Legal philosophy of the concept of criminal risk in the idiosyncratic and legislative domains "analytical, critical and comparative study"

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The discussion revolves around the concept of criminal danger and the precautionary measures taken against it during the social defense movement. This discussion has had a difference in opinions regarding the impact of each of them on modern philosophical and penal theories, as we shall see the legislators of Arab and foreign countries did not take the idea of criminal danger clearly and explicitly in their penal laws. Most penal legislation did not establish a precise and clear criterion that can be used to define the meaning and concept of criminal risk. The criterion of "probability", as many of the legislation especially Arabic ones, and specifically the Jordanian did not take this idea clearly in the Penal Code, but only put copies of it. But on the contrary of the law gave the order to assess the state of criminal risk to the administrative governor, and this means that the development of a general concept and comprehensive criminal risk is not easy. It is a flexible and variable idea that varies according to the variables in each society. And we will see many of the jurists when they were exposed to the concept of criminal seriousness, they confuse the concept of social and legal concept, and therefore we found it necessary to study the criminal risk in some Arab legislation compared to foreign legislation and clarify the opinions of lawbreakers about it.

Keywords: Criminal Risk, Idiosyncratic Domain, Legislative Domains

INTRODUCTION

The subject of criminal risk has received a great importance according to the jurisprudence, also most recent legislation has rely the idea of risk, so that the punishment or criminal penalty no longer have physical character as it was for a long period of time, but the penalty has become personal turn in which takes into account the perpetrator personality, the factors and circumstances that surrounded him and led him to commit the crime, as well the goal from the penalty is no longer a criminal reprisal or harassment, but the purpose has become repair and rehabilitation of the offender, which requires that the penalty be proportionate to the personal perpetrator. There is no doubt that the knowledge of the extent of criminal risk available to the offender, has a great impact on the choice of the penalty, which commensurate with this risk, and at the same time achieves the interests of the criminal to rehabilitation, and the interests of the community to palm the harm of offender and to prevent doing damage to his society in the future, through the repaired.

And the criminal risk is from the topics that stand on the border between criminology and science of punishment and the penal code, considering to which it raises issues related to each of these topics. so the criminal risk has become the foundation of the new policy, which aims to develop the penal legislation, as it more able to defend society while preserving the rights of citizens and social security within this community, , Which can only be achieved by identifying the perpetrator personality, and knowing mental state that was experienced by the criminal when he committed his crime, and the extent of what he has available the seriousness of the crime.

Criminal risk idea has emerged as a result of the efforts and the positive school studies and research, which are
calling for the determined response of the judicial act against crime and according to the seriousness of the criminal offender, this means that the idea of this school completely inconsistent with what brought by the traditional school where the latter was calling for the application of the principle of clearing between crime and punishment, the positive school was take the principle of inevitability of crime and do not take the principle of freedom of choice in their commission in the sense that criminal is forced or rather guided to commit a crime against his will as a result influenced by several factors including what is internal due to the psychological and organic criminals and some abroad due to the environment that surrounds a criminal. Thus, there is no face-to-accountability the criminal or blame on moral grounds, it does not mean entirely legal responsibility for criminal omission but asks socially considering what he has done is a source of risk to society, and it must provide protection to the community and protect him. This can only be done by taking precautionary measures against criminal threat. These measures aim to prevent criminal risk and its criminal source and then placing it in the center or place that it cannot harm society.

As a result, the back of intellectual trend aimed at social defense against the phenomenon of crime, and to protect against the necessity to focus on the criminal who committed the crime, the degree of gravity and establish the necessary and appropriate measures to address this risk from the premise that the purpose of punishment is to always protect the community and protect him from committing the crime, and this cannot be possible to achieve only through the delivery that the criminal Penalty must be directed towards a particular goal was expressed reform of the criminal on the one hand and protection of society and prevent future crimes on the other.

Also the school's ideas have been interest a lot of researchers in criminology. Even the most modern legislation as we'll see took some of the ideas of this school. Some of them stuck to the idea of crime risk enough to become a legislative phenomenon and some of the other legislation required even negligible risky criminal that the person has committed a crime so that it appears nature and riskiness of the circumstances surrounding the criminal and the likelihood of committing new crimes in the future.

Research Importance

Modern criminal policy was calling to care of minors by clergy who possible demonstrate criminal riskiness threaten the security and safety of the community. In order to cope with such criminals’ people, most studies have concentrated on trying to find out the reasons and motives for which led them to crime in order to process and reducing criminal risk. To achieve this, some of the precautionary measures imposed on them in order to protect society from crime and the phenomenon lies the importance of research in the statement of contents and concepts of criminal risk among scholars of criminal law, Arab and foreign legislation criticism study, So we come to the all-inclusive and blocker concept which can be rely on it as a criterion for the application of criminal sanction after studying the legal and jurisprudential debate about which many people define the concept of criminal risk after becoming occupies pride of place in the field of criminal sciences.

