

# RELATIVES' OBLIGATORY TESTIMONY TO DEFENCE THE ACCUSED ACCORDING TO THE JORDANIAN CRIMINAL PROCEDURE CODE

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## ABSTRACT

*This research devoted to discuss the relatives' obligatory testimony to defence the accused according to the provision of the Jordanian criminal procedure code. Accordingly, this research aims to illuminate the legislator approach to balance the conflicting interests in this case, in the same time to set a clear understanding of the justifications of this legislative approach, in addition to examine the effects of such obligatory testimony, in the context of criminal proceeding.*

*To achieve the desired goal, descriptive and analytical approach was adopted, consequently, it could be concluded, that the legislator relied on making testimony between ascendants, descendants and husbands in this way, on a number of justifications, including those that serve the interest of the accused or suspects by enabling him From defending himself and not robbing him of that right, including what is decided to preserve and document family ties.*

*Ultimately, this study suggested that the legislator should explicitly stipulate the issue of Relatives' Obligatory testimony to defense of the accused, either in a special text or by adding a paragraph to the text of Article 154 of Jordanian Criminal Procedure Code.*

**Keywords:** Obligatory, Compulsion, Testimony, Defense, Relatives

## INTRODUCTION

The judiciary cannot reveal the truth in any crime, and pass a judgment in it unless there is clear evidence based on it; Evidence is the basis on which the judge relies in issuing judicial rulings, especially in criminal cases, whether judgments of conviction or innocence, or lack of responsibility.

The means of criminal proof are many and varied, and all of them play an important role in revealing the truth that the judge is looking for in the incident in his hands, and these means are old and of historical origins known to all, and some of them are modern with a contemporary origin, such as those related to modern scientific techniques.

Despite the tremendous scientific progress in the field of criminal investigation and the recent scientific inventions produced by technology that have effectively contributed and contribute to revealing the truth of many crimes, testimony as a means of criminal proof remains the most important for the judiciary. Because it is represented by the human element (the witness), it gives the judge a greater perception of the crime, as if he is watching it with his eyes and hearing it with his ears. Abu Al-Roos & Ahmed (2005)

This great importance of the testimony gave the penal legislator, in most legislation, a sufficient justification to make its performance binding on everyone who was summoned to it, considering that whoever fails to do so is in violation of the law, which is something that no one may be able to say otherwise, but the matter that may be questioned is The extent to which compulsion of the witness to give testimony agrees with what should be achieved of the need to preserve family ties between the witness in his testimony in defense of his parent relative, descendant or spouse.

Accordingly, the talk came in the first requirement of this research about the most important justifications on which the penal legislator relied and adhered to in forcing the testimony between the relatives mentioned in the text of Article (154) of the Code of Criminal Procedure in defense of each other, and the second requirement was devoted to the hadith For the effect that may result from this compulsion, whether with regard to the testimony or the witness himself.

So, we can say that the problem of this research revolves around the penal legislator making the testimony between relatives (ancestors, descendants and spouses) in defense of each other or partners of any of them in the same accusation as a matter of compulsion and not to make it a matter of choice as in their testimony against each other, according to what It was stated in the text of Article (154) of the Code of Criminal Procedure.

Accordingly, the central question that this research attempts to answer is about the legislator's goal of forcing a nearby witness to testify in defense of his relative (parent, descendant, or spouse) or partner of any of them in the same accusation and not giving him the option to do so, and what is the effect of this Forcing in the criminal case? And thus to show the efficacy of this legislative approach to achieve the desired goals.

Based on the foregoing, the hypothesis of this study is that the expected answer to the questions raised in the problem is that the penal legislator wanted to make the testimony between the ascendants, descendants and spouses in defense of each other or partners of any of them in the same accusation in this form (force), due in Its basis is his keenness to strengthen the family ties between these groups, and to emphasize the principle of the right to defense and the need to maintain and preserve it in the criminal case. The importance of this stems from the fact that despite the great role that testimony plays in building criminal judgments, there is another issue that deserves the attention of the penal legislator, which is the issue of preserving family relations between relatives in their testimony in defense of each other, and at the same time looking at the need to preserve the sanctity of The right to defense and its importance.

