

The Moral Element of Traffic Crimes in the Palestinian Legislation

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Abstract

This research aimed to investigate the moral element of traffic crimes in the Palestinian legislation. It mainly identified the legal framework regulating the moral element of traffic crime in its two forms: criminal intent and unintentional error. The research defined criminal intent and its presence in traffic crimes in the legislation in force in Palestine. It also explained the idea of unintentional error and its forms in traffic crimes in the Palestinian legislation. The descriptive analytical approach was used, and the results revealed that the punishment for committing crimes is linked to the moral element. Moreover, the moral element in traffic crimes has two forms: the intentional form represented by criminal intent, and the unintentional form represented by an unintentional error. The forms of unintentional error are represented by lack of caution, negligence, and violation of laws and regulations. They are consistent with the criminal and punitive provisions contained in the Palestinian Traffic Law.

Keywords: Criminal intent, unintentional error, negligence, lack of caution, violation, laws, regulations.

Introduction

Traffic crimes and their consequences represent not only a local or national problem in Palestine. Rather, it is a global problem that affects all world countries (Peden, 2004). Recently, deaths and serious injuries resulting from traffic accidents have become major problems that threaten the lives of residents. Over the past years, the rate of traffic accidents has increased significantly. This resulted in a sharp rise in serious injuries and death (Mohan, 2004).

In recent years, the number of cars on the street in Palestine, with different types and sizes, has increased. Consequently, the problem of traffic accidents has emerged significantly (Biswas, 2012), as they occur on a daily basis in Palestine. One of the most important reasons for these accidents is attributed to a violation of the law or committing a traffic crime (Rolison, et al., 2018).

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Traffic crimes are common in Palestine. These traffic violations or crimes in their various forms: driving while the traffic red light is on, exceeding the permitted speed, crossing a continuous dividing line, and other such violations that threaten human life and safety.

Investigating a traffic crime requires a high level of accuracy and much focus on the related laws and legislations. In this respect, the Palestinian legislator has given the issue of traffic regulation and its laws and regulations great attention. Significantly, the Palestinian Traffic Law No. (5) of 2000 was enacted (Qafisheh, (2014), in addition to many legislations regulating traffic and roads in general.

The issue of proving legal responsibility and investigation is the first priority that the Palestinian, Arab and international legislator has given great attention. This is due to the great effects it has on society. It is also due to the great importance it poses on the legal level by punishing the violator of the law and the perpetrator of the traffic crime. Thus, the legislator is concerned about giving everyone his right, and ensuring the continuity of civil and societal peace and security.

The problem of this study lies in explaining the legal framework regulating the moral element of traffic crime in Palestinian legislation. Therefore, the importance of this study lies in explaining the danger resulting from the purposes of justice, which are represented in preserving the rights guaranteed by the legislator and protected by law. Traffic crimes result in a set of very important rights and effects. Thus, adjudicating these crimes in the required manner requires the presence of sound legal procedures that examine the moral element when the crime is committed. This would achieve justice and equality, improve people's lives, and maintain justice and tranquility.

Furthermore, the importance of this topic lies in explaining the seriousness of the error in determining the moral element of the traffic crime. It is also evident through the benefit that accrues to society when the investigation is consistent with the basic goals set by the Palestinian legal legislation.

Thus, the current study seeks to investigate the moral element of traffic crimes in the Palestinian legislation. It ventures to identify the legal framework regulating the moral element of traffic crime in its two forms: criminal intent and unintentional error.

Research Questions

This study seeks to answer the following main question:

- What is the moral element of traffic crimes in the Palestinian legislation?

The following sub-questions are raised:

1. What is the legal framework regulating the moral element of traffic crime?
2. What is meant by criminal intent in traffic crimes? And is it considered by the Palestinian legislation?
3. What is meant by unintentional error and what are its forms in traffic crimes in the Palestinian legislation?

Literature Review

The material element alone is not sufficient to identify a traffic crime, whether the behavior is abstract, as in formal crimes, or the behavior that leads to a result prohibited by law, as is the case in material crimes. There must be a degree of sin and error, known as the moral element of the crime, which expresses the psychological state of the offender who carries out this behavior (Mohammed, 2023; Fandiño, et al., 2021; Albakova, et al., 2020).

