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The Objective Aspects of Jordanian Penal Legislation and Their Compatibility with the Constitutional Guarantees of Human Rights

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Abstract

This research dealt with the issue of constitutional guarantees of human rights provided when applying the provisions of the Jordanian Penal Code. In this context, the research included human rights issues in the Jordanian constitution, human rights challenges in Jordan, in addition to human rights guarantees in the Jordanian constitution. The researcher used the descriptive approach to study the Jordanian legislation related to the issue of constitutional guarantees for human rights in the face of the application of the provisions of the Penal Code. The researcher concluded that the Jordanian legislator pays special attention to the issue of human rights, as it is evident in the second chapter of the Jordanian constitution, which is devoted to the rights and duties of Jordanians. However, the provisions of the Jordanian constitution did not explicitly and clearly state human rights guarantees when applying the provisions of the Jordanian Penal Code.

Keywords

Constitutional guarantees, human rights, Jordanian Penal Code.

Introduction

The issue of constitutional guarantees of human rights in the face of the application of the provisions of the Penal Code is one of the most important issues of concern to specialists in the field of criminal law. The role of constitutional texts is also of

great importance as it is the main guarantor of justice and the protector of human rights from violations that may be exposed to them during the application of penal provisions. Constitutions also constitute the basic rules and the solid ground on which human rights principles can be based. In fact, constitutional texts are considered the core of other legal rules that aim to protect human rights. In this context, it can be said that constitutional texts must link human rights with the necessary guarantees that protect those rights.

The issue of human rights still preoccupies the minds of thinkers, researchers, lawyers and decision-makers since primitive times and since the first crime against human beings was committed on earth. Throughout the ages, the issue of human rights has been the focus of discussion and the basis of every civilization. In the Middle Ages, for example, European civilization and Islamic civilization arose, at a time when European civilization practiced the most severe violations of human rights due to the conflict between the church and the emperor, we find that Islamic civilization has honored man and raised his status and established a number of guarantees for the principle of equality and the abolition of the caste system. Moreover, it established the principle of Justice and Integrity Unterhalter (2009). Almighty says: "And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference" (Holy Quran, 17:70).

In the present era, due to the development of human life, human rights have become inclusive of all aspects of human activity. In this regard, many international organizations and bodies concerned with defending human rights have spread. However, in spite of this, the human being is still vulnerable to abuse, and his basic rights are still subject to violation.

In this context, constitutions are of paramount importance and their role is represented in protecting human rights, material and moral, by providing legal guarantees to protect them from violations. Therefore, most of the world's constitutions focused on the issue of human rights and enacted laws that guarantee the protection of these rights and ensure their free exercise. It should be noted that the Jordanian constitution is one of the most prominent constitutions that cares about human rights and makes them a top priority. Accordingly, it can be said that the Jordanian constitution is in line with international conventions and the Universal Declaration of Human Rights, as it has precisely defined civil, political, economic, social and cultural human rights, and emphasized basic freedoms and the mechanism for protecting these rights and freedoms (Unterhalter, 2009). Accordingly, the Jordanian constitution is considered a contemporary and advanced constitution, as it is concerned with various aspects of human affairs.

Research questions:

The current study seeks to answer the main question:

Are there constitutional guarantees to protect human rights when applying the provisions of the Jordanian Penal Code?

The following questions arise from it:

- 1 - What are the constitutional guarantees that protect human rights when applying the provisions of the Jordanian Penal Code?
- 2 - Is there a relationship between the Jordanian constitutional texts and the protection of human rights when applying the provisions of the Jordanian Penal Code?
- 3 - What are the material and moral rights that the Jordanian constitution provides for protection when applying the provisions of the Jordanian Penal Code?
- 4 - What are the legislative or executive challenges that may lead to a restriction or obstruction of these rights when applying the provisions of the Jordanian Penal Code?

