

# The Impact of Mental and Nervous Abnormalities (Less than Insanity) on Criminal Responsibility, A Comparative Study of Iraqi and Arab Legislations

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## Abstract

Abstaining from criminal responsibility directly affects the suspect's insanity or mental impairment at the time of the commission of the act - or omission 1- constituting the crime. A mental impairment that denies criminal capacity, 2- Contemporary insanity or mental impairment to commit the act. The legislator equated mental and psychological disorders and considered that either of them is achieved by abstaining from criminal responsibility for a person. Mental disorder is synonymous with what the legislator considered crazy before the 2009 amendment. This mental disorder has a medical meaning related to the brain. But what is proven is that the legislator preferred to disclose insanity in its legal meaning in a way that includes all forms of disturbance of a person's mental powers, causing him to lose awareness or freedom of choice. For this reason, the judge does not adhere to the exact medical meaning of insanity and what that necessitates in the search for mental illnesses and their types. Rather, it suffices to verify the disappearance of awareness or freedom of choice in the person when committing the crime. It equals that the loss of awareness or choice is due to a disease that affects the brain "which is madness in its medical sense," or a defect related to the person's nervous system or mental health disorder.

**Keywords:** diminished criminal responsibility, mental abnormalities, fair and just trial, Iraqi Law,

## Introduction

The term forensic neuroscience or forensic neuroscience appeared recently, and it complements forensic psychiatry by describing some organic diseases that may affect the human brain and its ability to make insightful decisions and understand its consequences by permanently or temporarily disrupting the higher functions of the brain, and thus may disappear Assigning him leads him to a stage close to insanity, so he does not make sense or mention his words and actions related to criminal cases, whether he is a party to them or a witness to them. The correct diagnosis of neurological diseases that may have existed

before the felony and about which the patient or his relatives are not aware of help in judging the persons involved in criminal cases to evaluate them precisely and ensure that the punishment is deserved or not. Since forensic psychiatry deals with psychological diseases in detail, it may be difficult to diagnose some organic diseases of the nervous system, especially momentary cases of loss of consciousness or awareness, such as epileptic seizures, which do not result in muscle spasms of the patient with a clinically disguised epileptic seizure in the brain.

It is well known that sufficient evidence and presumptions must be available in the event of a

criminal suspicion indicating that a person intentionally committed a criminal act that requires punishment.

In rare cases, patients with epilepsy initiate actions and words that the patient does not intend to do or say, and they come from him due to excessive activity in the electricity of the brain that leads to the stimulation of some parts of the brain and results in abnormal actions or the patient loses consciousness or awareness later, and then known muscle spasms begin in the general public. After the epileptic seizure ends, the patient returns to his normal position and does not mention what happened during or after the seizure. Forgetting is part of the epileptic seizure that varies in intensity and duration. The epileptic seizure may be clinically hidden and last for hours or days without a complete loss of consciousness or the appearance of muscle spasms. Electrical activity in a specific part of the brain and does not spread to all parts, or it may be of the types that do not show muscle spasms during an epileptic seizure, but the patient only suffers from behavioral changes with a loss of awareness without loss of consciousness.<sup>1</sup> When a person with a criminal case is suspected of having epilepsy, a detailed history must be taken, and the necessary tests to diagnose it, such as electroencephalography and magnetic imaging, and consulting neurologists to examine it. It is known that drugs and intoxicants cause epileptic seizures when or after their use, due to their stimulating effect on central nervous receptors or by damaging nerve cells.

After recovery, patients with head injuries may experience psychological conditions such as major depression, outbursts of anger, or outbursts of poor judgment. These psychological symptoms are due to an injury to the frontal lobe of the brain or its network that connects it with the rest of the brain, and the psychological symptoms of some people with head injury accidents are linked to pre-injury factors so that they are a cause of the accident, such as aggressive personality traits or the presence of

Chronic mental illness or previous use of alcohol or drugs.

When there are severe depressive episodes that have not been discovered or treated, the patient with an old head injury may transgress himself and attempt suicide. Exaggerated aggressive or defensive reactions, especially if the head injury caused damage to the brain's frontal lobe.

The criminal is usually characterized by certain psychological characteristics, including weak religious scrutiny, lack of moral values, impulsiveness, recklessness, severe temperament, insensitivity to others and cruelty, but what if he has an actual mental illness that affects his mind and awareness, and the degree to which this is linked to his criminal responsibility for his criminal acts? Especially if he hides the reality of his illness and communicates naturally with society until he gets involved in a crime, which raises the curiosity of many, especially in light of the mental image associated with literary and artistic works that deal with this aspect.<sup>2</sup>

At the outset, it must be clarified that mental illness is not an absolute impediment to criminal responsibility but rather limits liability to the extent that the offender results in the inability to understand the nature of the act and its consequences. , the mind is entrusted with the assignment.

The degree of impact of mental illnesses on the human mind varies from one disease to another, so it is natural for criminal responsibility to vary. Some of them affect the mind partially by weakening it or causing it disorder while leaving space for discrimination, and in this case, the person is responsible to the extent of this space.

Article (60) of Federal Penal Code No. (3) of 1987 defines criminal responsibility for mental illness by stipulating that "no one who at the time of the commission of the crime lacks awareness or will due to insanity or a mental impairment... or for any other reason that determines science

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<sup>1</sup> Sorour, Muhammad Shukri, The General Theory of Right, first edition, Dar Alfeker Alarabi, Cairo, 2011, p. 56.

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<sup>2</sup> A group of writers: Researches of the International Conference on Justice and Justice, i: 1; Riyadh: Center for Studies and Research, Naif Arab University for Security Sciences, 1427 AH/2006 AD, p. 178.

shall be held criminally responsible. He loses awareness and will, but if insanity, mental impairment, or others result in a lack or weakness of awareness and will at the time of the crime, this is considered a mitigating excuse."

