



CRIMINAL PROTECTION OF THE HUMAN RIGHT TO FREEDOM FROM PAIN

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Article history:		Abstract:
Received:	28 th October 2024	<p>The human right to freedom from pain is among the most fundamental rights protected by criminal law. Criminal law prohibits any act that harms an individual or causes discomfort by subjecting them to pain or exacerbating their existing suffering. This right extends not only to freedom from physical pain but also to freedom from psychological pain. This right is recognized for both the individual and society, as the individual performs a social function and cannot effectively fulfill their role in society unless free from physical and psychological pain.</p> <p>However, this right is subject to certain restrictions, which may be voluntary or involuntary and legal. Voluntary restrictions are those initiated by the individual, such as medical procedures and surgeries performed with the patient's consent in accordance with the law. Although these actions may involve pain, they ultimately aim to ensure physical well-being and are therefore not considered crimes. Involuntary legal restrictions include actions carried out under the law, not by the individual's choice, such as testing blood alcohol levels or the use of force during lawful arrests.</p> <p>Beyond these restrictions, the law criminalizes acts that infringe on an individual's safety and their right to freedom from pain, whether committed intentionally or unintentionally due to negligence, recklessness, or failure to adhere to laws, regulations, and orders. The law does not punish the mere infringement on this right but does so due to the harm it causes to the interests of the individual and society.</p>
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INTRODUCTION

Criminal law protects human life by criminalizing actions that infringe upon an individual's right to life and bodily integrity, whether by damaging or impairing body parts or diminishing the body's ability to perform its functions properly. The right to bodily integrity and freedom from pain is a legally recognized interest protected by criminal law for every individual in society. Any act that causes physical harm or pain diminishes the individual's ability to function and undermines societal interests.

SIGNIFICANCE OF THE RESEARCH:

Crimes infringing on the human right to freedom from pain are of significant importance due to their severe impact on society. These crimes do not only affect the individual but also society as a whole, as the individual is a cornerstone of the community. For individuals to perform their societal roles effectively, they must enjoy physical and psychological well-being. Crimes that infringe upon the human right to freedom from pain undermine physical and mental capacities, causing discomfort and reducing individuals' ability to fulfill their duties toward society. Consequently, all laws prohibit violations of this right.

RESEARCH PROBLEM:

Crimes infringing upon the human right to freedom from pain are not new. Despite societal advancements, these crimes have increased and spread widely. They may take the form of physical harm or psychological harm. However, most legal systems lack explicit provisions addressing psychological harm crimes, which can often cause greater suffering than physical harm.

RESEARCH METHODOLOGY:

This study adopts a scientific methodology, specifically the analytical approach, supported by description and comparison, to achieve the research objectives and offer analysis for understanding and addressing the issue.

Chapter One

The Concept of Criminal Protection of the Human Right to Freedom from Pain

The human right to freedom from pain is a fundamental right protected by criminal law. To elucidate this concept, this chapter will explore the definition of the human right to freedom from pain, its scope, and the restrictions imposed on this right. The discussion will be divided into three sections:

1. Definition of the Human Right to Freedom from Pain
2. Scope of the Human Right to Freedom from Pain
3. Legal Restrictions on the Human Right to Freedom from Pain

The First Section

Definition of the Human Right to Freedom from Pain

Legal Definition of the Term "Right":

The term "right" refers to what is just, obligatory, and certain. It represents an established, verified obligation or entitlement. In legal terminology, a right is something that is affirmed and upheld, reflecting a legitimate and undeniable claim or duty⁽¹⁾.

It is also defined as that which is established and cannot be denied⁽²⁾.

Scholars have differed in defining the concept of "right." Some have defined it as the authority or administrative power granted by law to a person within a specific scope⁽³⁾.

Others view it as a legally entitled interest, which is a financial interest protected by law⁽⁴⁾.

The human right to freedom from pain is defined as the individual's right to be free from physical pain. Physical pain is realized by anything that causes harm to a person's sense of well-being. It includes any act that inflicts pain on the victim that was not present before or increases the pain the victim is already experiencing⁽⁵⁾.

An act is considered to infringe upon the right to freedom from pain or the integrity of the body, even if it does not affect physical completeness⁽⁶⁾.

An example of this is forcing the victim to consume a substance with a bad taste, even if it is not harmful to health⁽⁷⁾.

It is also defined as the individual's interest in maintaining a certain level of well-being, which originates from freedom from physical pain as well as psychological pain (psychological peace)⁽⁸⁾.

Freedom from pain is the individual's right to maintain bodily integrity and a level of health that allows them to feel comfortable and free from all pains and aches. The level of comfort and pain perception is based on personal considerations, as it varies from person to person. Pain and comfort are felt differently depending on factors such as age, physical constitution, and environment⁽⁹⁾.

The human right to freedom from pain is the right to experience comfort, physical tranquility, and peace of mind. Physical peace is not limited to freedom from physical or bodily pain; it extends to psychological pain as well. Bodily integrity encompasses the health of body parts that perform physical functions, such as the heart and lungs, as well as parts that are responsible for psychological functions, like sensory and emotional centers. Therefore, peace requires freedom from both physical and psychological pain. Any act that affects mental faculties, leading to fear, terror, or severe anxiety, is considered an infringement on the right to freedom from pain, as it causes psychological harm. Psychological harm refers to a form of violence or abuse that targets the individual's emotional and psychological well-being. It includes actions aimed at control, manipulation, and emotional damage, such as insults, threats, degradation, and social isolation⁽¹⁰⁾.

¹) Jamal al-Din Ibn Makram (Ibn Manzur), Lisan al-Arab, Vol. 1, Qom, Al-Hawza Publications, 1445 AH, pp. 46-56.

²) Ali ibn Muhammad al-Jurjani, Al-Ta'rifat, Beirut, Library of Lebanon, 1985, p. 93.

³) Dr. Hassan Kira, Introduction to the Study of Law, 4th Edition, 1971, p. 431.

⁴) Dr. Abdul Razzaq Al-Sanhouri, Sources of Rights in Islamic Jurisprudence (Comparative Study), Vol. 1, Cairo, 3rd Edition, 1967, p. 5.

⁵) Dr. Mohammed Eid Al-Gharib, Lessons in Criminal Law - Special Part, Faculty of Law, University of Mansoura, p. 440.

⁶) Physical integrity is defined as the natural functioning of the body's organs in performing their functions properly, ensuring that these organs remain complete and unharmed, and that no physical pain is caused to the physical integrity.

Dr. Abdel Hamid Al-Shawarbi, Crimes of Harm in Light of Jurisprudence and Judicial Practice, Alexandria, New Publications House, 1986, p. 259.

⁷) Dr. Mahmoud Naguib Hosni, Commentary on Criminal Law - Special Part, 5th Edition, 2017, p. 494.

⁸) Dr. Jamal Ibrahim Al-Haidari, Commentary on the Provisions of the Special Part of the Penal Code, Al-Sanhouri Library, Baghdad, 2012, p. 14.

⁹) Dr. Hussein Abdul Saghir, Crimes of Assault on the Human Right to Bodily Integrity, 1st Edition, 2012, p. 68.

¹⁰) Dr. Mohammed Saad Khalifa, The Right to Life and Bodily Integrity, Cairo, 1995, p. 37.

An assault on psychological peace can affect physical peace, as exposure to severe anxiety can lead to symptoms such as headaches, high blood pressure, increased heart rate, and loss of appetite, among other physical pains. Similarly, physical pain can cause psychological distress. Injuries, wounds, and burns that leave marks on the body can result in psychological disorders. There is a connection between psychological and physical peace; any act that harms either physical or psychological peace leads to the sensation of pain⁽¹⁾.