Objectives:

The present research is an attempt:

- 1 - To know the constitutional guarantees that protect human rights in the face of the application of the provisions of the Jordanian Penal Code.
- 2 - To know the relationship between the Jordanian constitutional texts and the protection of human rights when applying the provisions of the Jordanian Penal Code.
- 3 - To know the material and moral rights that the Jordanian constitution stipulates to protect when applying the provisions of the Jordanian Penal Code.
- 4 - To know the legislative or executive challenges that may lead to restricting or impeding those rights when applying the provisions of the Jordanian Penal Code.

Hypotheses:

- 1 - There are constitutional guarantees to protect human rights in the face of the application of the provisions of the Jordanian Penal Code.
- 2 - There is a relationship between the Jordanian constitutional texts and the protection of human rights in the face of the application of the provisions of the Penal Code.
- 3 - There are many material and moral rights that the Jordanian constitution stipulates to protect in the face of the application of the provisions of the criminal law.
- 4 - There are a number of legislative or executive challenges that may lead to restricting or impeding these rights in the face of the application of the provisions of the Jordanian Penal Code.

Methodology:

Given the nature of the current study, which seeks to know the constitutional guarantees that protect human rights in the face of the application of the provisions of the Jordanian criminal law, by following the texts of the Jordanian constitution and the Jordanian penal law, knowing the relationship between the Jordanian constitutional texts and the protection of human rights in the face of the application of the provisions of the criminal law, knowing the material and moral rights which the Jordanian Constitution provides for its protection against the application of the provisions of the Penal Code, knowing the legislative or executive challenges that may lead to restricting or obstructing those rights in the face of the application of the provisions of the Jordanian Penal Code, and to achieve the objectives of the study, the researcher used the descriptive approach. This approach is based on studying the phenomenon as it is, expressing it and describing it accurately, including its quantity, size, and the extent of its relationship to other phenomena (Obeidat & al, 2006). In this context, the descriptive approach does not stop at searching for the hidden phenomenon and its different and different relationships, but rather goes beyond that to include analysis, linkage and interpretation to reach conclusions and suggestions (Norreklit, 2000).

The limits of the study:

The current study is limited to the following items:

- Knowing the constitutional guarantees that protect human rights when applying the provisions of the Jordanian Penal Code.
- Knowing the relationship between the Jordanian constitutional texts and the protection of human rights when applying the provisions of the Penal Code.
- Knowing the material and moral rights that the Jordanian constitution stipulates to protect when applying the provisions of the criminal law.
- Knowing the legislative or executive challenges that may lead to restricting or obstructing those rights when applying the provisions of the Jordanian Penal Code.

Research Significance:

1. Scientific significance:

The scientific importance of the research lies in the importance of the topic it deals with, which is the constitutional guarantees that protect human rights in the face of the application of the provisions of the Jordanian criminal law, which is one of the modern and contemporary concepts in the field of law and the most

prominent main axes in the protection of material and moral human rights. Various legal institutions and bodies around the world seek to provide constitutional guarantees to protect these rights, especially in the face of the application of the provisions of the criminal law.

The scientific importance of this study also highlights that it represents a qualitative addition by providing legal thought with information that clarifies constitutional guarantees that protect human rights when applying the provisions of the Jordanian Penal Code and the relationship between Jordanian constitutional texts and the protection of human rights in addition to knowing the material and moral rights that the Jordanian constitution stipulates protection when applying the provisions of the Penal Code. The research also shows legislative or executive challenges that may lead to restricting or obstructing those rights in the face of the application of the provisions of the Jordanian Penal Code.

2. Practical importance:

The practical importance of the current study is highlighted by the results that it will produce with regard to knowing the constitutional guarantees that protect human rights in the face of the application of the provisions of the Jordanian criminal law and the relationship between the Jordanian constitutional texts and the protection of human rights, in addition to knowing the material and moral rights that the Jordanian constitution stipulates to protect in the face of the application of the provisions of the Penal Code. It also highlights the legislative or executive challenges that may ultimately lead to restricting or impeding those rights in the face of the application of the provisions of the Jordanian Penal Code.

The researcher hopes that the results will contribute to drawing a clear picture for researchers and various international legal institutions about the constitutional guarantees that protect human rights in the face of the application of the provisions of the Jordanian Penal Code. Thus, the current study will contribute to highlighting these guarantees, enabling the Jordanian citizen to know the constitutional guarantees that protect him and thus preserve his material and moral rights.

