specialized Legal Study

Entitled

The Legal Framework Governing the Imprisonment of Debtors under Jordanian Enforcement Law and the International Covenant on Civil and Political Rights

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Introduction to the Study

The right of a human being to live without any restriction upon his liberty is a right safeguarded by the Islamic Sharia, by Jordanian law, and by the international charters. Since the laws regulating human rights likewise preserve this right, the Jordanian legislature and the international instruments have accorded it particular attention. Correspondingly, the international law of human rights has, since its inception, imposed a restraint upon the public authorities of States in relation to the rights and freedoms of individuals; States were, and remain, bound to abide by the provisions of these conventions and to give effect to their texts within the sphere of their authority. Among these texts is Article (11) of the International Covenant on Civil and Political Rights of 1966, which prohibited the imprisonment of the debtor.

The subject of the imprisonment of the debtor constitutes one of the sensitive legal questions that brings together legal theory and practical application in numerous legal systems, whether at the domestic or the international level. Execution proceedings, conducted within a legal framework, represent a means of ensuring the enforcement of judicial rulings and of achieving justice between the parties, and are regarded as one of the foremost mechanisms for the protection of creditors' rights.

In this context, the Execution Law is considered one of the most prominent pieces of legislation regulating the process of compulsory execution, including the imprisonment of the debtor who refrains from paying his debts. However, the legislature — in many legal systems — has laid down precise restrictions on the subject of the imprisonment of the debtor, emphasising the necessity of verifying his insolvency before imposing the penalty upon him, in conformity with the humanitarian principles that guarantee the protection of the rights of individuals.

Accordingly, research into the subject of the imprisonment of the debtor is not confined to an analysis of the legal texts alone; it also requires consideration of the constitutional and human-rights principles and of the international provisions that afford the debtor legal safeguards protecting him from any arbitrary measures that may be taken against him.

Statement of the Problem

The problem of this study lies in determining the extent to which the provisions on compulsory execution contained in the amended Jordanian Execution Law No. 9 of 2022 are compatible with the international principles of human rights, particularly as regards the use of coercion as a legal means of enforcing obligations which the debtor refuses to perform. The problem arises through shedding light on the legal relationship between the creditor and the debtor in the light of the Jordanian legal texts, and on the extent of the effect of those texts upon the rights of the debtor in accordance with the principles set out in the International Covenant on Civil and Political Rights of 1966.

Questions of the Study

A number of subsidiary questions branch out from the principal problem, as follows:

1. What is the concept of the imprisonment of the debtor and what is its legal nature?
2. What is the position of ancient and modern legislation on the imprisonment of the debtor?
3. What is the position of Islamic jurisprudence (fiqh) on the imprisonment of the debtor?
4. What are the legal texts governing the imprisonment of the debtor in the Jordanian Execution Law No. 25 of 2007 and its amendments?
5. What are the legislative amendments governing the imprisonment of the debtor in the amended Jordanian Execution Law No. 9 of 2022?
6. To what extent is the imprisonment of the debtor under the Jordanian Execution Law compatible with the International Covenant on Civil and Political Rights of 1966?

Objectives of the Study

This study seeks to achieve the following objectives:

1. To set out the concept of the imprisonment of the debtor and its legal nature.
2. To set out the position of ancient and modern legislation on the imprisonment of the debtor.
3. To determine the position of Islamic jurisprudence on the imprisonment of the debtor.
4. To analyse the legal texts governing the imprisonment of the debtor in the Jordanian Execution Law No. 25 of 2007 and its amendments.

5. To analyse the legislative amendments governing the imprisonment of the debtor in the amended Jordanian Execution Law No. 9 of 2022.
6. To determine the extent to which the imprisonment of the debtor under the Jordanian Execution Law is compatible with the International Covenant on Civil and Political Rights of 1966.

Significance of the Study

The significance of the study lies in two respects:

1. From the academic standpoint: it lies in enriching the Jordanian legal library with a new legal study that reflects reality, concerning all aspects governing the rules on the imprisonment of the debtor in the Jordanian Execution Law No. 9 of 2022, in setting out the newly introduced orientations on the same subject, and in examining their compatibility with international standards, and in particular with the International Covenant on Civil and Political Rights.
2. From the practical standpoint: it lies in determining the extent of the lawfulness of the imprisonment of the debtor under the provisions of Jordanian legislation; in clarifying the most recent amendments introduced to the Jordanian Execution Law No. 25 of 2007, the latest being Amendment No. 9 of 2022; in identifying the problems associated therewith; and in setting out the position of the Jordanian legislature on the abolition of the imprisonment of the debtor save in specified cases, in conformity with the obligations arising from Jordan's ratification of the International Covenant on Civil and Political Rights.

Methodology of the Study

The study will rely upon the descriptive, analytical and comparative methods, by reference to the relevant works, research and studies and the presentation of the legal texts on the subject contained in Jordanian law; then by analysing these legal texts, the opinions of legal scholars and the relevant rulings of the Jordanian courts. The texts contained in the Jordanian Execution Law will also be compared with the provisions contained in the International Covenant on Civil and Political Rights.

Division of the Study

This study will be addressed in three chapters, as follows:

Chapter One: The Nature of the Imprisonment of the Debtor and the Legal Rules Governing It.

Chapter Two: The Legal Regulation of the Imprisonment of the Debtor in the Jordanian Execution Law No. 25 of 2007 and Its Amendments.

Chapter Three: The Extent of the Compatibility of the Amendments to the Jordanian Execution Law concerning the Imprisonment of the Debtor with the International Covenant on Civil and Political Rights.

Chapter One

The Nature of the Imprisonment of the Debtor and the Legal Rules Governing It

The device of imprisoning the debtor has been known among peoples since ancient times, at a period when the notion of slavery was widespread, for the device of imprisoning the debtor was founded upon that very notion. At that time the body of the man was used as the object of satisfaction of the financial obligation incumbent upon him, such that the creditor was entitled to own the body of his debtor if the latter did not discharge his debt, and was entitled to imprison him or to sell him in the slave market. Matters went so far that the creditor might kill his debtor and dismember his body in order to apportion it among the remaining creditors. Nor did the matter stop there: if the debtor died before discharging the obligation incumbent upon him, the creditor would detain his corpse and prevent its burial until the debt was paid, this being a device by which the heirs or relatives were induced to hasten to discharge the debt for fear of the stigma of disgrace — for at that time debt was not a mere obligation but was regarded as a source of shame attaching to the person of the debtor. This was widespread among the ancient peoples of Rome, among the barbarians, and in ancient Egypt.[1]

The principle of imprisoning the debtor arose with the development of Roman law, where in its beginnings it rested solely upon the detention of the debtor’s liberty, in contrast to what had prevailed in earlier centuries, when the debtor’s fate ended in his killing or his enslavement. Thereafter the view of the imprisonment of the debtor developed on the basis that the relationship between the creditor and his debtor is a relationship between two patrimonies, and

[1] Ramzi Mansour Al-Hurr, *The Extent of Compatibility of the Imprisonment of the Debtor Refraining from Payment of the Debt with International Conventions and Charters*, Master’s Thesis, Amman Al-Ahliyya University, Al-Salt, 2021, p. 67.

that satisfaction of the debt rests upon execution against property, bodies having no bearing upon the matter as they formerly did.[2]

The imprisonment of the debtor is regarded as one of the means to which the creditor resorts in order to recover his debts. It is a legal measure employed in certain legal systems, whereby the debtor may be imprisoned in the event of non-payment of the debts due from him; the purpose of this measure is to exert pressure upon the debtor to pay the sums incumbent upon him.[3]

The imprisonment of the debtor (coercive imprisonment) differs from executory imprisonment; in the latter the rights are rights adjudged in favour of the State, the debt is satisfied, and the debtor may not be required to pay a second time (as in the case of a fine).[4] Some confuse the designation "imprisonment of the debtor" with "executory imprisonment", inasmuch as the Jordanian legislature has dealt with the cases of imprisonment of the procrastinating debtor within the Execution Law; nevertheless, the two differ.

Upon reviewing the Jordanian Execution Law, we find that it permitted the imprisonment of the debtor in civil debts and also specified the cases in which the debtor may not be imprisoned. Article (1503) of the Majallat al-Ahkam al-'Adliyya provided: "If the debtor procrastinates towards the creditor and the latter complains of him, the ruler shall order him to pay; if he refuses, the ruler shall imprison him; and he must be released if his insolvency becomes apparent."[5]

We shall address this Chapter through the following two Sections:

Section One: The Concept of the Imprisonment of the Debtor.

Section Two: The Position of Ancient Legislation on the Imprisonment of the Debtor.

Section One: The Concept of the Imprisonment of the Debtor

The imprisonment of the debtor is a legal measure employed to deal with debtors who are unable to pay their debts. The concept of the imprisonment of the debtor consists in detaining

[2] Raghad Tawfiq Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor in the Jordanian Execution Law No. 9 of 2022: A Comparative Study*, Master's Thesis, Middle East University, Amman, Jordan, 2025, p. 9.

[3] Dr. Mahmoud Al-Kilani, *Rules of Evidence and Execution*, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Amman, 2010, p. 100.

[4] See Article (22) of the Jordanian Penal Code No. 16 of 1960 and its amendments.

[5] Article (1503) of the Majallat al-Ahkam al-'Adliyya (the Ottoman Journal of Judicial Rulings).

the person as a means of exerting pressure upon him to pay the sums due, after the court has established that he has not discharged his financial obligations.[6] Although this measure may be intended to protect the rights of creditors and to secure the recovery of their moneys, it nevertheless raises numerous legal and ethical questions.[7]

Historically, the imprisonment of the debtor was regarded as a common device for dealing with cases of financial incapacity; yet with the development of the law and the emergence of concepts of social justice, many States began to reconsider the effectiveness of this measure, which reflects the profound changes in the manner in which financial matters are treated in modern societies, and the current debates concerning the rights of debtors and more humane and effective alternatives, such as debt restructuring and negotiation.[8]

In language, “imprisonment” (al-habs) means “restraint” or “prevention from movement”,[9] while in technical usage it refers to a legal measure whereby the debtor is detained as a means of exerting pressure upon him to pay his debts.[10]

We shall address this Section through the following two Requirements:

Requirement One: The Definition of the Imprisonment of the Debtor in Fiqh and in Law

The imprisonment of the debtor is a legal measure taken against the individual (the debtor) who refrains from paying his debts notwithstanding his capacity to pay, and is intended to compel him to discharge his financial obligations. From the jurisprudential standpoint, imprisonment is regarded as a means of coercing the debtor into implementing a judicial ruling, and its application differs from one State to another according to the conditions and procedures prescribed.[11]

In this Requirement, the definition of the imprisonment of the debtor in fiqh and in law will be addressed, followed by its legal nature, as follows:

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[6] Dr. Muflih Awad Al-Qudah, *Principles of Execution in Accordance with the Latest Amendments to the Jordanian Execution Law: A Comparative Study*, 4th ed., Dar Al-Thaqafa for Publishing and Distribution, Amman, 2023, p. 141.

[7] Dr. Yousef Muflih Al-Shibli, *Imprisonment as a Means of Enforcing the Civil Obligation under the Jordanian Execution Law*, Egyptian Journal of Legal and Economic Studies, Cairo, Egypt, Issue (8), 2016, p. 12.

[8] Dr. Jaafar Al-Maghribi, *Methods of Compelling the Debtor to Perform in Kind: A Comparative Study*, PhD Dissertation, Cairo University, Egypt, 2000, p. 745.

[9] Academy of the Arabic Language, *Al-Mu‘jam Al-Wasit*, 1st ed., no publisher, Cairo, 2004, p. 20.

[10] Salah Al-Din Shusharee, *Compulsory Execution in Civil and Commercial Matters*, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Amman, 2009, p. 24.

[11] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 12.

Branch One: The Definition of the Imprisonment of the Debtor in Law

The Jordanian legislature has not laid down a precise definition of the term “imprisonment of the debtor”, but has rather left the matter to legal scholarship and the judiciary, since its principal function is legislation and it is not required to formulate definitions of legal terms save in exceptional cases. Legal scholarship has accordingly defined imprisonment as: “the restriction of the debtor’s liberty in the places designated by the public authority in accordance with the prescribed legal rules and procedures.”[12]

It thus becomes apparent to us that the imprisonment of the debtor is a means of coercion exercised by the creditor against his debtor who is able to pay. This device is intended to compel the debtor who obstinately refuses to discharge his obligation to do so, by restricting his liberty for a specified period and pursuant to a decision issued by the competent authority.

The imprisonment of the debtor is further distinguished by a number of characteristics, namely:[13]

1. The imprisonment of the debtor is a means and not an end, for the debtor is released as soon as the debt owed by him is paid.
2. The imprisonment of the debtor is an exceptional device: recourse is generally had to performance in kind, and if the debtor refuses, execution may be carried out at his expense; but where his personal qualities are material to performance, the debtor may be coerced into performing.
3. The imprisonment of the debtor is temporary, being limited to a specified period at the time the imprisonment order is issued, the reason being to exert pressure upon the debtor to compel him to perform his obligation.