Returning to the text of the aforementioned article, we find that it divided mental illnesses in terms of the degree of their impact on the human mind into two types. First, those diseases affect the individual's mind, so he loses his awareness of what is around him and weakens his efficiency, productivity and ability to judge matters, and such diseases have an impact on criminal responsibility.

As for the second type, it is represented in diseases that do not affect the mind of the individual and do not lose with them his ability to judge matters, and such diseases do not have an impact on criminal responsibility but are a reason to reduce the punishment according to the judge's discretion.

Finally, it should be noted that the final say on whether the accused at the time of the crime attributed to him suffers from a mental illness that deprives him of will and discrimination, in whole or in part, is the medical reports issued by specialists commissioned by the Public Prosecution or the competent court.

The Islamic Sharia came to look after and protect the interests of the individual and society in all its circumstances and preserve his rights and property. And the wise legislator knows - when he revealed this Sharia and the wisest construction of it - the reality and nature of the human soul and the formation of the human being, and the love of self and being drawn into lusts, and falling into sin and evil, which leads him to attack others and devour their rights, so disputes arise, and disputes spread and crimes occur and are committed felonies. Since the Islamic Sharia requires that the offender be aware of his action by choosing him to be subject to criminal responsibility for his actions, so the person responsible must be sane, adult and free, and if he is not so, then there is no responsibility on him; Because the unreasonable is not aware; Because he is not aware of what he is doing, and likewise a person who has not reached the age of

commissioning is not fully voluntary, and accordingly there is no responsibility on the part of a child, insane, imbecile, or unconscious for any reason. Today, mental illnesses have spread and diversified due to the conditions in which we live, which are not hidden from anyone, from security, social, political, economic, to other such circumstances. Or members, property and money, and the answer to this issue need to know the extent of the mental patient's awareness of his actions and words<sup>1</sup>.

Is the mentally ill person aware of what he does voluntarily, so he will be criminally responsible for his actions if he attacks others? Or is he not aware of what he is doing and is exempted from criminal responsibility? Or does he have some awareness and bear part of this responsibility? Then which of these mental illnesses does not affect cognition and bears full responsibility? Which one affects, and what is the extent of this effect? What is its impact on responsibility? Especially that the mentally ill often hide the reality of his illness, lest he be described as crazy, so he remains connected to his community, interacts with it and is able to continue his work, unlike the mentally ill who lives in a world of his own and is cut off from his community and does not interact with them and is not able to do any work because of his lack of awareness and will what is going on around it.

According to the amendment to Article 62 of the Penal Code by Law No. 71 of 2009 promulgating the Law for the Care of the Psychiatric Patient, the judiciary did not hesitate to consider psychological disorder as a barrier to criminal responsibility like insanity, and one of the forms of this psychological disorder, as revealed by the medical report, is the presence of a personality disorder characterized by High neurotic traits and aggressive criminal behaviour with a behaviour disorder.

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<sup>1</sup> Ibn Farhoun: Ibrahim bin Muhammad (died 799 AH), the rulers' insight into the origins of the districts and the methods of rulings, i: 1; Beirut: Dar al-Kutub al-Ilmiyya, 1416 AH / 1995 AD, p. 55

Among the most important related studies that we benefit from in preparing this doctoral thesis are the following:

1- Muhammad Yusuf Alwan, Crimes against Humanity - International Criminal Court - Challenge of Immunity, Security and Law Journal, Issue 1, January 2002. This article deals with the role of the International Criminal Court in applying international treaties to crimes in Sudan and Congo in Central Africa for Combating it according to the statute of the International Criminal Court.

2- Darawi, Daoud, Report on War Crimes and Crimes against Humanity: Israel's International Responsibility for Crimes During the Al-Aqsa Intifada, Palestinian Independent Commission for Human Rights, Ramallah, 2001, Legal Reports Series (24). This official report includes the application of the crimes of Israel with the statute of the International Criminal Court, focusing on the international crimes committed by Israel in Palestine and then the crimes against humanity.

3- Maryam Nasser, The Effectiveness of Punishment for Serious Violations of the Rules of International Humanitarian Law, 1st Edition, Dar Al Fikr Al Jamia, Alexandria, 2011. This thesis is the subject of premeditated murder, genocide, enslavement and rape committed by the heads of the armed forces of some countries in other occupied countries, which is a crime against humanity.

The research examines these questions: What are the images of the development of crime against humanity in international criminal courts from the first generation to the fourth generation of courts? What is the relationship between crimes against humanity and genocide? What are the most important manifestations of crimes against humanity according to the judicial process and the custom of the International Criminal Court? What is the position of Islamic criminal jurisprudence (focusing on Shiite jurisprudence) in the prohibition and criminalization of behaviour against humanity, and what is the Islamic confiscation in this regard that inspires codified criminal legislation such as the Iraqi law to develop the criminalization of this crime?

The research assumes that the development of the material element of the crime and its scope, as well as the inclusion of an aggravating circumstance of punishment called "widespread or systematic attack" are the two main images of the development of crime against humanity in the course of international criminal courts from the first generation (the courts of the victors of the world war) to the fourth generation of courts (the Criminal Court international). The research also assumes that crimes against humanity are mass crimes committed against the civilian population, and the most serious form of these crimes can be considered the killing of groups of people closely related to genocide. But crimes against humanity have a broader meaning than genocide. In crimes against humanity, it is not necessary to target a particular group, but in general, the civilian population, including political groups, etc., may be the subject of these crimes.