Problem Statement:

The problem of the study lies in examining the relationship between the guarantees provided by the Jordanian constitution for human rights and the restrictions that the legislative or executive authority may impose in terms of laws or legal or illegal practices that affect those guarantees and lead to violations of material or moral human rights.

The research focuses mainly on the extent of the importance of material and moral human rights in the Jordanian constitutional texts, in addition to knowing the availability of the necessary guarantees for the exercise of those rights. This means that the researcher will focus on the Jordanian constitutional texts related

to this subject with references to the guarantees contained in the Charter of the United Nations in the same context.

Previous Studies:

Kirk (1997): The study aimed to know the constitutional guarantees of human rights, as the researcher reviewed the political and legal guarantees provided by most constitutions. The researcher used the descriptive and comparative method to study the various constitutional texts and compare them with the Algerian constitution. The results of the study indicated that the constitutional guarantees of human rights are affected by the political hegemony in the third world countries, including Algeria.

This study agrees with the current research in that both studies are related to constitutional guarantees of human rights, while it differs from our current study as it is concerned with the issue of constitutional guarantees for human rights in general, while our current study is more specific as it is concerned with the issue of constitutional guarantees for human rights before the application of the provisions of the Jordanian Penal Code.

Awad (2015) this study is entitled "Constitutional guarantees of human rights in the constitutions of the Maghreb countries - Algerian constitutions as a model". The researcher followed the descriptive-comparative approach to describe the constitutional texts of Maghreb countries, with much emphasis on the Algerian constitution. The results of the study revealed that the Algerian constitutional system is blamed for preventing individuals from oversight over the constitutionality of laws and making them a monopoly on the legislative and executive authority. This study agrees with the current research in that both studies are related to constitutional guarantees of human rights, while it differs from our current study as it is concerned with the issue of constitutional guarantees for human rights in general, while our current study is more specific as it is concerned with the issue of constitutional guarantees for human rights before the application of the provisions of the Jordanian Penal Code.

Neuman (2002) the study aimed to know human rights, their guarantees, and the justifications for restrictions contained in the Constitution of the Hashemite Kingdom of Jordan. The study focused on the guarantees provided by the Jordanian constitution in the field of human rights compared to the American and Sudanese constitutions. The researcher used the descriptive approach to study the legal texts.

This study agrees with the current research in that both studies are related to constitutional guarantees of human rights provided by the Jordanian constitution, while it differs from our current study as it is concerned with the issue

of constitutional guarantees for human rights in general, while our current study is more specific as it is concerned with the issue of constitutional guarantees for human rights before the application of the provisions of the Jordanian Penal Code.

Tahat (2020) this study was entitled "Freedom of Opinion in Jordanian Legislation". The study dealt with the importance of freedom of opinion, its development, controls, and how to exercise it. The researcher used the descriptive approach to study the Jordanian constitutional texts related to the issue of freedom of opinion.

This study agrees with the current research in that both studies are related to constitutional guarantees provided by the Jordanian constitution, while it differs from our current study as it is limited to the issue of constitutional guarantees for freedom of opinion, while our current study is concerned with the issue of constitutional guarantees for human rights before the application of the provisions of the Jordanian Penal Code.

Hannum (1995) this study is entitled "Guarantees and Protection of Human Rights in accordance with International Law and National Legislation". The researcher used the descriptive approach to study human rights guarantees through the international agreements that followed the Charter of the United Nations, with a focus on the constitutional guarantees included in Yemeni legislation.

This study agrees with the current research in that both studies are related to constitutional guarantees, while it differs from our current study as it is concerned with the constitutional guarantees provided by the Yemeni constitution, while our current study is concerned with the issue of constitutional guarantees for human rights before the application of the provisions of the Jordanian Penal Code.