Branch Two: The Definition of the Imprisonment of the Debtor in Fiqh

Proceeding from respect for obligations as a fundamental and pressing necessity of legal life, we find that every obligation arising for any cause entails, in return, the necessity of performing that obligation in a manner that achieves the full satisfaction of the creditor and the discharge of the debtor’s liability. Within the framework of this obligation, the debtor is compelled to discharge what he has undertaken, whether voluntarily and by choice or by

[12]Dr. Al-Kilani, *Rules of Evidence and Execution*, op. cit., p. 112.

[13]Dr. Al-Shibli, *Imprisonment as a Means of Enforcing the Civil Obligation*, op. cit., p. 15.

compulsion, where performance is possible; and where performance is possible, the creditor obtains performance in kind, whereby the debtor renders the very object of his undertaking, in conformity with what the creditor expects by way of discharge of the obligation.[14]

If performance in kind is impossible, or entails hardship for the debtor or an infringement of his person, recourse is had to compensating the creditor instead of performance in kind, and the debtor is ordered to pay compensation for his inability to perform. This is what is known as "performance by way of compensation".[15]

The jurists of Islam recognised the importance of the debtor's person in the discharge of the obligation, on the footing that his person is an essential element of performance; for this reason his imprisonment is regarded as coercive in this situation, and performance in kind is accordingly described in the Islamic Sharia as the principle, while compensation is regarded as an alternative thereto.[16]

As for the concept of the imprisonment of the debtor in Islamic fiqh, it is: "a discretionary disciplinary (ta'zir) penalty". On the basis of the evidence submitted to him, the judge enjoys full liberty either to impose it or to refrain from doing so. Thus the imprisonment of the debtor emerges in Islamic fiqh as an exceptional device intended to induce the debtor to discharge his debt, while ensuring that it does not conflict with the Islamic principles that enjoin facilitation and mercy. Although Islamic fiqh does not favour imprisonment as a first solution, it nevertheless accepts it in certain cases after other means have been exhausted, and requires that it be carried out in accordance with Sharia controls that safeguard the rights of the debtor and avoid torturing or ill-treating him.[17]

Branch Three: The Legal Nature of the Imprisonment of the Debtor

One school of jurists has taken the view that the imprisonment of the debtor does not amount to a penalty, but is rather a means of coercion compelling the debtor to perform, he being in essence a person who refrains from payment notwithstanding his financial capacity.

[14] Dr. Al-Maghribi, *Methods of Compelling the Debtor to Perform in Kind*, op. cit., pp. 821–822.

[15] Shusharee, *Compulsory Execution in Civil and Commercial Matters*, op. cit., p. 25.

[16] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 14.

[17] Dr. Al-Maghribi, *Methods of Compelling the Debtor to Perform in Kind*, op. cit., pp. 8–9.

Executory imprisonment thus differs from penal imprisonment, which is directed at punishment and the achievement of the public interest.[18]

In executory imprisonment, imprisonment is a means of coercion to compel the debtor to pay; and although it involves the notion of the deprivation of liberty, it is not a penalty, unlike penal imprisonment, which constitutes a punitive measure imposed upon the accused (that is, the perpetrator of the offence) for his violation of the law. Moreover, in executory imprisonment the creditor may waive his right to imprison his debtor whenever he wishes, and if he waives that right he may not claim it again, while retaining the underlying right (the debt) itself.[19]

Article (22) of the Jordanian Execution Law provided that: "The period of imprisonment may not exceed sixty days in a single year in respect of a single debt, and this shall not preclude a request for imprisonment once again after the lapse of the year." It thus becomes apparent to us from the text of the Article that the imprisonment of the debtor operates as a means of exerting pressure upon the debtor which does not extinguish the underlying right for which imprisonment was sought, but which precludes a second request for imprisonment in respect of the same debt within the same year.

Requirement Two: The Types of Imprisonment of the Debtor

The objectives of imprisonment are concentrated in three principal points: the purpose of imprisonment may be to compel the debtor to pay, in which case it is coercive imprisonment; or the extinction of the debt owed by the debtor in return for the latter's remaining in prison, in which case it is executory imprisonment; and finally, its purpose may be to disclose the true state of the debtor's patrimony, that is, whether he is insolvent or solvent.[20]

In this Requirement these three types will be set out as follows:

Branch One: Executory Imprisonment

This is a legal measure imposed upon the debtor with a view to compelling him to discharge his financial obligations. Executory imprisonment is distinguished from penal imprisonment, which is regarded as a penalty imposed as a consequence of the commission of

[18] Shusharee, *Compulsory Execution in Civil and Commercial Matters*, op. cit., p. 33.

[19] Dr. Al-Qudah, *Principles of Execution*, op. cit., p. 143.

[20] Dr. Al-Shibli, *Imprisonment as a Means of Enforcing the Civil Obligation*, op. cit., p. 21.

an offence. Executory imprisonment is used principally to recover sums due or fines, and is subject to strict legal rules.[21]

Under these provisions, the creditor is not entitled to request the imprisonment of the debtor a second time after the expiry of his period of imprisonment in respect of the same debt, which reflects the temporary nature of this measure. Although executory imprisonment is regarded as an effective mechanism for the protection of creditors' rights, its application requires compliance with legal controls that guarantee the rights of the debtor, including his right to a fair trial. Some legal systems confer upon the judicial authority the power to reduce the period of imprisonment or to set it aside in certain cases, such as where it is established that the debtor is unable to discharge his financial obligations.[22]

Moreover, the distinction between executory imprisonment and penal imprisonment reveals important aspects: executory imprisonment is imposed by reason of debt, whereas penal imprisonment is imposed as a penalty for the commission of an offence; the purpose of executory imprisonment is to exert pressure upon the debtor who is able to pay in order to oblige him to discharge his debts, whereas penal imprisonment is intended to punish and reform the offender.[23]

Accordingly, executory imprisonment is not regarded as a criminal penalty in the strict sense, which means that the rules of pardon do not apply to it, and it does not extinguish the obligation. Rather, executory imprisonment is regarded as a means of coercing the debtor into performing his obligations, which entails legal consequences, such as the non-deduction of the period of pre-trial detention in respect of a criminal offence from the period of executory imprisonment, and the effect of a general amnesty, which extinguishes penalties but does not preclude the enforcement of judgments relating to compensation.[24]

First: The Conditions of Executory Imprisonment

1. The existence of a writ of execution: for the imprisonment of the debtor it is required that there exist proof of the debt owed by the debtor, this being established by a writ of execution, such that the right set out in the writ of execution is of a determined amount

[21] Dr. Ahmad Abu Al-Wafa, *Execution Procedures in Civil and Commercial Matters*, 1st ed., Al-Wafa Legal Bookshop, Alexandria, 2015, p. 26.

[22] Shusharee, *Compulsory Execution in Civil and Commercial Matters*, op. cit., pp. 30–31.

[23] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 16.

[24] Dr. Al-Shibli, *Imprisonment as a Means of Enforcing the Civil Obligation*, op. cit., p. 22.

so that judgment may be given for it; the reason being that no judgment for compensation may be given if the amount is not determined. The debt must also be presently due, so that the debtor may not be imprisoned in respect of a deferred debt, since the purpose of imprisonment is to avert the injustice occasioned by delay in the discharge of the debt.[25] It is likewise required that the debtor refrain from discharging the debt owed by him, unless the cause of his refusal is insolvency; that is to say, the insolvent debtor may not be imprisoned, whereas conversely the solvent debtor may be imprisoned, an example being where he refrains from disclosing his assets.[26]

2. That the ordinary means of execution be exhausted: for executory imprisonment to be imposed it is required that the ordinary means be exhausted, whereby the party seeking execution submits an application to the judge requesting the commencement of compulsory execution proceedings, followed by service of the writ of execution in accordance with the rules of service.[27] The debtor against whom execution is sought is deemed to be procrastinating if he refrains from performing or fails to disclose his assets, and in this case the execution judge may take all measures relating to executory attachment, including the imprisonment of the debtor in accordance with the provisions on execution.

3. The existence of a request by the creditor for the imprisonment of the debtor: the Jordanian legislature regulated the imprisonment of the debtor in Execution Law No. 25 of 2007 and its amendments, Article (22) providing that the creditor is entitled to imprison his debtor where the latter refrains from performing the obligations due from him, or where he has not offered him a settlement commensurate with his financial capacity during the period of notice.[28]

We take the view that the creditor's request for the imprisonment of the debtor is a legal proceeding submitted to the court, whereby the creditor seeks to obtain an order for the imprisonment of the debtor as a result of the non-payment of his debts. This request requires the submission of evidence establishing that the debtor is able to pay but is procrastinating. The steps for submitting the request consist in filing the action, proving the capacity to pay, hearing

[25]Dr. Abu Al-Wafa, *Execution Procedures in Civil and Commercial Matters*, op. cit., p. 37.

[26]Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., pp. 16–17.

[27]Shusharee, *Compulsory Execution in Civil and Commercial Matters*, op. cit., pp. 44–45.

[28]See Article (22) of the Jordanian Execution Law No. 25 of 2007 and its amendments.

the testimony and, finally, the issuance of the decision, all in accordance with the following legal considerations:

1. The rights of the debtor: imprisonment must be carried out in accordance with domestic law, with due regard for the rights of the debtor and the guarantees of a fair trial.
2. The grounds of imprisonment: imprisonment must be justified, being regarded as an exceptional measure.
3. The subject of the imprisonment of the debtor requires a balance between the rights of creditors and the protection of debtors.

Second: The Procedures of Executory Imprisonment

1. Submission of the request for imprisonment: the creditor, or his representative, is entitled to request imprisonment in the execution file, after service upon the debtor of the executory notice, in order to compel him to perform. The judgment creditor enjoys absolute freedom to request imprisonment, whether the debtor is able to pay, or is a public employee, or enjoys a commercial reputation.[29] It is worth noting that, maintenance being a periodic right, the creditor may renew the request for the imprisonment of the debtor each time the previous imprisonment has expired by execution and after a fresh instalment of maintenance has fallen due.
2. The decision of the Head of Execution ordering imprisonment and objection thereto: upon receipt of the request submitted to the Head of Execution, he sends a procedural notice to the debtor requiring him to pay within fifteen days following the date of service; thereafter the Head of Execution grants the creditor's request for imprisonment, and he may not refuse the request or direct the debtor towards another means of execution.[30]

The Head of Execution must draw up an execution memorandum and transmit it to the security authorities so that they may give effect to the decision and arrest the debtor for the purpose of serving the period of imprisonment specified in the memorandum.[31]

[29] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 18.

[30] See Article (7) of the Jordanian Execution Law No. 25 of 2007 and its amendments.

[31] Dr. Al-Shibli, *Imprisonment as a Means of Enforcing the Civil Obligation*, op. cit., p. 25.

As regards objection by the debtor to the decision of the Head of Execution, he is entitled to object by submitting a report to the Head of Execution, who issues a decision releasing him once it appears that the legal conditions were not observed in his imprisonment, as where he is an insolvent debtor. Where the debtor wishes to object to the detention decision, the public authority brings the debtor to the Execution Department so that his objection may be presented to the Head himself, who considers the objection directly and issues an immediate decision either releasing him or rejecting his objection, and his decision is enforced forthwith, being subject to challenge by way of appeal as a matter of urgency.[32]

Branch Two: Precautionary Imprisonment

This is imprisonment the purpose of which is to avert a harm that may occur, and it takes place by the creditor submitting to the court a request against his debtor seeking the latter's imprisonment as a precaution against the loss of the creditor's rights, as where the debtor might flee the country.[33]

The Jordanian legislature did not adopt precautionary imprisonment, for the legislature required in the Execution Law — specifically in the text of Article (6) thereof — that execution be founded upon a writ of execution.[34] Pursuant to this Article, the creditor is not entitled to request the imprisonment of the debtor where the latter is on the point of fleeing the country or of smuggling his assets abroad, because he does not hold a writ of execution enabling him to commence execution.[35]

It is worth noting that our Jordanian legislature regulated the case in which the debtor disposes of all his assets or smuggles them abroad, granting the creditor the right to resort to the court or to the judge of urgent matters, upon submitting sufficient evidence, in order to obtain a travel-ban order against the debtor. The Jordanian legislature, in the Penal Code, treated the solvent debtor who procrastinates in discharging the rights of creditors as having committed an offence punishable by imprisonment for a period of three months to two years and by a fine of fifty to two hundred dinars.[36]

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[32] Shusharee, *Compulsory Execution in Civil and Commercial Matters*, op. cit., pp. 58–59.

[33] Dr. Ghazi Muflih, *Execution Procedures under Jordanian Law*, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Amman, 2022, p. 20.

[34] See Article (6) of the Jordanian Execution Law No. 25 of 2007 and its amendments.