This article believes that forced slavery, the expulsion of people from their ancestral lands, arbitrary imprisonment or torture of political opponents, widespread rape of unarmed women, enforced disappearances, and harassment by discriminatory laws and procedures are among the most prominent forms of crimes against humanity according to the judicial custom of the International Criminal Courts and the ICC. The researcher also believes that Islamic criminal jurisprudence, using valuable scientific verses, traditions and teachings, has a great ability to correct the shortcomings in the tools and mechanisms of international criminal law in the prevention, prevention and punishment of crimes against humanity.

The research aims to analyze the historical development of crimes against humanity, search for the punishment of perpetrators of crimes against humanity by hybrid international criminal courts, and analyze how crimes against humanity are prosecuted in implementation of the principle of universal jurisdiction; The article also explains the context of the commission of crimes against humanity within the framework of the constitutions of the international criminal courts; We describe an analytical description of the historical development of criminal responsibility for the commission of crime against humanity,

and we discuss the role of Islam and Islamic countries in the development of international law and criminal courts in the prevention and punishment of crimes against humanity.

We faced another set of difficulties in our research. First is the difficulty of obtaining reliable official reports on statistics on crimes against humanity in general and armed conflicts from national and international authorities. Secondly, the lack of resources and legal efforts and the lack of judicial decisions, all because this is a wonderful and unprecedented topic of research.

In terms of the research method, within the framework of the descriptive-analytical method, we will analyze the provisions of the Statute of the Permanent International Criminal Court and the rules of procedure and evidence of the International Criminal Court, which relate to the guarantees of the accused before that court. As for the comparative approach, we will use it from time to time to compare the guarantees enjoyed by the accused before the International Criminal Court with those guarantees in national legislation to see if the guarantees provided for in the Rome Statute have a global dimension.

As for the aspect of creativity in this research, it is critical research on the progress of developing the material element of a crime against humanity and expanding its moral element from the types of intentional to the types of criminal negligence, in addition to the use of the context and analytical approach of Shiite jurisprudence in the development of criminal law to protect victims of crimes against humanity.

Theoretical principles of criminal responsibility for persons with mental abnormalities without insanity

Mental impairment is a broad term meaning that includes in its connotation every disease that affects the mind and takes it out of its normal activity. And to clarify the effect of these mental impairments on criminal responsibility, it is necessary to lay the foundation for criminal responsibility among Islamic schools of thought and other man-made schools? And to clarify the effect of these mental impairments, are they considered among the reasons that permit the act

or among the impediments that prevent criminal responsibility? We saw that the conditions of the impediments apply to them. From the circle of the ordinary, then cases of mental retardation represented by dementia, then idiocy, then mental weakness, and cases that affect the nervous system represented by epilepsy, hysteria and sleep vigilance, and psychological diseases such as shed thoughts and double personality. If these cases reach a degree that affects the will, they take the exemption from criminal responsibility, but if they are to a small degree, i.e. mental powers are weakened. The responsibility is incomplete, i.e. extenuating. It is permissible in both cases to place the offender in a clinic or place to receive treatment to protect society from its evil But the exemption from criminal liability does not preclude the exemption from civil liability. The mentally ill person shall be fully liable for the value of the damage he has done.

The fact that the offender has a mental disability without the limit of madness in mind and his loss as a result of that awareness or choice is not sufficient to achieve his abstention from the act he committed unless the committed act that realizes the crime occurred during the time in which the offender was unconscious or unconscious due to his injury and the law stipulates that Explicitly in Article 60 of the Penal Code, and this requires determining the time of committing the act constituting the crime and then verifying the condition of the interested person at this time.<sup>1</sup>

If he lost consciousness or choice at the time of committing the act, his responsibility would abstain, but his responsibility would not be denied in the opposite case.<sup>2</sup>

It is self-evident to say that the criminal issue entails punishment directed to the offender's will to discourage him from behavioural deviation. Or

<sup>1</sup> Mustafa Ibrahim Al-Zalami, "Inhibitions of Criminal Responsibility in Islamic Sharia and Arab Penal Legislation", first edition, Baghdad, 1998, p. 198

<sup>2</sup> Abd al-Salam al-Tunji, Impediments to Criminal Responsibility, Institute of Arab Research and Studies, Arab Organization for Education, Culture and Science, 1971, p. 54.

it deters him in the future, while if this will is non-existent or not free, it is absurd to say that the punishment affects it. Hence, in most criminal justice systems, it is stated that no one is punished unless he has done it consciously and willingly. The law requires the will to be vigilant and sane so that its choices are made following the laws and regulations that foster social life.

Mental retardation laws differed in determining their impact on criminal responsibility. However, before stating the effect of mental retardation on criminal responsibility, it should be noted that criminal responsibility is based on the freedom of choice in the direction of the will to the illegal act and to the criminal outcome in order for the will to be subject to the adoption of the law. It has legal value<sup>1</sup>, and in order for it to be so, two conditions must be met by the will: discrimination or awareness, which means the ability to understand the nature and nature of the committed act and to estimate the consequences that result from it, and also the will should have freedom of choice, i.e. the ability of the offender to choose a specific destination from the available destinations, in front of him. Since mental retardation lacks discrimination, freedom of choice, or both, criminal responsibility will be affected.

The Egyptian legislator made an important amendment to Article 62 of the Penal Code, adding psychological disorder to insanity as one of the barriers to criminal responsibility. The legislator has also begun to differentiate since the amendment that was made in 2009 between two assumptions, the first of which is that psychological or mental disturbance results in "loss" of awareness or choice of the perpetrator of the crime, that is, his complete absence, and in this imposition the perpetrator is not criminally responsible.<sup>2</sup>

As for the second hypothesis, the psychological or mental disorder results in a "decreased"

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<sup>1</sup> Alsaeed . Atiq, Legal Protection for People with Special Needs, Dar Al-Nahda Al-Arabiya, Cairo, 2005, p. 188.