The mere occurrence of the material element cannot be sufficient to prove the crime (Firkins, 2023; Vapniarchuk, et al., 2021), as the will and intention of the perpetrator must be present in committing this crime. The moral element represents the psychological basis behind the material element of the crime on which the imposition of punishment on the perpetrator of this crime is based (Al-Jbour, 2024).

It should be noted that the physical behavior that constitutes any crime, which involves muscular movement, is based on voluntary movement, which is the psychological element of the person who carries out the criminal behavior. The moral element is considered synonymous with the element of criminal wrongdoing (Maulana, 2024).

Punishing the offender in all penal legislation is linked to the presence of the moral element (Gacinya, 2024). When the will of the offender (perpetrator) is directed to violate the law by committing the criminal act and accepting the criminal result, he is considered a criminal and deserving of the legal punishment imposed on him to achieve justice and protect the interest of society (Firdaus, 2024).

The forms of criminal intent change in all crimes (Holmes, 2024), whether they are traffic crimes or otherwise, based on the change in the directions of human will by directing it in a manner that violates the law. These types may vary depending on the direction of the will to achieve the criminal result. Below we will explain these types and the extent of their application to the acts criminalized in the Palestinian Traffic Law and the regulations attached to it.

The general criminal intent, as we mentioned previously, is the desire to bring about the criminal incident and its constituent elements (Alfero & Rahayu, 2024), regardless of the goal that the offender wants to achieve.

Significantly, traffic crimes haunt the minds of scholars from different countries. In this respect, Rusdiana, et al. (2018) investigated the phenomenon in the Indonesian context. The study focused on Law No. 22 for the year 2009 concerning traffic and road transport. The results revealed that the traffic and road transport law does not meet the requirements as a law which contains the formulation of criminal law and is stated as part of over criminalization.

Gur-Arye (2017) examined the impact of moral panic on the criminal justice system. This case study mainly addressed hit-and-run traffic offenses. It significantly reveals that there is a relationship between the societal phenomenon of moral panic and the specific waves that it generates in the legal system.

Garrido, et al. (2018) shed light on the significant changes that have been applied to the regulation of criminal law concerning road traffic in Spain. Apart from this, Pamungkas, et al. (2020) stressed that through the application of strict criminal policy, there will be order, smoothness, security in road traffic and legal certainty and legal protection for road users.

Castillo-Manzano, et al. (2015) associated traffic crimes to the aggressive behaviour of individuals. The study concluded that road traffic fatality rates are higher in countries where the behavior of the inhabitants is more aggressive. Furthermore, Elvik (2006) noted that, as far as traffic violations are concerned, benefits obtained by committing violations of the law cannot be treated as a legitimate societal benefit.

Research Methodology

The descriptive analytical approach was used to explain the moral element and its forms in traffic crime. Moreover, the inductive approach was used by referring to specialized references and topics. These approaches were used to describe and analyze the moral element and its forms in relation to the Palestinian Traffic Law No. 5 of 2000. Therefore, the research includes two types of data: primary data and secondary data. The primary data is represented in the Palestinian Traffic Law, while the secondary data forms through theoretical basis of the research and it is collected from books and journal articles.

Results and Discussion

The results of this study reveal that the general intent exists when the offender intentionally commits the crime while knowing that he is committing a prohibited act, such as someone ignoring a traffic red signal (Pawlik, 2020). In this

regard, Article 98 of the Palestinian Traffic Law No. 5 of 2000 stipulates that a driver who ignores a red light will be fined 120 dinars or imprisoned for a period of not less than two months and not more than one year, or both penalties, according to the judge's discretion. The law here stipulates the criminalization of this act, regardless of the actor's goal or purpose for this behavior.

Contrastingly, the special criminal intent means that the offender's intention is to achieve a specific goal (Shawish, 2011, p. 318; Maculan, 2020). An example of this is when a person ignores a red traffic signal. But if a person ignores a red traffic signal with the intention of escaping from a policeman due to another violation, such as driving without a driver's license, for example, the specific intention here is to escape from the police, while the general intention is to ignore the traffic signal.