The human right to freedom from pain is the right to live free from all physical or psychological pain. The legislator grants protection to the human body as a whole, including all of its parts and vital functions. This protection extends equally to both external and internal organs. Any harm to bodily integrity that affects the normal functioning of the body or its organs, or causes pain, constitutes a crime, regardless of whether the act leaves a material effect or not. The concept of the body is not limited to the physical aspect alone, but also includes the psychological and mental aspects⁽²⁾.

Section Two

The Scope of the Human Right to Freedom from Pain

The human right to freedom from pain is both an individual right and a right established for the benefit of society. Therefore, this section will be divided into two parts. The first part will focus on the individual aspect of the human right to freedom from pain, while the second part will address the social aspect of this right.

Section One

The Individual Aspect of the Human Right to Freedom from Pain

The right to freedom from pain is fundamentally one of the rights established for individuals in society. The law recognizes each individual's right to be free from both physical and psychological pain, including the right to ensure that the functions of their body's organs are not disrupted and that they maintain bodily integrity. This is their right to bodily safety. Historically, it was believed that all rights were of an individual nature, and the legal system did not have the authority to restrict them. The individual is the one with the genuine interest in claiming rights, including the right to bodily integrity. In this context, the interest belongs to the person who has the right to maintain their body in a specific form, retain its natural shape, feel comforted, and enjoy bodily safety, free from pain⁽³⁾.

Since the right to bodily integrity, including the right to freedom from pain, is primarily an individual right, it reached a level of legal protection expansion during the period influenced by liberal philosophy. This expansion led to the recognition of the individual's direct authority over all aspects of their body, while the role of the social body was limited to providing protection. Any failure by the social body to provide such protection is considered a diminution of the individual's personality⁽⁴⁾.

The law grants each individual the right to preserve their bodily integrity, health, and physical tranquility, as well as the right to comfort and freedom from pain. These advantages represent an interest that benefits the individual primarily, while the community benefits indirectly. The individual has an interest in criminalizing any act that harms their bodily integrity, even if it serves goals that benefit the community, such as vaccination against epidemics. This is because the right to bodily integrity and freedom from pain is, above all, an individual right⁽⁵⁾.

In the present time, the functions of the state, which represent society, have become more complex and varied. This has led to a change in its role from a "night-watchman" state to one that intervenes to impose a system aimed at achieving the interests of society. As a result, a category of social rights has emerged, which must be preserved to ensure the continuity of life. Therefore, it has become obligatory for the state, when individual rights conflict with the rights of society, to prioritize the rights of society, as they are more deserving of care and protection⁽⁶⁾.

Branch 2:

The Social Aspect of the Right to Freedom from Pain

The right to freedom from pain is not limited to being an individual right established for the benefit of the individual only; it is also a social right, established for the benefit of society. This is because each individual in society has a social role to fulfill, and they cannot perform their duties within society if they are not enjoying bodily integrity and freedom from pain. Therefore, it is in the interest of society that its members maintain their bodily health in a natural state and their right to feel comfortable and free from pain⁽⁷⁾.

¹) Dr. Mahmoud Naguib Hosni, *The Right to Bodily Integrity*, Journal of Law and Economics, Issue 3, 1959, p. 541.

²) Dr. Ahmed Shawky Omar Abu Khatwa, *Crimes of Assault on Persons*, Cairo, 1993, p. 139.

³) Dr. Sabah Sami Dawood, *Criminal Liability for Torturing Individuals*, 1st Edition, Beirut, 2016, p. 27.

⁴) Dr. Munther Al-Shawi, *The Democratic State in Political and Legal Philosophy*, Volume 1, The Democratic Idea, Publications of the Scientific Academy, Baghdad, 1988, pp. 160-161.

⁵) Claude Albert Collard, *Libertés Publiques*, Sexism Edition, Dalloz, Paris, 1982, p. 361.

⁶) Dr. Akram Mahmoud Hussein and Dr. Berk Faris Hussein, *The Right to Bodily Integrity*, Published in Al-Rafidat Journal of Law, Volume 9, Issue 33, Year 12, 2007, p. 22.

⁷) Jean Jacques Dariot, *Constitutional et Institutions Politiques*, Neuvième Edition, Montchrestien, Paris, 1987, p. 19.

Any assault, even though it primarily infringes on an individual's right to bodily integrity, including their right to freedom from pain, simultaneously affects society's right to the safety of its members. This is because it diminishes the individual's ability to fulfill their social role, thereby reducing the benefits that society is entitled to derive from its members. The social aspect of the right to bodily integrity, including the right to freedom from pain, becomes evident in preventing individuals from harming their health, as the safety of their bodies is linked to the rights of society. It is not purely an individual right⁽¹⁾.

Socialist ideas played a significant role in prioritizing the social interest over individual interests, as it is considered more deserving of protection. Therefore, the focus is not on the individual alone but on society, which consists of a collective of individuals. Socialist thought allows for sacrificing the minimum rights of individuals if they conflict with the rights of society, including the individual's right to bodily integrity and freedom from pain. Based on this idea, the legal system, represented by the state, has permitted certain actions that may affect bodily integrity and the sense of comfort if their purpose is to achieve a public interest, such as actions taken in criminal evidence procedures or vaccination against certain diseases⁽²⁾.

Chapter Three

Restrictions on the Human Right to Be Free from Pain

Any act that results in harm to bodily integrity or causes pain is considered an infringement on the right of an individual to be free from pain. However, there are certain restrictions on this right. These are instances that, although they would typically be viewed as violations of bodily integrity and the right to be free from pain, are considered exceptions due to specific justifications. These exceptions can either be voluntary restrictions or legal restrictions. Based on this, we will divide this section into two parts: the first will focus on voluntary restrictions on the human right to be free from pain, and the second will address legal restrictions on the same right.

Section One

Voluntary Restrictions on the Human Right to Be Free from Pain

These are the cases in which an individual is granted a certain degree of direct authority over their body, and these are counterbalanced by the limitations placed on them by society. These voluntary restrictions are particularly evident in the context of medical procedures and practices⁽³⁾. The medical and surgical procedures require interference with the body and may therefore expose it to pain. However, it is generally agreed that such procedures are permissible because they aim to achieve the well-being of the human body, which ultimately benefits society by ensuring the safety of its members. Thus, these actions are not subject to criminalization if certain conditions for their practice are met⁽⁴⁾. The reason for the permissibility of medical procedures carried out by doctors is the legal authorization granted to them to practice medicine. The law regulates how this profession should be practiced according to conditions and procedures specified in the laws governing the practice of medicine. In order for a doctor's work to be lawful, it must be authorized by law. Otherwise, the doctor will be held responsible, whether the intended goal of healing the patient is achieved or not. The law allows medical work because the doctor has obtained the required academic qualification, which is the basis for licensing according to the specific professional laws that require obtaining the academic qualification before granting the license to practice the profession. Therefore, anyone who does not have a license to practice medicine is held accountable for any harm or injury caused to others, unless it is based on a state of necessity. Additionally, the doctor's work must be for the purpose of treatment, and the patient must consent to the doctor's intervention, because the doctor is not in control of the patient's body but is authorized to treat them if called upon. The patient's consent may come from a guardian if the patient is unable to express consent. A doctor may proceed with treatment without the patient's or guardian's consent in emergency situations, and they will not be held responsible in such cases. While medical procedures and surgery may affect the body or cause pain, they are permissible because their goal is a legitimate one, which is healing.

Section Two

Legal Restrictions on the Right of the Individual to Be Free from Pain

These are cases where the integrity of the body is affected and the individual is exposed to pain, regardless of their consent. This occurs in cases of societal necessity. What distinguishes these restrictions is that the individuals' will does not play a role in legitimizing the action, as it does in voluntary restrictions. Legal restrictions are legitimate regardless of the individual's consent.