[35] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 19.

[36] Dr. Al-Shibli, *Imprisonment as a Means of Enforcing the Civil Obligation*, op. cit., pp. 28–29.

Branch Three: Coercive Imprisonment

This is imprisonment the purpose of which is to compel the debtor to perform his obligation pursuant to a writ of execution and to coerce him into doing so, the creditor retaining the right to levy execution against such assets of his debtor as may appear. It thus operates as a means of coercing the debtor into performing his obligation, and this is what we shall analyse in detail in the subject of our study.

Section Two: The Development of the Position of the Laws and of Islamic Fiqh on the Imprisonment of the Debtor

The position of comparative legislation on the imprisonment of the debtor differs from one State to another. In some States imprisonment of the debtor is permitted in specified cases, particularly where it is established that he deliberately evaded payment of the debts or failed to cooperate with the court. Conversely, there are States that regard the imprisonment of the debtor as a violation of human rights and prohibit this practice, considering that imprisonment does not constitute an effective solution for the recovery of debts. Certain intermediate legislative systems may permit imprisonment in exceptional cases, but impose precise conditions to ensure justice.

We shall address this Section through the following two Requirements:

Requirement One: The Position of Ancient Legislation on the Imprisonment of the Debtor

In order to set out the position of ancient legislation on the imprisonment of the debtor, this Requirement has been divided into two Branches: the first addresses the subject of Roman and Greek law, and the second addresses ancient Egyptian legislation.

Branch One: Roman and Greek Law

The imprisonment of the debtor formed an essential part of the Roman legal system, being regarded as a means of ensuring the satisfaction of debts. Within this system, the Law of the Twelve Tables, enacted in 450 B.C., provided for the creditor’s right to bring the debtor before the court by force, with the possibility of imprisoning him for up to two months; and in the event of non-payment of the debt within that period, the creditor was entitled to take severe measures, such as killing the debtor or selling him in the market in satisfaction of the debt.[37]

With the passage of time, Roman law underwent major transformations. In the fifth century A.D. the Lex Poetelia was introduced, which curtailed the powers of creditors, for it was no longer permissible for them to bind the debtor in chains or to carry out penalties of death; rather, these harsh practices were abolished, which reflects a shift towards greater protection of the rights of debtors.[38]

Notwithstanding these transformations, the practice of imprisonment continued to be a common means of ensuring the payment of debts in ancient times. The debtor who was unable to discharge his debt was regarded as a slave and was bound in chains, while the assets of the guarantors were exposed to confiscation; and where the debtor persisted in non-payment, the creditor was permitted to take harsh measures which might extend to killing or sale, which reflects the harsh nature of those laws at that time.[39]

These historical practices demonstrate to us how the legal systems lacked any protection of human dignity, which led to the development of legal regimes that violated the rights of individuals and rested upon inhuman severity.

As for Greek legislation, there too existed practices relating to the imprisonment of the debtor, whereby senior officials could be imprisoned for failure to pay fines, which indicates that creditors possessed extensive powers; these regimes reflect the harsh nature of debt in Greek society.[40]

Branch Two: Ancient Egyptian Legislation

Legal techniques in ancient Egypt constitute a complex subject, for history lacks direct evidence concerning the legal collections promulgated by the pharaonic kingdoms. Nevertheless, the historical evidence sheds light upon the prevailing legal system, which was influenced by major political and social changes. In the feudal era, the power of the princes increased at the expense of the kings, which led to a change in the nature of financial dealings: the body of the debtor was regarded as a substitute for his patrimony, which granted the creditor

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[37] Dr. Abdul Qader Muhammadin, *The Legal Nature of the Action for the Non-Enforceability of the Debtor's Dispositions against His Creditors,* 1st ed., Dar Al-Kutub Al-Qanuniyya, Cairo, 2008, pp. 24–25.

[38] Dr. Al-Shibli, *Imprisonment as a Means of Enforcing the Civil Obligation*, op. cit., p. 30.

[39] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 22.

[40] Dr. Ghazi Muflih, *Execution Procedures under Jordanian Law*, op. cit., p. 27.

the right to enslave the debtor in the event of non-performance of his financial obligations; and upon the death of the debtor, the creditor was permitted to prevent the burial of the corpse until the debt was paid, which constituted considerable pressure upon the heirs to pay the debt in order to avoid disgrace.[41]

With the promulgation of the Code of Bocchoris, new foundations were laid for the legal system, whereby it was affirmed that the debtor's patrimony is the guarantee of his financial obligations, which led to the exclusion of the notion of bodily imprisonment from the discharge of debt. Before this law, in financial dealings the debtor was exposed to enslavement in the event that the creditor compelled him to work for his account until his debts were discharged, with the possibility of his being sold.[42]

The Code of Bocchoris brought about a marked transformation, in that it transferred the burden of liability from the body of the debtor to his property, so that the obligation became attached to the patrimony rather than to the person himself. Although these reforms were advanced, they did not endure for long, for Bocchoris was attacked by his adversaries, who accused him of impiety.[43]

After a period of tension, King Amasis affirmed the abolition of the personal obligation of the debtor, confining the creditor's right to satisfy the debt from the debtor's property alone; bodily coercion nevertheless remained applicable in respect of debts due to the State or to the temples.[44]

Non-payment of debt was likewise regarded as a source of slavery in pharaonic Egypt, where the master enjoyed full rights over his slave, including selling or lending him; and in the event of the slave's flight, the authorities were bound to pursue him and return him to his master.[45]

We take the view that the laws of ancient Egypt reflect the nature of financial and social relations in that period, indicating the interplay of human values with legal systems.

We would add that, in recent years, modern legislation has witnessed marked transformations in the manner of dealing with questions of the imprisonment of the debtor, a

[41]Dr. Muhammadin, *The Action for the Non-Enforceability of the Debtor's Dispositions*, op. cit., pp. 30–31.

[42]Dr. Abu Al-Wafa, *Execution Procedures in Civil and Commercial Matters*, op. cit., p. 54.

[43]Dr. Ghazi Muflih, *Execution Procedures under Jordanian Law*, op. cit., p. 29.

[44]Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., pp. 23–24.

[45]Dr. Muhammadin, *The Action for the Non-Enforceability of the Debtor's Dispositions*, op. cit., p. 33.

subject which gives rise to wide debate among the various parties. Traditional policies adopted strict positions towards debtors, leading to their imprisonment as a means of exerting pressure upon them to pay their debts; nevertheless, many States have begun to reconsider these strategies, relying upon the principles of human rights and social justice.

Requirement Two: The Imprisonment of the Debtor in Islamic Fiqh

The imprisonment of the debtor in Islamic fiqh is regarded as a sensitive subject that combines the rights of the creditor with the guarantee of justice for the debtor. In its treatment of this question, Islamic fiqh relies upon fundamental principles such as justice, the removal of harm and the protection of the rights of individuals; it also has regard to the social and economic circumstances of the debt, and strikes a balance between the creditor's right to obtain satisfaction of his debt and the dignity and circumstances of the debtor.

In this Requirement we address the provisions on the imprisonment of the debtor in Islamic fiqh, reviewing the conditions and controls laid down by the jurists in order to achieve justice, through the following Branches:

Branch One: The Lawfulness of the Imprisonment of the Debtor in Islam

The imprisonment of the debtor in Islamic fiqh has a basis in the Sharia, relying in this regard upon the Sharia texts that enjoin the discharge of debt and the rights of the creditor. Among the most prominent of these texts is the saying of the Almighty: "And if the debtor is in straitened circumstances, then let there be respite until a time of ease" (Al-Baqarah: 280). It is understood from this verse that the insolvent debtor is not to be imprisoned, but must be granted respite until his financial condition improves. Nevertheless, the imprisonment of the procrastinating debtor who deliberately refrains from payment despite his financial capacity has been permitted, as a means of pressure to compel him to discharge the debt.[46]

In the Prophetic Sunna, it is reported that the Prophet, peace and blessings be upon him, said: "The procrastination of a wealthy man is injustice" (narrated by Al-Bukhari and Muslim), which indicates the prohibition of delay in payment on the part of a debtor who is able to pay. Proceeding from this, the jurists permitted the imprisonment of the procrastinating debtor as a punitive measure against him, subject to proof of his capacity to pay; and the jurists agreed

[46] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 25.

upon laying down strict controls and conditions before resorting to the imprisonment of the debtor, so as to ensure that he is not harmed without lawful cause.[47]

Among these conditions are the following:[48]

1. Proof of procrastination: it is required that it be established by evidence that the debtor is procrastinating in payment despite his capacity to pay; procrastination constitutes injustice towards the creditor, and imprisonment has been permitted in this case in order to safeguard his rights.
2. The debtor's capacity to pay: if the debtor is insolvent or unable to pay for a reason beyond his control, he may not be imprisoned, in reliance upon the noble verse: "then let there be respite until a time of ease".
3. The issuance of a judicial ruling: the debtor may not be imprisoned save after the dispute has been submitted to the judge and the rights have been established by conclusive evidence.
4. The exhaustion of other means: imprisonment should be the last resort, after all other means have been exhausted, such as negotiation or rescheduling.

Branch Two: The Imprisonment of the Debtor in the Four Schools of Law

The question of the imprisonment of the debtor in Islamic fiqh represents a point of intersection between the achievement of justice and the safeguarding of human dignity. The four schools agreed upon the principle of the lawfulness of imprisoning the procrastinating debtor who is able to pay, but differed as to the details of application and the specific controls, which reflects the flexibility of the Islamic Sharia in addressing this question. In this Branch we address in detail the opinions of the four schools, highlighting the points of agreement and disagreement.

First: The Hanafi School

The Hanafi jurists take the view that where the debtor who is able to pay deliberately refrains from discharging his debt, he may be imprisoned as a measure to compel him to

[47] Dr. Ghazi Muflih, *Execution Procedures under Jordanian Law*, op. cit., pp. 33–34.
[48] Dr. Al-Shibli, *Imprisonment as a Means of Enforcing the Civil Obligation*, op. cit., p. 47.

perform.[49] The Hanafis rely in their opinion upon the principle of preventing injustice to the creditor, procrastination on the part of the debtor being regarded as manifest injustice.[50]

Nevertheless, the Hanafis lay down clear conditions for the imprisonment of the debtor:[51]

1. The condition of capacity to pay: if the debtor is insolvent and unable to discharge his debt, he may not be imprisoned in any circumstances, in reliance upon the saying of the Almighty: “And if the debtor is in straitened circumstances, then let there be respite until a time of ease” (Al-Baqarah: 280).
2. The condition of proof before the judge: the creditor must establish that the debtor is procrastinating despite his capacity to pay, and the debtor may not be imprisoned upon the mere allegation of the creditor.

The Hanafis also emphasise that imprisonment is not an end in itself but a means of exerting pressure upon the debtor; hence, if it appears that imprisonment will not produce payment, recourse should not be had to it.[52]

Second: The Maliki School

The Malikis permit the imprisonment of the debtor where he is procrastinating and able to discharge his debt, but they are distinguished from the other schools by leaving a wide margin to the judge in appraising the circumstances surrounding the debt and the debtor.[53]

1. The role of the judge: among the Malikis, the judge enjoys a broad discretionary power to consider the circumstances of the debtor and his capacity to pay; if it is established before the judge that the debtor does not possess the financial capacity, he may not be imprisoned but must be granted respite until his condition improves.[54]
2. Imprisonment in cases of suspicion: where the debtor alleges insolvency but does not adduce sufficient evidence, he may be imprisoned for a limited period in order to verify

[49] Dr. Muhammadin, *The Action for the Non-Enforceability of the Debtor’s Dispositions*, op. cit., p. 34.

[50] Dr. Ghazi Muflih, *Execution Procedures under Jordanian Law*, op. cit., pp. 33–34.

[51] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 27.

[52] Dr. Al-Shibli, *Imprisonment as a Means of Enforcing the Civil Obligation*, op. cit., p. 49.

[53] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., pp. 27–28.

[54] Dr. Ghazi Muflih, *Execution Procedures under Jordanian Law*, op. cit., p. 35.

the truth of his allegation; this is termed “imprisonment on suspicion” (habs al-tuhma), its duration being left to the judge to determine on the basis of the available evidence.[55]

The Malikis emphasise the necessity that imprisonment be a means of achieving justice and not a penalty prejudicing the dignity of the debtor or aggravating his suffering.[56]

Third: The Shafi‘i School

The Shafi‘is agree with the other schools as to the permissibility of imprisoning the debtor who is able to pay where he deliberately refrains from doing so, but they add precise particulars relating to procedures and safeguards, namely:[57]

1. Proof of procrastination: the Shafi‘is require that the debt be established by conclusive evidence, such as admission or testimony, and that the debtor’s refusal to pay despite his capacity be proved.
2. Release upon insolvency: if it is established that the debtor is insolvent, imprisonment is lifted from him forthwith, and he may not be kept in prison, since this would amount to injustice and would contravene the Sharia texts calling for respite to be granted to the insolvent.