Here we refer to two types of criminal intent: specific criminal intent and non-specific criminal intent. The first type is the direction of the offender's will to achieve a specific criminal result (Salama, 1997, p. 377). The offender's intention here is a specific act, but it is a criminal act. The Palestinian Traffic Law criminalizes, in Article (116), the driver's possession of means indicating the presence of speed detection devices. It stipulates that "Without prejudice to the measures established in this law or any more severe penalty in any other law, the penalty shall be imprisonment for a period of not less than one month." It shall not exceed six months and a fine of one hundred dinars or its equivalent in the currency in circulation, or one of these two penalties, whoever possesses in the vehicle or uses in its devices that detect or warn of the locations of vehicle speed measuring devices used by the traffic police or affect their work. These shall also be seized devices, and the court orders their confiscation."

Contrastingly, the non-specific intent exists when the perpetrator carries out an act that could lead to many criminal results of a different nature and he can envision all these results, but he does not stop at one result (Bernardini, 1978, p. 429). The perpetrator's will tend to determine an unspecified result, but his action may lead to several unlimited results. Thus, he presents them without specification, and his action brings about several results in their legal meaning but not in their physical meaning.

It is urging to point out the direct intent and the probabilistic intent. The direct intent is the direction of the will in a certain, decisive manner to bring about the criminal result. This occurs when the perpetrator commits the criminal act while awaiting the outcome as inevitable. Will is the essential element of direct intent (Benham, 1971, p. 884). Examples of this include someone driving a vehicle without the permission of its owner, and without holding a driving license that allows him to drive the same type of vehicle. The Palestinian Traffic Law

stipulates in Article (102) that anyone who drives a vehicle without the permission of its owner and without holding a valid driver's license permitting the driving of a vehicle of the same type shall be effectively deprived of holding or obtaining a driver's license for a period of not less than three years, in addition to any other penalty imposed by the court.

Contrastingly, the probabilistic intent is the offender's expectation of criminal outcomes and his acceptance of their occurrence. It is based on the elements of knowledge and will, as is the case with direct intent. The difference between them relates to the way the will is directed. Thus, the direct intention, as we mentioned, is where the will is directed to achieve the result directly. Contrastingly, the probabilistic intention implies that the result is not certain. It is possible for it to happen, and it is possible for it not to happen (Jassem, 2005, p. 30). We believe that the probabilistic intention is clear in those who violated the law with a specific crime and this crime led to an accident. This is what is stated in the text of the Palestinian Traffic Law in Article (104) that "If a person is convicted of committing one of the crimes mentioned in Article (98) of this law that led to a road accident that resulted in the injury of a person or damage to property, he shall be punished by being deprived of obtaining a driver's license or from possessing it for a period not less than three months and not exceeding six months. If he commits it again within two years from the date of his conviction, he will be deprived of it for a period of not less than one year and not exceeding two years in addition to every other penalty determined by the law. We note here that the probabilistic intent is clear in that the basic violation results in another prohibition; the accident which might not have happened, but it did.

There are other categories of intent, simple intent and premeditated intent. The first type is defined as the time interval during which the offender made his decision to commit the crime and carried it out without time passing between the decision and implementation (Khalaf, 2004, p. 31).

An example of the simple intent is someone who was driving his car on the street, and suddenly bored by the traffic jam. Then he drove in the other lane, opposite the direction of traffic allowed in it. As for premeditation, it is his determined thinking about committing the crime before it is carried out, away from an immediate outburst of anger or psychological agitation (2004, p. 31). A good example of this is what Article (98) stipulates in its fourth paragraph regarding driving a vehicle without a license and repeating this crime. The culprit here is taking enough time and thinking enough to act.

It is worth noting here the mistake, which is the form of the moral element in unintentional crimes. The principle is that the legislator specifies in the text the form of the moral element in every crime. If the legislator is silent about stating

this, it means that it assumes the presence of criminal intent. The rule stipulates that crimes must be intentional, and the exception is that they are not intentional. But there is no error without a text (Mahdi, 1985, p. 200). The Jordanian legislator in the penal code applicable in Palestine did not define a mistake, but rather limited himself to mentioning some specific forms of it. This was stated in the General Provisions section under the title "On the Moral Element of the Crime," and the last phrase of Article (64) of the Jordanian Penal Code states that "a fault occurs if the harmful act results from negligence, lack of caution, or failure to observe regulations." Then, these types were mentioned in the special section of the Penal Code regarding crimes of unintentional murder and harm, as it was stated in Article (343) of the Jordanian Penal Code that "Whoever causes the death of someone due to negligence, lack of caution, or failure to observe the laws and regulations shall be punished by imprisonment for a period of six months to three years" (2012, p. 412).

