

Preventing the imprisonment of an employed debtor in accordance with Palestinian law A comparative analytical study

منع حبس المدين الموظف وفقاً للقانون الفلسطيني دراسة تحليلية مقارنة

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الملخص:

يعتبر الإكراه البدني من أهم الوسائل القانونية التي تنتهجها غالبية الأنظمة القانونية لإجبار المدين على تنفيذ التزاماته والوفاء بديونه. إلا أن العديد من تلك التشريعات لم تجز حبس المدين الموظف في حال امتناعه عن الوفاء بالتزاماته، نظراً لما يؤديه ذلك من تعطيل للمصالح العامة والخاصة التي يقوم بها، ويحرمه من تحصيل قوته وقوت من يعولهم، ويحول دون تمكنه من الكسب للوفاء بما عليه من ديون أو التزامات. وترتيباً على ذلك، تعرض الباحث لموقف المشرع الفلسطيني من حبس المدين الموظف وفقاً لقانون التنفيذ الفلسطيني الحالي، وقانون الإجراءات السابق، مع بيان موقفه من هذا الأمر على ضوء القوانين المقارنة، والتعرض للآراء الفقهية الحديثة في هذا المجال.

الكلمات المفتاحية: حبس المدين، المدين الموظف، الإكراه البدني، مدة الحبس.

Abstract:

Physical coercion is one of the most important legal means used by most legal systems to compel the debtor to fulfill his obligations and fulfill his debts. However, many of these legislations did not allow the imprisonment of an employee debtor in the event of his failure to fulfill his obligations, due to the disruption of public and private interests that he carries out, and deprives him of obtaining his strength and the sustenance of his dependents, and without being able to earn to meet his debts or Commitments.

In order for this, the researcher reviewed the Palestinian legislator's position on imprisoning the debtor employed in the midst of the current Palestinian implementation law, and the canceled procedures law, while explaining his position on this matter in light of comparative laws and modern jurisprudential opinions in this regard.

Key words: imprisonment of a debtor; Employee debtor; Physical coercion; Duration of confinement.

Introduction

Research topic and its importance:

The issue of the debtor's imprisonment is considered one of the topics of great importance in civil life and legal forums, because of the seriousness and seriousness that the debtor is exposed to, represented by the execution on his body by imprisoning him to force him to fulfill his obligations, or to force him to disclose his money and property.

On top of these issues related to the debtor's imprisonment is the issue related to the imprisonment of the debtor who is employed. The old Palestinian legal approach prevented the public employee from imprisoning, and allowed deductions from his salary instead of imprisoning him. This approach corresponds to some comparative legal trends, including the

current Jordanian implementation law. However, the current Palestinian Execution Law No. 23 of 2005 departed from this rule, and allowed the imprisonment of a debtor, whether public or private, in order to force him to repay, or to reveal his money that he had hidden.

Research problematic:

It is known that if the debtor refrains from fulfilling his debt with the ability to do so, he is allowed according to it, but the question here is whether this principle applies to the debtor if he is a public servant? Does the judge have a fixed standard in the custody of the debtor if he is an employee? What is the position of comparative legislation, Jordanian law and Islamic law on that principle?

Approach:

In this research, the researcher followed the analytical approach by researching and analyzing the legal texts that regulate this issue. The topic of the research also required following the comparative approach, and on top of these comparative laws is the Jordanian implementation law, as well as the comparison with the glorious Islamic Sharia, leading to an integrated picture of the topic of our research, with an overview On the most important opinions of jurists and the most recent court rulings.

Research structure:

We will divide the research into two sections as follows:

The first topic: Cases of preventing imprisonment in Palestinian law and comparative legislation.

The first requirement: Cases of preventing imprisonment in Palestinian law.

The second requirement: Cases of preventing imprisonment in accordance with the Jordanian implementation law.

The second topic: the imprisonment of the debtor, the public servant.

The first requirement: what is meant by the public servant and the legislation's position on his imprisonment.

The second requirement: the position of Islamic law on the imprisonment of a debtor public employee.