Therefore these considerations invited us to do this study in order to shed more light on this vital subject, after the criminal law has become dependent on scientific facts derived from criminology and psychology, to apply the basic principles of the idea of rehabilitating and rehabilitation the criminal, accordingly, because our study will be about exposure to the concept of criminal risk on idiosyncratic and legislative bands and attempt to refute each concept alone in order to reach a clear and precise concept that can be relied upon as a standard in application the criminal penalty.

METHODOLOGY

The study of criminal risk idea and find out what they are both at the legislative or jurisprudential was required from the researcher to resort to the use of the approach of "critical and analytical" to show each concept has been said on them, as it is flexible and variable idea, as we shall see that there are who put the risk idea as a standard and there are who put the idea of possibility to the other, and this leads to a difference every jurist or legislation on the basic idea of her situation, So it is necessary to analyze these views legal analysis characterized by critical nature by the researcher, according to this we resorted to use this approach.

Research Difficulties

Putting a general and comprehensive definition of the criminal risk is not easy, as the latter is considered a flexible idea brook interpretation when putting its definition varies depending on variables and conditions in every society, the difficulty of research lies, in particular, that many scholars at their statement to the concept of criminal risk are confused between its legal and social concept. As well as the lack of a precise and clear standard can be resorted to in determining the meaning of criminal risk, that leads to ease the judiciary work, Sometimes as we have said the criterion of "risk" is used and at other times the criterion of "probability" is adopted. And many of the legislation, especially Arab ones, specifically the Jordanian legislation, did not take this idea clearly and explicitly in the Penal Code, but only put pictures of it.

Search Strategy

The researcher in his study of the topic of "legal philosophy of the concept of criminal risk upon idiosyncratic and
On criminal preparing, As for the second focused on the possibility, and despite the different concepts of the criminal risk, but it revolves around one content that the criminal risk is a personal case attached to the criminal person with the possibility of committing the crime in the future or back to it².

According to what was presented criminal risk known as "the criminal possibility of committing another crime " this definition is considered one of the best definitions that have been said about the risk, where this concept came to describe the criminal is a person of risk in terms of saying (possibility that the criminal), because of the conditions of criminal risk and the UAE, which reveal it is committing crime and therefore criminal risk is only among the criminal. But it Taken attic that it came free of possibility, and if it can be traced to the internal state lies in the criminal person, and what the nature of this case is it biological or psychological or is it due to the external circumstances.

There are who also known it as (the ability of a person to commit crimes according to his willingness, and this willingness may be authentic if it has been born with individual, and may be acquired if the result of factors resulting from the social environment contributed to the personal formation³).

We believe that this definition is the same as that scholars of criminal law practice and it replaced the word (probability) with the word (ability) and the fact that there is no importance to this matter, so long as that possibility means each particular result it is possible to predict as long as the causes constant and clear and not subject to doubt. , So as long as those causes are present ability to achieve the result it is also present at the front of the person who causes available.

There are those who investigate the accuracy of the criminal risk concept, as defined as (state or psychological case closely to the criminal person threatens the possibility of daring to commit another crime in the future), and precisely in this definition is that it is show the nature of these risk and explained that it psychological state also it show that it is issued just by criminal in other words the person who committed a crime in the past and is likely to commit a crime in the future, It also defined as a (psychological state is made up among criminal as a result of internal and external factors make it more likely to commit a crime in the future)⁴.

2. Dr. Abdel Moneim Suleiman, Criminology and Criminal, publications Halabi rights, Beirut, 2003, p 178.
4. Dr. Mohammed shalal Habib, criminal risk, a comparative study, PhD thesis introduction of the Faculty of Law and Politics, Baghdad University, 1980. p. 302
In turn, we prefer to formulate the following concept of criminal risk: Psychological state is made up among criminal as a result of certain factors, conditions and different circumstances interact with each other to make the criminal possibility to do another crime is improbable.

**The second requirement: The Western Idiosyncratic concept of criminal risk**

The development of a general and comprehensive definition of the criminal risk is not easy, since the latter is conceded a flexible idea which interpretation unbearable when developing its definition varies depending on variables and conditions in every society, Which made scholars disagree on the definition of criminal risk since the Italian judge display Jaruvalu, his idea of risk as a criterion for punishment in an article entitled "Studies on the punishment," published in 1878.

