

The Mother Killing of her Newborn to Avoid Disgrace under Jordanian Law

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Abstract

This research paper aims to investigate Article 332 of the Jordanian Penal Code No. 16 of 1960, which punishes a mother because of maternal infanticide in Jordan when committed by mothers to avoid disgrace. Through thorough analysis, this research seeks to shed light on the multifaceted dimensions of this problem and suggest potential solutions. The article adopted both descriptive and analytical approaches to conclude the results through the legal interpretation of the text and a review of the jurisprudence opinion and the judiciary's diligence (case law) on related issues. The article grasped several results, the most prominent of which is that the legislator did not specify what is meant by the terms mentioned in the text, which led to a difference in their interpretation, and because of this reason the legislator envisaged reducing this type of killing contradicts the punishment it established.

Keywords: Jordanian law, maternal infanticide, penal code, murder, Extenuating circumstances, honor crimes.

Introduction

Murder crime occupies the top of the pyramid of crimes committed against persons because it violates one of his most esteemed rights, which is the human right to live, a right guaranteed by all human rights charters and constitutions. Therefore, the penal laws in all countries are strict in imposing the appropriate punishment on the perpetrator of this crime because it has dangerous effects on individuals, families, and all societies.

The Jordanian Penal Code No. 16 of 1960 punishes this crime with different penalties, according to the circumstances in which it is committed, the extent of the criminal's gravity, and the psychological circumstances in which he committed the crime. Thus, there were three levels followed by the legislator in punishing this crime: First: the ordinary punishment, in the case of murder, that is not accompanied by an aggravating or extenuating circumstance. The killer is punished according to the text of Article 326: Whoever kills a person intentionally shall be punished with labor for twenty years. Second: aggravated punishment, when murder is committed

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under circumstances that aggravate the penalty. These circumstances are of two types:

The first type is circumstances that lead to the punishment of the perpetrators to life imprisonment. These circumstances are mentioned in Article 327, which states: "Murder will be punished with life imprisonment if it is committed intentionally: 1. In preparation for, or facilitating, or implementing a misdemeanor, or facilitating the escape of the instigators, perpetrators, or perpetrators of that misdemeanor, or to prevent them from being punished. 2. On an employee during the exercise of his job or for what he performed by virtue of his job; 3. On more than one person. 4. The murdered person was brutally tortured before being killed."

The second type is the circumstances that make the perpetrator punishable by death. These circumstances are mentioned in Article 328 of the Penal Code, which states: "Murder shall be punished by death: 1. If it is committed with premeditation, it is called (deliberate murder); 2. If it is committed in preparation for, facilitating, or carrying out a crime, or to facilitate the escape of the instigators, perpetrators, or accomplices of that crime, or to prevent them from being punished; 3. If the criminal committed it, against one of his assets."

Third: The lenient penalty: The legislator decided to reduce the murder penalty to a level less than the ordinary penalty due to estimated circumstances related to the criminal and his psychology when committing the murder. Among these circumstances is what was stipulated in Article 331 of the Penal Code, which states: "If a woman causes as a result of a certain act or intentional abandonment the killing of her newborn, who is not more than one year old, in a way that required her to be sentenced to death, but the court was convinced that when she caused the death, she had not fully regained consciousness from the effects of the birth of the boy or because of the breastfeeding resulting from his birth, the death penalty would be replaced by imprisonment for a period not to be less than five years."

Also, the subject of this article is what is stated in Article 332 of the Penal Code, which stipulates: "A mother who, in order to avoid disgrace, causes, by intentional act or omission, the death of her child from incest after his birth shall be punished by imprisonment for a period not less than five years." This text raises many questions, particularly: What is the reason that made the legislator reduce the murder penalty in this case? What conditions must be met for this crime to occur? What is meant by newborn? What is meant by the term avoiding disgrace? This article will answer these questions by following the descriptive and analytical approach, by interpreting the text of Article 332 in accordance with legal interpretation principles, and by stating the opinion of jurisprudence and Judicial diligence (case law) on these questions.

Results and Discussion

It seems that the legislator reduced the murder crime penalty in this case, considering that the circumstances of this crime did not arise from the danger of the

criminal but rather were a result of personal or social considerations that made the mother choose the most appropriate path in her opinion (Nasr, 2013).

Jurisprudence says: "The wisdom of reducing the sentence due to this excuse is clear, because the psychological conditions that the mother who has become pregnant with an incestuous child goes through are harsh and stressful, as she is terrified of indignity and scandal at the beginning of this pregnancy, and this feeling worsens in her with the biological developments that affect her because of it.