The first topic: Human rights in the Jordanian Constitution

The first section: The concept of human rights:

There is no single definition of the term human rights. Moreover, the International legislation and treaties have not provided a single definition of human rights. In this respect, many attempts to define the term human rights have been made. Some scholars have defined human rights as "Those rights that it is believed that all human beings should enjoy because they are human beings and the human condition applies to them, meaning that these rights are not granted by anyone and do not seek permission from the authority, and the latter neither grants nor prevents them (Cooley, 2017). Others have defined it as "An advantage granted by law to a specific person over a specific thing, who can thus dispose of that thing because it belongs to him (Dorfman, 2017). As for man, he is the living being who is mentally and morally superior. Thus, human rights are those legal rights guaranteed to any person as a human being" (Panikkar & Panikkar, 1982). Furthermore, human rights are defined as "The set of natural rights possessed by man, which are intrinsic to his

nature, and which continue to exist even if they are not recognized, and even more than that even if violated by some authority" (Heymann, 2001).

The second section: Human rights in the Jordanian constitution:

The Jordanian constitution issued in 1952 was based on a set of local and international facts, including the Universal Declaration of Human Rights, which was issued in 1948. The popular desire at that time for coexistence also contributed to the issuance of the Jordanian constitution, which guarantees justice and equality for all members of the Jordanian community. In this context, the Jordanian Constitution devoted an entire chapter to human rights under the title "Rights and Duties of Jordanians," and this indicates the utmost importance that Jordan attaches to human rights.

The third section: The Jordanian penal code:

Criminal law is a branch of public law that is closely related to the principle of state sovereignty. This means that all of its provisions and rules are binding and may not be violated or waived for any of them. Violation of this is considered improper and unacceptable and exposes its doer to accountability before the competent authorities.

The Jordanian criminal law is considered a regional law, which means that this law applies to all members of the state, whether they are Jordanians or foreigners. It is not permissible to apply a criminal law of another country to the territory of the state; otherwise it will be considered a violation of the principle of sovereignty.

The Jordanian Penal Code includes two sets of rules. The first set defines acts that may be related to the criminal character and the penalties prescribed for each of these crimes. It also clarifies the reasons for justification, the impediments to criminal responsibility, and the impediments to punishment. These rules are called the Penal Code. As for the second set of rules, it consists of formal rules that specify the procedures to be taken by the competent authorities, in case of any crime, until the arrest and prosecution of the offender and the issuance of a final judgment in the case.

The fourth section: Some articles of the Jordanian Penal Code in penal provisions:

Article (3):

There is no crime except by text, and it does not prescribe any punishment or measure that was not provided for by the law at the time of the commission of

the crime. The crime is considered complete if the acts of its implementation are completed without regard to the time of the result.

Article 4

1- Every law that amends the conditions of criminalization in the interest of the defendant, and its judgment shall apply to the acts committed before its entry into force, unless a final judgment has been issued regarding those acts.

2- Every law that amends the right of prosecution shall be applied to the crimes that preceded it, if it is more considerate of the defendant.

3- If the new law sets a time limit for exercising the right of prosecution, this period shall not run except from the day the law comes into force.

4- If the law amends the statute of limitation for a crime or a penalty, this time shall apply in accordance with the old law, provided that its term does not exceed the time specified by the new law, computed from the day it comes into force.

Article 5:

Every law abolishing a penalty or imposing a lighter penalty must be applied to the crimes committed before its entry into force. If a new law is issued after a final judgment, the act for which the perpetrator was sentenced is not punishable at the time of execution of the judgment and its penal effects cease.

The Second Topic: Constitutional Guarantees of Human Rights When Applying the Provisions of the Jordanian Penal Code

The first section: Personal (individual), Economic, Social and Cultural rights:

Personal rights are considered a top priority, as they are considered one of the most important freedoms that an individual must obtain under the constitution and the law. In this context, the Jordanian constitution included a set of individual rights. These rights include the security of the individual over himself and his money, and movement within and outside the country without restrictions...etc.

The Jordanian constitution has clearly stated that no one may be arrested, detained or imprisoned except in accordance with the provisions of the law, and after providing all guarantees and taking all the measures specified by law (Pocar, 2015).