The first topic:

Cases of preventing imprisonment in Palestinian law and legislation Comparison

Although the Palestinian law approved the principle of imprisonment of the debtor as a general rule, it added some exceptions that reduce the impact of forced imprisonment on the debtor to force him to fulfill, contrary to Western legislations and those who followed its ilk, which has become the subject of imprisonment of the debtor over financial matters related to his financial liability. The cases in which the Palestinian legislator has prohibited the imprisonment of the debtor, when available, can be restricted to three cases, which we will list consecutively below.

The first requirement

Cases of preventing imprisonment in Palestinian law

There is no doubt that the law is considered a mirror that reflects the social reality in which any society lives, and that the Palestinian legislator is in line with the values and principles on which our Palestinian society is based, as it excluded some groups from applying the provisions of some articles of the Palestinian Execution Law related to the imprisonment of the debtor. If one of the conditions for these exemptions were met, this would have made it impossible to imprison the debtor who had these conditions at all. On the other hand, the legislator decided other cases that are considered temporary barriers to imprisonment of the debtor, so that they are considered among the cases that justify the prevention of imprisonment temporarily or justify the postponement of imprisonment, and this is what we highlight in the following two sections.

The first branch

Cases of absolute prohibition of debtor imprisonment in the Palestinian Execution Law

The Palestinian Enforcement Law limited cases of absolute imprisonment to be prohibited in three cases: those who are not personally responsible for religion, those who have not reached the age of adulthood, the condemned debt between spouses and the ruled debts of descendants on the assets, and we are exposed to these cases in turn (1).

First - Who is not personally liable for the debt:

According to the text of Article (163) of the Palestinian Execution Law, it prohibits the judge from issuing a decision of imprisonment for those who: "He shall not be personally liable for the debt, such as disasters, but he does not lay hands on the inheritance, the guardian and the guardian."

According to the text of the previous article, imprisonment must be imposed on the person who is responsible for the obligation only. No other person is imprisoned, regardless of his subordination to the principal, whether this dependency is legal or contractual.

It is committed while it is for the latter based on another basis arranged by law or both parties(2). Therefore, imprisonment is not applied to the subordinate, guardian, or guardian in relation to the debt requested by the subordinate or under the guardianship or guardianship. "

It is known that the heir is not personally liable for debts owed by his inheritor, so the debt is required of the inheritor, and by his death the debt from the inheritance is an extension of his personality after death. The second right after preparing the deceased from the inheritance is to pay off the debt and it is submitted to the will and the inheritance "because the debt is a duty and the will is a donation.

The obligation is given in advance to the donation. This is also taken from his saying, peace be upon him, "The soul of the believer is attached to his religion until he is paid." And the payment of the debt is as much as the inheritance. Therefore, the Palestinian legislator derived this from

(1) Al-Den, Hossam Al-Din Mahmoud, Al-Wajeez in Explanation of the Forced Execution Law No. 23 of 2005 "Principles of Forced Execution, Nisan Library and Press, Palestine, 2017, ", second edition.

(2) Al-Qudah, Dr. Muflih Awad, Principles of Compulsory Execution according to the Procedure Law, without publisher and year of publication.

the principles of the glorious Islamic Sharia, so the debt is from the estate until it is settled if the creditor wants it. He wanted to leave it for the day of reckoning. This is also what Article (14) of the Palestinian Execution Law states, saying, "The execution shall be in the amount of money left by the bequest." The heir according to the text of the law will not be responsible for the estate unless he lays the hand on it and owns the disposal of it. The guardian or guardian may not be imprisoned if the person under guardianship or guardianship has not fulfilled his obligation.

Second - Persons incompetent and deficient:

According to the text of Article (163/2) of the Palestinian Execution Law, "no imprisonment decision shall be issued pursuant to this law against: the debtor who has not attained the age of eighteen, the insane and the insane."

It is evident from the text of the previous article that the Palestinian legislator has set a minimum age for the debtor so that the imprisonment order can be signed on him, so the court may not overstep it even if other debt conditions are met. This age is the age of majority in force in Palestine, which is eighteen years. According to it, a person is considered to have full capacity unless he is aware of it, a symptom of eligibility. The burden of proof of incompetence rests with those who claim it. "

On the other hand, it is noticed that the Palestinian legislator has not set an upper age limit that considers attaining it an obstacle to imprisonment, such as reaching the age of sixty or seventy. Note that the considerations of mercy and compassion for the elders and the elderly carry the same considerations that would have prevented the debtor from being imprisoned according to most of the previous cases, especially since we are not dealing with a penal law.