<sup>2</sup> Dari Khalil Mahmoud, The Impact of Mental Disability on Criminal Responsibility, Legal Research Center, Baghdad, 1982, p. 329.

awareness or choice of the perpetrator of the crime, not its total absence, and here the perpetrator remains criminally responsible. However, the court considers this circumstance when determining the period of punishment. This means that decreasing awareness or choice is considered a reason to reduce the penalty in terms of its amount.

The majority of criminal legislation did not provide for the definition of insanity, leaving the matter to specialists in psychiatry. We have previously explained the concept of insanity in its narrow medical meaning, as it means the complete demise of mental powers resulting from a growing disease such as general paralysis, but this concept expands in its legal connotation. It is not limited to The medical connotation, in confirmation of the subjectivity of the criminal law<sup>3</sup>, as the medical connotation of insanity fails to encompass all forms of mental illness that result in the absence or diminution of a person's criminal capacity, so insanity is defined from a legal point of view as (every deviation affecting the body's systems and forces that contribute to The formation of the will, which would deprive it of discrimination or freedom of choice.

As a result, most modern criminal legislation has tended to use other, broader expressions than the term "madness." The Italian legislator used the term "illness" in Article (88) of the Italian Penal Code, and the French legislator used the term "mental or nervous disorder that removes the ability to The term (disorder of consciousness, pathological disturbance of mental activity, or mental weakness) in the German Penal Code (Article 51), and the term (illness) Mental or serious mental abnormality) in the Swedish Penal Code (Article 5), while other legislation tended to add other expressions to the term insanity in order to expand its concept as the expression (mind impairment) in the Iraqi Penal Code (Article 60) and the Sudanese Penal Code (Article 10). ), and the Egyptian Penal Code (Article 62), and this would include all that scientific progress reveals in the field of mental

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<sup>3</sup> Abd al-Salam Arafat, The chain of transmission in criminal law, jurisprudence and jurisprudence, Dar al-Fikr al-Lawun, Cairo, 2005, p. 76

and psychiatric medicine from conditions of mental disorder, or psychological diseases that lead to the lack of criminal capacity for the sufferer.

### **3- Attitudes in analyzing the criminal responsibility of people with mental disorders without being insane**

The importance and necessity of this topic stem from the fact that it will represent an addition to the legal, scientific library and the legal field in its practical aspect, and aims to define criminal responsibility and clarify the views of Islamic jurisprudence in dealing with the mentally ill and to determine the legal point in this, and what drew the researcher's attention is that Islamic law requires accountability. However, the Egyptian Criminal Code of 1991 - which affects the development of legislative amendments in the Iraqi criminal law - has been confused in its codification of these provisions and has not followed the usual doctrinal effect, despite its detailing of the general basis for accountability. Yet, it stipulates that the criminal responsibility of the offender with a mental or psychological disability is frightened, so this research comes to explain the impact of these diseases on criminal responsibility.

The developments that medicine has witnessed and the expansion of scientific research have proven the existence of cases of mental disabilities that do not lead to a complete loss of cognition or choice, but rather their effect depends on detracting from one or both of them, which leads as a result to the emergence of a group of mentally ill people who mediate their mental faculties. And its absence means that its members possess a degree of discrimination that does not reach the level of the sane and does not exist as in the case of the insane, and this condition is known as mental retardation and means the lack of reason and its insufficiency. Species. It should be noted that most criminal law jurists and Islamic jurists confuse insanity and mental retardation and look at the two cases as being named for the same content, but medicine has proven that there is a difference between each of them in many respects.

The Islamic Sharia came to look after and protect the interests of the individual and society in all its circumstances and to preserve his rights and property. And the wise legislator knows - when he revealed this Sharia and the wisest construction of it - the reality and nature of the human soul and the formation of the human being, and the love of self and being drawn into lusts, and falling into sin and evil, which leads him to attack others and devour their rights, so disputes arise and disputes spread and crimes occur and are committed Felonies<sup>1</sup>. Since the Islamic Sharia requires that the offender be aware of his act and voluntarily be the subject of criminal responsibility for his act, so it is necessary for the person responsible to be sane, adult and free, and if this is not the case, then there is no responsibility on him; Because the unreasonable is not aware; Because he is not aware of what he is doing, and likewise a person who has not reached the age of commissioning is not fully voluntary, and accordingly there is no responsibility on the part of a child, insane, imbecile, or unconscious for any reason. Today, mental illnesses have spread and diversified, as a result of the conditions in which we live, which are not hidden from anyone, from security, social, political, economic, to other such circumstances. Or members, or property and money<sup>2</sup>. The answer to this issue needs to know the extent of the mental patient's awareness of his actions and words. Is the mentally ill person aware of what he does voluntarily, so he will be criminally responsible for his actions if he attacks others? Or is he not aware of what he is doing and is exempted from criminal responsibility? Or does he have some awareness and bear part of this responsibility? Then which of these mental illnesses does not affect cognition and bears full responsibility? Which one affects and what is the

<sup>1</sup> Ahmed Fathi Bahnasy, *Criminal Responsibility in Islamic Jurisprudence*, second edition, Al-Halabi and Partners Foundation, Cairo, 1969, p. 176.

<sup>2</sup> Sobhi Al-Attar, *Attribution, sin and responsibility in Egyptian and comparative jurisprudence*, research published in the *Journal of Legal and Economic Sciences*, Nos. 1 and 2, Year 32, Ain Shams University Press, 1990, p. 165.

extent of this effect? What is its impact on responsibility? Especially that the mentally ill often hides the reality of his illness, lest he be described as crazy, so he remains connected to his community, interacts with it and is able to continue his work, unlike the mentally ill who lives in a world of his own and is cut off from his community and does not interact with them and is not able to do any work because of his lack of awareness and awareness what is going on around it.

