

Criminal Responsibility in Mental Abnormalities; a Comparative Study of the Criminal Legislation of Arab Countries

Montadher Saadoun Rasan Ali Al-Zubaidi¹, Mahdi Khaghani Isfahani², Soudabeh Rezvani³

Abstract

Psychoanalysis was of great importance in understanding criminal behavior because psychology provided society with many theories of great importance in studying the psychological aspect of the individual and his innate predispositions and the deviations that he experiences, which have become important indicators of criminal behavior; psychological complexes, emotional imbalance, and... Instincts are factors in criminality. Psychological sciences have provided multiple explanations for various types of behavior and have attempted to develop proposals that would treat types of criminals according to the results derived from psychoanalytic procedures, studying the depths of the human psyche and probing its depths for various repressed psychological components and their relationship to criminal behavior, leading to studying the reasons driving that behavior and trying to reform the criminal and bring him back to the social body.

The developments witnessed in medicine and the expansion of scientific research have proven the existence of cases of mental disabilities that do not lead to a complete loss of perception or choice, but rather their effect depends on diminishing one or both of them, which leads, as a result, to the emergence of a group of mentally ill people who mediate... Their mental faculties are among the minds The absence of it stems from the importance and necessity of this topic in that it will represent an addition to the legal scientific library and to the legal field in its applied aspect. It aims to introduce criminal responsibility and state the views of Islamic jurisprudence in dealing with the mentally ill person and determine the legal basis for this. What caught the researcher's attention is that Islamic law requires Criminal accountability is imposed on the chosen taxpayer, and it provided clear rules for implementing this responsibility. However, the Egyptian Criminal Code of 1991 - which influenced the development of legislative amendments in the Iraqi Criminal Code - was disturbed in its codification of these provisions and did not follow the usual jurisprudential influence, despite its detailing of the general basis. For criminal accountability, except that it stipulates that the criminal liability of the offender suffering from a mental or psychological disability is limited, so this research explains the impact of these diseases on criminal liability.

Keywords: *mental anomaly, nervous anomaly, insanity, criminal liability.*

¹ PhD student in Criminal Law and Criminology, Al-Khwarizmi University, Tehran, Iran.
Email_muntadheralzubidi@gmail.com

² Assistant Professor of Criminal Law and Criminology at the Institute for Research and Development in Humanities (SAMT), Tehran, Iran. (corresponding author).Email Khaghani@samt.ac.ir

³ Assistant Professor of Criminal Law and Criminology, at Kharazmi University, Tehran, Iran. Email s.rezvani@khu.ac.ir

Introduction

The term forensic neurology or forensic neurology has recently appeared, and it complements forensic psychiatry by describing some psychological diseases that may affect the human brain and its ability to make insightful decisions and understand their consequences by permanently or temporarily disabling the higher functions of the brain, and thus may disappear. The assignment takes him to a stage close to insanity, so he does not understand or remember his words and actions related to criminal cases, whether he was a party to them or a witness to them. The correct diagnosis of neurological diseases that may be present before the crime occurs and that the patient or his family does not know about helps in judging people related to criminal cases to evaluate them correctly, and to ensure whether the punishment is deserved or not.

It is well known that sufficient evidence and evidence must be available in the event of a criminal suspicion indicating that a person intends to commit a criminal act that requires punishment. This may be difficult to prove in cases of mental illness or nervous system disease, and also vice versa when trying to use that illness as an excuse to reduce the punishment in criminal cases. .

At the beginning, it must be made clear that mental illness in itself is not an absolute impediment to criminal responsibility. Rather, responsibility is determined to the extent that the perpetrator is unable to realize the nature of the act and its consequences. If a person loses awareness and the ability to choose, he is not considered responsible for his actions. The mind is subject to assignment. Article (60) of the Federal Penal Code No. (3) of 1987 defines the criminal liability resulting from mental illness by stipulating that "Anyone who, at the time of committing the crime, lacked awareness or will due to insanity or a mental defect...or for any other reason determined to be known, shall not be held criminally liable." He loses awareness and will, but if insanity, mental disability, or other results result in a deficiency or weakness of awareness and will at the time of committing the crime, this is considered a mitigating excuse." It should be noted, finally, that the final say on whether the accused, at the time of committing the crime charged against him, was suffering from a mental illness that robbed him of his will and discrimination, completely or partially, is the medical reports issued by specialists commissioned by the Public Prosecution or the competent court.