The provision for such an exception is not strange or innovative. Rather, some laws were taken, such as the Iraqi Implementation Law ⁽¹⁾, and some other Arab legislation ⁽²⁾.

(1) Al-Sanhouri, Dr. Abdul Razzaq, Mediator in Explaining Civil Law, Part One, Sources of Compliance, Revision by Counselor / Ahmed Medhat Al-Maraghi, Bar Association Edition, 2007, without edition number.

(2) Including the Kuwaiti Procedure Law (Article 264/1) of the Kuwaiti Civil and Commercial Procedure Law No. 38 of 1980, as well as the UAE Legislator Article (326/1) of the UAE Civil and Commercial Procedures Law No. 11 of 1992, and the text of Article (41/2) of Iraqi Implementation Law No. 45 of 1980.

There is no doubt that the insane and the imbecile are not subject to the imprisonment decision, nor is it issued to them, and the question arises here about the insane insanity that is not implemented, which is intermittent insanity, as some laws considered the actions of a mad person to be intermittent insanity in the event of his recovery as the behavior of the sane.

He also excluded the Palestinian legislator from dementia confinement, and what is meant by dementia is a defect that afflicts the human mind and leads to a deficiency of the mind, not to its complete disappearance, such as insanity, but rather makes its owner of little understanding mixed speech ⁽¹⁾.

The question arises about the possibility of imprisoning the fools, the careless and the double handicap?

To begin with, foolishness is the lightness of a person, so it leads him to work by squandering his money in contradiction to the requirements of Sharia and reason, and it is a disease that does not affect the mind, but rather affects the measure and corrupts it. As for negligence, it is a weakness in the psychological faculties that emerge through deceiving the person in a manner that threatens his money with loss, and there is no point in him converting to profitable behavior ⁽²⁾.

According to the foregoing, it becomes evident that the behavior of both the foolish and the negligent did not rise to the behavior of a normal person. As a general rule, the provisions that apply to the behavior of the distinguished boy apply to them. And since the imprisonment decision is only applied to those who have reached the age of eighteen, we think that it is appropriate for the Palestinian legislator to prevent imprisonment in order to fulfill financial liabilities, especially since they are considered incompetent, they are subject to impediments to liability when they violate the penal code, and they are not imprisoned. The first is that they should not be imprisoned for the deduction of the debts they owe because of the lack of

⁽¹⁾ Al-Den, Dr. Hossam Al-Din Mahmoud, The General Theory of Commitment, "Sources of Commitment - Provisions of Commitment", Al-Miqdad Press, Palestine, 2015, first edition.

⁽²⁾ Al-Den, Dr. Hossam Al-Din Mahmoud previous reference.

fulfillment of the purpose and the wisdom of imprisoning the rational debtor to force him to repay.

Third - Debt of Spouses and Religion of Origins:

Article (3/163) of the Palestinian Execution Law states that "No decision is issued for imprisonment in accordance with this law for: The debtor is condemned for his debt between the husband and his wife or for a debt adjudicated for descendants on the assets."

In fact, the Palestinian legislator has prevented imprisonment from this category of relatives despite the availability of the terms of imprisonment in order to preserve the ties and family and family relations that are of high value and sacredness especially in our Palestinian society, and this is in accordance with the glorious Islamic Sharia, the Messenger of God, may God bless him, said and he greeted "the boy and his father did not possess his hands" ⁽¹⁾.

According to the previous text, it is forbidden to legally impose imprisonment on the assets of a debt that they owe to their descendants, bearing in mind that this prohibition does not have to be analogous to it and does not extend to brothers or uncles and other relatives. In spite of this, some Arab legislation has expanded the circle of prohibition from imprisonment to prevent imprisonment of those who were brothers of the creditor, including the Iraqi legislator according to the text of Article (41/3), and it is not permissible to measure this prohibition with regard to the debt ruled on the basis of the branches where the assets are entitled to lock the branches on debts owed to them by them.