To achieve the desired goal of this research, the descriptive and analytical approach was adopted to research this topic; As the nature of this study requires stopping at the relevant legal texts, knowing the jurisprudential opinions and judicial rulings related to the subject of the research, analyzing them properly, and reaching through them to the desired results. Therefore, and based on the binary division method, this research was divided into two main demands, the first was the discussion of the most important justifications on which the legislator relied in forcing the testimony between relatives, and the second was searched through the most important effects left by that compulsion on the criminal case, whether Regarding the psychology of the witness or regarding the validity of the testimony.

## **THE FIRST REQUIREMENT**

### **The Reason for Forcing the Testimony Because of Family Ties**

First of all, and before talking about the compulsion stipulated in Article (154) of the Code of Criminal Procedure, it must be said that the criterion that can be relied upon in determining whether this or that testimony is a testimony against the accused or suspect or a testimony in his favour (defense testimony) is a formal, not subjective criterion; If the witness whose name will be heard by the court has been mentioned among the evidence of the Public Prosecution, then his testimony is a testimony whose purpose is to prove and therefore a testimony against the accused or suspect. It is called a defense testimony, and nothing changes the matter if the court is the one who asked to hear the witness on its own, according to its authority to do so. The criterion for differentiation and distinction between both types of testimony remains a formal criterion as well. So that if the court summoned the witness was at the stage of the prosecution, we are going to talk about the testimony of the opposite, even

if that witness was not named by the Public Prosecution in the list of witnesses, while if it summoned him in the second stage of the trial, which is the stage of defending the accused Or the suspect, we are going to talk about a defense testimony even if the accused or his representative was not the one who named that witness.

Saying that giving the witness the option to testify against his relative in the opposite testimony aims primarily to preserve family ties, then this undoubtedly means that forcing the witness to testify in defense of his relative will lead to the same result; As this compulsion and lack of choice will work - and in the sense of violation - to strengthen those family and marital relations and tighten the bonds of friendship and love between its members.

Nevertheless, we cannot stop at this point and say that the legislator relied on this justification only to compel the testimony between these groups. Thus, declaring the need to achieve a balance between what should be done in order to prove the guilt of the accused and what is required by the humanitarian aspects and the rules of justice to enable him and give him the opportunity to deny the charges attributed to him, taking into account the need to benefit from every part of that testimony which may be performed in his defense, and within it is what allows the court to adhere to it to prove the fact.

On this basis, the discussion in the first section will be about coercion decided to protect the right of defense, and then move on to talk in the second section about the compulsion established for proof (conviction).

### **Section One: Protecting the Right of Defence**

One of the established and undisputed rules in penal legislation is that the accused is innocent until his guilt is proven conclusively(), and in consequence, if the public interest in any penal legislation necessitates making every effort to verify the accusation against the accused and inflicting a just and appropriate punishment on him, This does not exempt her from the obligation to give him an adequate opportunity to defend himself by all available legal methods, so that in the result and before any judicial ruling is issued a real equality between the public interest of society from this punishment and the interest of the accused in defending himself, one of these interests does not override the other. or bully them.

There have been many definitions that clarify the concept of the right of defense. Some jurists define it as: giving the accused the full opportunity to prove the opposite of the charges attributed to him, either by overthrowing the evidence and proving its incorrectness, or by finding opposite evidence that contradicts that evidence and leads to the accused's innocence, And some of them defined this right: those activities and practices that the accused performs in self-defense by expressing his opinion on the incorrectness of the charges against him, so that he practices these actions or activities by himself or through his lawyer, and among the jurists who defined the right to defense in its narrow sense, which is to enable The accused may seek the assistance of a lawyer to defend him in the criminal case before the judiciary.