1- The Importance and Necessity of Research

The importance and necessity of this topic stems from the fact that it will represent an addition to the legal scientific library and to the legal field in its applied aspect, as the developments witnessed in medicine and the expansion of scientific research have proven the existence of cases of mental disabilities that do not lead to a complete loss of perception or choice, but rather their impact depends on Detracting from one or both of them, which ultimately leads to the emergence of a group of mentally ill people whose mental faculties are intermediate between reason and its lack. We will examine the legal status of homosexual criminals. The study revealed to us the legal importance of the homosexual problem and the extent of the need to ensure real legislative regulation of it, and that Iraqi law's neglect of this category of offenders is a clear shortcoming.

Given the ineffectiveness of limiting punishment alone, precautionary measure alone, or combining them for the abnormal criminal, some jurists have asked whether it is possible to think of a new system that combines the characteristics of punishment and precautionary measure, and ensures the implementation of both together. This system has been called the mixed measure. We will try to apply the theory of mixed measures (which, in our estimation, occupies the middle position between punishments and precautionary measures) on homosexual criminals, so that we can be certain that this theory guarantees the protection of society from the danger of these criminals in a manner consistent with legal logic.

Research questions :

- 1- What is the position of Iraqi criminal law and comparative Arab countries regarding the criminal responsibility of those suffering from mental-psychological illnesses without insanity while committing a crime?
- 2- What is the role of the nature of the crime in the criminal responsibility of criminals afflicted with psychological and brain abnormalities without insanity in the medical sense according to the Iraqi legal system and some other Arab legislation?

Research hypotheses:

- 1- The Iraqi Penal Code divides individuals into wise and insane groups, and does not allow those afflicted with mental and psychological anomalies with anything less than insanity to reduce criminal responsibility, but only gives the possibility of reducing the sentence to the discretionary authority of the criminal court judge.
- 2- The nature of the crime (the legal classification of the crime or the objective classification of the crime) did not make a difference in the criminal responsibility of those with mental and psychological disabilities without insanity in Iraqi law. Because Iraqi law is secular and there is no legal classification of crimes in the general criminal law in Iraq.
- 3- The insufficient interest of the Iraqi legislator in the achievements of criminal psychology and forensic medicine prevents a change in the Iraqi criminal liability system to gradual liability according to the severity of knowledge of the mental or psychological disability affecting the breach in knowledge and criminal intent.

Research aims

- 1- Definition of mental abnormality and mental illness,
- 2- The effect of mental abnormality on mental illness and vice versa,
- 3- The concept of criminal responsibility,
- 4- Cases of psychological and mental illness that raise criminal responsibility in the criminal legislation of Arab countries,
- 5- Mental illness that does not raise criminal liability.

The researcher relied on the descriptive approach in his thesis entitled "The Effect of Mental and Nervous Abnormalities Milder Than Insanity on Criminal Responsibility in Iraqi and Arab Legislation," from which this research was drawn.

The main concepts of the research

Definition of anomaly in language: Ibn Faris says: "Al-Shain" and "Dhal" indicate isolation and paradox , and Ibn Manzur said: An anomaly from it is an anomaly. If it is isolated from the crowd and is rare, then it is an anomaly. Definition of anomalies in terms: The image we have of them in the field of principles differs from the image of scholars, grammarians, or readers, for example. Reason is a language: reason is used in language and means what is equivalent to madness and foolishness. Therefore, it was said in its definition: quarantine and prohibition. It is also used to mean one who deters one's desires and keeps one away from error, and it includes the saying: So-and-so's mind, if he knew the mistake he had made and retracted it, and it is also used to refer to "blood money" . The mind in terms: The status of the soul and its necessity for man has made it the subject of interest for a large number of scholars who discovered its essence to identify it, researched its effects and tried to study most of it, then they arrived at different definitions of the soul according to the knowledge established by each one of them. Among these. Al-Raghib Al-Isfahani divides the mind into two parts: The first: It is the power ready to accept knowledge, and we see it in the saying of the Prophet, may God

bless him and grant him peace: "God has not created a creation more honorable to Him than the mind as a reference to Him."

Psychological abnormality (Nevrose)

A- Definition: In its 1952 report, the American Psychiatric Association defined mental illnesses as follows: "Mental illnesses are a group of deviations that do not result from psychological disease or damage to the structure of the brain. Rather, they are functional disorders of the temperamental personality and are due to experiences or Emotional shocks or disturbances in the individual's relationships with the social environment in which he lives and interacts with him and is linked to the individual's past, especially in his early childhood.

Dr. Mahmoud Naguib Hosni defined it as "cases of deviation in the activity of the nervous system during normal development, and these diseases are multiple and mean the law as they undermine the control of the nervous system over the body and disrupt the connection that this system establishes between the guidance centers in the brain and the body's organs, thereby affecting discrimination and freedom of choice."