Examples of legal restrictions include procedures required for criminal evidence, such as blood tests. The test here refers to those conducted for non-medical purposes, such as in criminal cases, like testing for blood alcohol levels to determine if the offender was under the influence of alcohol at the time of the crime, or testing blood to establish parentage. Although drawing blood impacts bodily integrity and may cause pain, it is lawful because its purpose is to uncover the truth and maintain public order, ensuring the offender is not exempt from punishment. This public interest outweighs the individual's right to bodily integrity.

¹) Dr. Hussein Abdul Sahab, Previous Source, p. 97.

²) Dr. Sabah Sami Dawood, Previous Source, pp. 28-29.

³) Akram Mohamed Hussein, Birk Fares Hussein, Op. cit., p. 46.

⁴) "Dr. Ahmed Shawky Omar Abu Khotba, previous source, p. 152."

For instance, Article 70 of the Code of Criminal Procedure No. 23 of 1979 allows blood tests without the person's consent if required by the investigation or necessity.

Other examples of legal restrictions include the obligation of individuals to undergo vaccinations when a disease is suspected. Health authorities have the right to examine individuals to ensure they are free from disease and to take samples for analysis.

Legal restrictions also extend to the arrest of individuals suspected of committing a crime. The arrest process may, in some cases, require the use of force due to the suspect's resistance, which may cause pain. The suspect's resistance to authority or attempt to escape justifies the use of necessary force to stop them and force their surrender. In this case, the use of force, although it affects the individual's right to be free from pain, is permitted if done under the conditions set by law. Any harm caused to the suspect in order to arrest them is permissible if it is the only means of effecting the arrest. Therefore, this is an example of legal restrictions on the right of an individual to be free from pain⁽¹⁾.

The second chapter

Intentional crimes affecting the human right to be free from pain

The intentional crimes affecting the human right to be free from pain are intentional injury crimes, which include felonies of intentional injury, misdemeanors of intentional injury, and minor injury crimes. This chapter will be divided into three sections:

- The first section will be dedicated to discussing felonies of intentional injury.
- The second section will be dedicated to discussing misdemeanors of intentional injury.
- The third section will be dedicated to the crime of minor injury.

Section one

Felonies of intentional injury affecting the human right to be free from pain

Felonies of intentional injury affecting the human right to be free from pain are represented by the crime of injury with the intent to cause permanent disability and the crime of injury leading to permanent disability. This section will be divided into two parts:

- The first part will focus on the crime of injury with the intent to cause permanent disability.
- The second part will focus on the crime of injury leading to permanent disability.

The first branch

The Crime of Harm with the Intent to Cause Permanent Disability

Before discussing the elements of this crime, it is essential to define what is meant by permanent disability.

Permanent disability refers to the loss of the body's ability to perform one of its natural functions due to the complete or partial loss of the function of one of the body's organs, where recovery is not expected. The body performs a range of functions according to natural laws, and if one of the body's organs is injured, leading to permanent dysfunction or incapacity in bodily functions, permanent disability is achieved. It is also defined as the loss of one of the body's organs or parts, or the loss or reduction of its benefit or resistance, which persists indefinitely.

Permanent disability is considered one of the most severe forms of assault on a person's right to be free from pain, as it affects the body's integrity and its ability to maintain its physical substance. The removal or impairment of an organ represents the utmost form of aggression against the body's safety⁽²⁾.

The crime of causing harm with the intent to inflict a permanent disability is established by the fulfillment of both the material and moral elements. The material element is realized through the act of assault, which is represented by wounding, beating, or violence⁽³⁾, Or by administering a harmful substance, committing any other act contrary to the law, or refraining from performing an act that could prevent the crime if the law or an agreement imposes an obligation to act, and the failure to do so results in a permanent disability⁽⁴⁾, An assault alone does not constitute the crime unless it results in a permanent disability that cannot be cured. A permanent disability is established when an injury affects any body part, whether external or internal, regardless of its size—whether the part is large or small. Examples include losing the ability to procreate, losing or weakening one of the senses, such as sight, speech,

¹) "Hussein Abdul-Sahib, source previously mentioned, p. 114."

²) Dr. Galal Tharwat, Crimes of Assault on Persons, Theory of the Special Section, Part One, Al-Dar Al-Jameya, 1979, pp. 427-428.

³) Wounding refers to the cutting or tearing of body tissues, whether superficial, such as skin cuts, or internal, such as tears affecting internal organs like the stomach, liver, or spleen. The definition of wounding also includes abrasions and burns. As for beating, it refers to applying pressure to the body without causing cutting or tearing. Dr. Fakhri Abdul Razzaq Al-Hadithi, Explanation of the Penal Code, Special Section, Al-Zaman Press, Baghdad, 1996, p. 194.

⁴) Dr. Nashaat Ahmed Nassif, Explanation of the Penal Code, Special Section, Al-Sanhoury Library, 2010, p. 95.

hearing, or smell. A permanent disability may also arise as an indirect result of the assault, such as the removal of a body part during a necessary surgical procedure to save the victim's life⁽¹⁾, The act of assault committed by the perpetrator must be the cause of the disability or one of the factors contributing to its occurrence. In order to establish the perpetrator's responsibility for their act, a causal relationship between the act and the disability must be proven, meaning that the disability must result directly from the perpetrator's action⁽²⁾, The causal relationship is considered established even if other factors contributed to the act of the perpetrator, as long as these factors are familiar and foreseeable according to the normal course of events⁽³⁾, This means that it is not required for the defendant's act to be the only factor that led to the permanent disability. The assailant is responsible for the disability even if other factors contributed to its occurrence along with their act⁽⁴⁾, However, if the causes or factors that contributed to the disability, along with the perpetrator's act, were sufficient by themselves to cause the disability, the perpetrator will not be held accountable for the disability in this case, but only for their own act, according to Article 29 of the Iraqi Penal Code⁽⁵⁾, The material element consists of three components: the act of assault, the result represented by the occurrence of a permanent disability, and the causal relationship linking the act to the result. The moral element in this crime is established by the presence of criminal intent, as it is an intentional crime. Criminal intent is represented by both knowledge and will, meaning the perpetrator's will is directed towards committing the act of assault with the knowledge that their action will likely result in a permanent disability. This is known as direct intent. The intent may also be probable, where the perpetrator commits the act of assault without desiring the result of a permanent disability, but anticipates it, and despite this, proceeds with the assault, accepting the risk of causing it. The penalty for this crime is imprisonment for a period not exceeding fifteen years, according to Article 412 of the Iraqi Penal Code. The penalty may be aggravated if certain aggravating circumstances, as stipulated in Article 414, apply.

Second Branch

The crime of assault resulting in permanent disability occurs when its elements are fulfilled

the material element and the moral element. The material element is realized through the act of assault, which may be in the form of wounding, beating, violence, administering harmful substances, or committing any act contrary to the law. It is essential that the act of assault results in a consequence, namely, a permanent disability. There must be a causal relationship between the act of assault and the permanent disability, as seen in the crime of assault with the intent to inflict a permanent disability, as mentioned previously⁽⁶⁾.

The moral element is established by the presence of criminal intent, which is reflected in the perpetrator's will to commit the assault, with the knowledge that their action could harm the victim. However, the intent is not directed toward causing a permanent disability. Therefore, this crime falls under crimes of exceeding intent (transcending intent). In this case, the perpetrator's will is aimed at harming the victim's safety, resulting in a permanent disability, but the perpetrator did not intend to cause the disability, nor did they foresee it. However, their act is the cause of the disability. It is sufficient to punish the perpetrator for intentionally committing the assault that led to the permanent disability.