So jurisconsult (Jaruvalu) define the criminal risk as (criminal capacity, which shows what appears on the criminal permanently corruption effectively, it also determines the amount of evil, which is expected to happen with him and to estimate the risk we must consider the extent to which the criminal respond to the community).9

Criminal capacity, which represents the willingness and ability of psychological person is influenced by all the other factors, if it was a social or genetic or other to become criminals represent another element to this definition. Thus, there is a psychological component included in the definition next to the social component, either in terms of the correlation between the two components of any psychological component with a social component, it can argue that lying between criminal capacity and extent of social responsiveness of the criminal, as there are some people who are have criminal capacity without have the possibility of social responsiveness, however, they may pose a danger to the community.

As for Jrspina jurisconsult, he has defined it as (the clear person capacity is to become a part of the prospect commits an criminal in the future)7 This opinion expressed the idea of criminal risk with the idea of criminal willingness since the latter represents the psychological toll in the group so that is linked to the extent of the power of self-deterrents and that will control the external and internal motivation. Thus, if this willingness has intensified and increased effectiveness, it turns into the possibility of committing the crime to the possibility of actually occur i.e. criminal risk "and that's what it meant this criminal capacity view.

From the viewpoint of Jrspina to the criminal risk two aspects the first legal and the other Psychological it is illegal status made up of the individual and result in a criminal sanction, nor psychological aspect it is the individual psychological status and its qualities and conditions of the ordinary to be eligible for the commission of the crime8.

From our perspective, we note two observations on this view, the first was made criminal risk personal status attached to its owner, and exposure to criminal penalty legally, and thus through linking between risk criminal in the perspective of the law and the criminal penalty. The second observation is the ultimate adoption of the concept of criminal risk on what is available from the psychological condition of individual so that it pay him to the lute back to the commission of the crime.

As for the (Jenny de worse) jurist he has defined it as (the most obvious possibility that the person who becomes the perpetrator of the crimes or take back the commission) also he added that this criminal risk carries the possibility that the criminal may commits antisocial doings, However, it must restrict the possibility of taking the idea to commit a crime when talking about the positive law9.

Based on the above, the Second International Congress of Criminology which held in Paris in 1953, was determining criminal risk as stated in the formulation of each of (De aswo Jrspina) and the content of this deterrent is (that the case of risk is with person when it is probable daring directly to illegal act and whether it's a temporary basis or on an ongoing basis to the legal personal rights, Such as the right to life and the right to the integrity of the body and the right to liberty and the right to property, even if the penalty was not intended in itself)10.

From our perspective we observe the following two notes the first that this concept is influenced by the social concept of crime in criminology and this differs from the legal concept of a crime and cannot join with each other, the jurist (De worse) believe that the risk in criminology mean probability towards the individual commission antisocial work while they are in the perspective of the

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6 Dr. Tariq Mohammed Douiri, the general theory of the criminal risk and its impact on the general principles of contemporary criminal legislation, Master Thesis, University of Algiers, Algeria, 1980, p. 59.

7 Dr. Yusr Anwar Ali, the general theory of precautionary measures and criminal risk, legal and economic sciences magazine, Issue I, the thirteenth year, Ain Shams Press, 1971, p. 198.

8 Dr. Mohamed Sobhi najem, the assets of criminology and punishment, ibid., P. 87.

9 Dr. Mansour Rahmani, criminology and criminal policy, Darul Uloom for publication, Annaba, Algeria, 2006, p. 148

10 Dr. Qadri Abdel Fattah Shihawi, conditional legal encyclopedia, the world of books, Cairo, 1977, p. 320.
law means the probability to commit a crime. The second note that the concept of risk in this way has been devoid of the nature of probability and whether it was possible to return to the case of an internal latent in the criminal and whether the nature of this case, either biological or psychological factors, it is due to the external circumstances.

As for the German jurist (Phon lest) has define the criminal risk as (especially nature of an individual under he cannot prevent from committing criminal proceedings by threatening punishment etc.) 11.

From our perspective we do not agree with this concept as it has been devoid of a statement of what the special nature of risk and whether they go back to psychological or biological agents, because to give in this concept means that the crime was committed by a person at risk is inevitable cannot prevent its occurrence, while the risk is the possibility of a significant degree of force threatens to embark on the commission of the crime.

As for the Italian jurist “Ferry” was define as the risk is commit a crime or initiated “From our perspective we do not agree with this concept which streaked over, Since not everyone who commits a crime is inevitably criminal from criminal destination, also this opinion does not distinguish between risk and what is regarded as distinctive characteristics or connotations 12. One of the jurists considered that the criminal risk is independent of the will of the individual, as objectively be estimated without the esteem toward the will 13.