Her psychological pressures reach their peak from the moment her baby sees the light, for her, it represents the fruit of a sin committed by her that is unforgivable by her family, the environment, or society, and she sees no way out in the light of this stressful psychological situation except to get rid of it in order to avoid the hindrances she will be exposed to if her matter is revealed. Thus, due to the fear of scandal and shame, the mother, with all her maternal feelings, kills her newborn. Hence, the legislator appreciated the difficult psychological circumstances due to which the mother performed this act in order to avoid shame and reduced her sentence for this reason" (Al-Qahwaji, 2010).

It is required that the murder be committed against the newborn after his or her birth, meaning that the subject of the crime must have been born alive, to begin with, and then the murder is subject to being within its full elements. The penal law does not usually provide definitions (Miqdad, Abu Issa, & Alwerikat, 2022; Abu Issa & Khater, 2023). So the law doesn't know what a newborn is, which is essential because it prevents us from applying this circumstance. The text also did not specify the period pertaining to the phrase (after birth), and this is also an important issue that should not be left unspecified. Jurisprudence has considered this issue to be a fact matter, and its determination should be left to the trial judge, as it is difficult to specify a precise time limit after which this crime will not be considered (Garraud, 2003).

Determining the time limit at which the description of the (newborn) ends is left to the judge to estimate on the basis of the reason for determining this mitigating circumstance, which is the fall of the mother who became pregnant by an incestuous person under the influence of psychological, biological, and social circumstances, resulting from her confronting face-to-face against the evidence of her fall and sin, is a matter that should be considered by him with some lenience. (Abu Amer, 1990).

The High Criminal Court followed the same track, except that it stipulated that the period be short, and it said in one of its decisions: "As for the time condition that the legislator referred to with the word (after), that is, the time period between birth and the act that caused death is short, and its assessment is up to the court in light of the fact that the legislator did not specify it." (Grand Criminal Court Decision 1384/2021, dated 24 January 2022).

In language, the word (newborn) means a newborn when he is immediately born (Ibn Manzur, 1999), male or female (Anis, 2004), and up to a week after his birth (Omar, 2008). Therefore, we believe that it is necessary to take into account the linguistic meaning and limit the period to one week only.

The killing of the newborn, as is clear from the text, must be through an intentional act or omission. The Jordanian Court of Cassation considered that this crime occurred when the mother left her newborn after placing it in an olive grove and it died due to leaving it in this way exposed to the cold (Criminal Cassation 53/1962, dated 10 July 1962) or by leaving the newborn without tying the umbilical cord (Criminal Cassation 319/2010, dated 22 April 2010; Criminal Cassation 1043/2011, dated 4 September 2011). Or by burying the newborn in the dirt after its birth (Criminal Cassation 228/1985, dated 27 November 1985), or by throwing it in a garbage container (Criminal Cassation 1072/2005, dated 5 September 2005), or slaughtering the newborn with a knife from its neck (Criminal Cassation 31/1986, dated 17 February 1986).

It is also required that the newborn be the result of the incest act, and incest has two implications, one legal and the other linguistic. According to the Penal Code, incest means the crime mentioned in Article 285, which deals with incest between relatives⁴, and this is not what is meant in this extenuating circumstance. The Court of Cassation is in favor of adopting the linguistic definition. For the word (incest), it decided the following:

"The meaning of incest in the *Almuejam Alwasit* is to establish an illegitimate relationship with a woman, and he fornicated with her as an incestuous person, establishing with her an illegitimate relationship without legal marriage, and it is said that they are in an incest relationship. Also, by referring to the text of paragraphs (a, b) of Article (285) of the Penal Code, we find that, they discussed incest between relatives, in-laws, and Mahrams, and between a person and another person subject to his legal authority other than these, which leads to the conclusion that what the legislator intended in incest is not limited to these people, but rather what is meant by it is (adultery) in its broad sense, which is the establishment of an illicit relationship without a legal marriage with the consent of both parties, between a man and a woman resulting in the woman becoming pregnant with an illegitimate child". (Criminal Cassation 2097/2009, dated 1 February 2010; Criminal Cassation 1254/2007, dated 4 November 2007).

⁴ Article 285 of the Penal Code stipulates the following:

a - Incest between ascendants and descendants, whether legitimate or illegitimate, and between brothers and sisters, brothers and sisters of the father or mother, or those of their status among in-laws and relatives. The perpetrator shall be punished with temporary labor for a period of not less than seven years.

b- Incest between a person and another person subject to his legal, legal or actual authority. The perpetrator shall be punished with temporary labor for a period of no less than five years. If the offender has guardianship over the victim, he shall be deprived of this guardianship.