Multiple perpetrators may be involved in the beating or wounding that led to the permanent disability. If there was a prior agreement among them to commit the assault, they are all responsible for the disability, even if it resulted from just one of them. If there was no prior agreement among them to commit the assault, each will be held accountable for their own act, and will only be responsible for the disability if their individual actions, such as beating or wounding,

¹) Dr. Jamal Ibrahim Al-Haidari, Explanation of the Provisions of the Special Section of the Penal Code, Al-Sanhoury Library, Baghdad, 2014, pp. 296-297.

²) Dr. Fakhri Abdul Razzaq Al-Hadithi and Dr. Khaled Abdul Hamid Al-Zenji, Criminal Encyclopedia, Explanation of the Penal Code, Special Section, Crimes Committed Against Persons, Amman, Dar Al-Thaqafa, 2009, p. 96.

³) Dr. Omar El-Sayed Ramadan, Explanation of the Penal Code, Special Section, Cairo, Dar Al-Nahda Al-Arabia, 1986, p. 310.

⁴) Mahmoud Naguib Hosni, Explanation of the Penal Code, Special Section, Previous Source, p. 545.

⁵) Article 29 of the Iraqi Penal Code No. 111 of 1969 states:

1. A person is not held accountable for a crime that was not the result of their criminal conduct, but they may be held accountable for the crime even if their criminal conduct contributed to its occurrence along with another cause, whether prior or subsequent, even if they were unaware of it.
2. However, if that other cause alone is sufficient to cause the criminal result, the perpetrator will only be held accountable for the act they committed.

⁶) If the act is committed by a public employee or someone entrusted with a public service while performing their duties, or as a result of performing those duties, the crime may be subject to different legal considerations or penalties, depending on the specific circumstances and the applicable laws.

directly caused it. If it is impossible to determine which one caused the injury leading to the permanent disability, all will be held responsible for the assault (such as beating or wounding) or any other unlawful act, based on the most certain factor⁽¹⁾.

As for the penalty for this crime, it is stipulated in Article 412/2 of the Iraqi Penal Code. The penalty is imprisonment for a period not exceeding seven years, or detention. Therefore, the court has discretionary power to impose a sentence of imprisonment for a period ranging from more than five years to seven years, or to impose a detention sentence⁽²⁾ , As for the Egyptian Penal Code, Article 240 stipulates that the penalty for this crime shall be imprisonment for a period ranging from three years to five years.

Second Section:

Intentional Harm Misdemeanors

In this section, we will discuss intentional harm misdemeanors in three branches. The first branch will address the crime of assault with the intent to cause harm or illness. The second branch will be dedicated to severe harm crimes. The third branch will focus on the crime of harm caused by the use of a weapon, tool, or harmful substance.

First Branch:

Crime of Assault with the Intent to Cause Harm or Illness

Article 413, Paragraph 1, of the Iraqi Penal Code stipulates: "Whoever intentionally assaults another by wounding, beating, or committing any other unlawful act that causes harm or illness shall be punished by imprisonment for a period not exceeding one year, or a fine not exceeding one hundred dinars, or by either of these penalties.

The material element in the crime of harm as outlined in Paragraph A of Article 413 requires the commission of an assault act, which may be in the form of wounding, beating, violence, administering harmful substances, or any unlawful act that results in causing harm or illness, in the form of health deterioration⁽³⁾ , Harm refers to any injury to the body that impairs the normal functioning of the body's organs or causes changes to any of the body's parts. As for illness, it refers to anything that affects health, weakens the body's resistance, or diminishes the ability of the body's organs to perform their functions⁽⁴⁾ , It refers to any condition that disrupts the normal functioning of life functions in the body, such as when the victim is incapacitated from performing their usual tasks for twenty days or less, or when they suffer injuries that do not prevent them from carrying out their usual activities, regardless of the duration of their treatment⁽⁵⁾, The provision also applies to injuries, bruises, abrasions, etc., resulting from a blow with a fist, stick, or small stones, provided that the treatment period ranges from one day to nineteen days, according to a medical report prepared for this purpose⁽⁶⁾ , It is essential to establish a causal relationship between the act of assault and the harm or illness, meaning that the harm or illness must be the result of the assault committed by the perpetrator. If the causal relationship between the assault and the harm or illness is absent, the perpetrator will not be held accountable for this crime under Article 413 of the Iraqi Penal Code, but will only be held accountable for their act⁽⁷⁾ , The moral element in this crime is established by the presence of criminal intent, which is realized when the perpetrator's will is directed towards causing physical harm or illness to the victim⁽⁸⁾ , It is not necessary for the perpetrator's intent to be directed towards achieving a specific result. It is sufficient that their will is directed towards intentionally causing harm or illness that affects the victim's bodily integrity and harms their health. The law does not require that the harm or illness reach a level that forces the victim to remain bedridden⁽⁹⁾.

As for the penalty for this crime under the Iraqi Penal Code, it is imprisonment for a period not exceeding one year and a fine not exceeding one hundred dinars, or either of these penalties. This means that the court has discretionary power to impose imprisonment and determine its duration, provided that it does not exceed one year. Similarly, the court may impose a fine, as long as it does not exceed the amount stipulated by law⁽¹⁰⁾ , As for the Egyptian law, the

¹) Dr. Abdul Hamid Al-Shawarbi, Previous Source, p. 306.

²) Article 412, Paragraph 2, of the Iraqi Penal Code No. 111 of 1969 states: "The penalty shall be imprisonment for a period not exceeding seven years, or detention, if the act results in a permanent disability without the perpetrator intending to cause it.

³) Dr. Fakhri Abdul Razzaq Al-Hadithi, Explanation of the Penal Code, Special Section, Previous Source, p. 205.

⁴) Dr. Jamal Ibrahim Al-Haidari, Previous Source, p. 304.

⁵) Dr. Hamid Al-Saadi, Explanation of the New Penal Code, Crimes of Assault on Persons, Part Three, Baghdad, 1976, p. 346.

⁶) Ali Al-Samak, The Criminal Encyclopedia in Iraqi Criminal Jurisprudence, Vol. 4, 1st Edition, Baghdad, 1968, p. 99.

⁷) Dr. Jamal Al-Haidari, Previous Source, p. 304.

⁸) Dr. Sultan Al-Shawi, Crimes Affecting Bodily Integrity, Journal of Legal Sciences, Volume 10, Issue 2, 1994, p. 57.

⁹) Ali Al-Samak, Previous Source, p. 100.

¹⁰) The fine amount in the Iraqi Penal Code No. 111 of 1969 was amended by Law No. (6) of 2008, based on what was approved by the House of Representatives, in accordance with the provisions of Article

penalty is imprisonment for a period not exceeding one year or a fine not less than ten pounds and not exceeding three hundred pounds⁽¹⁾.

Second Branch: Severe Harm Crime

In this crime, the law requires that the act of assault results in severe harm, which may involve a bone fracture, the victim's inability to perform their usual tasks for more than twenty days, or harm caused by the use of a weapon, tool, or harmful substance.

First: Crime of Harm Leading to a Bone Fracture

In this scenario, the law requires that the assault leads to a bone fracture in the victim. There must be a causal relationship between the assault and the result, which is the bone fracture. Bone fractures are explicitly mentioned in Article 413, Paragraph 2 of the Iraqi Penal Code. Therefore, if the assault leads to the fracture of any bone in the body, such as the femur, leg, hand, forearm, shoulder, clavicle, jaw, or finger bones, the crime is considered committed⁽²⁾. As for the breaking of teeth, it does not constitute this crime because teeth are not considered bones⁽³⁾. It is sufficient for this crime to be established if a bone fracture occurs, regardless of whether it heals in a short or long time, or if healing requires complex surgeries. The duration of treatment has no relation to the commission of the crime⁽⁴⁾. In order for this crime to be established, the perpetrator must have criminal intent. This crime requires the deliberate intention to harm the victim, affect their bodily integrity, and subject them to pain. It is not necessary for the perpetrator's intent to be directed specifically at causing a bone fracture in the victim. The law holds the perpetrator responsible if their act results in significant harm (such as a bone fracture). Therefore, the perpetrator can be held accountable for harm to the body if their intention was to cause it⁽⁵⁾. As for the penalty for this crime, it is imprisonment for a period not exceeding three years or a fine not exceeding three hundred dinars, or one of these penalties⁽⁶⁾.