But we do not see the acceptance of this view the one hand, there is no correlation between the mental state and risk. As a person in their right mind enjoy it also have a disorder or defect in his intellectual abilities. On the other hand there are plenty of cases where this risk realized as a result of involuntary as is the case when recidivism or habitual criminality.

The second topic: The legal definition of a criminal risk

Criminal risk paved his way to be present in the texts of various punitive legislation, whether foreign or Arab, due to its large importance on the criminal system as a whole, and to endorse this idea was a strong echo in legislation known in the twentieth century, it began to appear in some of the old legislation.

In England, specifically in the reign of King “Charles” Article 176 of the Penal Code promulgated in 1532 stipulates that if it is found that the person after committing the first crime threatens to commit a second crime, the judge may order the detention of that person until a sponsor or a sufficient guarantee 14.

In America, by the end of the nineteenth century, the idea of fixed-term punishment was emerged, one of the types of measures that assume the deposit of a certain type of criminals risk in prison for as long as necessary in order to treat their risk, and although it did not specify the idea of criminal risk, which is the basis for this measure. The idea of criminal risk has appeared for the first time in the Norwegian legislation field at the beginning of the last century, specifically in 1902, And the scope of its application was limited only for two categories of criminals who are gay and accustomed to crime. Therefore, we will study this topic in two requirement the first we devote entitled identify risk idea in some Arab legislations, The second we devote to identify risk encroachment in some Western legislation as follows:

The first requirement: Identify criminal risk idea in some Arab legislation

Most Arab laws, which took the idea of criminal risk was swung between the substantive direction and personal direction and this is as an attempt to develop a concept of the risk of the criminal, and we well show these laws as follows:

First branch: Jordanian law

Jordanian law did not take in a clear and explicit the idea of criminal risk, however, we find that the sanctions Law No. 16 of 1960 stated in Article 28 thereof to provide for some of the precautionary measures that could be applied to the perpetrator of a criminal act, in addition to the sanctions imposed by this law for instance selling that which is taking precautionary measures prohibitive of freedom system for those who did booking in a precautionary shelter, As they are deposited in a private hospital to receive the necessary care according to their status (Article 92 of the Penal Code 15).

12 Dr. Abdel Moneim Al-Awadi, introduction to systematic studies of the origins of criminality, Dar Arab renaissance, Cairo, 2009, p. 154.
14 Dr. Mansour Rahmani, criminology and criminal policy, ibid., P. 148.
15 Dr. nezam Tawfiq al-Majali, explaining the Penal Code, op. Cit., P. 205.
It should be noted here that the Jordanian legislator has tended to take some of the previous cases of risk to commit a crime, as a case of homelessness, which reportedly stipulated in the Juvenile Act of 1968, as well as the case of suspicion that the text contained in the Crime Prevention Act of 1954.

With regard to the situation of homelessness where the legislator considered among the cases of risk and which permits the measures incidence or forwarded to the House Juvenile Welfare for a period not less than one year nor more than five years.

In this regard, some go to the Hadith that the legislature is right when he offense to be displaced in the Juvenile Code and punished the dangerous situation caused by it even if he didn't do any crime, and explain his view that if the exposure to those who reached the age of majority of public under the pretext of availability criminal risk to avoid crime may occur "Although it has not yet been located," it is something that would involve an exaggeration, because it is exposed to the risk of personal freedoms for such people, which leads to the achievement of results may have dire consequences. Such notification is not important when it related to young generation, because the they will automatically be under guardianship or state, and as it may, guardian or guardian to take thereon measure is a fortiori State may take with him a measure similar, but that the state measure when they take on the young generation to be more capable than the family that is often corrupt system 16.

From our perspective we tend to adherence of this view in the circulation, as long as the law is the one who take care of identifying cases of criminal risk for young generation, also identifies measures under the legal provisions to be taken with respect to such young generation.

Add to that that the Jordanian legislator is not content to stand at this point as to leave estimate the availability of criminal risk to the local governor and did not leave it in the hands of the judiciary, if legislator left the availability of criminal risk before the crime was committed to eradicate it will be closer to the logic, as for left entirely to the local governor, who gives him a legislator under the Crime Prevention issued an arrest warrant on a person who was found in one of the three cases mentioned earlier in preparation for his trial validity of the law of the day, this is under consideration, this is under consideration, Article 5/4 / a stated explicitly that it is not necessary in the actions taken under this law to prove that the accused has committed an act or certain acts.