The second branch

Cases of temporary prohibition of imprisonment of the debtor in Palestinian law

In addition to the cases of preventing imprisonment decided by the Palestinian legislator, the latter gave the execution judge the discretionary power to postpone the imprisonment of the debtor, especially if it became clear to him on the basis of medical evidence that the debtor's condition does not allow his imprisonment. In addition, it is not permissible to imprison the

⁽¹⁾ Narrated by Imam Ahmad in Al-Musnad.

debtor again in the same year for the same debt upon the expiration of the imprisonment period stipulated by law. Or if the creditor requests the release of a debtor.

First - the debtor's illness:

The execution judge may postpone the imprisonment of the debtor to another term if it is proven to him according to a medical report issued by a competent official medical committee that the debtor whose imprisonment has been decided for failure to fulfill the debt sentenced to him does not bear imprisonment due to illness.

Second - Exhaustion of the legally permissible period of imprisonment of the debtor:

If the debtor spends the period stipulated in the law, which is ninety-one days per year, and twenty-one days if the debt does not exceed five hundred Jordanian dinars.

Bearing in mind that the law did not indicate whether the twenty-one-day period is linked to one year as the previous one, or not, which is considered a legislative deficiency that must be remedied.

According to Article 157 of the Palestinian Execution Law, the debtor's imprisonment period may not be more than ninety-one days a year, as a maximum. It is not permissible to transcend it, regardless of the number of debts or whatever the amount of the debt, and this text is enjoining and related to public order, and violating it leads to nullity.

If the sentenced amount does not exceed five hundred Jordanian dinars, then the period of imprisonment must not exceed twenty-one days, or less, of course, so whoever owns the higher owns the lesser. (Imprisonment for several days or for a week) ⁽¹⁾.

It should be noted that the debtor may be imprisoned again in the following year on the same debt for a period not exceeding the aforementioned period until he fulfills his debt. This is in contrast to the Jordanian execution law, which permits the imprisonment of the debtor in the same year for more than ninety-one days, provided that it is under an executive document

⁽¹⁾ Abdel-Hamid, Raed, Al-Wajeez in Explanation of Palestinian Implementation Law No. 23 of 2005, Palestine, 2008, First Edition.

different from the first bond, or in other words that the reason for imprisonment is not on the same debt.

If the second religion is different from the first, it is permissible, according to the Jordanian Execution Law, to imprison the debtor for a period of more than ninety-one days in the same year, contrary to what was decided by the Palestinian Execution Law as mentioned.

Finally, it should be noted that if the judge issued a decision to install the debt, then each debt installment is considered independent, and imprisonment is carried out according to each installment separately, not exceeding the mentioned maximum period (91 days). Note that imprisoning the debtor does not abolish the debt nor exempt him from paying it, but rather is a means of forcing him to repay.

Third - If the creditor requests the release of a debtor:

According to the text of Article (158) of the Palestinian Execution Law, it stipulated that the debtor's incarceration cannot be repeated in the same year (for his release) that the creditor has agreed to release the debtor.

The matter is equal if the debtor fulfills what was promised by the creditor or failed to do so. If the creditor requests the execution judge to release his debtor, he may not claim his imprisonment in the same year, whatever the reasons justifying such a request.

Promises to start, as the Jordanian legislator agreed with his Palestinian counterpart in most of the previous cases, but he expanded in that to include more categories than those taken by his Palestinian counterpart, where he prevented imprisonment for both: state employees, the bankrupt debtor during bankruptcy transactions or the debtor demanding Protective reconciliation, and the pregnant woman until the lapse of three months after childbirth and the mother of the newborn until the completion of two years of age, and this is what we shed light on in the second requirement of this topic.

The second requirement

Cases of preventing imprisonment according to the Jordanian implementation law

The Jordanian legislator agreed with his Palestinian counterpart in cases of preventing the imprisonment of the debtor, but it expanded in the cases where imprisonment is not permissible in three other cases, and in order to that we confine ourselves to mentioning these cases without re-stating the previous cases of preventing imprisonment according to Palestinian law.