Secondly, the crime of assault leading to the victim's inability to perform their usual tasks: This crime is established when an act of assault occurs, resulting in the victim's inability to perform their usual activities for a period exceeding twenty days. The term "inability" here refers to the lack of capacity to carry out physical, bodily, or manual tasks⁽⁷⁾. This refers to the impairment of the functions of organs such as the hand or foot. The legislator did not mean by "tasks" personal activities, service, profession, or occupation. The variation in punishment is not based on the severity of the injuries, but rather on the social function of the victim⁽⁸⁾. This means that this crime is established even if the assault does not prevent the victim from performing their profession, as in cases where the victim is engaged in mental work and the assault causes them to be unable to walk⁽⁹⁾. It is enough for this crime to occur if the victim is unable to perform physical and bodily tasks, even if it does not lead to an inability to perform their job duties. The law does not require the incapacity to be complete; it is sufficient if the injuries result in the victim being unable to perform a specific task, even if they can still carry out limited activities⁽¹⁰⁾. It is required for the material element in this crime that a causal relationship is established between the criminal result, which is the inability to perform usual tasks for more than twenty days, and the assault committed by the perpetrator. This means that the assault must be the cause of the victim's disability. The causal relationship is interrupted if unusual, unforeseeable factors intervene, such as if the duration of the disability is prolonged due to the victim's bad faith or refusal to receive treatment without an acceptable excuse, or due to the doctor's gross error⁽¹¹⁾. Therefore, if the causal relationship between the act of assault and the injury sustained by the victim is broken, as if the foreign cause alone is sufficient to cause the injury, in this case, the responsibility of the perpetrator for the injury is negated, and they are only liable for the harm

138/Fifth/C of the Constitution. The Law for the Amendment of Fines in the Penal Code and other special laws was issued. Article 2, Paragraph B of the Law for the Amendment of Fines stipulates: "For misdemeanors, the fine shall not be less than 200,001 dinars and shall not exceed 1,000,000 dinars."

¹) Refer to Article 241 of the Egyptian Penal Code No. 58 of 1937.

²) Dr. Maher Abdul Shwish, Explanation of the Penal Code, Special Section, Mosul, 1988, p. 299-230.

³) Dr. Gabriel Al-Banna, Explanation of the Penal Code, Baghdad, Special Section, 1947, p. 170.

⁴) Dr. Hamid Al-Saadi, Previous Source, p. 341.

⁵) Ali Al-Samak, Previous Source, p. 74.

⁶) Dr. Nashat Ahmad Nassef, Previous Source, p. 98.

⁷) Dr. Jundi Abdul Malik, The Criminal Encyclopedia, Vol. 5, 1st Edition, Al-I'timad Printing, Baghdad, 1942, p. 809.

⁸) Dr. Mahmoud Mahmoud Mustafa, Explanation of the Penal Code, Special Section, 5th Edition, Dar Al-Kitab Al-Arabi Press, Cairo, 1958, p. 189.

⁹) Dr. Jalaa Tharwat, Source previously mentioned, p. 427.

¹⁰) Dr. Abdelhamid El-Shawarbi, Source previously mentioned, p. 295.

¹¹) "Ali Al-Samak, previous source, p. 73."

according to Article 413, Paragraph 1, provided that a causal link is established between their act and the harm⁽¹⁾, The mental element in this crime requires the presence of criminal intent, as it is an intentional crime. The perpetrator's will must be directed towards the act of assault, with the knowledge that their action is likely to harm the victim's bodily integrity, health, or cause injury⁽²⁾, However, it is not required for the perpetrator's will to be directed towards causing a certain degree of harm in terms of severity and danger. Moreover, the perpetrator will be held liable for serious harm if their intention is directed towards causing it. Consequently, if the perpetrator is unaware that their action is likely to harm the victim and did not intend to cause harm, the criminal intent (*mens rea*) is negated, and they will be held liable for the crime of negligent injury according to Article 416 of the Iraqi Penal Code⁽³⁾, The penalty for this crime is imprisonment for a period not exceeding three years, or a fine not exceeding three hundred dinars, or one of these penalties, in accordance with Article 413, Paragraph 2(b) of the Iraqi Penal Code⁽⁴⁾, As for the Egyptian Penal Code, Article 241 stipulates that the penalty is imprisonment for a period not exceeding two years, and a fine not less than twenty pounds and not exceeding three hundred pounds.

Thirdly, the crime of injury using a weapon, a sharp instrument, or a harmful substance:

This crime is realized when the act of assault involves the use of a tool designed for harm, such as a dagger, sword (iron knuckles), hook, or club, or the use of a firearm such as a rifle, machine gun, or pistol. The perpetrator may also use a harmful or corrosive substance, such as acids, dynamite, or caustic soda. As for burning substances, they include any material at a high temperature, like hot water or any burning object. Harmful substances refer to poisons when given in small quantities sufficient only to cause harm, or any harmful material that disrupts the body's functions. The act of assault must result in harm or disrupt the victim's health, meaning the tool, weapon, or harmful substance used by the perpetrator is the cause of the criminal result, which is injury. There must be a causal link between the act of assault and the criminal result. If the causal link is broken between the perpetrator's act and the result, liability for the crime is negated, especially if an external cause intervenes and is sufficient on its own to cause harm. In this case, the perpetrator will only be liable for their act of harm, which is minor, according to Article 413, Paragraph 1⁽⁵⁾.

It is noted that there is no specific legal provision in Iraqi legislation concerning psychological injury crimes, despite the fact that these crimes have more severe and dangerous effects than physical injury, leaving pain and discomfort on the individual. The reason for this is likely that psychological abuse is often carried out by a spouse or a family member and, in most cases, is indirect, making it difficult to detect and prove. Psychological abuse takes many forms, such as verbal abuse, humiliation, psychological fear, and belittlement. It can occur in marital, familial, friendship, or professional relationships. Its effects may lead to long-term problems, including health issues and mental disorders, such as anxiety, depression, loss of self-confidence, and post-traumatic stress disorder. Additionally, there is difficulty in proving the causal relationship between the psychological methods of harm and the injury caused to the victim, as well as proving criminal intent. However, some provisions may apply to cases of psychological abuse. The Iraqi legislator mentioned that injury crimes are realized by any act contrary to the law, and this phrase could encompass psychological harm. Thus, the material element of the injury crime could be realized through moral means (psychological harm), in addition to physical harm represented by acts like wounding, beating, or violence, or administering harmful substances. Several bills have been discussed in Iraq to enhance protection for individuals from domestic violence, including psychological abuse. One of these bills is the Domestic Violence Prevention Law, which was proposed to strengthen the protection of women's and children's rights. If this law is adopted and implemented, it could provide greater protection for individuals from psychological abuse⁽⁶⁾.