As for Freud, he considered neurosis (plural neurosis) to be a disease affecting the personality with symptoms and pathological organization of a neurotic nature linked to the childhood history of the affected person. As for Michel Basquin, he considers neurosis to be an emotion that leads to a disturbance in the natural state of the individual, which leads to discomfort in his social life, but without questioning the relationship that links him to the reality that surrounds him.

In general, mental illness is a partial personality disorder and its accompanying disorders, with the patient's constant contact with his community, and it can sometimes be accompanied by a marginal physical disorder that also results from psychological influences. Tendencies, most of which are of a sexual nature.

Cases of the impact of mental illness on the psyche and vice versa, and their impact on crime and criminal responsibility

First: Cases of the impact of psychological and mental illness on crime and criminal responsibility

Before we explain the impact of mental illness on criminal responsibility, we mention some points:

The first point has been passed: elements and conditions of criminal liability.

Criminal liability is based on:

- 1- That a person commits a forbidden act.
- 2- To be selective.
- 3- He must be conscious. This is why scholars have stipulated that in order for a person's action to be valid, and for it to be productive with its effects, he must be able to understand the legal discourse, and that is required by reason.
- 4- The ability to implement the content of the speech by choice (with free will).

Dr. Abu Zahra says: "In order for the punishment to be proven, three elements must be fulfilled: intention and intention to do it, free and chosen will, and knowledge that it is forbidden."

The point lies in criminal responsibility and the right of the offender to be punished at the time of committing the crime. As long as the perpetrator had full capacity at the time of his assignment, it is not necessary for this to be done until the end of the trial and the execution of the penalty. Most Arab penal legislation adopted this condition in similar designations such as "at the time of committing the act, 62 Egyptian, 22 Kuwaiti

penalties, 83 Libyan, 92 Jordanian, or 60.” Iraqis, 47 Algerians, 134 Moroccans. At the time of the crime.....

Islamic Sharia jurists agree with human laws that the insanity of the crime is what leads to the punishment being lifted from the perpetrator.

As for French law, in its Article 1222-1 it expresses this as “the time of the facts”, and in this sense, chaos is not a reason for criminal irresponsibility unless it corresponds to the facts. Under this article he was present in section 64 of the Old Act of 1810 which required that insanity must be present at the time of the commission of the act during the commission of the act, and that the subsequent acts of the crime should not be disappeared or weakened by disorder.

In this regard, it is noted that the disorder taken into account is what is directly related to the crime committed, but if the disorder is not linked to the commission of the criminal act, then the responsibility of the criminal remains complete. He cites the example of a soldier in the Spanish army who suffered from delirium, hallucinations and the feeling that the Spanish and French intelligence were trying to assassinate him, so he placed an explosive device in front of the house of a Spanish figure under the illusion that he was persecuting him. At the same time, he tries to poison his old uncle so that he can inherit it by increasing the amount of medicine the uncle takes. In the first offence, the decision prevented him from being prosecuted because the criminal act was linked to a mental disorder. In the second crime, he was charged with attempted intentional poisoning .

The concept of criminal responsibility and the impact of mental and psychological diseases and abnormalities on it

Criminal liability in language: It is what a person was responsible for or claimed for things or actions he did, that is, the person’s actions or actions for which he is responsible, that is, bearing the consequences of the harm he caused to others, and bearing responsibility for what he did, and in this sense it expresses About the philosophical, ethical and legal position in which a person is responsible for facts and actions committed by him, in violation of moral and social norms, laws, rules and legal provisions.

Criminal liability: Liability is either a moral responsibility or a legal responsibility. That is, it includes all aspects of his life. He commands goodness and looks at a person’s goals and objectives, and works to prove that these goals and objectives are directed towards goodness. And punish him for what he strays from. As for the scope of law, it is much narrower than that because it is limited to regulating a person’s relationship with others or organizing his life from a social point of view, because the framework of this relationship does not extend to the environment. . From the Point of view of law, except for including what takes the form of tangible external activity, because the law is not responsible for intentions, but only for external actions that occur. That is, moral responsibility belongs to the sphere of morality, while legal responsibility belongs to the sphere of law, the latter regulating actions and usually involving legal obligation or punishment, due to which behavior entails certain consequences of law.