First - the bankrupt debtor during bankruptcy transactions or the debtor requesting protective conciliation:

Bankruptcy is: the excess of the debtor's debts over his rights, whether due or not payable as long as they are debts realized.

Commercial bankruptcy means: the trader stops paying his commercial debts and strengthens financial confidence in him by means of clearly showing illegal behavior ⁽¹⁾.

According to the text of Article (23/2) of the Jordanian Execution Law, it is not permissible to imprison a bankrupt debtor during bankruptcy transactions or the debtor who requested a conciliation from bankruptcy, and the pioneer of the legislator in this is that imprisonment requires the debtor's ability to repay, so the method of pressure and physical coercion on him, represented by his imprisonment, should be used to force him to fulfill. If it is proven that the debtor is unable to do so, he may not be imprisoned according to Jordanian law.

The truth is that the position of the Jordanian legislator is compatible with Islamic Sharia, as the latter does not allow the imprisonment of an insolvent debtor, and an insolvent debtor from the point of view of Sharia is a person who owes debts whose money is insufficient to meet them, and this is in compliance with the Almighty saying, "And if he is in difficulty, then a view is easy."⁽²⁾

In fact, the Palestinian Implementation Law did not provide for this case, as the Palestinian legislator left the regulation of this issue to the Trade Law, given that bankruptcy and the request for protective conciliation are regulated within the Trade Law.

⁽¹⁾ Muhammad, Dr. Shady Osama, Debtor Prison According to the Palestinian Execution Law, No. 23 of 2005, "A Comparative Study," Al-Najah National University, College of law, (Letter) 2008, p. 8

⁽²⁾ Surat Al-Baqarah, verse 280.

Second - The pregnant woman until three months after giving birth and the mother of the newborn until the age of two years:

The Jordanian Implementation Law prohibited the imprisonment of pregnant women, and the Emirati legislator agreed with it, particularly in the text of Article (326 / c) of the Federal Civil Procedure Law.

The Palestinian legislator did not regulate this case, and it was necessary for our Palestinian legislator to regulate this case and explicitly stipulate that a pregnant woman may not be imprisoned for financial and debt issues, as it is a purely humanitarian issue, especially since the Palestinian law has decided to postpone the imprisonment of a parent in the event that he provides support for his minor children despite committing a crime. The period of imprisonment for her does not exceed one year, so it was a priority not to imprison a pregnant or breastfeeding mother for sums and financial benefits.

The truth is that the glorious Islamic Sharia suspended from the boundaries of what is higher than forced confinement to force the debtor to fulfill, and the only evidences for this is the fact that the limit of stoning Al-Ghamidiyah has been disrupted, who admitted adultery until she gave birth to her fetus and reached the age of nearly two years⁽¹⁾.

Third - state employees:

In fact, the Jordanian legislator excluded state employees from imprisonment, not employees in the private sector, and given the importance of this case, and because it represents a point of distinction in the topic of research, and a point of intersection and difference between the canceled Palestinian procedure law and the current Palestinian implementation law on the one hand, and it is a matter of dispute between the law Palestinian implementation and Jordanian implementation law on the other hand, for which we devote an independent topic.

(¹) It was mentioned in the noble Prophet's Sunnah that "Al-Ghamdiyyah came to the Messenger of God, may God bless him and grant him peace, acknowledging fornication and carrying her from him: She gave birth to al-Ghamdiyya, and he, may God's prayers and peace be upon him, said: We do not stone her and put her little one who has no one to nurse him. Narrated by Muslim

in his Sahih, Book of Punishment, Hadith No. 2846.

The second topic

Imprisonment of the debtor employee

In this study we deal with the legal concept of the employee and the position of Jordanian and Palestinian law towards him in the first requirement, then we deal with the position of Islamic Sharia regarding the imprisonment of the employee in the second requirement, as follows:

The first requirement: What is meant by the public servant and the position of legislation towards his imprisonment

We will deal with the concept of the public servant and the position of Jordanian law on imprisoning the debtor employed in the first branch, and then address the position of Palestinian law on the imprisonment of the debtor employed in the second branch.