This right is considered one of the legal guarantees stipulated by the penal legislator and guaranteed to the accused in the criminal case to be able by himself or through his lawyer to defend himself, as the legislator stipulated this right in many legal texts (), and this right is one of the legal rights and guarantees that She received great attention in court decisions and jurisprudence, especially those issued by the Court of Cassation; Confirming and emphasizing the importance of exercising this right in the criminal case and the need for the court in order to achieve this to make all efforts and not to relax in any legal demand requested by the accused or his representative, and accordingly, it was decided, among those jurisprudence, that the trial court should hear the defense witnesses requested by the accused And not to invoke the inability to do so for any reason, even if this leads to a delay in deciding the case.

As for the importance of the right of defense in the criminal case, it is possible to argue with the validity of what a significant aspect of jurisprudence has stated that the importance of adhering to this right and the need to implement it and not violate it in any way reflect positively on the reality of the case in general and not only on the accused; So that the judge can, through what the Public Prosecution put forward and the evidence shown before him, and the defenses and counter evidence raised by the accused or his agent, understand the facts of the case and take a full perception of it and thus his ability to issue the appropriate decision. The interest of justice through the fair decisions issued by the court, which necessarily reflect on the security and stability of society through the feeling of its components of confidence in the judicial procedures as a result of their real participation in those rulings through the right of deafens.

This right is not considered exclusively in one stage without the other in the criminal case. Rather, it appears in both stages: the stage of the preliminary investigation and the stage of the final investigation. With regard to the stage of the preliminary investigation, we see it evident in many texts, such as the right of the defendant with the assistance of a lawyer(), and His or his representative has the right to review all investigation work except for the statements of witnesses and under pain of nullity of that interrogation(), as well as the necessity for the public prosecutor to seek clarification from the defendant in every interrogation following the first interrogation of his continued consent to answer without the presence of a lawyer and under the nullity of that subsequent interrogation.

Among the manifestations of the application of this right at the trial stage is the necessity for the accused to attend the trial procedures , and the legislator also requires the presence of a lawyer with the accused in criminal offenses, as well as not forcing him to answer the questions directed to him by the court and to decide his right and freedom to remain silent and consider This is a clear indication from him that he did not admit the accusation against him, and other manifestations of the application of this right in both stages, which the place does not have room to detail.

The Jordanian constitution has taken care of the right of defense. Although it is devoid of any text explicitly referring to this right, this does not mean at all that it neglects this right and does not pay attention to it; As Article (97) of Chapter VII of it affirms that judges have no authority over them except the law, and therefore we can say that this text constitutes a general principle that guarantees everyone the rights of litigation within fair legal standards that take into account the accused's access to all his rights, including his right to defense About himself, which is something that most countries have been keen to implement in their legislation and have been guaranteed by international charters and resolutions.

Testimony as a means of defense is one of those ways in which the accused can avert the punishment from himself or at least lessen its impact on him, as if the purpose of that testimony is not to completely deny the accusation against that accused, but perhaps to prove that his perpetration of that crime was not planning and insistence. beforehand or that he had committed it in self-defence , for example, and thus preventing the application of the most severe punishment against him, as testimony is the most powerful weapon for the Public Prosecution in which it adheres to prove the accusation against the accused, and at the same time it is also an effective weapon that the accused adheres to to deny attribution to him and defend through it For himself, the legislator has given in the previous text (Article 154 penal assets) and clearly the right to the accused or suspect to call as many witnesses as he wants to defend him in the accusation against him, even if these witnesses are one of his ascendants, descendants or even his spouse, if the legislator He wanted to not accept the testimony of these groups for what he mentioned originally, or perhaps he explicitly stipulated not accepting their certificates or giving them the option to do so, as he did in their testimonies against each other as mentioned in the text of Article (153) of the same law previously mentioned.

The legislator's provision for calling ascendants, descendants and spouses to testify in defense of the accused or suspect confirms that violating this provision by not appearing or refraining from such testimony for the witness who is called to defend the accused or suspect will expose him - even if he is a parent, descendant or spouse - to the prescribed penalty. Which confirms the extent of the legislator's keenness on the right of defense and adherence to it in the criminal case, as it is one of the aspects of justice, and his prioritization of this right over the private interest of the witness himself, who may experience some kind of hesitation in attending to testify, either because of fear of falling into perjury because he is affected by his emotions, or perhaps due to his unwillingness to defend his relative, as if the accused or suspect was a previous spouse to him, the family relationship between them ended and there were no longer feelings that united them.