It should be noted that the Jordanian constitution adopts the principle of punishment in order to protect the right to security and physical integrity. In this context, Article Seven of Chapter Two of the Jordanian Constitution stipulates that (Personal freedom is guaranteed). The article that follows stipulates that (1. No person may be seized, detained, imprisoned or the freedom thereof restricted except in accordance with the provisions of the law. 2. Every person seized, detained, imprisoned or the freedom thereof restricted should be treated in a manner that preserves human dignity; may not be tortured, in any manner, bodily or morally harmed; and may not be detained in other than the places permitted by

laws; and every statement uttered by any person under any torture, harm or threat shall not be regarded).

Therefore, no member of the Jordanian society is guilty of any crime or convicted of any penalty unless the legislator expressly stipulates that (Al-Dabbas and Abu Zaid, previous reference). Accordingly, Article 3 of the Jordanian Penal Code stipulates that (No penalty shall be prescribed unless it was stipulated by law when the crime was committed). The laws that complement the Jordanian constitution guarantee some guarantees related to the right to security. In this context, Article (103) of the Code of Criminal Procedure stipulates that "no person may be arrested or imprisoned without an order from the legally competent authorities."

The Jordanian legislator also stipulated that whoever violates the right to life will expose himself to the most severe penalties. In this context, the provisions of the Jordanian Penal Code protect the human right to life from birth to death, as it includes texts criminalizing murder in all its forms. Article (236) of the Jordanian Penal Code stipulates that simple murder requires a penalty of 15 years of hard labor. Article (327) of the same law stipulates the penalty of whole life imprisonment with hard labor in the event that the crime is linked to one of the aggravating circumstances stipulated in the said article. As for Article 328, it stipulates the death penalty for anyone who assaults a person's right to life by killing him, in the event that the crime of murder is committed with premeditation. Thus, we find that Jordanian law has stressed the protection of the human right to life and physical integrity even in the event of being accused, that is, when applying the provisions of the criminal law. It is not permissible to prejudice the physical integrity of the accused or expose him to torture in order to confess the accusation.

In addition, the Jordanian constitution guarantees freedom of movement and the choice of place of residence inside and outside the country. However, there is nothing to prevent the government from placing some restrictions on the movement of its citizens in order to preserve public order. In this context, Article 9 of the Jordanian Constitution stipulates that "a Jordanian may not be expelled from the kingdom, nor may a Jordanian be prohibited from residing in a certain place, nor is he obliged to reside in a particular place except in the cases specified in the law."

The Jordanian constitution also stipulates the inviolability of the home. This is considered among the personal rights of the individual and means the freedom to choose, use and change the home, and it is not permissible to break into the home except with the consent of the one who resides in it and not the one who owns it (Heymann, 2001).

Article 10 of the Jordanian Constitution stipulates that "homes are inviolable, and they may not be entered except in the cases specified in the law and in the manner stipulated in it." The Jordanian Penal Code also added criminal protection to the dwelling, as Article (347) of it stipulates that "Whoever enters another dwelling or its annexes against the will of that other, as well as whoever

stays in the aforementioned places contrary to the will of the one who has the right to exclude him from it, shall be punished by imprisonment for a period of no more than six months, and a sentence of imprisonment from one month to one year is imposed if the act occurred at night or by violence against persons, or by breaking or using a weapon, or by several persons collectively.

The Jordanian legislation also guarantees freedom and confidentiality of personal correspondence. The confidentiality of correspondence falls within the freedoms of the individual, as it relates to the private life of the individual, and no one may see it except the sender and receiver. Article eighteen of the Jordanian constitution stipulates that "All postal and telegraphic correspondence, telephonic communications, and the other communications means shall be regarded as secret and shall not be subject to censorship, viewing, suspension or confiscation except by a judicial order in accordance with the provisions of the law". In the same context, Article 356 of the Jordanian Penal Code stipulates that "All postal, telegram and telephone correspondence are considered confidential and are not subject to monitoring or arrest except in the cases specified by law." But this freedom is not absolute but restricted. The authority has the right to monitor it according to the text of Article (88) of the Criminal Procedure Law: "The public prosecutor may seize all letters, letters, newspapers, publications and parcels at post offices and at telegraph offices all telegraphic messages and he may also monitor telephone conversations whenever this is useful in revealing the truth."