He will define it as “a legal relationship that arises between the individual and the state according to which the individual is obligated before the public authority to be accountable for his actions that violate the rule of law and to be subject to the reaction resulting from the violation. Therefore, to prove criminal responsibility, it is no longer sufficient for the offender to commit a substantive act, but rather to lead to A harmful result, but the crime must be committed under the conditions imposed by contemporary criminal jurisprudence, because it is a material reality and a psychological reality. Activity that conflicts with the goals of the group, and derives its illegal character from its contradiction with a rule of criminal law that makes it a crime, and consists of two

elements, one of which is The other is physical, the other is moral, and the other can only be a crime if these two conditions are met.

Accordingly, criminal responsibility consists in holding the offender responsible for the behavior he committed in violation of the rules in force in society, and then in expressing this social disapproval of this behavior by giving it a tangible manifestation in the form of punishment or precaution. Measures. Weigh. To impose the law on those responsible for the crime.

The jurisprudential opinion is that criminal liability is not considered an element of the crime, because it does not arise unless all the elements of the crime are present. While the other view views criminal liability as an element of the crime, arguing that any behavior that breaks the law by a person is not punishable, such behavior should instead be subject to liability. For him personally, because the responsibility here relates to the person of the author and not to his act itself when he has criminal capacity.

The relationship between mental and psychological illnesses and their impact on crime

First: Psychological and mental illness, which partly affects criminal responsibility

Mental illness in itself does not exclude criminal liability. On the contrary, responsibility is excluded for what results from the offender's inability to understand the nature of the act and its consequences. If a person loses consciousness, he is deprived of reason, and if a person loses consciousness, he is not considered responsible. Because the mind is expensive. Since the effect of mental illness on a person's mind and perception varies from one illness to another, so does its effect on criminal liability, depending on the effect of mental illness on the person's will and perception, because mental illness can partially affect the mind and weaken it or cause it to be disturbed in some way.

While there remains room for him to distinguish, in such a case, if the injured party commits a crime that causes self-destruction or less than that, is his responsibility for his crime complete or partial?! Jurists have explained the responsibility resulting from the crime of his mental weakness and partial loss of the ability to perceive, which is the case of the partial effect of mental illness, which we will explain in the following allegations. But before explaining these provisions, we explain the concept and limits of mental impairment that can be caused by mental illness and the so-called terms of case law. Islamic jurisprudence has highlighted this type of mental weakness, although jurists differed as to its reality.

Ruling on the mentally ill person's crime against himself in the case of partial lifting of criminal liability: The mental patient who has been partially affected by the disease, which weakens his awareness and impairs his mind, is in this case like the idiot whose jurists have made his ruling. The decision was the decision of the distinguished boy, as we mentioned before.

The jurists unanimously agreed that there is no punishment for him in this case. Because the meaning for which the punishment was prescribed was not fulfilled due to a clear deficiency in his mind. As we explained, there are conditions to punish the murderer, and the most important of these conditions is for the murderer to be charged. Any sane adult, there is no punishment for a boy, lunatic, lunatic, or mentally ill person whose mind is weak and lacks understanding; This is because revenge is a punishment, not a punishment for people. Because punishment is not obligatory except with the perfection of reason and maturity in which full ability is expressed, and the basis of this is what the Messenger, may God bless him and grant him peace, said: The pen is lifted from three people: from the sleeper until he wakes up, from the boy until he reaches puberty, and from the insane until he awakens.

What is meant by the pen in the hadith is the calculation, and the calculation does not occur until after the obligation of implementation, so this indicates that it is confirmed by complete ability, which is the moderation of the condition with maturity of reason.

What happened among jurists of killing the insane and those in the same category, such as the mentally ill who lost all his reason and understanding, was this intentional or a mistake? There was this dispute about killing the privileged boy and the demented and the like, like a psychopath whose mind is weak and lacks understanding.

The public believed that the killing of the distinguished, demented, and mentally ill boy, whose illness led to weakness in his mind and lack of conscience, was considered a crime against the soul, and a mistake in avenging him. them and the amount of blood money and reason for that, and takes into account the state of their mental weakness that requires rational and legitimate mitigation, and because they do not have the correct intention; Because it does not prove perfect intention on their part, just like forcing blood money on the wise women, it is a warning to her and draws her attention to perform her duty towards her children with appropriate care, follow-up, attention and education. So that they do not return to such actions. And if they have intelligence, as the Shafi'is said, then the responsibility of raising and caring for them lies with their wise men. The Prophet, may God's prayers and peace be upon him, said: Command your children to pray when they are seven years old, and beat them for it when they are ten years old, and separate them in their beds.