The first branch: the concept of the public servant and the position of the Jordanian legislator regarding his imprisonment

First - What is meant by the employee:

Definition of employee: It is every person who earns a fixed wage and works relatively permanently and regularly.

Definition of public servant: Despite the difference in the jurisprudence the definition of a public employee, even from the perspective of administrative law ⁽¹⁾, we can define a public employee as "every person who contributes to the service of a public utility run by the state in a manner of direct exploitation, permanently occupies a job within the scope of The staff of the public administration ⁽²⁾, but if his work is casual, seasonal, or to accomplish a specific task, he is not considered an employee⁽³⁾ .

(1) Al-Atoum, Dr. Mansour, Disciplinary Responsibility of the Public Employee, Sharaf Press, Amman, 1984, without edition number.

(2) Muhammad, Dr. Shady Osama, Debtor Prison According to the Palestinian Execution Law, No. 23 of 2005, "A Comparative Study," An-Najah National University, (Letter) 2008.

(3) Surat Al-Baqarah, verse 280.

Second - The position of the Jordanian legislator on imprisoning an employee debtor:

The truth is that the Jordanian legislator has prohibited the imprisonment of a public employee when he fails to pay the debts he owes without the private employee.

In fact, the Jordanian legislator favored the public servant in not permitting him to be imprisoned in debt cases and financial receivables at the private employee's account.

The reason for preventing the imprisonment of a public employee is that the public employee receives a fixed monthly salary, and he can be seized even by a certain amount (a quarter in most legislations), and as long as he has money, there is no justification for his imprisonment, especially since imprisoning the debtor is a coercive way to force him to repay or to force him to show his money. He hid it.

Since the private employee unites with the public employee in the same illness, he receives a monthly salary and has visible funds that can be executed within the stipulated by the law, so why is this differentiation between these two types of employees despite the problem between them?!

We believe that the prohibition of imprisonment of a public employee is not considered immunity, and it should not be understood as such, for the purpose of preventing imprisonment is that the employee is left visible and has a fixed financial salary through which he can pay his debts, and then the distinction between these two types of employees is not justified.

On the other hand, prohibiting the debtor's imprisonment of a public servant to impose the possibility of prohibiting this imprisonment in obligations that are subject to a monetary amount, or money that can be estimated in cash, so what is the case if the public employee is charged with a matter that cannot be financially estimated, such as the viewing order for a young person who is decided for one Parents, is the imprisonment of the debtor employed in this case also forbidden?

The second branch: The position of Palestinian legislation on employee imprisonment

First - Under the repealed Palestinian Procedure Law of 1921 AD:

Based on Article Two of the aforementioned law⁽¹⁾, we find that the Palestinian Procedure Law forbade the imprisonment of a public employee, and instead of imprisoning him, it permits the seizure of his salary and the collection of debts he owes from this salary, not exceeding one third.

The aforementioned law also did not stipulate the prohibition of imprisoning a debtor employed in the private sector or not. And the fact that we are talking about an exception, this is not permissible to expand or measure, and therefore it was possible, according to this law, to imprison the debtor employed in the private sector, contrary to what is the case for the public employee.

Nevertheless, the current Palestinian Execution Law came in complete contradiction to this approach, so it did not prohibit the imprisonment of the debtor who was employed, whether public or private, but subjected him to the general rules in the law that permit the imprisonment of the debtor to force him to fulfill his financial obligations, and this is what we are exposed to in more detail below.

Second - Under the current Palestinian implementation law:

The truth is that the Palestinian Implementation Law No. 23 of 2005 deviated from the rule that was in effect under the Revoked Procedure Law, which prohibited the imprisonment of an employee debtor, as we mentioned.

In fact, the silence of the legislator about this matter means that it is permissible to imprison the employee, whether he is a public or private employee⁽²⁾, and we think that the legislator was not completely successful in this matter, as it would have been better for him to leave this

(1) It was mentioned in the noble Prophet's Sunnah that "Al-Ghamdiyya came to the Messenger of God, may God bless him and grant him peace, acknowledging fornication and carrying her from him. : She gave birth to al-Ghamdiyya, and he, may God's prayers and peace be upon him, said: We do not stone her and put her little one who has no one to nurse him. Narrated by Muslim in his Sahih, Book of Punishment, Hadith No. 2846.