Economic, social and cultural rights, on the other hand, are among the most important rights stipulated in world constitutions, including the Jordanian constitution. Its importance is gained from the fact that it liberates individuals from the economic, social and cultural domination of any party and enables them to live with dignity and fulfill their social and cultural role. Economic, social and cultural rights fall under a set of rights, which include the right to property, the right to work, the right to education, the right to form and join trade unions, the right to social security and health care.

The right to property is an economic right that each individual should enjoy. In this respect, the Jordanian constitution has been keen to protect this right in accordance with the text of Article (11) " No property of any person shall be expropriated except for public utility and in consideration of a just compensation as shall be prescribed by law". Moreover, Article 12 of the Jordanian Constitution stipulates that "Compulsory loans shall not be imposed and property, movable or immovable, shall not be confiscated except in accordance with the law".

The Jordanian constitution also stipulates the right of the individual to work, which means the freedom of the individual to engage in the work he wants and not to force him to do a specific work (Fiss, 1981). In this context, Article 6 of the Jordanian Constitution stipulates that:"The State shall ensure work and education within the limits of its possibilities, and shall ensure tranquility and equal opportunities to all Jordanians".

Moreover, the Jordanian Constitution guarantees the right to education for all Jordanians. In this context, Article 19 of the Jordanian Constitution stipulates that "Congregations shall have the right to establish and maintain their own schools for the education of their own members provided that they comply with the general provisions of the law and be subject to the Government control in their curricula and orientation". Moreover, Article 20 stipulates that "Basic education shall be compulsory for Jordanians and free of charge in Government schools."

The Jordanian constitution also guarantees the right to form and join trade unions. Professional unions are defined as professional groups whose mission is to defend the material interests of their members mainly and include all fields of industrial, agricultural and commercial work (Hartshorn, 2017). The Jordanian constitution left the responsibility for organizing unions and their resources to the Jordanian Labor Law No. 8 of 1996.

The Jordanian constitution also guarantees the right to social security and health care. However, the Jordanian constitution did not explicitly state this right. Rather, it was mentioned in the second paragraph of Article 6 that " The defence of the country, its territory, the unity of its people and the preservation of social peace are sacred duty of every Jordanian".

The second section: Moral human rights:

The Jordanian Constitution guarantees moral rights of all Jordanians. These rights include political rights and intellectual rights. The political rights indicate the individual's rights to vote and to be elected, the right to hold public office, the right to address public authorities, freedom of temporary gatherings, and freedom to form political parties. On the other hand, the intellectual rights include freedom of opinion and expression, freedom of belief, and freedom of the press.

Findings and recommendations:

A) Findings:

1. The Jordanian constitution approved the principle of equality, as Jordanians are equal in enjoying the rights and carrying out the duties stipulated in the constitution.

2. Most of these rights and freedoms are fixed, such as the right to personal freedom, free basic education, and the ban on deporting a Jordanian outside the Kingdom.

3. Some rights are restricted by the provisions of Jordanian law. These rights include freedom of expression, confidentiality of correspondence, etc., education, work, and others.

4. Most rights are restricted to Jordanians alone, such as political and social rights. Some rights include Jordanians and foreigners, such as freedom of belief and correspondence.

5. The Jordanian constitution did not stipulate some basic human rights such as the prohibition of torture and inhuman treatment. But the Jordanian law ensures that.

6. The Jordanian constitutional texts related to human rights face a number of legislative and executive challenges that constitute restrictions on individuals while exercising their rights.

7. The Jordanian constitution provides for a parliamentary system that emphasizes cooperation between the legislative, executive and judicial authorities. However, the executive authority may sometimes constitute restrictions on basic human rights.

8. There is no provision in the Jordanian constitution with regard to determining the body that monitors the constitutionality of laws, and consequently, some human rights may be confiscated by the judiciary.

B) Recommendations:

1. We hope that the Jordanian constitution will directly and explicitly include guarantees related to the protection of human rights before the application of the provisions of the Penal Code.

2. We hope that the Jordanian Constitution will include articles that decide the body that supervise the application of the provisions of the Penal Code.

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