Imprisonment of the debtor for the purpose of investigation: where the debtor alleges insolvency but does not adduce convincing evidence, he may be imprisoned for a period in order to verify the truth of his allegation, provided that this period is not lengthy and that humanitarian circumstances are taken into account therein. The Shafi‘is display a particular sensitivity towards the dignity of the debtor, taking the view that imprisonment must be the last measure after all other means have been exhausted.[58]

Fourth: The Hanbali School

The Hanbalis, like the other schools, permit the imprisonment of the procrastinating debtor where his capacity to pay and his refusal are established;[59] nevertheless, they hold clear positions concerning the insolvent debtor and the procrastinating debtor, as follows:[60]

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[55] Dr. Al-Shibli, *Imprisonment as a Means of Enforcing the Civil Obligation*, op. cit., p. 50.

[56] Dr. Muhammadin, *The Action for the Non-Enforceability of the Debtor’s Dispositions*, op. cit., p. 36.

[57] Dr. Ghazi Muflih, *Execution Procedures under Jordanian Law*, op. cit., pp. 42–43.

[58] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 28.

[59] Dr. Muhammadin, *The Action for the Non-Enforceability of the Debtor’s Dispositions*, op. cit., p. 39.

[60] Dr. Al-Shibli, *Imprisonment as a Means of Enforcing the Civil Obligation*, op. cit., p. 51.

1. Imprisonment of the procrastinator: they take the view that the imprisonment of the debtor who is able to pay is regarded as a lawful means of safeguarding the rights of the creditor, provided that procrastination is proved before the judge.
2. Insolvency and the lifting of imprisonment: the Hanbalis emphasise that the debtor may not be imprisoned where his insolvency is established, since this would contravene the Sharia.
3. The period of imprisonment: the Hanbalis indicate that imprisonment must be for a reasonable period sufficient to compel the debtor to pay, and that he must be released if no improvement in his financial condition appears.

The Hanbalis are further distinguished by their emphasis upon the necessity that the judge adhere to justice in this matter, so that neither party is treated unjustly, while according priority to means that do not violate the dignity of the debtor.[61]

Notwithstanding the detailed differences among the four schools of fiqh, we take the view that they agree upon the following principles:

1. Imprisonment is lawful only where the debtor is procrastinating and able to pay.
2. The insolvent debtor is granted respite for payment and is not imprisoned.
3. Imprisonment is a means of pressure and not a penalty, and is used only within the limits of necessity.
4. The judge has a pivotal role in appraising the situation and taking the appropriate decision on the basis of the evidence.

Accordingly, the imprisonment of the debtor in Islamic fiqh reflects the balance which the Sharia seeks to achieve between the rights of the creditor and those of the debtor. Although imprisonment is regarded as a lawful means of compelling the procrastinator to pay, Islamic fiqh is careful to prevent the misuse of this measure, and emphasises regard for the circumstances of the insolvent debtor. These provisions demonstrate the flexibility of the Islamic Sharia and its capacity to adapt to new developments, which renders it a framework upon which reliance may be placed in developing contemporary laws in a manner achieving social and humanitarian justice.[62]

[61] Dr. Ghazi Muflih, *Execution Procedures under Jordanian Law*, op. cit., p. 46.

[62] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 30.

The Islamic Sharia regulated the affairs of life with precision and provided just solutions for the various relationships, including the question of the imprisonment of the debtor. In Islam the creditor is regarded as a benefactor, and the debtor is bound to discharge his debt. The jurists distinguished between the insolvent debtor who suffers from poverty and the solvent debtor (who possesses the capacity to pay); certain Islamic schools accordingly provided that the insolvent debtor may not be imprisoned, since imprisonment was prescribed as a means of obtaining performance of the debt and not for the punishment of the debtor.[63]

Accordingly, there are three types of imprisonment of the debtor in Islamic fiqh:[64]

First: Imprisonment for deliberation and testing (habs talawwum wa-ikhtibar): this relates to the insolvent debtor, whom the judge may imprison in order to test his capacity to pay.

Second: Imprisonment for constraint and chastisement (habs tadyiq wa-tankil): this is applied to the solvent debtor who is able to perform but alleges incapacity, and it then transpires that he is untruthful.

Third: Imprisonment for inducement and discipline (habs taghrir wa-ta'dib): this is applied to the procrastinating debtor who is suspected of concealing his property, and he is imprisoned until he pays or establishes his poverty.

Accordingly, we take the view that the Islamic Sharia seeks to achieve a balance between the rights of the creditor and the rights of the debtor, which manifests the principles of justice and moderation in the regulation of financial relations. The imprisonment of the debtor in Islamic fiqh is thus a means of obtaining the discharge of debts without violating the rights of the insolvent debtor.

Chapter Two

The Legal Regulation of the Imprisonment of the Debtor in the Jordanian Execution Law No. 25 of 2007 and Its Amendments

The Jordanian legislature regulated the provisions on the imprisonment of the debtor in Articles (20–25) of Execution Law No. 25 of 2007 and the amendments made thereto, including those introduced by the amendment of 2022, devoting to the matter a special chapter

[63] Dr. Muhammadin, *The Action for the Non-Enforceability of the Debtor's Dispositions*, op. cit., p. 41.

[64] Dr. Ghazi Muflih, *Execution Procedures under Jordanian Law*, op. cit., p. 51.

which set out the legal provisions and the conditions required for the application of the imprisonment of the debtor. The Jordanian legislature adopted the imprisonment of the debtor as a device intended to exert pressure upon the person of the debtor in order to expedite the performance of his obligation,[65] so that he is faced with two options: either performance (payment of the debt) or the offer of a settlement satisfying the creditor in order to avoid imprisonment. This device falls within the exceptions to the general principle of human liberty — in the sense that the relationship is one between two patrimonies, that is, execution is levied not against the person but against his property, out of respect for human dignity.

This is intended to achieve a balance between the rights of creditors and the protection of debtors, while affirming the importance of respect for fundamental legal principles and human rights. Thus, while the imprisonment of the debtor is regarded as a means of achieving financial justice, it must take place within a legal framework guaranteeing that the rights of individuals are not violated.[66]

This is what was provided by Article (22) of the Jordanian Execution Law No. 25 of 2007 and its amendments, the content of which is as follows:

> "a. The creditor may request the imprisonment of his debtor if the latter does not pay the debt or offer a settlement commensurate with his financial capacity during the period of the notice, provided that the first instalment under the settlement shall not be less than (25%) of the adjudged amount. If the judgment creditor does not accept this settlement, the Head may order the parties to be summoned in order to hear their statements, and he shall examine the debtor as to his capacity to pay the amount, and may hear the statements and evidence of the creditor as to the capacity of the judgment debtor and issue the appropriate decision.
>
> b. The creditor may request the imprisonment of his debtor without the need to prove his capacity in the following cases:
>
> 1. Compensation for damage arising from a criminal offence.
>
> 2. An adjudged maintenance debt, each instalment thereof being deemed an independent debt.
>
> 3. The dower adjudged in favour of the wife.

[65] Dr. Al-Maghribi, *Methods of Compelling the Debtor to Perform in Kind*, op. cit., p. 844.

[66] Dr. Al-Kilani, *Rules of Evidence and Execution*, op. cit., p. 121.

4. Refusal to deliver up the minor entrusted to his custody, as well as failure to comply with the enforcement of a visitation order, in which case imprisonment shall be renewed automatically until compliance.

c. The period of imprisonment may not exceed ninety days in a single year in respect of a single debt, and this shall not preclude a request for imprisonment once again after the lapse of the year.

d. Imprisonment may continue after the expiry of its period in respect of another debt, upon the request of the same creditor or of another creditor.

e. The Head may postpone imprisonment if he is satisfied that the judgment debtor is suffering from an illness incompatible with imprisonment."

It thus becomes apparent to us from the above text that the legislature distinguished between those cases of imprisonment of the debtor in which the law requires the creditor to prove the debtor's capacity to discharge his obligation, and those cases in which the debtor may be imprisoned without the need to prove his capacity.

Accordingly, this Chapter has been divided into two Sections: the first addresses the legal basis of the imprisonment of the debtor, while the second addresses the conditions of the imprisonment of the debtor and the cases in which it comes to an end.

Section One: The Legal Basis of the Imprisonment of the Debtor

There is no doubt that the optimal purpose intended by the legislature in laying down the rules and provisions of the Execution Law is to enable the creditor to obtain satisfaction of his right with the greatest speed and ease; this on the one hand. On the other hand, the legislature was careful to safeguard the interest of the debtor by providing the guarantees that protect him from the abuse and excess of the creditor in the exercise of his right when seeking execution. The Execution Law included the device of imprisoning the debtor as one of the means by which pressure is exerted upon him to perform what he owes to the creditor.[67]

The notion of the imprisonment of the debtor traces back to the Jordanian Civil Code and to certain special laws, whereby in specified cases it is required that the debtor should have breached his financial obligations following the issuance of a judicial ruling ordering him to

[67] Dr. Al-Qudah, *Principles of Execution*, op. cit., p. 132.

pay his debts.[68] In enumerating the cases of imprisonment of the debtor, a distinction must be drawn between the solvent debtor and the debtor who lacks capacity.

In this Section this will be analysed in the following two consecutive Requirements:

Requirement One: The Imprisonment of the Debtor Where the Law Does Not Require Proof of His Financial Capacity

In the text of Article (22) of the Jordanian Execution Law, the Jordanian legislature presumed the debtor's capacity to discharge the debt owed by him, thereby exempting the judgment creditor from proving the debtor's capacity to pay. These cases are as follows:

1. Failure to pay the debt or to offer a settlement: the Jordanian legislature provided for the necessity of notifying the debtor before taking execution measures, in accordance with the applicable legal rules. The notice must be for a period of seven days commencing on the day following service upon the debtor, after which the debtor may take steps to pay the debt before the Execution Department, or pay the statutory quarter of the amount, or submit an offer of settlement commensurate with the debtor's financial capacity and accepted by the creditor. If this statutory period expires without the debtor taking any of the said steps, the legislature affords the judgment creditor the right to request the imprisonment of the debtor on the presumption of his capacity to pay. In this case, the debtor has no option but to pay the debt, nor is he entitled to renew the offer of settlement save by challenging the service before the Court of Appeal, where the debtor alleges that he was unable to appear owing to a supervening circumstance, a matter left to the appraisal of the court.[69]

Where the debtor submits an offer of settlement in the form of instalments, the legislature required that the first instalment be not less than 15% of the value of the adjudged debt, in order to ensure the seriousness of the debtor in offering the settlement. In all cases, the settlement remains subject to the acceptance of the creditor, who is entitled to waive his right, since the settlement is regarded as a matter concerning the two parties and unconnected with the public interest. If, however, the debtor offers a settlement within the statutory period but does not pay

[68] Dr. Al-Kilani, *Rules of Evidence and Execution*, op. cit., p. 124.

[69] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., pp. 36–37.

the statutory quarter of the debt, the legislature permits the creditor to request the imprisonment of the debtor without the need to prove the debtor's capacity to pay.[70]

2. That the adjudged sum be compensation arising from a criminal offence: the legislature permitted the imprisonment of the debtor for the recovery of the amount of compensation for damage arising from a criminal offence, whether that offence be of the nature of a contravention, a misdemeanour or a felony. It is required in this case that a final judgment convicting the debtor should have been issued, whereafter the judgment awarding compensation may be issued by the criminal court or by the civil court, provided that a judgment has first been issued by the criminal court.[71] Where, however, a judgment is issued by the civil court before the issuance of the criminal judgment, or where the public prosecution has not been set in motion, the judgment issued by the civil court is regarded as a judgment founded upon the rules of tortious liability and not as compensation for a criminal offence, since civil fault is broader in scope than criminal fault.[72]

It should be noted, however, that the judgment issued in a private-right action is not regarded as compensation for damage arising from a criminal offence where the public-right action has been extinguished by general amnesty, in which case the criminal court retains its jurisdiction to consider the private-right claim and issues its judgment in accordance with the rules of civil liability.[73]

3. The adjudged maintenance debt: the legislature permitted the imprisonment of the debtor in respect of maintenance. Maintenance means the money which one person is bound to pay to another by reason of a marital bond or kinship, and it comprises maintenance for food, housing and medical treatment as prescribed by law. Accordingly, maintenance arising from agreement is excluded from the application of Article 22 of the Execution Law. Maintenance is regarded as one of the rights arising directly by operation of law, such as maintenance for the wife, the children and the parents. Upon reference to the text of Article 22 of the Execution Law, we find that it

[70] Dr. Abbas Al-Aboudi, *Commentary on the Provisions of the Execution Law*, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Amman, 2007, p. 156.

[71] Dr. Al-Qudah, *Principles of Execution*, op. cit., p. 147.

[72] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 37.