Second: The reality of mental illness, which does not affect criminal responsibility

Man is naturally exposed to psychological reactions that arise in him as a result of his passing through a situation, his interaction with a part, or his influence on an event, and these interactions and influences are part of nature. His spirit, happiness, joy, and happiness appear on his face when something nice happens, and he shows distress and anger when disturbed and provoked, as well as fear and panic when he is exposed to a frightening event. A terrifying accident or relationship, and all of these cases are cases of human exposure to different psychological interactions and effects. These interactions and effects may last for periods of time that may be long or short depending on the magnitude of the circumstance or event affecting the person, and may or may not be noticed by others. These situations are severe shocks that put a person in a state of delirium known as astonishment and intense anger that closes the door of understanding for the person, which is called closure. The person may suffer from cases of psychological illness that may also be... Accompanying him permanently, but it does not affect his ability, thinking, thought and understanding. Scientists have divided mental illnesses into two types based on their effect on the patient's mind: The first type: those diseases that affect the individual's mind and cause him to lose his awareness of what surrounds him completely or partially.

The second type: diseases that do not affect the individual's mind and do not make him lose his insight or ability to judge things, but they reduce his activity to some extent, such as severe sadness that lasts for long periods and the inability of some to get relief. In addition to certain developments in life, which are called (adjustment disorder) and others.

In such psychological states and emotions that do not affect his mind and perception, but rather he remains with full mental faculties, awareness, and sound understanding, a person is responsible for what comes out of him.

Abdul Qadir Odeh said in his comment on such cases, if a person has a conscience and a choice, then he commits a crime, for which he is criminally responsible, and if he commits the crime under the influence of strong emotion, and that is. Emotion is equated with being honorable or despicable. What prompted it is the love of revenge or intense hatred to kill a person for whom he is responsible, and whoever is motivated by intense

love to kill a person in order to save him from his severe pain is also responsible. To kill him, strong emotions, no matter how strong, have no effect on criminal liability.

Psychologists in the modern era have clarified this issue, and that there are psychological feelings that do not absolutely affect the human mind and perception, which means bearing full responsibility, as Dr. explained. Ahmed Okasha said: The neurosis of the mentally ill is usually characterized by the presence of internal conflicts and rupture in personal relationships, and the appearance of various symptoms, the most important of which are: anxiety, fear, depression, obsessions, and compulsive actions. Ease of awakening, excessive sensitivity, sleep and eating disorders, as well as transformational symptoms (hysteria). This occurs without compromising the cohesion and integrity of the personality, and the patient bears full responsibility and performs his duties as a good citizen.

The impact of mental illness varies from one case to another and from one person to another, and the criminal liability varies for each case, as Dr. Akram Nashat explained, saying: "The impact of abstract and real mental illnesses on criminal responsibility varies depending on their different types, which makes it necessary to consider each type separately." It stipulates that she is not criminally responsible when a crime is committed during a seizure, including the loss of one of the senses in its functioning and physical pain that is not affected by it. The patient's criminal responsibility when committing a criminal act, as his conscience and will are not affected by these pathological conditions, including anxious hysteria, Intellectual fantasies and daydreams that haunt the affected person. Criminal liability for the crime he may commit.

From the above, it is clear to us that mental illness does not affect criminal responsibility: "It is a disease that does not affect a person's mind and awareness, and he does not lose his insight and ability to judge things, but rather remains in the fullness of his mental faculties, mind and awareness, even if it is emotional, such as hatred." When agitated, it can push someone who has this intense passion, especially when angry, to commit a crime that can reach the level of murder, as we say in today's term (Get rid of one's nerves). We say that no matter how intense these feelings are, they do not affect the criminal responsibility of their owner as long as It does not affect his mind and cause him to lose awareness, as well as any psychological condition to which a person is exposed, whether permanent or temporary, which does not affect the person's mental abilities or make him lose his awareness and insight, and does not have an impact on criminal responsibility, and its owner bears full criminal responsibility if he commits a crime.

Mental illness that completely eliminates criminal responsibility: It is a disease that affects a person's mind, causing him to lose his vision of what surrounds him and not realize what he is doing. Perception and reason, and with them, he does not lose his insight or his ability to know things and judge, but this decreases his awareness and weakens his ability to know and imagine things, and these are diseases that partly affect criminal responsibility.

Note: It is necessary to confirm that the assailant is indeed mentally ill, through identification documents, health certificates, and medical reports that indicate this, and by asking trustworthy specialists and those around him.

When talking about the human self, thought must turn to the Austrian scientist Freud, who is the undisputed pioneer of this trend, when he tried to discover this hidden aspect of the human self. In this regard, we will try to clarify the psychological-Freudian theory, its most important assumptions, and its relationship to criminal behavior.