(2) Al-Atoum, Dr. Mansour, Disciplinary Responsibility of the Public Employee, Sharaf Press, Amman, 1984, without edition number.

matter to the discretion of the judge, as he decides that the principle is not permissible Imprisonment of the employee due to the availability of a fixed financial link for him that can be seized, while giving the judge discretionary power to imprison him if certain conditions are met, such as if the amount owed by him is too large and the employee cannot fulfill it even if the deduction is made from his salary for a long period, or other reasons and justifications Which justify his imprisonment according to the convictions of the judge.

The second requirement

The position of Islamic law on the imprisonment of the debtor employee

The Islamic Sharia aimed at preserving the five essential pillars of human life, namely, religion, soul, reason, offspring, and money, and among the mercy of God Almighty for people in legislation was that he intended among all of his purposes to maintain a balance between the interests of individuals and groups, and to organize contracts and actions as they are in Islamic law. It is intended to administer justice, prevent disputes, preserve financial rights and not violate them.

The Islamic jurists have approved the principle of imprisoning a debtor who refrains from repaying his debts despite his ability and ease, as they considered imprisonment in the case of deliberate procrastination as a penalty for the debtor's injustice to his creditor because the Messenger, peace be upon him, said: "The wealthy is overlooked," so it is not permissible to imprison an insolvent debtor who has no money to pay the debt. He looks at when he pleases him, for "the Almighty said," and if he is difficult, then a look is easy, and that you give charity is better for you if you know⁽¹⁾. Accordingly, the principle in Islamic jurisprudence says, "The debtor is pleased as long as he is imprisoned."

⁽¹⁾Surah Al-Baqarah, verse 280.

It was also narrated on the authority of the Messenger of God, may God bless him and grant him peace, that he was asked about praying for the dead debtor, and he said, "What is it good for you to pray for a man whose soul is pawned in his grave and do not ascend to heaven?"⁽¹⁾

Through reviewing the opinions of the four imams, we find that they prevented the imprisonment of an insolvent debtor and permitted that when the procrastinating debtor is able to pay, and they have set conditions for imprisoning the debtor, which are⁽²⁾:

- 1- That the debtor is able to repay the debt
- 2- That the debt is immediate, and imprisonment in the deferred debt is not permissible
- 3- The debtor's debt, that is, his delay in paying off the debt
- 4- That the creditor requests the imprisonment of the debtor

5. The debtor should not be one of the assets of the creditor, a confirmation of the verse "and spent your Lord not none but Him and dutiful to your parents either they reach old age you have one or both of them, do not say F is not Tnehrhma and say two words generous."⁽³⁾

They also emphasized that the debtor's imprisonment does not lead to the abolition of the debt for which he was imprisoned, as imprisonment is a means of pressure on the procrastinating debtor to push him to fulfill his debt⁽⁴⁾.

In the same context, Article (1503) of the Code of Islamic Rulings was stipulated in the doctrine of Imam Ahmad bin Hanbal (If the debtor seeks the Lord of the religion and complains about his order to the ruler for not being fulfilled, then he refuses to imprison him and he must be released if he demonstrates his insolvency).

⁽¹⁾Narrated by Al-Bukhari in his Sahih Hadith No. 1066, Chapter of Madaena.

⁽²⁾Zafer, Mubarak, Imprisonment of the Debtor is a Method of Compulsory Execution, A Study in Kuwaiti Law, MA Thesis at the Middle East University, college of law, 2012, p 52.

⁽³⁾Surat Al-Israa, verse 23.

⁽⁴⁾Ahmad, Sharaf, Rulings of the Procrastinated Debtor in Islamic Jurisprudence, MA Thesis, Al-Quds Open University, college of Sharia, 2001, p 22.

The debtor must be imprisoned in this case in order to implement the rule of more severe harm, and the lesser harm will be removed, and this is what was stated in Article 27 of the Code of Judicial Rulings. Imprisonment of the debtor is not a punishment for the debtor himself or his insolvency, but rather a punishment for the debtor who is able to fulfill the payment he refrained from⁽¹⁾.