We see in this regard that it is a departure from the principles of all the criminalization and punishment, in particular the principle of legality. Because it leads to exposing the freedoms of individuals at risk without the person commits a crime, add to that that this law gives the executive branch terms of reference are the origin of the terms of reference of the judicial authority, this approach of Jordanian law and legislation, which has become a way lead to the conclusion that prevail doubt on certainty. This is quite contrary to the principles of individual liberty, which the legislator wanted when he decided to protect the principle of legality of offenses and penalties and that it is not permissible legally accountable person more than once for a single crime which invites us that object to criminalize the case of suspicion.

Jordanian legislator was not known parole system 17, but the Jordanian Prisons Act cited a similar situation to it under Article 29, which stipulates that "in order to encourage prisoners to improve their behavior and develop the spirit of love of work in them and to facilitate their treatment, all prisons take arrangements that enable every prisoner sentenced to imprisonment for one month or more, or arrest or hard labor under a single provision or provisions taken straight to merit his release when it has remained full of his sentence of no more than a quarter".

From the foregoing it is clear that committed a crime and if it was really creates the state in the punishment of the criminal, but that is not enough in itself to the application of punishment in all cases, and the punishment applied will on the availability of criminal risk, whether judicial or presumed by the legislator, and this risk considers expressive to choose a criminal penalty in order to achieve social defense in accordance with modern penal system.

The second branch: Egyptian law

Although the Egyptian penal code did not extravagant in a clear and evident to the concept of criminal risk, but that all the provisions that came out to show that he took into account this idea in all positions requiring their presence. This is well illustrated by the following texts 18.

1. What came by Article (55) which allowed the judge ruling to suspend execution of the sentence for those who his conditions is not risk, as if the court had seen the ethics of the convict, his past, antecedents, and age or circumstances of the criminal which reason to believe he would not return to the violation of the law.

2. The text of the article (17) and (49) of the Egyptian Penal Code on individualize punishment in the type and amount depending on the degree of criminal risk, the terms of article (17) Switch penalty for severe crimes to punishment

\[16\] Dr. Mohammed Saeed nmour, stopping execution of the sentence, the system is missed in penal legislation in Jordan, Mutah Journal for Research and Studies, Vol. III, second edition, 1988, p. 587.

\[17\] Dr. Mohamed Sobhi najeem, the assets of criminology and punishment, op. Cit., P. 156

\[18\] Dr. Mohammed Zaki Abu Amer, assets aware of criminal risk, the new University House, Alexandria., 2001, p. 158.
3. cases that call for mercy for the judges. While the article pointed out (49) to the lute, and it represents a source of severe punishment and that it represents a criminal presumption of return.

4. As well as with respect to the second paragraph of Article 18 of the Egyptian Penal Code concerning the method of implementation the penalty depending on the estimate criminal risk stipulating (anyone sentenced to simple imprisonment for a period not exceeding three months to asked rather than the imprisonment sentence to run outside the prison, according to decide the law of limitations to achieve the Criminal Code only if the text of the judgment deprived of this option)\(^\text{19}\).

5. Also, the Egyptian Code of Criminal Procedure set forth in Article (543) of the permissibility of removing the effects of judgment against the perpetrator, who does not disclose his condition of criminal risk in order to facilitate the re-integration with the social.

Third branch: Lebanese law

The Lebanese law express the idea of criminal risk as "the risk to public safety" and his defined in the article "211" / 3 came as the ( each person comment a crime is make a risk to the community if they was afraid to report the other acts punishable by law)\(^\text{20}\).

Previous article has developed a general rule that it is not possible to judge the person orchestrating a precautionary measure unless it is proved that a threat to public peace, or the law assume this risk as a judgment, this is stipulated in the previous article by saying (no one is under precautionary measure unless it is a threat to public peace. the precautionary measures is govern after verifying the case of risk, except in cases in which the law presumes the existence of a threat).

Based on the above, according to the article "263" of the aforementioned person is considered a risk to public peace by law if the occurrence of the penalty besides the criminal fines penalty, or intentional misdemeanor and sentenced to anti-freedom penalty for at least one year in a felony or misdemeanor other unintended, And when this case available is inevitable to say that a person is considered a risk to society. This law has been shown the four cases where the person is considered a risk to public safety, namely:-

1. In the case of whether a person accustomed with a criminal or sentenced to penalty which is not fine, and then sentenced to anti-freedom penalty for other legal repeat. "Article 264/1".
2. In the case of whether a person is accustomed of Crime which was released in over fifteen years which does not count the time spent in the implementation of sanctions and precautionary measures either four prison sentences for crimes committed with an excuse or cover of unintended provided that be the last of the three crimes committed after the previous crime provision has become prohibited article "264 / 3.2".