As for the stance of legislations on the crime of psychological injury, some legislations have recognized the use of moral means to form the material element in injury crimes. The French legislation issued in 1863, although it did not explicitly state this, implicitly included it by not distinguishing between wounding, beating, and other forms of assault that do not directly affect the victim's body but cause significant distress, such as conveying disturbing news to a patient. If this results in a disruption in bodily functions, it is considered an assault on bodily integrity. Additionally, a law was passed in France in 2010 criminalizing psychological violence in marital relationships, including insults and control. In the United States, laws vary from state to state, with some recognizing psychological abuse as part of domestic violence laws, though there is no specific federal law criminalizing psychological abuse. As for the laws in the Middle East, in the Gulf countries, there is a trend towards strengthening laws related to domestic violence, including psychological abuse, and some have started issuing legislation to protect individuals from psychological violence. In

¹) "Dr. Hamal Ibrahim Al-Haidari, previous source, p. 308."

²) Dr. Maher Abdul Shweish, previous source, p. 326.

³) Dr. Sultan Al-Shawi, previous source, p. 57.

⁴) The amount of the fine was amended in the Iraqi Penal Code No. 111 of 1969 by Law No. 6 of 2008. Article 2, Paragraph (b) of the aforementioned Law on Amending Fines stipulates this amendment.

⁵) Dr. Jamal Ibrahim Al-Haidari, previous source, p. 311.

⁶) Domestic Violence Prevention Bill in Iraq, published on the website, <https://www.hrw.org>.

Egypt, the Egyptian Parliament approved a draft law in 2021 recognizing psychological violence within the framework of domestic violence⁽¹⁾.

Section Three

Aggravating Circumstances in Intentional Injury Crimes

The penalty for intentional injury crimes is aggravated if the commission of the crime is accompanied by one of the circumstances provided for in Article 414 of the Iraqi Penal Code. These circumstances may relate to the presence of a specific characteristic in the victim, or if the victim is a relative of the perpetrator. They may also stem from premeditation, or if the injury crime was committed in preparation for committing a felony or misdemeanor. Additionally, the penalty is aggravated in cases of multiple perpetrators. Accordingly, we will divide this section into three parts. The first part will focus on the aggravation of the penalty due to the victim's characteristics or if the victim is a relative of the perpetrator. The second part will examine the aggravation of the penalty due to the perpetrator's premeditation. The third part will discuss the aggravation of the penalty if the crime was committed in preparation for a felony or misdemeanor, or in cases of multiple perpetrators.

First Branch

Aggravation of the Penalty Due to the Presence of a Specific Characteristic in the Victim

The penalty for the crime of intentional injury is aggravated if the victim possesses a specific characteristic, such as being an employee or tasked with public service, and the assault occurs during or because of the performance of their duties. Additionally, if the victim is a relative of the perpetrator, the penalty is aggravated.

First: If the Victim is an Employee or Tasked with Public Service

To aggravate the penalty in this case, the assault must occur on the employee or public servant during the performance of their duties or because of them, meaning there must be a temporal relationship between the assault and the performance of their work. This is outlined in Article 414, Paragraph 4 of the Iraqi Penal Code. The reason for this is, as indicated in the text, that public service should be respected and protected, so that employees or those tasked with public service can perform their duties in peace, without fear or hesitation. Thus, the legislator considers an assault on an employee or public servant while performing their duties or because of them as an aggravating circumstance. Therefore, if the assault occurs on the employee outside the scope of their public function or service, and is not related to it, the penalty will not be aggravated because the reason for aggravation is absent. For instance, if someone threatens a public employee that they will assault them if an attachment is placed on their assets and home due to a creditor's request, the penalty will not be aggravated.

The key factor in aggravating the penalty is the temporal relationship, meaning the assault must occur while the employee is performing their duties. The other factor is causality, meaning the assault must be due to the employee's role or function, establishing a link between the function and the crime committed. If the assault on the employee is unrelated to their function, or if it did not occur during the performance of their duties or public service, the penalty will not be aggravated⁽²⁾.

Second: If the Victim is a Relative of the Perpetrator

The law addresses this situation in Paragraph 3 of Article 414 of the Penal Code (if the victim is a relative of the perpetrator). The legislator considers an assault by the perpetrator on one of their relatives as an aggravating circumstance. Therefore, if the perpetrator assaults their father or mother, regardless of their age, the penalty will be aggravated. However, it is required that the perpetrator is aware that they are assaulting one of their relatives.

The assault by the perpetrator on one of their relatives indicates the dangerous personality of the perpetrator and their criminal tendencies, which have transcended familial bonds, thus necessitating the aggravation of the penalty.

Second Branch

Aggravation of the Penalty Due to the Presence of the Circumstance of Premeditation

Article 33/2 of the Iraqi Penal Code No. 111 of 1969 defines premeditation as "the deliberate thinking about committing the crime before its execution, away from momentary anger or psychological agitation." The court may aggravate the penalty if the crimes specified in Articles (412-413) are committed with premeditation.

The essence of premeditation is that it is an idea in the mind of the perpetrator, a goal they persist on executing after careful thought, planning the means to achieve the goal, and being aware of the consequences. As mentioned, premeditation means that the perpetrator has thought about the crime prior to committing the act and was calm, free from momentary anger or psychological agitation. Therefore, premeditation requires two elements: a temporal element and a psychological element. The temporal element refers to the period of time between thinking about the crime and carrying it out, meaning premeditation must precede the act in time. The essence of premeditation is the mental state of the perpetrator before committing the crime. The perpetrator must have decided to commit the crime calmly, away from emotional outbursts and anger.

The focus of premeditation is not just the passage of time between deciding on the crime and its occurrence, but rather what occurs in that time, including the planning, thinking, and determination to commit the crime while the

¹) Stance of criminal legislations of countries on psychological injury, Chatgpt.com//https:

²) "Dr. Hamid Al-Saadi, Explanation of the New Penal Code, Part One, Dar Al-Huriya for Printing, Baghdad, 1976, p. 195."

perpetrator remains calm and thoughtful⁽¹⁾, It is possible to establish the presence of premeditation by analyzing the actions performed by the perpetrator before committing the crime, which indicate prior design and a calm mental state, such as preparing the weapon to commit the crime and the existence of grudges or enmities between the perpetrator and the victim. Premeditation is established whether the perpetrator's intent is directed at a specific person or an unspecified person, and whether it is contingent on the occurrence of an event or dependent on a condition⁽²⁾.

Article 414 stipulates that premeditation is considered an aggravating circumstance in crimes of assault as defined in Articles 412 and 413. Similarly, under the Egyptian Penal Code, the penalty for the crime of assault resulting in permanent disability is aggravated if the act was committed with premeditation, stalking, or intentional waiting, in which case the punishment is imprisonment for a period of 3 to 10 years. Moreover, the penalty for assault resulting in injury or illness lasting no more than 20 days is aggravated if premeditation or stalking is present. In such cases, the penalty is imprisonment for up to 2 years, or a fine not less than 10 Egyptian pounds and not exceeding 300 Egyptian pounds⁽³⁾.

Third Branch

Committing Assault as Preparation for Committing a Felony or Misdemeanor, or the Multiplicity of Perpetrators

First: Committing Assault as Preparation for Committing a Felony or Misdemeanor
The legislator has aggravated the penalty for assault crimes when committed as a means of preparing for a felony or misdemeanor. If the perpetrator commits the act of assault in preparation for committing a felony, whether it is murder, aggravated theft, rape, or a misdemeanor punishable by imprisonment for not less than one year, the penalty for the assault is also aggravated. The penalty is further aggravated if the assault is committed as a means of enabling the perpetrator or an accomplice of the felony or misdemeanor to escape or avoid punishment.

To aggravate the penalty in this case, it is not sufficient for the act of assault to occur; the assault must be a means to commit another crime, independent of the assault, whether it is a felony or a misdemeanor punishable by imprisonment for not less than one year. Thus, the aggravating circumstance does not apply if the assault was committed in preparation for committing an infraction or a misdemeanor punishable by imprisonment for less than one year. The aggravating circumstance does not apply in this case unless a causal link exists between the act of assault and the subsequent crime, meaning that the latter is the cause of the assault. In other words, the purpose of committing the original crime must be to commit the subsequent crime⁽⁴⁾.