By gay criminals, we mean the people who occupy the middle rank between ordinary criminals who are fully criminally responsible and enjoy a distinct free will and criminals without criminal responsibility, that is, without awareness and discrimination, and we call them the term gays instead of semi-insane and they are those with incomplete will<sup>1</sup>.

We will discuss the legal status of homosexual criminals, and the study revealed to us the legal importance of the homosexual problem and the need to ensure real legislative regulation for it, and that the Iraqi law's ignoring of this category of offenders is a clear shortcoming.

We will discuss the legal status of homosexual criminals, and the study revealed to us the legal importance of the homosexual problem and the need to ensure real legislative regulation for it, and that the Iraqi law's ignoring of this category of offenders is a clear shortcoming.

Since it is not feasible to limit the punishment alone or the precautionary measure alone or to combine them for the abnormal criminal, some jurists have questioned whether it is possible to think of a new system that combines the characteristics of punishment and the precautionary measure, and ensures the implementation of both together. This system has been called the mixed measure. We will try to apply the mixed measure theory (which in our estimation occupies the middle position between penalties and precautionary measures) on gay

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<sup>1</sup> Jalal Muhammad Ibrahim, Mental Abnormalities and Civil Responsibility, Journal of Law, First Issue, Tenth Year, Kuwait University, 1986, p. 89.

criminals, so we have confirmed that this theory guarantees the protection of society from the dangers of these criminals in a manner consistent with legal logic.

According to the Islamic Penal Code issued in 1392, mental illnesses are diseases that affect mental health and deprive a person of his will, put a person in a state of insanity, and absolve him of criminal responsibility. However, since not all mental illnesses completely deny willpower, it is extremely important to determine to what extent a person with a mental disorder bears criminal responsibility.<sup>2</sup> And therefore requires the knowledge and attention of judges determine the penalty for each disease and the degree of deprivation of the will of the person and does not exceed the limits of justice. One of the innovations of the 2013 Islamic Penal Code, like the laws of other countries, is the use of the concept of criminal mental disorder instead of the word insanity, and broadening the range of factors influencing criminal behavior is a step towards determining weak liability. However, the only legal effect of a mental disorder remains in the realm of madness.

The disagreement about the criminal responsibility of the mentally retarded has resulted in the emergence of three trends, the first of which sees it as full responsibility, and the second sees no responsibility, and the third sees it as mitigating responsibility.<sup>3</sup>

### **The first direction: full criminal responsibility**

This trend of legislation is governed by the ideas of the traditional school, which sees that criminal responsibility is indivisible, and that it either exists in full or does not exist at all, and that the

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<sup>2</sup> Sarikhani, Adel, Aqababai Bani, Ismail. (1394). The effect of the occurrence of insanity when committing a crime in the name of metaphors. Islamic Law, Session 7, Shamara 26, p. 109.

<sup>3</sup> Naglaa Tawfiq Najib Falih, Indiscriminate Intervention in Harm Acts, A Comparative Study, Master's Thesis submitted to the College of Law, University of Mosul, 1995, p. 183.



criminal is one of two men, either responsible or not responsible, and everyone who does not have an objection to responsibility on its terms He is definitely responsible. This trend goes to the fact that the criminal responsibility of the mentally retarded is a full criminal liability, as it is not permissible to say that the responsibility is not<sup>1</sup> As for the mentally retarded, the conditions for abstaining from responsibility are not met, nor is it permissible to order a precautionary measure, as there is no place for a measure unless provided for by law, and this approach was taken by the French legislator in the Penal Code of 1810, as the persons who are not responsible according to the text of Article (64) French penalties are those who suffer from mental illness or a great mental deficiency in mental powers, as well as the Egyptian legislator, if he did not recognize the system of incomplete responsibility in the Penal Code, according to the text of Article (62) Egyptian penalties prove criminal responsibility in full or deny completely according to the absence of insanity or mental impairment Or proven, the Egyptian criminal legislation is ignorant of the theory of mitigating responsibility.

### **The second trend: the irresponsibility of the mentally retarded**

This trend tends to the non-responsibility of the mentally retarded, in cases where the accused at the time of committing the crime was unable to realize or choose because of his insane or mental impairment<sup>2</sup>. This trend is not bound by a specific medical indication of mental illness, but rather focuses on the effect of the disease, which is feeling and choice. When the offender at the time of committing the crime was under the influence of a mental illness, his criminal

<sup>1</sup> Hamad Safwat, Safiya; *Criminal Intent and Absolute Responsibility*, a comparative study, translated by Abdulaziz Safwat, first edition, Beirut: Dar Ibn Zaydoun, 1986 AD, p. 65.

<sup>2</sup> Nada Salem Hamdoun Mulla Alo, *The impact of mental illness on legal behavior - a comparative study*, PhD thesis submitted to the College of Law, University of Mosul, 2001, p. 87.

responsibility does not exist, whatever the crime was.<sup>3</sup> It can be said that the legislation that adopted the ideas of the traditional school that sees the inability of criminal responsibility to be indivisible and called for full criminal responsibility is the same that took this direction because it does not It accepted the idea of gradation of responsibility and did not take into account the idea of mitigating responsibility, as a mental impairment leads to the accused's lack of responsibility if it leads to his loss of feeling and choice, and does not affect the full criminal responsibility of the accused if it does not lead to his loss of feeling and choice or one of them at the time of committing the act.

### **Third trend: mitigating criminal liability**

This tendency goes to the gradation of capacity according to the mental state, and divides people on this basis into three categories, perfection, nothingness, and a middle state between them. Criminal responsibility is negated if the offender's awareness or choice is absent, and is graded according to the degree of derogation that occurs in perception and choice, so that the offender's responsibility becomes mitigated and of a special kind, because the lesson is the fact that the offender is aware and distinguishes him from the level that the law is reliable.