3. In cases where a person released on three provisions of the rule, including by the criminal penalty and judgments one of them is similar to those stated in paragraph 3.2 of the previous article that these three sentences have been issued within a period of fifteen years. Which are not accounted for how long it spent in the implementation of precautionary measures and sanctions? (This situation indicates the availability of the presumption of criminal risk).

4. In cases where the person commits a felony or an intentional misdemeanor sentenced because of it one year's imprisonment, provided that this is during the period of his stay in prison, or in the next five years for the release, this case indicates the availability of criminal risk judgmental article "265'. These cases cited by the Lebanese legislature in which the availability of criminal risk in the person of the criminal apart from verifying the extent of the existence of this danger in his psyche is assumed or not, this means that the legislator mentioned may cross materially in his definition of criminal risk based on the verification of certain conditions come through certain acts committed by a criminal person.

From our perspective we do not see any importance to the meaning of the distinction between the risk state assumed for the four cases reported and between the case of risk to public safety which required by law to verify and make sure of its existence, since the legislature in all previous cases may develop physical conditions presumably with the presence and existence of criminal risk to the person\(^\text{21}\).

Article "262" comes of the same law to know us the criminal risk person based on the definition of habitual criminal that (Is the one who his criminal work is psychologically permanent readiness whatever it was innate or acquired to commit crimes and misdemeanor) and we can see from this concept that the habitual criminal is a criminal his personality is characterized by large criminal risk caused by the psychological readiness he has to commit crimes.

Fourth branch: Iraqi law

Iraqi legislator took the idea of criminal risk and gave her a special role within the limits that have dealt with the precautionary measures, as Article 103 of the Penal Code No. 111 of 1969 which is (is not permissible to have measure of precautionary measures stipulated by the law in the people right without having actually found

\(^{19}\) Dr. Ahmed Fathi Sorour, the criminal theory of risk, the law of Economy magazine, Issue / 2 year / 34, June 1964. d. Jalal Tharwat, criminal phenomenon, university Cultural Foundation, Alexandria, 1982, p. 421.

\(^{20}\) Dr. Fattouh Abdullah El-Shazly, the basics of criminology and punishment, Halabi legal publications. Beirut, 2009, p. 327.

\(^{21}\) Dr. Netham al Majali, responsibility for the inevitable at the thought of the positive school, Journal of Legal Sciences, Faculty of Law, Volume XIV, Issue, 1999, p. 380.
guilty, the law is considers a crime and his condition is considered risk to the society safety, and the criminal is conceder a risk on the society safety if it is found from his conditions, his past, his behavior, circumstances of the crime and the motivation that there is a serious possibility for daring to commit another crime).

It is clear from the preceding text that the conditions imposed precautionary measures that the previous crime is characterized by criminal risk, and the Iraqi legislature has gave to the judge wide discretion to check the availability of criminal risk, this latter is in charge of disclosure risk by standing on the conditions of the criminal, his behavior, his past and the circumstances that motive him to commits the crime, This Means that the Iraqi legislature has embraced the personal doctrine in his definition of the criminal risk and through the Article 103 is clear to us that criminal risk from the perspective of the Iraqi legislator means (state sends to believe the possibility that criminals those who have committed a previous crime to commit a new crime through what is clear from the his conditions, his past, his behavior and the circumstances of the crime and its motivation).

The idea of criminal risk is not limited to punitive legislation on the Article mentioned, but clearly taking shape in the individualization penal system. This system means the appropriate punishment for the personal situation of the criminal, which is the psychological, biological and social composition and the motive that prompted him to commit the crime, taking into consideration taking into account the physical circumstances of the criminal and that look at the way and manner of commission, and the consequential damages resultant to the victim and the society.

Punitive exclusivity has two aspects The first relates to the character of the criminal and the other about materialism sides of the crime, which is on three types (legislative, and judicial, and executive) Perhaps the two main modes texted of the legislator punitive legislative uniqueness are exempt excuses, mitigating and aggravating circumstances, the article 128 came to show excuses stipulating that (excuses either be exempt from punishment or diluted with no excuse except in cases specified by law….). This means that it is calling for reasons diluted exempt for excuses is the lack of criminal dangerous to the person, if the crime is committed at the provocation of the victim unlawfully or committed honest motives (AD 128/1), and the legal conditions tightened it embody the path created by the legislature in order to face criminal risk inherent in the criminal.

The judicial uniqueness and which allows the legislator to judge multiple systems when applied penalty under which determines the appropriate punishment Among these means quantitative gradient edged between the lowest and highest qualitative distinction between the death of two or more or a combination of both. And reduce penalty below the minimum or tightened to more than the maximum, and stop the execution of the penalty.