Second: The Multiplicity of Perpetrators

The commission of an assault by a group consisting of three or more individuals who agree to carry out the assault is considered an aggravating circumstance in the crime of assault, as per Article 414 of the Iraqi Penal Code. The rationale behind this is that an assault committed by three or more individuals has a significant impact, as it induces fear and terror in the victim and makes it easier to overcome their resistance. The multiplicity of perpetrators facilitates the commission of the crime. Moreover, the mere presence of multiple perpetrators is dangerous in itself, as the formation of criminal gangs is a serious phenomenon indicating a deep involvement in criminal activity, with its impact in instilling panic and fear in the hearts of people.

Similarly, under the Egyptian Penal Code, the penalty for the crime of assault is aggravated if the assault is committed by more than one person. It stipulates that the punishment shall be imprisonment if the assault is committed using weapons, sticks, or other tools by one or more individuals, within a group or gathering of at least five people who have agreed to commit the assault and harm⁽⁵⁾.

Third Section

Unintentional Crimes Affecting the Human Right to Freedom from Pain

In this section, we will examine unintentional harm crimes that affect the human right to freedom from pain through three subsections. The first subsection will focus on the material element of unintentional harm crimes affecting this right. The second subsection will be dedicated to discussing the moral element of such crimes. Finally, the third subsection will address the penalties for unintentional harm crimes that infringe upon the human right to freedom from pain.

¹) "Dr. Ibrahim Hamed Tantawy, Premeditation as an Aggravating Circumstance in Bodily Injury Crimes (An Analytical and Foundational Study of the Egyptian Court of Cassation's Rulings), 1st Edition, Dar Al-Nahda Al-Arabia, Cairo, 2007, p. 38."

²) "Dr. Sultan Al-Shawi, Previous Source, p. 69."

³) Article 242 of the Egyptian Penal Code No. 58 of 1937, as amended.

⁴) Sultan Al-Shawi, previous source, p. 74.

⁵) Article 243 of the Egyptian Penal Code.

First Subsection

The Material Element in Unintentional Harm Crimes Affecting the Human Right to Freedom from Pain

The material element consists of three components: **the act, the result, and the causal link between them**. The act in unintentional harm crimes affecting the human right to freedom from pain is represented by the **voluntary conduct of the perpetrator**, which was not intended to cause the harmful outcome that resulted in injury to the victim⁽¹⁾. However, the harmful result here occurred due to the perpetrator's conduct, which is described as negligence, inattention, recklessness, or failure to observe laws, regulations, and orders. The perpetrator's conduct may be active, as in the case of recklessness and lack of precaution, or it may be passive, as in the case of negligence and inattention⁽²⁾. In unintentional harm crimes, the perpetrator intends to commit the act of assault through his conduct and behavior, but he does not want the result and excludes it⁽³⁾. The term "harm" mentioned in Article 416 of the Iraqi Penal Code has a broad meaning, allowing its interpretation to include all forms of violation of the victim's integrity, such as wounds, beating, violence, administering harmful substances, or committing any act contrary to the law⁽⁴⁾. As in the case of an unskilled builder whose work causes stones to fall and injure people, or when a pharmacist makes a mistake in preparing medicine, causing harm or increasing the pain of the patient, or when someone swings a stick carelessly and strikes a passerby⁽⁵⁾. The result of the perpetrator's act is the violation of the victim's bodily integrity, causing harm and exposing them to pain. Therefore, this crime cannot be established unless harm or illness results from the perpetrator's act. If no injury occurs, liability does not arise, regardless of the severity of the fault. In unintentional harm crimes, according to general rules, there is no attempt, as attempt requires the existence of criminal intent⁽⁶⁾. The result of the perpetrator's act in unintentional harm crimes affecting the human right to freedom from pain is limited to injury or pain. However, if the perpetrator's act leads to the victim's death, the perpetrator is not liable for unintentional harm but for unintentional manslaughter. In this case, the perpetrator's liability may be limited to the act of assault, even though the victim died, if it is proven that the death was caused by other factors independent of the perpetrator's act, and the perpetrator is only responsible for the harm⁽⁷⁾. There must be a causal link between the perpetrator's behavior, which is described as negligent, and the resulting harm, illness, or pain. If the causal link is absent, the perpetrator is not liable for the result, which is the harm or illness that occurred⁽⁸⁾. The perpetrator is liable for the act if it is unlawful, such as when the act violates laws, regulations, and rules. The standard for establishing causality assumes that the perpetrator committed the act without considering the consequences of his actions or taking precautions to prevent harm to others. This necessitates that the perpetrator's conduct be described as negligent. The rules governing the standard of causality in unintentional harm crimes are the same as those in intentional harm crimes, but the difference lies in that in unintentional harm crimes, the result that the perpetrator can foresee is any form of harm, without the need to predict the severity of the harm. In contrast, in intentional harm crimes, as previously mentioned, harm has various forms, and the result differs from one form to another⁽⁹⁾.

Second Subsection

The Moral Element in Unintentional Harm Crimes Affecting the Human Right to Freedom from Pain

The basis for the perpetrator's liability in unintentional harm crimes is negligence⁽¹⁰⁾. It is not intent, as the moral element in unintentional harm crimes shares its psychological and legal nature with the moral element in unintentional manslaughter, in that it consists of two elements. The first is the perpetrator's failure to fulfill the duties of caution and care when committing the act. In this case, the perpetrator falls short of the level of caution and care required by law, leading to harm or illness. Every individual has the right to engage in all forms of lawful behavior, and this right is only limited by the duty not to harm others. This duty may either be established by general rules based on human experience—i.e., what people are accustomed to in a specific community—or established by law or custom⁽¹¹⁾. The

¹) Dr. Hussein Abdul Sahib, previously cited source, p. 194.

²) Dr. Jamal Ibrahim Al-Haidari, previously cited source, p. 315.

³) Dr. Mahmoud Mahmoud Mustafa, Explanation of the Penal Code, Special Section, previously cited source, p. 265.

⁴) Dr. Jamal Ibrahim Al-Haidari, previously cited source, p. 316.

⁵) Blanch e ,V no 25, p, 27, chauveau et He lie , IV no,1426,p.126.

⁶) Dr. Mahmoud Nagib Hosni, Explanation of the Penal Code, Special Section, 5th edition, Dar Al-Matbou'at Al-Jamia'a, Alexandria, 2017, p. 569.

⁷) Dr. Jamal Ibrahim Al-Haidari, previously cited source, p. 316.

⁸) Dr. Mahmoud Nagib Hosni, Explanation of the Penal Code, Special Section, previously cited source, p. 569.

⁹) Dr. Jamal Ibrahim Al-Haidari, previously cited source, p. 317.

¹⁰) The standard for determining the existence of negligence is an objective one, expressed through abstract evaluation. It requires comparing the actions of the person who made the mistake with what could have been expected from another person, a hypothetical average individual who exercises normal caution and care, such as a typical head of a household or an ordinary person Dr. Rouf Obeid, Principles of the General Section of Criminal Legislation, 4th edition, Dar Al-Fikr Al-Arabi, 1979, p. 365.