Content of psychoanalytic theory

Psychoanalytic theory, led by Sigmund Freud (1856-1939), divides the human psyche into feeling and unconsciousness. Feeling represents a set of mental responses that we feel at the time they occur, and we are aware of their nature and essence, such as love,

pleasure, pain, anger, etc. While the subconscious represents a group of hidden responses that we are not aware of and that have a profound impact on our behavior, thoughts, and emotions. Or this unknown place of the human self contains patterns that the individual does not recognize.

Freud and his followers considered the subconscious to be the decision of the soul in which repressed desires come together since childhood, and it contains instincts that clash with the values and traditions of certain societies. It also contains all the fears, desires, overwhelming emotions, unfulfilled aspirations, and memories of the past that were separated from feeling and settled in the subconscious. These different memories, although they disappear into the subconscious, represent active energy in their interaction with each other, directing the individual's behavior without his knowledge or awareness.

Manifestations of repressed memories:

Abdul Rahman Muhammad Al-Issawi summarizes the aspects in which repressed memories are expressed as follows :

- 1- Looseness of the tongue because an individual can say the opposite of what he wants to say.
- 2- Pen slips when an individual writes words that he does not want to write or words that have the opposite meaning that he apparently wants to express.
- 3- Forgetting to complete appointments and tasks, such as forgetting for a long time to deliver the letter you wrote to a family member, or forgetting an appointment you made to meet someone. This may be due to a subconscious desire that you do not want to meet him.
- 4- Losing or losing things for subconscious reasons, such as the desire to get rid of those things. Losing the engagement ring may be an expression of the subconscious desire to break off the engagement.
- 5- The drawings and shapes that the individual draws subconsciously as an expression of some subconscious desires or motives, such as the desire for protection and security or the desire to kill someone.
- 6- Compulsive actions that the individual is forced to do despite their absurdity or insignificance, such as someone who washes his hands dozens of times a day, or takes care of counting the light poles, or someone who finds himself forced to steal certain things while knowing that stealing is a reprehensible act.

The function of the power of repression is to push repressed memories and desires to the depths of the soul and prevent them from appearing in the world of sensation, and this is what separates feeling and unconsciousness. Freud built his theory of the unconscious on the basis of the principle of repression of memories rooted in the subconscious mind, and on its basis was founded the principle of psychoanalysis, which attempts to reach the depths of the human soul and freely reveals its repressed psychological complexes and components.

Psychological explanation of crime

There are theories that attribute the crime to genetic or physiological factors, including the theory of Cesare Lombroso (1835 - 1909) and what he said about the so-called birth crime. The suggestion of the born offender came from his student Enrico Ferri, and the basis of his theory is that the offender commits the crime by nature and not Motivated by social or repeat offender.” This is claimed as regression or relapse, or a return to decadence, i.e. a return to primitive life.

He did not have one type of criminal, but Lombroso classified criminals into categories, the most dangerous of which is the criminal by birth or course. He also distinguishes the criminal by habit or habit, which is the one who begins the crime by chance or is forced

to commit it, then gets used to it and practices it. This explanation includes a psychological aspect because Habituation is also a form of learning, and it is also what commits the extreme crime. He is controlled by his feelings of anger, which drives him to violence.”

Enrique Ferri continued the work of his teacher Lombroso by emphasizing the importance of the social environment in the generation of crime, in his famous book “Criminal Sociology” in 1929, in which he attributed crime to:

- Natural and geographical factors.
- Psychological personal factors.
- Social factors.

Imagine that the relationship between these factors is an interaction relationship and that the percentage of each of these factors contributes to the interaction process that leads to criminal acts. Ferré devised a law called the "Law of Criminal Density."

The American sociologist Donald Taft, in his book on criminology published in 1945, believes that the criminal is created by society, and that heredity does not play a major role in provoking crime. Man is like the raw material that forms the conditions of life he has lived since his birth, and hence his criminality. It goes back to the corrupt social conditions in which he grew up, raising the causes of ignorance, corrupting society, and stirring up ignorance. An illness whose meanings are attributed to them in the form of a measure against them.

Sergei divided human nature into:

- Basic nature
- An exotic nature.

The basic nature is based on heredity, personal and psychological factors in the decision, and is divided into: a deep and real part dating back to the lives of primitive people.

The lower part reflects the depth of the life of the race and family to which the individual belongs.

As for the alien character, it is what happened to the individual in the circumstances that he experienced in his life, and which are considered, even partially, necessary for him.