The legislator has authorized also to judge if it finds that there is a circumstance calls for clemency with the criminal to come down to below the minimum prescribed for the crime, and thus comes the role of criminal risk in extenuating circumstances judicial system, the judge in charge of the search for the degree of criminal risk inherent in the same the criminal and therefore mitigate his penalty if it finds - any risk - a few degrees does not deserve the penalty prescribed in the law.

Such exclusivity judicial penalty systems, stop the execution of the penalty system which provided for in article(144) of the Penal which allowed for a court ruling to stop implementation of the sentence convict when there are conditions for a stay of execution law, conditions related to crime and other related to criminal and conditions relating to the punishment.

And the appropriate article for the permissibility to stop the execution of the penalty is should not convicted for the intentional crime irrespective of its kind, provided that the Court considers the criminal attitude and his past, age and the circumstances of his crime as a matter of believing that he will not return to commit a new crime, all of this is one of the tags about the absence of criminal risk has, i.e. the lack of or weakness of the criminal tendencies he has, and this assures us that the criminal risk is a major role in stopping the execution of the penalty system, so the judge cannot judge a stay of execution for criminals have a tendency future towards the commission of the crime.

The second requirement: Identify criminal risk idea in some western legislation

Since the idea of criminal risk began to make their way in the old legislation as we have seen, it has also started to enter the modern situation in the legislation, but the legislation that took it has gone in two directions. The first trend: - (objective) and this trend is limited to determine the conditions to be fulfilled in the risk person, so that the application of precautionary measures against him.

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22 Dr. Akram Nashat Ibrahim, the general rules in Comparative Penal Code, the first edition, boys Press, 2009, p. 376.
23 Muhsin Naji, the general provisions in the Penal Code, the first edition, Ani Press, Baghdad 1974.454 .od. Fakhri al-Hadithi, explaining the Penal Code, op. Cit., P. 513
24 Resolution No. 55 on 29/05/ 2011, Group of judicial sentences, the second issue, the seventh year, 2011, pp. 337
25 Nashat Akram Ibrahim, the general rules in Comparative Penal Code, ibid., pp. 374.
26 Dr. Fakhri Abdel-Razzaq al-Hadithi, explaining the Penal Code, op. Cit., P. 496.
As in 1885 of French law, relating to the dimensions of the usual and returning after the execution of the penalty, as well as New York Act of 1926 with respect to the arrest who are accustomed to criminality and who had previously been convicted of four times. The second trend: 1) (personal) and this trend depends on estimate the criminal personality and examined scientifically, and it must be noted that most of the legislation has been adopted, taking the direction of personal and which empowers the judge guided by indications within the accused person builds upon the availability of criminal risk or not27.

We see in this regard the correct application of this standard, which is the safest in determining criminal risk, this last, as we said variable depending on the change of the human personality, that personality that cannot be predicted or at least put obvious features to it, and therefore cannot be scaled and determine the framework by putting certain legal requirements, which is difficult to unify the people. Here we review some of the laws that took the idea of criminal risk.

**First branch: Italian law**

The Italian law, issued in 1930, is considers the first pioneer in the taking the idea of criminal risk field, as talked about the its concept under the Article "133" which expressed by individual readiness for criminality, the above article is put the directories to show signs and evidence upon which the judge in his statement to the availability of criminal risk for the person or not, and rely on these signs in the criminal derived from:-

1- Nature, type and means, subject, time, place and every way for the reaction.
2- The magnitude of the damage and the risk that causes a person affected by the crime.
3- The severity of the intent and the degree of error. The judge also has to take into account the capacity of the convicted criminal and to be drawn from: -
   a. Reasons driving for the crime and ethics of the criminal.
   b. Criminal jurisprudence and generally the behavior and the previous lives of the criminal to commit a crime.
   c. Behavior during the commission of the crime and the subsequent behavior on them.
   d. Personal and family life and social conditions.

The concept of a person with the criminal risk was under Article 203 of the Act that (person who commits a crime if the potential to commit subsequent offenses prescribed by law as crimes)28.

And the idea of criminal risk is show clearly under article 164 of the Act, which legalized the judge to stop the execution of the penalty if it appears to him from the behavior of the contemporary subsequent, former crime, living conditions, social, family and others that the criminal will not return to commit other new crimes, this shows that the suspended sentence depends on the suggestive circumstances not to its risk, as well as Article 176, while required for the release of the convicted person to give the latter firm evidence for good behavior, and these conditions are characterized the case convict risk even be argued that the criminal risk affect execution of the penalty, meaning that the presence of risk prevents the stay of execution of penalty or parole, and this is different from saying that the risk is the basis for the application of the penalty29.