With regard to the burden of proof with the debtor's ease and delay in implementing the obligation, it falls on the plaintiff (the creditor), because the evidence is on the one who claimed, and because the original is good faith, and the creditor has to prove the bad faith of the debtor⁽²⁾.

We note that Islamic law has addressed the issue of the imprisonment of the debtor and put conditions and solutions are characterized by fairness, because it stems from a fundamental principle which is the optional fulfillment of debt, where he says, "God commands that trusts to their owners and if you judge between people to judge with justice that God admonishes you do that God was hearing, seeing⁽³⁾".

But it did not differentiate between the debtor, the public servant and the ordinary debtor, and therefore it did not exclude the public servant from imprisonment if he was able to fulfill his debt and procrastinate, because the requirements of justice must be applied to everyone. He is punished if he is able to delay paying his debt.

Conclusion

It became clear to us through the research that the position of Islamic Sharia stipulates that it is permissible to imprison a debtor when it is not possible to collect the debt from him, and that when he is stalling with the ability to pay what he owes, but otherwise it is not permissible, just

⁽¹⁾www.alaqsa.edu.ps/site_resources/aqsa_magazine/files/607.doc. Al-Balawi, Dr. Saif Al-Din, 12 June 2020.

⁽²⁾Al-Fadl, Dr. Munther, Mediator in Explaining Civil Law, Sources of Obligations and Their Provisions, Arab Culture House, 2012, without edition number.

⁽³⁾Surat An-Nisaa verse 58.

as imprisoning the debtor for not fulfilling his religion is not a punishment, but it is one of the means Forcing the debtor with the intention of compelling him to fulfill his religion, as it became clear to us that the Palestinian legislator did not distinguish between the debtor, the public employee and the ordinary debtor, and this contradicts the position of the Jordanian legislator who distinguished in this between the public employee and the employee who works in the private sector.

We reached some conclusions and recommendations, which we include as follows:

First - Results:

1- The glorious Islamic Sharia took into account the conditions of the debtor in terms of being insolvent or easy, and preserved the relationship between the creditor and the debtor on a balanced basis.

2- The majority of jurists agreed that it is not permissible to imprison an insolvent debtor, in addition to the need to warn him if he is affluent.

3- Imprisonment of the procrastinating debtor is considered a means to force him to fulfill his debt, and it is not considered a punishment in itself, but rather a means that leads us to an end.

4- The revoked Palestinian Procedure Law did not permit the imprisonment of the debtor employed, and the current Palestinian Execution Law stipulated the abolition of the Palestinian Procedure Law.

5- The current Palestinian implementation law does not stipulate that it is not permissible to imprison a debtor who is employed, whether he is a public employee or a private employee.

Second - Recommendations:

1- We recommend that the Palestinian legislator add a text in the implementation law confirming the necessity of not imprisoning the debtor in general if he is sick with a disease that cannot be cured, or if he is very old, and that other compulsory enforcement methods be satisfied.

2- We recommend the Palestinian legislator to stipulate the need to exclude the pregnant woman if she is indebted from imprisonment, and perhaps the Islamic Sharia and the Palestinian

Code of Criminal Procedure deal with kindness in inflicting the punishment on the pregnant woman, so it is more appropriate that this kindness be in the case of imprisonment to force this woman to fulfill her debts.

3- We recommend that the Palestinian legislator explicitly stipulate that the debtor cannot be imprisoned, public or private, provided that there is a sufficient monthly salary that guarantees the fulfillment of his debts and obligations within a reasonable period.

4- We recommend the Jordanian legislator the necessity of equality between the public employee and the private employee in terms of the inadmissibility of his imprisonment, and not making the matter as immunity for the public employee from imprisonment in the event of non-payment of his debts, because the common denominator between them (the reason) is the existence of a monthly salary for both of them that guarantees payment of the debts of this employee.

5- Finally, we recommend the need to establish specialized bodies to assess the debtor's situation, to verify his ability to fulfill or not, to submit its report to the competent authority in this regard, and to inform charitable or donor agencies that are concerned with the poor and human rights, and social cases of all kinds to provide possible assistance.

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