[73] Dr. Al-Qudah, *Principles of Execution*, op. cit., p. 148.

did not specify the type of maintenance with precision, having used the word "maintenance" in absolute terms.[74]

Accordingly, the person in whose favour maintenance has been adjudged is entitled, upon enforcing the judgment through the Execution Department, to request the imprisonment of the debtor without the need to prove his financial capacity. Nevertheless, Article 13 of the Sharia Execution Law required that the judgment be enforced within a period not exceeding three months from the date of its issuance. In this case, the enforcement of the judgment is not subject to the conditions of the offer of settlement, and accordingly the creditor is entitled to request the imprisonment of the debtor without proving his financial capacity if the judgment is filed within the three months. Where, however, the judgment is filed after the expiry of that period, the creditor must prove the debtor's financial capacity; and where the debtor has paid the statutory quarter and offered a settlement which the creditor has not accepted, the creditor may request the imprisonment of the debtor.[75]

4. The dower adjudged in favour of the wife: dower means "the money which the man is bound to pay to the woman upon the contract of marriage".[76] Article 20 of the Jordanian Execution Law and Article 13 of the Sharia Execution Law both permitted the imprisonment of the debtor by reason of dower, but each of the two laws laid down different provisions as regards proof of the debtor's financial capacity.

Under the Execution Law, the imprisonment of the debtor may be requested without the need to prove his financial capacity. The Sharia Execution Law, however, distinguished between two situations. In the first, where the debtor has paid the statutory quarter of the dower and offered a settlement within the statutory period, but the creditor has refused the settlement, the creditor must prove the debtor's capacity to pay. In the second, where the debtor has not attended the Execution Department, or has not paid the statutory quarter, or has not offered a settlement, the creditor is not required to prove the debtor's financial capacity and may request his imprisonment directly.[77]

From the foregoing it becomes apparent to us that the Sharia Execution Law conflicts with the Jordanian Execution Law, the Execution Law being a general text while the Sharia

[74]Dr. Al-Aboudi, *Commentary on the Provisions of the Execution Law*, op. cit., pp. 161–162.

[75]Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 39.

[76]Dr. Al-Kilani, *Rules of Evidence and Execution*, op. cit., p. 128.

[77]Dr. Al-Qudah, *Principles of Execution*, op. cit., p. 154.

Execution Law is a special text; and according to the general legal rule, where a special text conflicts with a general text, the special text is applied. Accordingly, the Sharia Execution Law prevails over the Execution Law.[78]

As regards Article 23 of the Execution Law, which provides that imprisonment is not permissible where the debt is between the spouses, this text does not apply to dower, given the existence of a special text permitting the imprisonment of the debtor for the satisfaction of a debt of dower, whether the marital relationship subsists or has come to an end, since the text was framed in absolute terms and an absolute text is to be applied in its absolute sense.[79]

5. Refusal to deliver up the minor entrusted to his custody, and failure to comply with the enforcement of a visitation order: the legislature dealt in Articles (170–186) of the Jordanian Personal Status Law with the provisions relating to custody, joinder and visitation. Article (22/b) further provided for the possibility of imprisoning the persons concerned, provided that a final judgment has been issued by the competent court. The legislature presumed that the refusal to perform the obligation (such as delivering up the child or enforcing the visitation order) results from the will of the judgment debtor, which enables the creditor to request the imprisonment of the debtor without the need to prove this. Where an order of imprisonment is issued, that order is renewed automatically until the debtor complies with the performance of the specified obligation, and in this case imprisonment is not limited to the period prescribed in Article (22/c) of the Execution Law. Where, however, the refusal to perform is due to a force majeure beyond the will of the judgment debtor, imprisonment may not be imposed, since the purpose of imprisonment is then absent; and the judgment debtor bears the burden of proving the existence of such compelling causes.[80]

Requirement Two: Persons Whose Imprisonment the Law Prohibits

It is important to note that there are persons whose imprisonment the law prohibits. Although the general rule is that imprisonment is ordered against judgment debtors without distinction, whether men or women, employees or non-employees, the legislature made an exception in respect of certain persons whose imprisonment is prohibited, whether for

[78]Dr. Al-Aboudi, *Commentary on the Provisions of the Execution Law*, op. cit., p. 166.

[79]Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., pp. 40–41.

[80]Dr. Al-Kilani, *Rules of Evidence and Execution*, op. cit., p. 132.

considerations relating to the person of the debtor or out of regard for the public interest. They are set out in the text of Article (23/a) as follows:

1. State employees: by reference to the text of Article (2/a) of the Civil Service Regulation No. 30 of 2007, which defined the employee as the person appointed by a decision of the competent authority to a post listed in the schedule of establishment of posts issued pursuant to the General Budget Law or the budget of one of the departments, including an employee appointed under a contract, and excluding a person receiving a daily wage; the term comprises military and civilian employees. The basis for this is that the imprisonment of a government employee causes harm to the public interest exceeding the harm affecting the interest of the creditor.[81]

It is evident that the Jordanian legislature did not exclude the public employee from executory imprisonment without purpose; rather there is an objective which the legislature seeks to preserve, namely that the State employee performs a public service in the public interest, and consequently his imprisonment would result in the disruption of that service, thereby prejudicing the guarantee that the public utility operates regularly and continuously, and leading to grave harm far exceeding the interest of the creditor seeking execution, for the public interest prevails over the private interest. Moreover, the salary of the public employee is regarded as a guarantee of payment to the extent of one third thereof, the creditor being able to levy executory attachment upon one third of the total remuneration received by the public employee, pursuant to the text of Article (31/b) of the Jordanian Execution Law No. 25 of 2007 and its amendments.[82] This has been affirmed by the Jordanian judiciary in a number of decisions, including Decision No. (159/2020).[83]

In our own view, there should be no discrimination in the treatment of debtors on the basis of their employment or social status. If the law prescribes financial sanctions or other penalties upon debtors who do not pay their debts, these must be applied to all without exception; the non-imprisonment of the government employee amounts to unjustified discrimination and contravenes the principle of equality before the law.

2. A person not personally liable for the debt: executory imprisonment is characterised by its personal nature, being applied to the person liable for the obligation or the personal

[81]Dr. Al-Qudah, *Principles of Execution*, op. cit., p. 132.

[82]Dr. Al-Qudah, *Principles of Execution*, op. cit., p. 134.

[83]See the decision of the Amman Court of First Instance, sitting in its appellate capacity, No. 159/2020, dated 19/2/2020.

act. Accordingly, executory imprisonment may not be applied to the principal, the guardian, the tutor or the heir, unless they are liable for the debt of the deceased, and then only within the limits of the assets of the estate, since there is no estate save after the payment of the debts due.[84]

3. A debtor who has not attained eighteen years of age, a person of unsound mind, an insane person, and a person interdicted for prodigality or heedlessness: the object of the Jordanian legislature in imprisoning the debtor is the payment of the debt; what purpose, then, is served by imprisoning a person of unsound mind or an insane person, so long as neither of them comprehends the meaning of imprisonment? This does not, however, mean that they may not be imprisoned after their recovery, unless the debt has become time-barred.[85]

4. A bankrupt debtor during bankruptcy proceedings, or an insolvent debtor in accordance with the provisions of the Civil Code: Article (290) of the Jordanian Commercial Code provides: “Every trader may, before ceasing payment or within the ten days following such cessation, apply to the Court of First Instance in whose jurisdiction his principal centre is located, requesting it to summon his creditors for the conclusion of a preventive composition in bankruptcy.” This means that once an application for preventive composition has been submitted, the debtor may not be imprisoned, since imprisonment is a coercive means of compelling the debtor to pay, whereas the suspension of imprisonment in this case is regarded as an indulgence towards the insolvent debtor. This provision applies likewise to the insolvent or interdicted debtor in accordance with the provisions of the Jordanian Civil Code in Articles (375) et seq. under the heading of “interdiction” of the bankrupt debtor.[86]

5. A pregnant woman, until the lapse of three months after delivery, and the mother of a newborn until the completion of two years of his age: the purpose of this is that imprisonment affects the body of the pregnant woman as well as the newborn who requires care.[87]

[84] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 43.

[85] Shusharee, *Compulsory Execution in Civil and Commercial Matters*, op. cit., p. 237.

[86] Dr. Al-Qudah, *Principles of Execution*, op. cit., p. 135.

[87] Dr. Al-Aboudi, *Commentary on the Provisions of the Execution Law*, op. cit., p. 174.

We conclude that the legislature took a wise decision in dividing the text into two limbs, the first relating to the pregnant woman and the second to the mother of the newborn. As regards the pregnant woman, given the possibility that she may give birth to a stillborn child, the legislature granted her three months after delivery; and if God grants life to her child, the period is extended until the child completes two years of age.

6. Kinship between the debtor and the creditor: the imprisonment of a debtor bound to his creditor by a family relationship is prohibited; but not every degree of kinship is regarded as a bar to imprisonment, for the legislature specified them exhaustively. Thus the imprisonment of a debtor spouse of the creditor is prohibited, as is the imprisonment of a debtor who is an ascendant of the creditor, however remote (father, grandfather, mother, grandmother). As regards the debtor spouse, the legislature required that the marital relationship be subsisting and that no separation have occurred between them; if separation has occurred and the marital relationship has come to an end, we rely upon the juristic maxim that "when the impediment disappears, that which was prohibited returns".[88]

In addressing this subject, reference should be made to the text of Article (23/b) of the Civil Execution Law, the substance of which is that it does not permit the imprisonment of ascendants for the debt of descendants. This Article is not applied to the debt of maintenance, given the existence of an express text in the Sharia Execution Law which did not distinguish between a judgment issued against ascendants and one issued against others; recourse may not be had to the Civil Execution Law where an express text exists. Article (13/d) of the Sharia Execution Law provides: "Notwithstanding the provisions of paragraph (a) of this Article, the judgment creditor may request the imprisonment of the judgment debtor in respect of a maintenance debt." This Article was framed in absolute terms covering all adjudged maintenance, whether awarded to descendants against ascendants or to others.[89]

We take the view that the law must be sufficiently flexible to acknowledge the human value of family relationships, where the wife is the creditor or vice versa; a wife should not be compelled to resort to coercive means, such as executory imprisonment, that may damage the marital relationship. Instead, the parties may reach flexible arrangements obliging the debtor

[88] Shusharee, *Compulsory Execution in Civil and Commercial Matters*, op. cit., p. 239.

[89] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 45.

(the husband) to settle the debt in a manner that respects family ties and does not expose family stability to danger.

Section Two: The Conditions of the Imprisonment of the Debtor and the Cases in Which It Comes to an End

The Jordanian legislature has set out the conditions that must be satisfied for the imprisonment of the debtor by providing for them in Article (6) of the Jordanian Execution Law No. 25 of 2007 and its amendments, currently in force, where they are set out exhaustively and not by way of example. The Head of Execution must verify their fulfilment before issuing an order for the imprisonment of the debtor; this on the one hand. On the other hand, the conditions required for the imprisonment of the debtor must remain fulfilled throughout the period of his imprisonment, and if one of these conditions ceases to be satisfied, the execution judge must in that case issue a decision revoking the imprisonment order and releasing the debtor against whom the imprisonment order was made.[90]

We shall address this Section through the following two Requirements:

Requirement One: The Conditions of the Imprisonment of the Debtor

There is no doubt that the original principle in relation to a person is that his patrimony is unencumbered, such that the encumbrance of the patrimony is a departure from the original principle. Consequently, the procedures followed with a view to restoring the original position — namely the freedom of the debtor's patrimony from obligations towards others — must necessarily take the direction of compulsion imposed upon the debtor. Since the imprisonment of the debtor is regarded as an exception to the original principle,[91] the Jordanian legislature has laid down a number of conditions that must be satisfied for imprisonment to be imposed upon the debtor. In addressing these conditions, we review them in detail as follows:

First: The creditor must hold a writ of execution arising from a right that is certain in existence, determined in amount and presently due, whether the writ of execution consists of judgments issued by the courts of all kinds and degrees, or by the councils and bodies whose decisions the law provides shall be enforced through the Execution Department, or whether it consists of official or ordinary instruments. It is required at the outset, in order to ensure the propriety of the conduct of the execution proceedings aimed at the imprisonment of the debtor,

[90] Al-Hurr, *The Imprisonment of the Debtor Refraining from Payment of the Debt,* op. cit., p. 82.

[91] Dr. Muhammadin, *The Action for the Non-Enforceability of the Debtor's Dispositions*, op. cit., p. 47.

that the writ of execution satisfy the aforementioned conditions.[92] This is made clear by the text of Article (6) of the Jordanian Execution Law, which provides at its outset that: “No execution may be levied save under a writ of execution in satisfaction of a right that is certain in existence, determined in amount and presently due.”

Second: The writ of execution on the basis of which the debtor is to be imprisoned must not be subject to challenge, that is, it must have acquired the force of res judicata and be presently due and payable.[93] This is made clear by the text of Article (9) of the Jordanian Execution Law, which provides that: “Instruments may not be compulsorily enforced so long as they remain subject to challenge, unless expedited execution is provided for by law or has been ordered by judgment.”