**The second branch: Spanish law**

Article 71 of the Spanish Penal Code of 1928 came to identify criminal risk that they (especially case of person readiness resulting in the possibility of committing the crime case).

It is noticeable on this definition, it came up a comprehensive qualitative risk "criminal and social", because the text of the previous article came to describe, in particular, every person, whether a returning criminal or he committed the crime for the first time, and it should be noted to Spanish law in its definition of criminal risk has embraced the doctrine personal, but the definition was absolutely, so its left to the judge discretion to judge each individual, for which have evidence reveals the underlying its risk30.

**Third branch: Brazilian law**

Brazilian law issued in 1940, was embracing personal principles in the definition of criminal risk, and this illustrated by the general principle established by the law on the risk situation without specifying exactly general conditions of criminal risk. But to make it is up to the competent judge, as the latter must be inferred from the accused person, his past, his motives, circumstances of the crime that the person represents a risk to the future.

Accordingly, the mentioned law has been defined the criminal risk as a state are available for the person who his character, his past, the motives, circumstances of the crime committed allows the possibility to made a new criminal in future)31.

27 Dr. Mohamed Sobhi Nejm, crime and punishment in assets, op. Cit., P. 122
28 Dr.yuser Anwar Ali, the general theory of precautionary measures and criminal risk, ibid., P. 26.
29 Dr. yuser Anwar Ali, scientific doctrines in criminal policy, ibid., P. 71.
30 Dr. Abdullah Alorikat, the impact of the deterrence ..., op. Cit., P. 58.
31 Dr. Fakhri al-Hadithi, the General Penal Code, op. Cit., P. 420
However, this definition and as some see is not accommodate for the idea of risk before the crime, based on that is the person characterized by pioneers committing the crime, and from our perspective we do not see any shortcomings in this definition, as long as it did not deviate from the concept of criminal risk, those that materialized after the person actually committing a crime. In the eyes of the penal law, and the respect of those which consist in a person who did not commit a crime after it has jurisprudence drawer to call Social risk.32

Forth branch: Cuban law

The Cuban penal call with Social Defense Law, this law came to define the criminal risk (a certain patients or formative readiness, or an acquired habit, serving on the means of resistance among the person and strengthens his tendency toward objects)33. We note from this definition that it embraced the doctrine personal definition of risk and came as a statement of internal and external causes of criminal risk, in terms of its response to the overall factors and causes, that would affect the human psyche, and regardless of whether they return to the genetic or biological or pathological reasons, lead individually or in combination to enhance the power of motivation towards his criminality.

FINDINGS AND RECOMMENDATIONS

1- Jordanian legislator as well as the Egyptian did not take idea of criminal risk in a clear and explicit way in their laws punitive but Contented themselves with remembrance of pictures. We appeal both to their laws and conveys the idea of punitive criminal risk because of their importance in the legal field as did the Iraqi legislature.

2- Putting a general and comprehensive concept of the criminal risk is not easy because they are considered flexible and variable idea vary according to the variables in each community.

3- We noticed a lot of scholars when they were developing the concept of the criminal risk, they confuse between the social concept and legal concept.

4- Most of the punitive legislation did not set a precise and clear standard can be resorted to in determining the meaning of criminal risk which leads to facilitate the work of the judiciary. Therefore, we wish to legislation that did not take the personal standard adopted for being closest to the logic in determining criminal risk. The latter, as we said vary depending on the variables in each community, and this trend empowers the judge guided indications and emirates within the accused person build upon the availability of risk criminal or not.

5- Jordanian legislator gave assessing the status of criminal risk matter before the commission of the crime to the local governor, and this is a violation and a departure from the principle of legality of criminal as well as granting the executive branch functions are originally from the jurisdiction of the judiciary. We appeal our legislator to return things back on track to grant the judiciary is assessing the status of the criminal risk.

6- Jordanian legislator did not approve the conditional release system, as did the Iraqi legislature, which means approval of the importance of criminal risk, and that we wish to our legislator be singled out a provision for conditional release and incorporated into assessing the status of the criminal risk.

7- Lebanese legislator cited four cases in which the person is Considers a risk to public safety and a difference between all of them, we do not see any importance to this distinction as the legislator in all of these cases may develop physical conditions known to exist with a risk criminal to the person.

32 Dr. kamel alSaeed, the origins of criminology and punishment, op. Cit., P. 154. d. Mohamed Sobhi najem, the assets of criminology and punishment, op. Cit., P. 164.

33 Dr. kamel alSaeed, explained the Penal Code, "General" section, Dar wrapped for Publishing and Distribution, Amman, 2015 edition, p. 315.
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