Crime and conditioning theory

According to this theory, crime is an individual matter, and there are causes of crime as well as sources of discomfort, trouble, and frustration. Attempts to attribute the crime to a single causal factor have failed, because there is no single general cause. Crime is always the result of the interaction between many personal and external factors, namely:

Decrease in intelligence.

Personal imbalance.

The father's relationship with the child is bad. Broken homes.

Low social and economic level.

Cultural conflicts.

Social disintegration or social disintegration

Poor upbringing and various other reasons.

When the doors to the natural satisfaction of an individual's needs are closed, he may resort to crime to satisfy his desires. Deprivation of satisfaction and sympathy may also

lead to crime, and thus to interpreting crime as a result of adapting to internal conflicts, in certain circumstances.

Psychopathy and crime

Psychopathy: A moral and behavioral disorder that is found to varying degrees in many groups, such as the unfaithful merchant, the bribed employee, the neglectful mother, the unfaithful friend, or the emotionally dry husband. It is also found in its intense degrees in hardened criminals, criminal professionals, murderers, thugs, alcoholics and drug addicts, and professional prostitutes. Among juvenile delinquents in this deviance, the patient's mental powers remain unchanged, and he appears to be an attractive person, but the imbalance affects his moral conscience, such that he does not feel guilty, blame himself, or bear responsibility. He is selfish, utilitarian, predatory, exploitative, materialistic, and a liar. He prefers to lie even when it is in his best interest to tell the truth, and when he is exposed he is not ashamed.

Psychopathy is a mental illness or disorder, especially a severe mental disorder associated with antisocial activity, that requires and accepts medical treatment.

A psychopath is a person with a disturbed mind characterized by a mental or psychological disorder, because he has a healthy flavor in terms of mental functions. He is unable to maintain the rules adopted by his society in behavior because he does not possess a suitable sublime self, and therefore he can steal or lie without responsibility from his conscience. .

The term psychopathy or personality disease also refers to a specific psychological disorder, but its pathological nature is not specific and often results from the inability to find an appropriate solution to the psychological conflicts experienced by the woman. The term psychopathy is derived from two words:

Psycho - means psychological

Pat - means illness or deviation.

Thus, the term psychopathy carries the concept of an individual's psychological deviation to his kings away from the path of normality.

Conclusion

From what has been read and clarified regarding the appropriate and optimal sentence for a mental patient suffering from a lack of criminal capacity, I have seen that the mixed system is considered one of the most appropriate measures to solve the problem of a mental patient with legal capacity. Because this system combines the characteristics of punishment and the characteristics of precautionary measure, unlike systems that conflict with the principle of the unity of the human personality, as it subjected the psychological patient to the punishment system first, and after the expiration of the term. of the term of the sentence, subject him to a system of precautionary measures in the event of a continuing criminal danger or vice versa, starting with the procedures and then the punishment, which human logic does not approve of the signing of two diets for the person - who has developed a mental illness and whose conscience has diminished in such a way that he is forced to commit the criminal act.

Therefore, considerations of human and legal justice must be applied in applying the system of mixed procedures, which requires the application of punishment and measure at the same time and in a place prepared for this, and therefore there must be punitive medical institutions in which the patient psychiatrist spends the punishment that is proportionate to his sin as well as the amount of his conscience. Under the direct supervision of doctors, the court, and psychiatrists to rehabilitate and reform him until the

criminal danger and his psychological condition disappear. It allows him to reintegrate into society as a normal person free of psychological anomaly and its problems.

These institutions lack their presence in many countries, in addition to the lack of legislation stipulating the introduction of a mixed management system, and therefore we call on modern criminal legislation to adopt a mixed management system while providing and preparing medical penal institutions for those who are mentally ill in order to reduce the phenomenon of danger and the spread of crime. In light of the increasing prevalence of mental illnesses at the present time. The researcher concluded with some conclusions and recommendations as follows:

First: Conclusions

1. Mental illness is different from mental illness
2. Insanity is one of the barriers to criminal liability in Arab legislation.
3. Absence of consciousness due to intoxication does not affect criminal liability if the intoxicating or narcotic substance was consumed willingly and by choice.
4. Diseases that affect a person's mind and perception are mental diseases, not psychological ones.
5. There is a difference between neurotic and psychotic illness in the degree of a person's awareness of his condition. For example, if a person believes without reason that he sees spirits, then he is neurotic, but if he is completely convinced that he actually sees them, then he suffers from psychosis.
6. Psychological and mental diseases may result from biological factors and are related to the patient's psychological makeup, and may be inherited.
7. Expert evidence differs from witness testimony in proving psychological and mental illness.
8. The offender's actions before or after committing the crime are considered one of the most important criteria that the court requested to determine the mental strength possessed by the offender.
9. The evidence of experts is not binding on the court. If it wishes, it may accept it, and if it wishes, it may refrain from it and explain the reason.
10. The mentally ill person whose illness has the effect of completely removing criminal liability is governed by the rule of an insane person, and the same provisions that apply to an insane person apply to him.
11. A psychiatric patient whose illness has no effect on criminal responsibility is governed by the rule of a normal person, but is taken into account in the punishment resulting from his crime.