However, it is often criticised that the Court of Cassation limited the meaning of the word (incest) to an illicit relationship with the consent of both parties, which means that this circumstance does not exist if the newborn results from rape. This is contrary to what jurisprudence has settled on: that this circumstance is present when killing any illegitimate child, whether it is the result of adultery or rape (Namur, 2013), in order to unite in the cause (Al-Jabour, 2012). The opinion of jurisprudence is the most appropriate to follow because the word “incest” mentioned in the text is an inaccurate translation of the word “*conçus hors mariage*” mentioned in the French text from which our legislation was taken. It means all cases in which a woman gives birth to children outside of legal marriage (Al-Fadil, 1965).

In order for this circumstance to be present, the motive for killing must be (avoiding disgrace), and this is the specific intent that must be present alongside the general intent (Alshible, 2023), and it is an implicit matter that the judge presumes from the evidence and circumstances surrounding the crime (Najm, 2003). If the motive is not to avoid disgrace, then this circumstance does not exist. Thus, the mother will not benefit if she does not pay attention to considerations of integrity and honour, such as a prostitute who gave birth to an illegitimate child, if the motive for the killing was lack of livelihood, or because the newborn was a girl (Al-Batrawi, 1999). Likewise, there is no motive for disgrace prevention if the mother declared her illegitimate pregnancy openly or bragged about it, or if the matter of her pregnancy and her sin became public and she defended it (Abu Amer, 1990).

Avoiding disgrace is not limited to a woman’s family only but extends to all members of society, including her husband if she is married, and this is what the Grand Criminal Court decided when it ruled the following:

"The accused only carried out her negative activity, which represented abandoning her newborn without cutting her umbilical cord. This was only to avoid shame, and this is not undermined by the fact that the accused had previously given birth in 2004 to a baby born as a result of illegal sexual intercourse in her family’s home, and her family knew of that previous incident. What is established from the investigation file includes her father’s statements about the previous incident in 2004. As he had asked the accused about the newborn, she told him that she did not know anything about what had stimulated her father at that time to inform the police, which indicates that by denying it, she believed that she would be saved from her previous action and that there is no evidence about her. On the other hand, her previous sinful act and her family’s knowledge of that do not certainly mean that the accused did not abandon her child, the subject of this case, to avoid disgrace. This last motive is not limited to her family only but extends to all members of society and to her husband, with whom she is still under his custody. In addition, the circumstances of this case and its circumstances, including her concealment of the incident of marital intercourse due to fear of her family, rationally support that

the accused decided to abandon her newborn without cutting her umbilical cord in order to end her life, but this was out of fear of disgrace". (Grand Criminal Court Decision 655/2010, dated 28 February 2011).

The murder must be committed by the mother, as this is a personal circumstance, and no other person, regardless of his capacity, benefits from it, even if his motive for the killing was to protect the mother from the disgrace scandal, just as the one who contributed with the mother to this crime does not benefit from this circumstance. Finally, the penalty for murder associated with the circumstances mentioned in Article 332 of the Penal Code is one pillar, which is detention for a period not less than five years, and according to the general rules, the maximum limit is twenty years.

Conclusions

Maternal infanticide in Jordan is a complex issue deeply rooted in the country's legal framework, cultural norms, and societal pressures. When looking closely at Article 332 of the Jordanian Penal Code, it was found to be somewhat unclear. This is because the terms used in it do not have a clear legal definition, which has led to a lot of different opinions and case law about what these terms mean. The term "*newborn*," the term "*avoidance of disgrace*," and the term "*after his birth*" are terms that carry several interpretations and meanings, so the legislator needs to clarify precisely what was meant by them.

This crime remains a felony and may reach the prescribed period for an ordinary murder penalty, although it differs in the type of punishment. The ordinary penalty for murder is labour and labour, according to the text of Article 18 of the Penal Code, is the work of the convict in labour that is appropriate to his health and age, whether within correction and rehabilitation centres or outside them. As for detention, it means placing the convict in a correctional and rehabilitation centre for the period he is sentenced to, granting him special treatment, not obliging him to wear an inmate's uniform, and not employing him in any work inside or outside the correctional and rehabilitation centre without his consent, in accordance with the text of Article 19 of the Penal Code. However, this reduction in the penalty is not consistent with the reason for the mitigation sought by the legislator, as the mother's killing of her newborn to avoid disgrace was aimed at not exposing her matter in society because of its negative effects on her life and future, and placing her in detention for a period that may reach twenty years will not achieve this goal, as her problem will be exposed in society as a result of her absence for a long period, so the legislator - if he wanted to adhere to mitigation circumstance - had to think of a societal punishment that achieves the purpose of mitigation. To address this problem effectively, a comprehensive approach that combines legal reforms, support services, awareness campaigns, and continued research is needed. Ultimately, the goal should be to prevent the tragic loss of innocent lives and provide mothers with better alternatives to escape the burden of disgrace.

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