Third: The debtor must have been duly served with the executory notice on the basis of which imprisonment is sought, in accordance with the provisions of the law. The creditor must serve the executory notice upon the debtor through the competent Execution Department before commencing imprisonment proceedings against his debtor, and must grant him the sufficient period prescribed by law, namely fifteen days, before initiating the proceedings for his imprisonment. If the statutory period elapses without payment by the means prescribed by law, the creditor may request the imprisonment of his debtor.[94] Article (14/a) of the Jordanian Execution Law provides: “A notice must be served upon the debtor before the commencement of execution”; Article (22/a) of the same Law likewise provides: “The creditor may request the imprisonment of his debtor if the latter does not pay the debt or offer a settlement commensurate with his financial capacity during the period of the notice, provided that the first instalment under the settlement shall not be less than (25%) of the adjudged amount. If the judgment creditor does not accept this settlement, the Head may order the parties to be summoned in order to hear their statements, and he shall examine the debtor as to his capacity to pay the amount, and may hear the statements and evidence of the creditor as to the capacity of the judgment debtor and issue the appropriate decision.” It thus becomes clear to us that the creditor is entitled to request the imprisonment of his debtor who refrains from payment, provided that the latter has not paid the full value of the debt or offered a settlement consistent with the value of the debt and the debtor’s financial capacity, and provided that this occurs within the period of the executory notice. The creditor must likewise prove the capacity of his

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[92] Dr. Al-Qudah, *Principles of Execution*, op. cit., p. 129.

[93] Shusharee, *Compulsory Execution in Civil and Commercial Matters*, op. cit., p. 32.

[94] Dr. Al-Aboudi, *Commentary on the Provisions of the Execution Law*, op. cit., p. 163.

debtor in order to be able to impose executory imprisonment upon his liberty; otherwise the creditor is entitled to imprison his debtor, as affirmed by the Jordanian judiciary in the decision issued by the Amman Court of Appeal.[95]

We would also point out that the creditor is entitled to imprison his debtor without the need to prove his capacity in the cases provided for in the text of Article (22/b) of the Jordanian Execution Law, which set them out exhaustively as follows:

1. Compensation for damage arising from a criminal offence.
2. An adjudged maintenance debt, each instalment thereof being deemed an independent debt.
3. The dower adjudged in favour of the wife.
4. Refusal to deliver up the minor entrusted to his custody, as well as failure to comply with the enforcement of a visitation order, in which case imprisonment shall be renewed automatically until compliance.

Fourth: It is required in executory imprisonment that its period should not exceed ninety days in a single year, this period being confined at its upper limit to a single debt only, so that the creditor is entitled to renew the request for the imprisonment of his debtor in each year in which the latter has not discharged the full debt owed by him.[96] Article (22/c) of the Jordanian Execution Law provides that: “The period of imprisonment may not exceed ninety days in a single year in respect of a single debt, and this shall not preclude a request for imprisonment once again after the lapse of the year.”

Fifth: The creditor must request the imprisonment of his debtor. A distinction must be drawn here according to whether the value of the debt exceeds (3,000) dinars or not. Where the debt claimed exceeds the sum of (3,000) dinars, the request for imprisonment must be submitted through a practising advocate, for Article (41/1/a) of the Regulated Advocates Law No. 11 of 1972 and its amendments provides: “Appearance before the Magistrates’ Courts in civil actions the value of which is less than one thousand dinars, settlement actions, actions for the rectification of civil-status entries, criminal cases and execution cases the value of which is less than three thousand dinars, provided that the proceedings therein are conducted by the person concerned directly or through an advocate.” This has been affirmed by the judiciary in

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[95] See the decision of the Amman Court of Appeal No. 17654/2010, dated 28/4/2010.

[96] Dr. Al-Qudah, *Principles of Execution*, op. cit., p. 132.

the decision issued by the Amman Court of First Instance in its appellate capacity No. (199/2021).[97] At the same time, the Head of Execution may not order the imprisonment of the debtor of his own motion without a request to that effect submitted by the creditor or his agent for the imprisonment of the debtor who refrains from payment; and if imprisonment takes place without a request from the party having an interest therein, the imprisonment decision is defective in one of its conditions, entailing its nullity as being premature, and consequently the judge who issued the imprisonment decision must revoke it.[98]

Sixth: There must exist no impediment to imprisonment precluding the imposition of executory imprisonment upon the debtor. The Jordanian legislature set out a number of situations precluding the imposition of executory imprisonment upon the debtor who refrains from performing his undertaking, by providing for them in the text of Article (23) of the Jordanian Execution Law, which we shall set out in detail in the following Requirement of this Section of this study.

Requirement Two: The Termination of the Imprisonment of the Debtor

The Jordanian legislature provided for a number of cases in which the imprisonment of the debtor comes to an end, setting them out exhaustively in the text of Article (24) of the Jordanian Execution Law, as follows:

a. If the debtor's obligation is extinguished for any cause.

b. If the creditor consents to the release of the debtor, in which case he forfeits his right to request imprisonment a second time within the same year.

c. If the debtor discloses assets belonging to him sufficient to satisfy the debt.

It becomes apparent from the aforementioned text that the cases in which imprisonment comes to an end fall into two categories: in the first, imprisonment comes to an end definitively; in the second, imprisonment comes to an end temporarily. In examining this matter, we shall address each of them in a separate Branch, as follows:

Branch One: The Definitive Termination of the Imprisonment of the Debtor

The causes of the definitive termination of the imprisonment of the debtor may be numerous, the text of Article (24/a) of the Jordanian Execution Law having been framed in

[97] See the decision of the Amman Court of First Instance, sitting in its appellate capacity, No. 199/2021, dated 23/11/2021.

[98] Al-Hurr, *The Imprisonment of the Debtor Refraining from Payment of the Debt*, op. cit., p. 84.

absolute terms without enumerating the causes or identifying their nature. We shall therefore set out the cases in which executory imprisonment comes to an end consequent upon the extinction of the underlying debt, as follows:[99]

1. Release (ibra'): the obligation of the debtor is extinguished if the creditor releases him therefrom. Article (444) of the Civil Code provides: "If the creditor of his own free will releases his debtor from a right owed to him, the right lapses and the obligation is extinguished."
2. Where performance has become impossible: if the debtor establishes that performance of the debt owed by him has become impossible for a foreign cause beyond his control, imprisonment comes to an end consequent upon the extinction of the obligation provided for in Article (448) of the Jordanian Civil Code, which provides: "The obligation is extinguished if the debtor establishes that its performance has become impossible for him for a foreign cause beyond his control."
3. Merger of the two capacities: the merger of the two capacities is regarded as a cause of the extinction of the obligation and consequently of the termination of any measure taken against the debtor, including imprisonment. This is provided for by Article (353/1) of the Jordanian Civil Code, which provides: "If the capacities of creditor and debtor in respect of a single debt are united in one person, that debt is extinguished to the extent to which the two capacities have merged."
4. Prescription: if the period of prescription prescribed in Article (8) of the Jordanian Execution Law has elapsed, this precludes the creditor from requesting the imprisonment of his debtor, and the case is regarded as concluded as though it had never existed, and is classified among abandoned cases.

It should be noted that the debtor has the right to relieve himself of imprisonment, with the consequent termination thereof, by disclosing assets belonging to him sufficient to satisfy the debt owed by him. Article (24/c) of the Jordanian Execution Law provides: "If the debtor discloses assets belonging to him sufficient to satisfy the debt." In that event the imprisonment of the debtor comes to an end, since there is no purpose or justification for imprisoning him or for continuing his imprisonment.[100]

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[99] Dr. Al-Qudah, *Principles of Execution*, op. cit., pp. 144–146.
[100] Shusharee, *Compulsory Execution in Civil and Commercial Matters*, op. cit., p. 44.

Branch Two: The Temporary Termination of the Imprisonment of the Debtor

The imprisonment of the debtor comes to an end temporarily, and not definitively, in the following two situations:[101]

1. The termination of the debtor's imprisonment upon the lapse of the period adjudged: the termination of imprisonment here is not definitive, so long as the debtor's patrimony remains encumbered. The Head of Execution may order the imprisonment of the debtor for a maximum period of 90 days in a single year, and may so order in each year upon the request of the creditor, so long as the element of indebtedness subsists in the execution proceedings. It is settled that imprisonment comes to an end upon the expiry of the period specified by the Head of Execution, unless an imprisonment order has been issued against him in respect of another debt; and this termination is temporary and confined to the very year in which the imprisonment order was applied to the debtor. Article (22/c) of the Jordanian Execution Law provides that: "The period of imprisonment may not exceed ninety days in a single year in respect of a single debt, and this shall not preclude a request for imprisonment once again after the lapse of the year."
2. The creditor's consent to the release of his debtor: there is no doubt that executory imprisonment exists in order to safeguard the rights of creditors against their debtors, and the creditor may waive his right whenever he wishes. Moreover, the creditor may request the release of the debtor against whom an imprisonment decision has been issued, and the Execution Department is bound to release the debtor from prison as soon as the creditor so requests. If the creditor consents to the release of his debtor, he may not request his imprisonment once again within the same year, pursuant to Article (24/b) of the Jordanian Execution Law, which provides: "If the creditor consents to the release of the debtor, in which case he forfeits his right to request imprisonment a second time within the same year."

Chapter Three

The Extent of the Compatibility of the Amendments to the Jordanian Execution Law concerning the Imprisonment of the Debtor with the International Covenant on Civil and Political Rights

[101] Al-Hurr, *The Imprisonment of the Debtor Refraining from Payment of the Debt*, op. cit., pp. 94–95.

Notwithstanding the importance of the imprisonment of the debtor as a judicial measure taken pursuant to the Jordanian Execution Law, there have been numerous calls for its abolition, whether from the Jordanian public or from jurists. These calls rest upon the fact that the Hashemite Kingdom of Jordan has ratified the International Covenant on Civil and Political Rights, which provides that no one may be imprisoned merely on the ground of his inability to fulfil a contractual obligation.

It is settled in Jordanian legal scholarship and judicial practice that the provisions of international treaties acquire a force superior to that of ordinary legislation. Accordingly, the provisions of the International Covenant on Civil and Political Rights are those which must be applied by the Jordanian judiciary.

On this basis, we address this Chapter through the following two Sections:

Section One: The Amendments Introduced to the Imprisonment of the Debtor under Amendment No. (9) of 2022

In this Section we shall address the most recent amendments introduced to the Jordanian Execution Law by Law No. (9) of 2022, and the extent of their compatibility with the International Covenant on Civil and Political Rights, in a number of Requirements as follows:

Requirement One: The Amendments Introduced to Article (22) of the Execution Law

1. Reduction of the first instalment: the Jordanian legislature reduced the percentage payable as a first instalment from 25% to 15%, this percentage to be paid during the period of the executory notice, which is fifteen days.

The Jordanian legislature also expressly provided that the period of imprisonment must be commensurate with the amount filed for execution, and made clear that the period of imprisonment in a single year in respect of a single debt may not exceed sixty days. By these amendments the legislature sought to remove any ambiguity concerning the relationship between the period of imprisonment and the amount claimed, since under the former law the debtor could be imprisoned for a period of up to ninety days in a year, which gave rise to debate as to whether the debtor could be imprisoned for the maximum period irrespective of the value of the debt. In the new amendment, the legislature settled this question by establishing proportionality between the period of imprisonment and the amount to be enforced. The period of imprisonment was likewise reduced so as not to exceed sixty days in a year in respect of a single debt; and in all events, even where the debts are multiple and the creditors different, the period may not exceed 120 days in a single year.[102]

Article (22/c) of the same Law provides that: “The Head shall determine the period of imprisonment commensurately with the amount filed for execution, provided that the period of imprisonment does not exceed sixty days in a single year in respect of a single debt.” This amendment reflects the legislature’s concern to ensure the fairness of judicial procedures, while affording the debtor an opportunity to work and earn during the remaining days of the year in order to pay the debts owed by him, which contributes to alleviating the burden upon the debtor and affording him a suitable opportunity to discharge his financial obligations without inflicting grave harm upon his liberty and his working life.[103]

2. Contractual obligation, with the exception of real-property lease contracts and employment contracts: in the latest amendment, the legislature prohibited the imprisonment of the debtor by reason of failure to fulfil contractual obligations, with the exception of real-property lease contracts and employment contracts; this provision is to take effect three years after the date of entry into force of the Law. Article (22/1/2) provides as follows: “1. A debtor may not be imprisoned if he is unable to fulfil a contractual obligation, with the exception of real-property lease contracts and employment contracts. 2. The provisions of item (1) of this paragraph shall apply after the lapse of three years from the date of entry into force of the provisions of this Law.”