Second: Proposals

1. The researcher recommends that the state provide designated places to house these patients, so that means of correction and rehabilitation are available, with a portion of punishment to rehabilitate them and thus become good individuals in society.
2. Benefiting from specialists in mental and psychological diseases in drafting legal texts.
3. The necessity of including criminal psychology in the courses taught by law students.
4. Work to increase people's awareness and pay attention to the educational aspect about mental illness in order to change society's view of the mentally ill and encourage

patients and urge them to go to specialized clinics for treatment without shame or embarrassment.

5. The family of a mentally ill patient has a duty to care for their patient, take him into consideration, present him to specialized psychiatrists for treatment, work to help him get out of his sick condition, monitor his behavior, and not leave him without care.
6. Giving the judge complete freedom to choose the appropriate punishment to deter, discipline, and reform the psychological patient. The psychological patient does not need more people to appreciate his circumstances and not adhere to a specific punishment specified for all similar cases.
7. Considering insanity an obstacle to remote responsibility and not an excuse mitigating punishment.
8. Applying a system of care and correctional measures to those suffering from a mental illness and not punishing them as sane people in society.
9. Benefiting from specialists in mental and psychological diseases in drafting legal texts.
10. The court must take into account the offender's behavior before and after committing the crime in order to know the mentality of the injured offender
11. The necessity of including criminal psychology in the courses taught by law students.

References

1. Abdul Rahman Al-Issawi, *Mental Health and Criminal Crime*, Modern Arab Office, Alexandria, Egypt, 1996.
2. Adnan Al-Douri, *Crime and the Criminal, the Problem of Man and the Dilemma of Life*, Alam Al-Fikr Magazine, Issue Three, Volume Five, 1974.
3. Abdul Rahman Al-Issawi, *Encyclopedia of Textual Science and Analysis*, Madbouly Library, Cairo, Egypt 1994.
4. Abdul Rahman Al-Issawi, *New in Mental Health*, Al-Ma'arif facility, Alexandria, Egypt 1992.
5. Abd al-Rahman al-Issawi, *The Authoritarian Aggression*, Dar al-Nahda al-Arabiya, Alexandria, Egypt, 1976.
6. Abdul Rahman Al-Issawi, *Crimes of Young People*, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 2005.
7. Abdul Rahman Al-Issawi, *Ways to Combat Crime*, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt 2006.
8. Abdul Rahman Al-Issawi, *Psychology of Criminology*, Al-Rateb University House, Beirut, Lebanon, 1997.
9. Abdul Rahman Al-Issawi, *Psychology in Contemporary Life*, Dar Al-Maaref, Alexandria, Egypt, 1988.
10. Abdul Rahman Al-Issawi, *Encyclopedia of Textual Science and Analysis*, Madbouly Library, Cairo, Egypt 1994.
11. Abdul Rahman Muhammad Al-Issawi, *Psychology and Criminal Research*, Dar Al-Fikr Al-Jami'i, Alexandria, 2005.
12. Abdul Sattar Al-Jumaili and Muhammad Aziz, *Modern Criminal Investigation Science*, Dar Al-Islam Press, Baghdad, 1976.

13. Abdel Sattar, Fawzia, *Explanation of the Code of Criminal Procedure*, Cairo, Dar Al Nahda Al Arabiya.
14. Abdel Sattar, Fawzia, *Principles of Criminology and Penology*, second edition, University Press House, 2018.
15. Abu Al-Azayem: The truth about mental illness (<http://www.elazayem.com/new-page185htm>).
16. Al-Khalaf Ali Hussein and Al-Shawi, Sultan Abdul Qadir, (2002), *General Principles in the Penal Code*, Al-Resala Press, Kuwait.
17. 6. Hosni, Mahmoud Naguib (1998), *The General Theory of Criminal Intent*, Dar Al Nahda Al Arabiya, Cairo.
18. Al-Shawi, Tawfiq, (1995), *Criminal Liability in Arab Legislation*, Institute of Higher Studies, Cairo.
19. Maalouf, Louis, 1960, *Al-Munajjid in Language, Arts and Sciences*, Catholic Press Beirut, first edition.