Unintentional error is defined as "a person's failure to fulfill the duties of caution imposed by the law, whether it takes the form of negligence, lack of caution, or failure to observe the laws and regulations, and does not, accordingly, prevent his behavior from leading to the occurrence of the criminal result, whether he did not expect it and has a duty to expect it, or he expected it but calculated that he could avoid it (1998, p. 431).

Others defined it as a breach of the duties of caution and attention (Salem, 1984, p. 80), as described by the rules of conduct in protection, or as dictated by the rules of the law, (AbdulSattar, 1977, p. 14). Based on the previous definition of an unintentional error, which turned out to be merely a breach of the duties of caution, caution is not enough to prevent a mistake, but there must be a psychological relationship between the will of the offender and the criminal outcome (Abu Afifa, 2012, p. 80). Some jurists support the definition which considers an unintended error as the will to conduct that results in illegal consequences that the actor did not expect if they were expected or he expected them and only that he could avoid them.

What supports this jurisprudential opinion is that the direction of the will towards criminal behavior is consistent with the criminal intent and the unintentional error. In each case, the offender's will must be directed towards the criminal behaviour, and the direction of the will towards the behavior includes knowledge of it. In this respect, not accepting the occurrence of the result is what distinguishes the unintentional error from criminal intent, and criminal intent is based on the will towards the criminal result in the form of resolve and determination or in the form of consent and acceptance of it if it occurs.

Conclusion

Most international legislation studies the basic psychological motivation of the offender now of committing the crime. This is because understanding the psychological state of the offender represents a benefit that may cause the judiciary to increase or cancel the punishment for the offender. It is inconceivable that the persistent offender would be punished with the same penalty as the perpetrator who did not intend or want to commit the crime. Rather, circumstances occurred that resulted from an error in judgment and the possibility of avoiding the outcome of that act.

The legislator does not intend to implement punishment, nor does it intend revenge when it imposes the punishment or the aggravating circumstances resulting from the commission of the act. Rather, the general intention of the legislator is to create a general deterrent situation in which society refrains from daring to violate the rules of the law. Since traffic crime is one of the crimes that Palestinian society suffers from, the public authorities have paid much attention to the traffic sector. In this regard, the Palestinian Public Prosecution established a specialized unit called the Traffic Crimes Prosecution to combat traffic crimes. Accordingly, this research found that it is not possible to suffice with the mere occurrence of the material element to prove the crime. Rather, the will and intention of the perpetrator must be present in committing the crime. The moral element represents the psychological foundation behind the material element of the crime, which can be relied upon to implement punishment against the perpetrator of the crime.

Punishing the offender in all penal legislation is linked to the presence of the moral element, as when the will of the offender (perpetrator) is directed to violate the law by committing the criminal act and accepting the criminal result. In this case, he is considered a criminal and deserving of legal punishment, in order to achieve justice and protect the interest of society. Determining the criminal intent is important in proving the extent of people's criminal responsibility, whether in traffic crimes or otherwise. Furthermore, the moral element in traffic crimes has two forms: the intentional form, which is criminal intent, and the unintentional form based on a mistake.

Forms of unintentional error, represented by negligence, lack of caution, and violation of laws and regulations, are in line with the criminal provisions contained in the Palestinian Traffic Law. The same law was keen to stipulate the necessary penalties in the event of its commission.

Recommendations

This study recommends the following:

- Giving the moral element of crimes special importance in the draft of the Palestinian Penal Code. This can be done through clarifying the forms of criminal intent and error.
- Intensifying the mobilization and educational efforts of the Palestinian Public Prosecution (Traffic Crimes Prosecution) to educate drivers about the dangers of lack of caution and negligence in achieving a criminal result.
- The procedures for granting driving licenses should also be tightened by subjecting new drivers to high-level courses and skills, especially with regard to legal systems and proper methods for dealing with roads and vehicles. This should be done in a way that is commensurate with reducing the number of traffic crimes
- Intensifying the penalty in the event of repeated commission of a traffic crime, especially in the case that the offender's criminal intent to commit is evident.

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