We observe from the text that the legislature excluded contractual obligations from imprisonment, save in respect of real-property rents and labour rights. This prompts us to inquire as to the legislature’s intention: did it mean the obligation arising from a unilateral will, or the obligation arising from a contract, and why did it except real-property lease contracts and employment contracts?

The answer to this question becomes clear once we understand that the legislature sought to strike a balance between protecting the debtor from imprisonment in cases of inability to fulfil contractual obligations, and safeguarding the rights of creditors who may be prejudiced by the non-performance of essential obligations such as rent and labour rights.

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[102] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., pp. 49–50.

[103] Dr. Al-Kilani, *Rules of Evidence and Execution*, op. cit., p. 147.

Requirement Two: The Amendments Introduced to Article (23) of the Execution Law

1. The inadmissibility of imprisoning both spouses together: the legislature's purpose in this amendment is to protect families from disintegration, particularly in cases where one or both parents are liable to imprisonment, which may have adverse effects upon the children, especially where there are children under 15 years of age or children with special needs.[104]

Article (23/a), paragraph six, of the same Law provides that both spouses may not be imprisoned together, or where the debtor's spouse is deceased or an inmate of one of the correction and rehabilitation centres, if they have a child under 15 years of age or a child with a disability. This amendment is intended to have regard to the humanitarian and social circumstances of the family, particularly in cases where the children may suffer from the absence of their parents by reason of imprisonment, leading to social and health problems for the children.[105]

In our view, this amendment reflects a profound understanding of the effects of imprisonment upon the family and reinforces the principle of social justice, by not burdening children or persons with special needs with the consequences of imprisonment, thereby contributing to the preservation of the stability and welfare of the family.

2. Debts between ascendants, descendants and siblings: where the amount of the debt claimed arises between ascendants, descendants and siblings, unless it is a maintenance debt. By reference to the former text, imprisonment was prohibited between ascendants and descendants; whereas in the recent amendment to the text the legislature prohibited imprisonment whether the debt was owed by ascendants, descendants or siblings. Article (23/b), paragraph one, provides: "Where the adjudged sum is a debt between spouses, or between ascendants and descendants, or between siblings, unless the debt is adjudged maintenance."

3. Imprisonment of a sick debtor: where the debtor is suffering from an illness incompatible with imprisonment, the Jordanian legislature permitted the postponement of his imprisonment until his recovery, in accordance with the position in force before the amendment. Under the recent amendment, Article (22/a), paragraph seven, provides

[104] Al-Hurr, *The Imprisonment of the Debtor Refraining from Payment of the Debt*, op. cit., p. 96.
[105] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 51.

that: "No debtor suffering from an incurable illness incompatible with imprisonment may be imprisoned, on the basis of the report of an official medical committee."

The foregoing Article provides that a debtor suffering from an incurable illness incompatible with imprisonment may not be imprisoned, on the basis of the report of an official medical committee. We take the view that this amendment reflects regard for human rights and for the health circumstances of the debtor, in that it enables him to avoid imprisonment where his state of health prevents him from enduring it. This amendment therefore constitutes a positive step towards reinforcing humanitarian justice, in that it ensures that the debtor is not punished where he is physically unable to endure imprisonment, thus reflecting a balance between the application of the law and the preservation of the dignity of individuals.

4. Where the debt is secured by a real security: this means that where the debtor possesses assets sufficient to satisfy his debt, they take precedence over the imposition of imprisonment upon him. This is a newly introduced text in the amendments to the Execution Law No. (9) of 2022.
5. An amount of less than five thousand dinars: by reference to the newly introduced text of Article (23), it appears that where the amount is less than five thousand dinars, the debtor may not be imprisoned in respect of that amount unless it constitutes real-property rent or labour rights. It should be noted that the fees and costs of the action are calculated as part of the adjudged amount, for when the judge adjudges the sum claimed he takes into account the fees, costs, advocates' fees and the legal interest.

Requirement Three: The Amendments Introduced to Article (24) of the Execution Law

1. Disclosure of property: under the former law, the legislature prohibited the imprisonment of the debtor where he disclosed assets sufficient to satisfy the debt, and granted the creditor the power to levy execution against them directly. Following the amendment of the text, however, we find that the legislature conferred upon the Head of Execution the power to hold an execution hearing and the power to allow the debtor to pay the amount by instalments over a period not exceeding three years.

We take the view that, although Jordanian law grants the creditor the right to levy execution against all the assets of the debtor, this right must be restricted rather than absolute, and must be exercised within the prescribed legal framework, with due regard for the human rights of the debtor and without prejudice to his liberty or his basic needs. Where the debtor is the head of a family, Jordanian law takes into consideration the social and humanitarian circumstances when enforcing judgments against the debtor's property, affording additional protection in matters relating to family rights and the basic needs of dependants.

2. Provision of a guarantor: the Jordanian legislature introduced a situation which did not exist under the former law, namely the termination of imprisonment where the debtor provides a bank guarantee for the payment of the debt or a solvent guarantor acceptable to the Head. By reference to the text of Article (24/e) of the amended Law, which provides: "e – Where the debtor provides a bank guarantee sufficient for the payment of the debt and its accessories, or a solvent guarantor acceptable to the Head", this means that if the debtor provides a guarantor in accordance with the said Article, or a guarantee sufficient to satisfy the debt, imprisonment comes to an end.[106]

Section Two: The Imprisonment of the Debtor under Jordanian Law in the Light of the International Covenant on Civil and Political Rights

The State must strengthen the social protection of debtors and provide fairer legal avenues for the resolution of financial disputes. At the international level, Jordan should take serious steps to harmonise its legislation with the standards laid down by the International Covenant, which reinforces its standing as a State committed to the principles of national justice and human rights. In the modern era a number of legal treaties and conventions have emerged which seek to address the question of debtors in a context that has regard to human rights and fundamental freedoms. Among these developments, the principle of "limiting imprisonment in debt cases" has been adopted in many States, whereby the debtor is permitted to continue his ordinary life without being exposed to imprisonment in the event of his inability to pay, unless there is bad faith or manipulation on his part.[107]

We shall now examine the provisions of the Covenant specifically, and its position on the imprisonment of the debtor. The International Covenant on Civil and Political Rights is an international treaty adopted by the General Assembly of the United Nations on 16 December 1966, which entered into force on 23 March 1976. The Covenant seeks to protect the civil and political rights of individuals against violations by governments or any other parties, and comprises a body of fundamental rights which the signatory States must respect and apply,

[106] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 54.
[107] Al-Mallad, *The Legal Rules Governing the Imprisonment of the Debtor*, op. cit., p. 67.

such as the right to life, liberty and security of person, the right to a fair trial, and freedom of expression.

The Human Rights Committee of the United Nations monitors the implementation of the Covenant and requires States to submit periodic reports on the extent of their compliance with the implementation of these rights. Individuals who consider that their rights under the Covenant have been violated may submit complaints to the Committee, which examines them and issues recommendations thereon.

The imprisonment of the debtor as a legal measure represents one of the controversial questions combining the purely legal aspect with humanitarian and human-rights considerations in Jordanian law. This measure is viewed as a means of exerting pressure upon the debtor to compel him to discharge his financial obligations, whereas international law — and in particular the International Covenant on Civil and Political Rights — reflects a contrary vision, regarding the imprisonment of the debtor as a measure involving a violation of his human dignity where it results from his inability to pay.

The imprisonment of the debtor raises numerous humanitarian and social difficulties. On the one hand, this measure prevents the debtor from working, thereby aggravating his financial crisis rather than resolving it. Imprisonment does not harm the debtor alone; its adverse effects extend to his family, which may find itself facing compounded economic and psychological burdens. On the other hand, this measure creates additional pressure upon the judicial and prison systems, thereby increasing the financial and administrative burdens upon the State.

In the context of this study, the International Covenant on Civil and Political Rights expanded upon the principle of the inadmissibility of arbitrarily arresting any person and detaining his liberty, by adding an express provision prohibiting the imprisonment of any person merely on the ground that he has become unable to fulfil an obligation which he has undertaken towards another, pursuant to the text of Article (11) of the International Covenant on Civil and Political Rights, which provides: “No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”

We shall address this Section through the following two Requirements:

Requirement One: The Status of International Conventions and Charters in Jordanian Legislation

Upon reference to the rules governing the application of international treaties and conventions, we find that the Hashemite Kingdom of Jordan ratified the International Covenant on Civil and Political Rights without entering any reservation to any of its provisions. Consequently, it is bound to apply the substance and provisions contained in the Covenant, such that the Jordanian legislature, when enacting domestic legislation, must have regard to the substance of the International Covenant on Civil and Political Rights, given that international treaties and conventions, once ratified by the Hashemite Kingdom of Jordan, have the status of laws — indeed, they prevail over them. This is what is provided by Article (33/2) of the Jordanian Constitution of 1952, which states: “Treaties and agreements which entail any expenditure upon the Treasury of the State or affect the public or private rights of Jordanians shall not be valid unless approved by the National Assembly; and in no case may the secret terms of a treaty or agreement be contrary to its overt terms.”[108]

The International Covenant on Civil and Political Rights obliged every State Party thereto — that is, every State that has ratified its provisions — to respect the rights recognised therein, and to secure the rights guaranteed by the Covenant to all individuals present within its geographical territory and subject to its jurisdiction.

In addition to the foregoing, Article (27) of the Vienna Convention on the Law of Treaties provides: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.” It thus appears that reliance may not be placed upon national law in order to refrain from giving effect to the provisions of international treaties and conventions to which the State Party has consented and which it has ratified.[109]

On the basis of the foregoing, it may be said that the accession of any State to the International Covenant on Civil and Political Rights means that it has accepted the obligation to adopt new legislation and laws, and to amend those in force, so as to render them consistent with the provisions and rules contained in the Covenant which are intended to preserve and safeguard human rights, that is, the rights of the individual in society. Consequently, international conventions and treaties to which the Hashemite Kingdom of Jordan is a party and which it has ratified take precedence in application over national legislation; accordingly,

[108]See the text of Article (33/2) of the Jordanian Constitution of 1952 and its amendments.

[109]Al-Hurr, *The Imprisonment of the Debtor Refraining from Payment of the Debt*, op. cit., p. 76.

the provisions of international treaties and conventions prevail over national legislation and suspend its operation.[110]

International treaties and conventions ratified by the Hashemite Kingdom of Jordan are regarded as an integral part of the legislation, and domestic laws do not prevail over them, pursuant to Article (24) of the Jordanian Civil Code, which provides: “The provisions of the preceding Articles shall not apply where there exists a provision in a special law or in an international treaty in force in the Hashemite Kingdom of Jordan that conflicts therewith.” We conclude from the foregoing text that the legislature accorded the provisions of international treaties and conventions priority over domestic legislation, to the extent of suspending the operation of those Articles that conflict with the substance of international treaties and conventions ratified by and in force in the Hashemite Kingdom of Jordan.

In this connection, the judiciary has affirmed in numerous decisions issued by it that international treaties and conventions rank above domestic laws and have priority of application where the latter conflict with them, and that no domestic law may be invoked against any international treaty or convention. Among the most important decisions affirming the principle of the primacy of international conventions and treaties over domestic laws are the decision issued by the Court of Cassation No. (1225/2021) (Cassation, Civil) and the decision likewise issued by the Court of Cassation No. (2936/2017) (Cassation, Civil).[111]

In addition to the decisions of the Court of Cassation, mention should be made of the decisions of the Constitutional Court, most prominently Decision No. 1 of 2020 issued on 3/5/2020,[112] which held that no law may be enacted that conflicts in its entirety with the obligations imposed upon the parties to international treaties or conventions ratified by the Hashemite Kingdom of Jordan pursuant to a law. It further held that no law may be enacted amending or repealing the provisions of any international treaty or convention ratified by the Kingdom. In the same decision the judiciary also affirmed that international treaties and conventions have binding force upon the parties, and that States must respect them so long as

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[110] Al-Akour, Omar; Al-Adwan, Mamdouh; and Baydoun, Maysa’ (2013), “The Rank of International Treaties in National Legislation and in the Jordanian Constitution”, *Journal of Sharia and Law Studies*, University of Jordan, Vol. (40), Issue (1), p. 91.

[111] See the decision of the Jordanian Court of Cassation – Cassation (Civil) No. 1225/2021, dated 22/4/2021, and the decision of the Jordanian Court of Cassation – Cassation (Civil) No. 2936/2017, dated 10/8/2017.

[112] See Constitutional Court Decision No. 1/2020, dated 3/5/2020.

they remain subsisting and in force, provided that such treaties and conventions have been concluded and ratified and have satisfied all the procedures prescribed for their entry into force.