¹¹) Dr. Fakhri Abdul Razzaq Al-Hadithi, Penal Code, General Section, previously cited source, p. 307.

second element is represented by the psychological relationship between the intent of the actor and the harm or illness, which has two forms: The first is when the actor anticipates the harm or illness but relies on insufficient precautions to prevent it, meaning that the actor did not take all possible precautions to avoid the harm, even though they could have taken enough precautions to prevent it. This form is referred to as conscious error or error with anticipation. The second form occurs when the actor does not anticipate the harm or illness, even though they could and should have anticipated it and could have taken necessary measures to prevent it. This is called unconscious error or error without anticipation⁽¹⁾ , It is noted that the difference between the error in the crime of manslaughter and that in the crime of injury is that, in the case of manslaughter, the perpetrator is held accountable for the death of the victim because they did not anticipate the death nor prevent it from occurring, even though they could have anticipated it. Alternatively, they may have anticipated it but relied on insufficient precautions to prevent it. On the other hand, in cases of accidental injury, the perpetrator is held accountable for the bodily harm because they did not anticipate the harm and did not prevent it, even though they could have anticipated it. Alternatively, they may have anticipated the bodily harm but relied on insufficient precautions to avert it⁽²⁾ , As a result, if the perpetrator commits an assault and it is proven that the act is accompanied by an error related to causing bodily harm to the victim but does not extend to death, their responsibility is limited to unintentional injury and they are not held accountable for manslaughter. This is because when the act was committed, the perpetrator could not have anticipated the death and could only have anticipated the injury. Therefore, their responsibility stops at injury and does not extend to manslaughter, even if the death occurred as a result of their act. For example, a nurse administers two doses of medication to a patient, although she was entrusted with giving only one dose, and the patient dies due to someone poisoning the medicine between the two doses. If it is proven that the nurse could not have anticipated the poisoning or the patient's death, her responsibility is limited to injury resulting from the overdose, and she is not held accountable for the death, as it occurred due to an abnormal and unforeseen factor⁽³⁾

Section Three:

The Penalty for the Crime of Accidental Injury

The penalty for the crime of accidental injury is imprisonment for a period not exceeding six months, or a fine not exceeding fifty dinars, or either of these penalties, as stated in Article 416 of the Iraqi Penal Code. This means that the crime of accidental injury is considered a misdemeanor⁽⁴⁾ , The legislator has granted the court the discretionary power to impose the maximum penalty of imprisonment as stated in the text, or a lesser penalty, or to impose either imprisonment or a fine alone. However, the penalty for the crime may be aggravated in certain cases, where the legislator has set the penalty for the crime of accidental injury as imprisonment for a period not exceeding two years if any of the aggravating circumstances mentioned in Article 416, paragraph 2, are present⁽⁵⁾ , Additionally, the penalty for the crime of accidental injury is aggravated under Egyptian law if accompanied by aggravating circumstances, as stated in Article 244. The aggravating circumstances in cases of accidental injury may be related either to the severity of the error or to the severity of the harm. Aggravating circumstances related to the severity of the error attributed to the perpetrator include a serious violation of the duties of the function, profession, or trade, whether the position is public or private. The profession differs from the trade in that the former involves intellectual work, while the latter involves manual work⁽⁶⁾ , A violation of the principles of the profession or trade occurs if the error involves neglecting the basic and fundamental rules that directly govern the function, profession, or trade, whether these rules are legal or derived from the science or art according to which the profession or trade is practiced⁽⁷⁾ , Similarly, the defendant committing the act of accidental assault while in a state of intoxication or under the influence of drugs is considered an aggravating circumstance. For this circumstance to apply, the intoxication or drug use must be voluntary and intentional, resulting in a reduction of the defendant's awareness, which reveals a negligent personality that does not care about harming others. The penalty is aggravated due to the severity of the perpetrator's error if, at the time of committing the error, the perpetrator failed to assist the victim or request help, despite having the ability to do so⁽⁸⁾ , The aggravating circumstances for the crime of accidental injury related to the severity of harm include cases where

¹) Dr. Ahmed Kamel Salama, *Explanation of the Penal Code - Special Section*, Nahdat al-Sharq Library, Cairo, 1987, p. 123.

²) Dr. Mahmoud Nagib Hosni, *Op. cit., Explanation of the Penal Code - Special Section*, p. 571.

³) "Dr. Mahmoud Nagib Hosni, *Assault on Life in Modern Criminal Legislation*, Dar Gharib for Printing, Cairo, p. 216."

⁴) The amount of fines in the Penal Code was amended by the Law on Amendment of Fines, so that for misdemeanors, the fine amount is not less than 200,000 dinars and not exceeding 1,000,000 dinars, as stipulated in the Law on Amendment of the Amount of Fines in the Iraqi Penal Code No. 111 of 1969. See page [X] of the research for more details.

⁵) Dr. Jamal Ibrahim Al-Haidari, *Op. cit.*, p. 319.

⁶) Dr. Raouf Obaid, *Principles of the General Section of Criminal Legislation*, *Op. cit.*, p. 359.

⁷) Dr. Ahmed Kamel Salama, *Explanation of the Penal Code - Special Section*, *Op. cit.*, p. 166.

⁸) Dr. Mahmoud Nagib Hosni, *Op. cit., Explanation of the Penal Code - Special Section*, p. 572.

the victim suffers permanent disability due to the perpetrator's error, or when multiple victims are involved, such as when the defendant's act results in the injury of three or more people, indicating the severity of the harm⁽¹⁾, The Traffic Law has specified aggravating circumstances for the crime of accidental injury in Article 35, paragraph 1, which states that the penalty shall be imprisonment for a period not less than six months and not exceeding two years, or a fine not exceeding one million dinars, or both penalties, if the perpetrator's act results in serious harm to another person or permanent disability, caused by driving his vehicle without adhering to traffic laws, regulations, notices, and instructions, or due to the lack of safety and durability in the vehicle. As for paragraph 2, it states that the penalty shall be imprisonment for a period not less than one year and not exceeding three years, or a fine not exceeding one million dinars, or both penalties, if the crime is committed while driving the vehicle recklessly, or if the driver is under the influence of alcohol or drugs, and fails to assist the victim or request help when capable of doing so⁽²⁾

CONCLUSION

The right of an individual to be free from pain is one of the rights protected by criminal law and is an element of the right to physical integrity. Through our research on the criminal protection of the human right to be free from pain, we have reached a set of conclusions and recommendations.

First: Conclusions

1. Every person has the right to feel at ease by being free from all the pain they experience, whether physical or psychological. The law provides criminal protection for this right by criminalizing actions that constitute an assault on the individual's right to be free from pain.
2. The scope of this right is not limited to the individual. It is not only a personal right but also a right established for society. This is because every individual has a role to play in society, and to fulfill their duties toward society properly, they must enjoy physical integrity and feel at ease, which can only be achieved if they are free from both physical and psychological pain.
3. Despite the importance of the human right to be free from pain, this right is subject to restrictions established for the benefit of the individual or for the public interest. These restrictions may be voluntary or involuntary legal restrictions.
4. The law criminalizes acts that constitute an assault on the individual's right to be free from pain, whether the assault is intentional or the result of negligence, carelessness, or other forms of error.

Second: Recommendations

1. It is essential to raise awareness about the importance of the human right to be free from pain and deepen the understanding within individuals and society that the right to be free from pain includes freedom from all forms of pain that cause discomfort, including physical, psychological, and mental pain. This can be achieved through educational curricula and cultural training programs.
2. There is a need to raise awareness about the effects of psychological harm and take steps to prevent and effectively address it through social support, psychological counseling, and legal resources.
3. It is necessary to establish a specific legal provision and clear guidelines to define crimes of psychological harm, where the assault affects the psychological aspect rather than the material or physical body. This should include identifying mental acts or means that constitute an assault on the human right to be free from pain and the right to physical integrity, which fall under the category of injury crimes. This is important due to the severe impact of psychological harm, which is no less significant than physical injury.
4. It is important for countries to continue developing their legislations to protect individuals from psychological harm and to provide adequate support for victims through social, health, and legal services.

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²) See the Traffic Law No. 8 of 2019.

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