Most of the legislations have gone to report mitigating responsibility commensurate with the mental deficiency of the offender, foremost of which is the Iraqi Penal Code, as Article (60) of the Iraqi Penal Code No. Because of insanity or a mental disability, or because he was in a state of intoxication or drugging that resulted from intoxicating or narcotic substances that were given to him forcibly or without his knowledge of them, or for any other reason that determines that he loses awareness or will. Intoxicant, narcotic, or other than a lack or weakness of

<sup>3</sup> Mustafa Ibrahim Al-Zalami, *"Inhibitions of Criminal Responsibility in Islamic Sharia and Arab Penal Legislation"*, first edition, Baghdad, 1998, p. 65

awareness or will at the time of committing the crime is considered a mitigating excuse<sup>1</sup>.

This is what the Lebanese Penal Code of 1943 has taken in, as Article (233) of it stipulates that (whoever, at the time of the act was afflicted with a hereditary or acquired mental handicap, the power of awareness or choice in his actions decreased, legally benefits from the commutation or reduction of his punishment...) on the grounds that the responsibility Which assumes the mental and emotional integration of the normal human being does not fully exist in the lunatic who has lost that integration due to a partial impairment in his mind, and therefore the inevitable result of this partial impairment in mental powers is to consider criminal responsibility only partially.

The same applies to the Moroccan Penal Code issued in 1963, as it stipulates in Article (135) of it that (the responsibility of a person is incomplete if he suffers from a weakness in his mental powers that would diminish his awareness or will...).

This is what the English legislator expressly expressed in the second section of the Homicide Act issued in 1957 related to the reduction of responsibility due to mental disability, where he made a provision according to which, he is not subject to conviction for the crime of premeditated murder or participation in it if it is proven that the person was suffering at the time of its commission from A mental disorder, regardless of the nature of its pathological source, whether it is a cessation or a retardation in mental development, and it is also not important that it arises from a genetic or acquired cause resulting from disease or trauma, provided that this deficiency is fundamental and leads either to a lack of awareness or He lost control of himself.

The text on this ruling came as a result of the development that English jurisprudence and jurisprudence has undergone since the sixteenth century in dealing with this issue, since the jurist Lampard set his rule which says that if murder is

committed by a crazy, retarded, manic or child, it does not differentiate between right and wrong, it is not considered that A crime for lack of will and awareness for this act, passing through the rule of seven established by the jurist William Blackstone, then the rule of the wild beast established in 1724, all the way to the McNatten rule in 1843 which states that if it occurs due to mental illness that a person does not know or distinguish the nature of his work Or differentiate between right and wrong, he is not responsible for this action.

The French legislator override the criticisms leveled at the treatment stipulated in the repealed legislation, by stipulating in the new French Penal Code issued in 1992 on two groups of people with mental disorders<sup>2</sup>, and decided the responsibility of those who were afflicted with a mental disorder at the moment of the crime did not cancel his ability to distinguish Nor is his ability to control his actions and to influence them, while giving the judiciary a discretionary authority to take into account this circumstance when determining the penalty and how to implement it<sup>3</sup>. And the lack of responsibility of the person who was suffering from a mental or mental and nervous disorder that led to the abolition of his ability to distinguish and control his actions, and thus the legislator counted The French lack of discrimination or the ability to control behavior due to mental or nervous disorder is one of the reasons for reducing the penalty.

The removal of criminal liability for insane and undisciplined criminals in law and the importance of recognizing cases of non-discrimination and will, makes courts benefit from the opinions of relevant experts in the field, particularly forensic doctors and psychiatrists. By precisely identifying these cases, it is possible to

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<sup>1</sup> Mahmoud Abu Zaid, *The Dictionary of Criminology, Legal Sociology and Punishment*, Dar Al-Kitab for Publishing and Distribution, 1987, p. 65

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<sup>2</sup> Fatima Al-Zahra Al-Razzouk, (2015). *Health psychology. Its fields, theories and concepts emanating from it*, Algeria, Diwan of University Publications, p. 43

<sup>3</sup> Muhammad Safwat, Safiya; *Criminal Intent and Absolute Responsibility, a comparative study*, translated by Abdulaziz Safwat, first edition, Beirut: Dar Ibn Zaydoun, 1986, p. 181.

prevent the punishment of many patients who may have erroneously intended to be punished and, if necessary, to be transferred to a psychiatric hospital for treatment rather than imprisonment. Insanity in criminal law is a state in which a person does not have the ability to distinguish and his actions are not intentional. Although there is no term for insanity and its diagnostic criteria in the reference books of psychiatry, from a psychological point of view, mental disorders that reach the level of lack of awareness and will are exempt from criminal responsibility. And therefore, Examples of insanity include degrees of illness such as schizophrenia, hypomania, mania, depression, delusional disorders, epilepsy, dementia, some personality disorders, mental retardation, etc. Although examples of insanity in criminal law are examples of insanity in forensic medicine, it can be said that not only insanity in psychiatry does not contradict insanity in insanity in criminal law, but also cases of non-discrimination and will in criminal law with examples in psychiatry overlap to a big limit.

It is worth noting that some laws used the term insanity as a comprehensive for all cases of mental disorder or mental disability, and this is a mistake that those laws fell into, because insanity from a scientific point of view is a type of mental illness, that is, it is one state or image of a mental handicap. Among these laws is the Algerian Penal Code, as it stipulates in Article (47) that (there is no penalty for anyone who was insane at the time of the commission of the crime), as well as the Palestinian Penal Code, as Article 101 of it stipulates that (whoever was insane shall be exempted from punishment. insane).