Requirement Two: The Extent of the Lawfulness of the Imprisonment of the Debtor under the International Covenant on Civil and Political Rights

Building upon the foregoing Branch, and after some have adhered to the notion of opposing the imprisonment of the debtor in Jordanian society, some consider that the device of imprisoning the debtor as a means of execution under Article (22) of the Jordanian Execution Law, which embodied that device, constitutes a manifest violation of the International Covenant on Civil and Political Rights, inasmuch as the Covenant provided that a debtor may not be imprisoned for a contractual obligation pursuant to the text of Article (11) thereof, whereas the Jordanian Execution Law expressly provided for the imprisonment of the debtor as a result of his failure to perform what he undertook towards the creditor, or even as a result of the debtor's difficulty in discharging the obligation encumbering his patrimony, upon the request of his creditor. All these situations are but the product of contractual obligations. It should be noted that the Jordanian Execution Law contains no provision distinguishing between the debtor who is unable to perform his obligation towards his creditor — that is, the insolvent debtor — and the solvent debtor who obstinately refuses to pay the debt owed by him to the creditor, that is, the debtor who refrains from payment, save through its reference to the debtor who is able and the debtor who is unable to pay, on the basis of which the debtor may be imprisoned, all pursuant to Article (22) of the Jordanian Execution Law.[113]

An example of this is the decision issued by the Execution Judge of Al-Qasr Court – Karak, who held that: "… By reference to the text of Article (11) of the International Covenant on Civil and Political Rights, which provides that: 'No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation', which was ratified by the Government of the Hashemite Kingdom of Jordan in Amman in 2006 and published in the Official Gazette; and whereas international conventions and treaties ratified by the State prevail over domestic laws, as has been settled by the jurisprudence of the honourable Jordanian Court of Cassation; I therefore decide to revoke the previous decision and to stay the request against the judgment debtor."[114]

[113] Al-Hurr, *The Imprisonment of the Debtor Refraining from Payment of the Debt*, op. cit., pp. 78–79.
[114] Decision issued by the Execution Judge of Al-Qasr Court – Karak, dated 24/4/2014, unpublished decision.

By reference also to the decision of the Head of Execution of the Aqaba Court of First Instance, it was appealed and was set aside by the Ma'an Court of Appeal, the text of the appellate decision being as follows: "We find, upon reference to the text of Article (11) of the International Covenant on Civil and Political Rights of 2006, ratified by the Council of Ministers at its session held on 30/5/2006 and published in Official Gazette No. (4764), which provides that 'No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation', that from the foregoing text we deduce that the following two conditions must be satisfied: first, the obligation must be contractual; and second, the debtor must be unable to perform. Returning to the facts of the action, we find that the basis of the judgment filed for execution is a contractual obligation between the appellant and the respondent, namely the lease contract concluded between them, which means that the first condition is fulfilled. As regards the second condition, we find that there is nothing in this action indicating the debtor's inability to perform, since no evidence establishing this was adduced. What is established is the debtor's failure to pay the adjudged sum, and not his inability to pay, and this distinction is fundamental, which means that the second condition is not fulfilled. Since the respondent has not paid the sum adjudged against him and has not established that he is unable to pay, the text of Article (11) of the International Covenant cannot be applied to the facts of this action, which at the same time does not conflict with the text of Article (22) of the Execution Law; which renders the application of the provisions of that Article to this action contrary to the prescribed rules and to the law, and misplaced, having been made prematurely. Founded upon the foregoing, and without the need to respond to the remaining grounds of appeal, it is decided to set aside the appealed decision and to remit the papers to their source for the taking of the requisite legal action."[115]

Accordingly, we take the view that these decisions were clear in indicating the necessity of proving inability to pay, or a state of insolvency, on the part of the claimant — that is, that solvency is presumed so long as the debtor has not discharged his obligations. The Head of Execution of the Karak Court adopted this approach, refusing to release the debtor in reliance upon the provisions of Article (11) of the International Covenant, and justified his decision in the summary of the foregoing appellate decision (the decision of the Head of Execution of the Karak Court of First Instance issued on 12/8/2014, an unpublished decision). It thus appears that the Jordanian judiciary has settled upon the view that the International Covenant on Civil

[115] Decision of the Ma'an Court of Appeal, heard by a delegated panel of the Aqaba Court of Appeal, No. 924/2014, published on the Qararak website – Jordanian Bar Association.

and Political Rights is not binding in its application in Jordan, and is not regarded as prevailing over Jordanian law. Nevertheless, there remains some difficulty in the interpretation of the text of Article (11) of the International Covenant, particularly as regards the state of insolvency, the interpretation differing between those who place upon the defaulting debtor the burden of proving his inability to pay, and those who place upon the creditor the burden of proving the debtor's solvency and his capacity to pay.

From another standpoint, we take the view that, in accordance with the foregoing, the International Covenant on Civil and Political Rights has preferred the right of the individual to personal liberty and freedom of movement over the right of ownership belonging to the creditor, such that these rights are guaranteed so long as the debtor is in good faith and his failure to perform what he undertook towards his creditor is attributable to his insolvency and is not the result of bad faith — as where the debtor refrains from paying his debt notwithstanding his financial solvency, out of obstinacy or for other improper purposes. By way of contrary inference, however, the International Covenant on Civil and Political Rights did not prohibit the imprisonment of a debtor who is able to fulfil his contractual obligations, since Article (11) thereof specified the debtor who is unable to pay the debt arising from contractual obligations. On the contrary, the Jordanian legislature did not contravene the International Covenant on Civil and Political Rights by virtue of the provisions of the Jordanian Execution Law, for it is permissible under Article (11) of the International Covenant on Civil and Political Rights to imprison the solvent debtor, and this is what is provided for in Jordanian legislation pursuant to Article (22/a), under which the legislature permitted the imprisonment of the debtor upon the request of the creditor after proof of the debtor's capacity to perform the debt owed by him. In addition, the Jordanian legislature presumed, during the period of the executory notice, that where the debtor does not attend the Execution Department before which execution is levied against him and does not offer any settlement, he is able to pay the amount of the debt within the period of the executory notice; this on the one hand. On the other hand, as regards the cases in which the legislature permitted the creditor to request the imprisonment of his debtor without the need to prove his capacity, provided for in Article (22/b) of the Jordanian Execution Law, the substance of which is: "The creditor may request the imprisonment of his debtor without the need to prove his capacity in the following cases:

1. Compensation for damage arising from a criminal offence.
2. An adjudged maintenance debt, each instalment thereof being deemed an independent debt.

3. The dower adjudged in favour of the wife.
4. Refusal to deliver up the minor entrusted to his custody, as well as failure to comply with the enforcement of a visitation order, in which case imprisonment shall be renewed automatically until compliance."

The first situation set out in item one of the text does not in substance contravene the text of Article (11) of the International Covenant on Civil and Political Rights, since it relates to claims arising from a criminal offence and not to claims arising from contractual obligations; that is to say, this situation does not contravene the International Covenant on Civil and Political Rights. As regards the other situations set out in the three remaining items, which relate to matters issued by the Sharia courts — namely the maintenance debt, the dower adjudged in favour of the wife, the delivery of the minor and the enforcement of a visitation order — these are situations that are not regarded as arising from contractual obligations and are not contrary to the text of Article (11) of the International Covenant on Civil and Political Rights, inasmuch as it confined the prohibition to the imprisonment of a person merely on the ground of his inability to fulfil contractual obligations. Consequently, it is evident that the Jordanian legislature did not contravene the International Covenant on Civil and Political Rights, as has been affirmed by the Jordanian judiciary in a number of judgments issued affirming the lawfulness of the imprisonment of the debtor in accordance with international conventions and charters, as provided for in Article (22) of the Jordanian Execution Law No. 25 of 2007 and its amendments. Thus the Irbid Court of Appeal issued Decision No. (1356/2018), in which it affirmed that the device of imprisoning the debtor provided for in the aforementioned Article does not contravene the International Covenant on Civil and Political Rights.[116]

In the light of the foregoing, we take the view that the legislature ought to have drawn an express distinction between the insolvent debtor and the debtor who refrains from payment, and ought further to have allocated to each situation specific provisions and procedures whereby the judiciary might readily verify the extent of the debtor's capacity in order to determine whether he is insolvent or is refraining from paying the debt, so that specific measures might be taken in respect of each of them, striking a balance between the right of the creditor and the safety and liberty of the person of the debtor; this on the one hand. On the other

[116]See the decision issued by the Irbid Court of Appeal, Decision No. 1356/2018, dated 22/1/2018.

hand, this would remove any ambiguity by clarifying the absence of any contravention of the text of Article (11) of the International Covenant on Civil and Political Rights.

Conclusion

Findings and Recommendations

The study has addressed the device of imprisoning the debtor as one of the means of compulsory execution, whereby the debtor is deprived of his liberty in order to exert pressure upon his will so as to compel him to perform the debt owed by him. This device has numerous effects upon the person of the debtor himself, upon his family and upon society at large, in conformity with the principle that it is the debtor’s property, and not his person, that stands as the guarantee for the payment of his debt, notwithstanding the seriousness and effectiveness of that device in compelling the debtor to perform.

In conclusion, and in order to avoid repetition, we have reached a number of findings and recommendations, which we set out as follows:

First: Findings of the Study

1. The device of imprisoning the debtor is one of the means of compulsory execution whereby the debtor is coerced so as to compel him to perform what he owes to the creditor; it is not regarded as payment of the debt owed by the debtor, inasmuch as the debt is not extinguished by the expiry of the imprisonment.
2. The Jordanian legislature has adhered to the device of imprisoning the debtor as one of the means of execution whereby rights are satisfied and recovered for those entitled to them; and notwithstanding the rising voices denouncing this device by reason of its social and economic effects upon the person of the debtor, its effectiveness in exerting pressure upon the person of the debtor so as to curb his obstinacy and his refusal to pay what he owes to his creditor cannot be denied.
3. The Jordanian legislature did not adopt the device of imprisoning the debtor as a means of execution in absolute terms; rather it laid down a number of conditions and controls provided for in the Jordanian Execution Law No. 25 of 2007 and its amendments, and further provided exemptions for certain categories for particular humanitarian, economic and legal considerations.

4. The Jordanian legislature has not in practice adopted a distinction between the debtor who is unable to pay his debts — the so-called distressed debtor — and the debtor who refrains from paying his debts by reason of bad faith towards the creditor.

5. In adopting the device of imprisoning the debtor as one of the means of compulsory execution, the Jordanian legislature has not contravened the text of Article (11) of the International Covenant on Civil and Political Rights of 1966, inasmuch as the legislature included among the conditions for requesting the imprisonment of the debtor that he be solvent and not unable to pay his debts, which is consistent with the provisions of this Covenant. The legislature has not, however, expressly clarified its presumption of the debtor's capacity where the latter does not attend the Execution Department or does not offer a settlement during the period of the executory notice.

6. The Jordanian legislature has not adopted alternatives capable of replacing the device of imprisoning the debtor and depriving him of his liberty; consequently, that device may deprive him of his opportunity to work in order to pay his debts.

Second: Recommendations of the Study

1. We recommend that the Jordanian legislature provide for the regulation of the procedures for requesting the imprisonment of the debtor, and for the necessity of not issuing decisions ordering the imprisonment of the debtor before he has been duly served, since some creditors use fictitious addresses so that the debtor is not in fact served within the period of grace afforded by the executory notice, with the result that reliance is placed upon service by publication, thereby depriving the debtor of the opportunity to deny the debt, or of the opportunity to offer a settlement, or to establish his inability to discharge the debt.

2. We recommend that the Jordanian legislature provide for the adoption of measures alternative to the imprisonment of the debtor, including the electronic bracelet, the administrative freezing of the debtor's assets, and house arrest within the limits of his place of residence and work upon proof of his place of residence and work, and other effective measures.

3. We recommend that the Jordanian legislature provide for the regulation of pre-emptive procedures preceding the creation of the obligation, including verification of the financial and credit standing of the debtor at the time the debt arises so as to secure the

obligation, and the tightening of supervision and oversight over lending and financing institutions, and other pre-emptive means preceding the creation of the obligation, in order to ensure performance.

4. We recommend that the Jordanian legislature provide that the debtor may not be imprisoned in respect of the same debt more than once, even if his creditors are multiple, in order to avoid the debtor entering an endless vicious circle of imprisonment lasting throughout his life.
5. We recommend that the Jordanian legislature provide for a clarification of the difference between the distressed or "insolvent" debtor and the debtor who refrains from paying the debt, the "procrastinator", given the ambiguity that presently surrounds the subject. This would put an end to the debate as to whether the device of imprisoning the debtor contravenes Article (11) of the International Covenant on Civil and Political Rights, and would clarify the matter for the public and in particular for those calling for the abolition of the device of imprisoning the debtor merely because they believe that the provisions of the Jordanian Execution Law contravene the provisions of that International Covenant.
6. We recommend that the Jordanian legislature take into consideration that the creditor is more deserving of protection, given that the creditor took the initiative first and voluntarily in performing what he undertook, thereby causing his debtor to become a debtor. Accordingly, the interest of the debtor should not be preferred by the legislature over that of the creditor, so as to avert the risks of undermining credit confidence among individuals, this being one of the most important elements driving the economic engine of the State.

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