It should be noted that the Iraqi legislator was not successful in the text of Article (60) when he mentioned the phrase (for insanity or a disability in the mind), because insanity, as we mentioned, is one of the mental diseases and therefore it is part of a mental impairment or a kind of its types. It is wrong to distinguish between them by saying that No one who was afflicted with insanity or was suffering from a mental disability should be criminally questioned, because insanity falls within the category of mental impairments. The Iraqi legislator and other legislators who made

such a mistake would have been more deserving of mentioning the term mental impairment under which all mental illnesses, including all kinds of insanity, and cases of Mental retardation, some cases of mental retardation and neurotic or psychological diseases.

With regard to the authority of the judiciary to decide whether the accused suffers from any mental disability, including mental retardation, his orientations differed in this regard. In Egypt, we find that the trial court is the supreme expert in everything that requires technical expertise. Sufficient cause if it appears that the accused was unconscious or unconscious at the time of committing the act, and she is not legally obligated to delegate an expert if she considers that she has enough evidence and presumptions to judge the mental state of the accused, and she is not obligated to answer the defense to what he asks for assigning an expert to assess the mental state of the accused As long as his sanity was ascertained from his position in the investigation, his condition at the hearing, his answer to the questions I put to him, and the discussion of witnesses.<sup>1</sup>

The same applies to the Iraqi criminal judiciary, as the Code of Criminal Procedure No. 23 of 1971 granted the criminal courts the discretionary authority to assign experts in psychiatry or psychiatry to examine the accused and ensure his mental health, and therefore the provisions of the Iraqi criminal justice were characterized by instability in Taking a specific course in this regard, as we find that the Court of Cassation, in some of its decisions, has approved the procedure taken by the trial court to reject the defense's request to refer the accused to a specialized medical committee for mental examination, on the pretext that the purpose of the defense request is to obstruct the settlement of the case, while we find In other decisions, it is not satisfied with accepting the challenge to the validity of the decision of the competent court if it did not adopt the medical expertise when issuing its decision.

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<sup>1</sup> Mahmoud Naguib Hosni, Criminal Intent, research published in the Journal of Law and Economics, p. 3-4, p. 29, Cairo University, 1956, p. 155

Rather, we find that it calls for the adoption of the opinion of the medical expertise in a way that goes beyond its required technical competence, so that it extends to asking it to express its opinion on whether the accused is responsible for the matter Which is at the heart of the judicial function.<sup>1</sup>

Prosecuting a lunatic, who is someone who suffers from a mental disability, is not permissible, because the accused is unable to defend himself, and therefore the text of Article (230) of the Code of Criminal Procedure indicated that in the event that it appears during the investigation or trial that the accused does not He understands what was issued by him, which indicates that he has a mental disability that prevents him from defending himself, so the investigation procedures, the judicial investigation procedures, or the trial procedures must stop. It may not reach the degree of lack of awareness, as its degrees vary, so it was necessary for a legal system to deal with the regulation of stopping the procedures and referring to the competent medical committees and court procedures after receiving the decision of the competent medical committee.

During the investigation or the trial, the accused may show signs indicating his inability to defend himself due to a mental disability or suspected mental illness. The court finds that the accused does not understand what is issued by him, and may not be able to answer a simple question, and may delirious With matters outside of logic, which may lead to the suspicion that he suffers from a mental handicap.<sup>2</sup>

These signs may be clear indications that he suffers from a mental handicap, and this case may confuse the investigation or trial officials and whether he is actually delirious without feeling or is he faking the situation, Of course, the lawyer has the right to defend the accused's

<sup>1</sup> Samer Radwan and Konrad Richke, (2001). Health behavior and attitudes towards health, a comparative field study between Syrian and German students, 1999, p. 56.

<sup>2</sup> Mustafa Al-Auji, Criminal Responsibility in Lebanese Law, second edition, Beirut, 1979, p. 94.

insanity or mental abnormality, which is a fundamental defense that must always be subjected to the judgment when accepting or rejecting reasons derived from the papers and with an acceptable logical conclusion. In this case, the law differentiates between two forms according to the type of crime committed:

1. If the crime for which it is not permissible to release on bail such as crimes punishable by death, the investigation or trial procedures shall be suspended by a decision of the investigating judge or the court and the accused shall be placed under guard in one of the government health institutions prepared for mental illness.

2. If the crime is one of the crimes for which release on bail may be granted, the investigation or trial procedures shall also be halted by a decision of the investigating judge or the court, and the accused shall be placed in a governmental or non-governmental health institution at his expense at the request of his legal representative or at the expense of his relatives on a guarantee of a guarantor who undertakes According to it, he shall pay the expenses of that sanatorium and what will be spent on the demented accused from his family. In the aforementioned two cases, a competent official medical body or committee is assigned to examine him and submit a report on his mental state<sup>3</sup>, after the accused is placed in a health institution to study his mental state, psychological problems and the factors affecting his discrimination and wills. On the report of this committee depends the fate of the accused and the fate of the criminal case.

With regard to court procedures after receiving the medical report, these procedures differ according to whether the report issued by the competent medical committee includes the inability of the accused to defend himself or if he was insane at the time he committed the crime. We will explain the procedures as follows:

<sup>3</sup> Al-Ahmadi Ali bin Hassan, (2003), The level of health awareness for students of the second grade of secondary school and its relationship to health trends in Madinah Al-Munawwarah, Master's thesis, Umm Al-Qura University, p. 59.

1. If the report makes it clear that the accused is unable to defend himself, the investigation or trial must be postponed until the accused returns to maturity, which enables him to defend himself. In such a case, the accused must be placed under guard in a government health institution. It should be noted that the court may initially be satisfied with what was stated in the report of the medical authority that examined the accused and decided that he had a disability. Its members without summoning it completely, and it discusses what is stated in the report for the purpose of being convinced of it. It should be noted that the period during which the demented accused is placed in the government health institution under guard is counted for him when the judgment is issued against him and is deducted from the sentence period, by analogy with the provisions of Article (15) of the Penal Code and Article (283/c) of the Code of Criminal Procedure.

2. If, on the other hand, if it appears from the report submitted by the competent official medical authority, after examining the accused, with whom the investigation and trial was decided to stop, that he was mentally impaired at the time of the crime, which affected his awareness, the investigative judge must decide that he is not responsible or the court issues a ruling that he is not responsible. Depending on the circumstances of the case, this decision or judgment, according to the general rules, and after it becomes final, leads to the termination of the criminal case against the accused. When the court or the investigative judge issues a ruling or a decision that the accused is not responsible, it must decide to take the appropriate measures that guarantee his safety and protect him from danger from others.<sup>1</sup>

Thus, we find that the Iraqi judiciary has had its decisions varying and sometimes incorrect based on its discretionary authority granted to it by the legislator, and therefore the Iraqi legislator was not successful in granting the criminal justice the discretionary power to delegate a medical

committee to verify the mental health of the accused, and the legislator should have followed. What is his approach in the Civil Procedure Code of obligating the civil judiciary to assign a medical committee to verify the mental health of the accused, so that the court's decisions are based on scientific grounds in determining whether the accused is criminally responsible or not. As for the Syrian judiciary, it decides in many of its rulings that mental illnesses are among the subtle and hidden diseases that require extensive experience and full knowledge. Note that the issue of mental disability is one of the technical issues that the court cannot decide automatically based on its observations and conclusions without relying on clear technical expertise.

We support this trend and call on the Iraqi judiciary to adopt it, because seeking the opinion of experts and specialists in cases of mental disability is obligatory because it is related to purely technical matters that do not fall under the discretionary issues that are independent of the trial court. Expertise is a scientific and technical task that the court tends to whenever it finds itself before a problem that requires special knowledge and scientific study, so that it is closer to reassurance and far from suspicion.

We should mention that mental retardation in order to have an effect on criminal responsibility by negating it or decreasing it, according to the circumstances, it is required that there be a symbiosis between the lack of awareness or will or lack thereof and the commission of the crime, and this is an application of the general rule that concerns the moment of the occurrence of the act to determine the eligibility for criminal responsibility.<sup>2</sup> Taking care of the proportionality between the degree of eligibility of the offender and the amount of punishment imposed on him.

<sup>1</sup> Naglaa Tawfiq Najib Falih, Non-discriminatory Intervention in Harm Acts, A Comparative Study, Master's Thesis submitted to the College of Law, University of Mosul, 1995, p. 84.

<sup>2</sup> Nada Salem Hamdoun Mulla Alo, The effect of mental illness on legal behavior - a comparative study, PhD thesis submitted to the College of Law, University of Mosul, 2001, p. 77.

## Results

The lesson in the field of denying or reducing responsibility is through the effect caused by the mental or psychological defect or impairment, regardless of its name and description<sup>1</sup>, if it would severely weaken the mind and in such a way that the patient loses the ability to realize the nature of his actions or the face of the error in them so that Make the law not take into account the elements of responsibility available to him as a result of a lack of awareness or choice or a severe deficiency in them, the injured prevents his criminal responsibility and that he enjoys a small amount of awareness or choice but without what the law requires for invoking it, but if mental retardation weakens the mind in a way Awareness is only lacking, as it is one of the reasons for reducing responsibility and reducing punishment.

The exclusion or reduction of criminal responsibility is limited to those who have mental retardation and not others who are contributors to the crime, knowing that the denial or reduction of responsibility does not preclude taking precautionary measures against the offender whenever the court deems it necessary for the purpose of these measures in order to limit his danger to society and this is what stipulated It is subject to many punitive laws, including the Iraqi Penal Code, which stipulates in Article (105) that the injured shall be placed in a hospital or sanatorium for mental illness or any place designated for that, as well as what the Lebanese legislator went to in Article (234) of the Lebanese Penal Code regarding placing The imbecile is in the precautionary shelter, whether the offense he committed requires it, and if it is proven that he poses a danger to public safety.

According to the Iranian Islamic Penal Code issued in 2013, mental illnesses, that is, diseases that affect mental health and deprive a person of his or her will, put a person in a state of insanity and absolve him of criminal responsibility. Achieving criminal responsibility requires a person to have the necessary understanding and awareness when committing a crime. In this way

<sup>1</sup> Bu Saqi`a, Hassan, Al-Wajeez in the Private Criminal Law, Part Two, Edition 2004, p. 198.

his actions are done voluntarily and consciously,<sup>2</sup> otherwise the crime will not be attributed to him and the person under the heading of insanity criminal responsibility. It is clear that the Iranian criminal justice system has tried from the beginning until now to harmonize the laws with the requirements of the times in dealing with the issue of insanity, and it has taken different approaches, and the last attempt The legislator in this field is the Islamic Penal Code of 2013 on mental disorders and their impact. It deals with criminal responsibility in this study. While examining the current laws on the subject, criminal and non-insane responsibility is determined first, then the method of discovering insanity and the differences between them are discussed, then the judge's task in dealing with a criminal with a disorder. Psychological achievement is discussed separately on the basis of the time of the incident compared to the time of the crime.<sup>3</sup>

Theorizing and creativity in the research lies in the analysis of ways to raise the barriers to moving from the stage of non-relative criminal responsibility for people with mental and psychological disabilities to the stage of relative criminal responsibility for them, in comparison with the method of Iranian law and judiciary regarding how to influence the role of each mental disorder in reducing or evading criminal responsibility.

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<sup>2</sup> Mersaidi, Mr. Mansour; Criminal Responsibility, First Edition, Volume One, Tehran: Al-Mizan Publishing, 2005, p. 183.

<sup>3</sup> Al-Alfi, Muhammad Abdul-Aziz, Criminal Responsibility between Freedom of Choice and Inevitability, The National Criminal Journal, No. 2, July 2014, p. 65.

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