On this basis, when a relative witness comes to the court to hear his defensive testimony on behalf of his accused or suspected relative, all provisions of special testimony and its procedures for the defense will apply to him, whether in terms of the obligation to take the oath or in terms of the possibility of its being discussed by the Public Prosecution or the court. These judgments and procedures are near the witness to the accused or the suspect, and the court may take what it is convinced of from this testimony and leave the rest, and it is not permissible in any way - as long as it is consistent and supportive of the rest of the evidence and close to it - to put it aside and not care about it on the pretext that it is composed Relatives of the accused or suspect.

Based on that, what the legislator has done to compel a nearby witness to testify in defense of his accused relative (parent, descendant or spouse) cannot be considered a legislative contradiction with what is stated in the provisions of Article (153) of the same law, which speaks of the testimony of the opposite between the same ones. categories; The objective here of compulsion is to preserve the right of defence, which aims to achieve the private interest through what it performs of strengthening and documenting those family ties between the witness and his relative, the accused or suspect, on the one hand, and through what he achieves from a fair and impartial trial on the other. This fair trial also results in the achievement of the public interest, which is the upgrading of judicial procedures and rulings to reach the highest levels of justice to which everyone aspires. On the one hand, and their harmony on the other hand, with the supreme rules whose features are drawn by the constitution and confirmed by international charters and resolutions, so that the legislator cannot deviate from all these facts and goes against the trend by giving the option to the near witness to testify in defense of his relative instead of forcing him to do so.

### **The Compulsion Decided to Protect the Interest of Society to Reform the Accused through Conviction**

The penal legislator, in regulating the issue of testimony between relatives (ancestors, descendants, and spouses) against each other or even against the partner of any of them in the same accusation, gave them the choice in that testimony and did not force them to perform it, based in his approach on a number of justifications, whether those related to the public interest or private interest, then he returned and in the context of his speech and organization of the issue and allowed the court to rely on the statements made by the nearby witness in defense of his accused or suspect relative (parent, branch or spouse) to convict him and prove the accusation against him, through what information may be included in that testimony indicating that to his connection with the accusation.

Reliance on defense witnesses' statements in convicting the accused or suspect is not generally considered surprising or disapproving. Access to justice and revealing the truth through the statements of the witness, regardless of his position (defense witness or proof witness) makes us believe in the validity and legality of this procedure, but the strangeness according to the text of Article 154 of the Code of Criminal Procedure lies in the fact that the

defense witness here is of a special nature and is a relative of the accused Or the suspect, who is related to him by the link of origin, branch or marital relations, as this social characteristic in the witness is originally a matter of interest by the penal legislator.

Article (154) of the Code of Criminal Procedure states: (If any of the ascendants of the accused, the suspect, his descendants, or his spouse are summoned to testify in his defense, the testimony given in the aforementioned manner, whether in the interrogation or in the discussion of the public prosecutor, may be relied upon in proving the guilt ascribed to the accused or suspect), and accordingly, the question raised by this text revolves primarily around the legality of the court establishing the guilt against the accused or suspect through the testimony of his relative, which he performs in his defense. Testifying against his relative on the grounds that the defense's testimony does not have the option - as in the testimony of the opposite - which is in contradiction with what was stated in Article (153) of the same law, especially if we also recognized that the court has the right to summon any witness for the defense in which it finds what serves the case and the hearing. Him to show the truth?

In order to be able to answer this question, we must first know the concept of criminal legality, and the extent of the legislator's commitment to this principle in approving the text of Article (154) of the Code of Criminal Procedure in this way?

The principle of legality in law - in general - means conformity of actions with the legal texts regulating them and the subjection of everyone to the provisions of the law. This concept in criminal law - in particular - is the commitment to the provisions of the law, whether punitive or procedural, that are followed from the moment the crime occurred until the issuance of a final judgment in it, so that they agree These procedures are with the texts regulating them and do not deviate from them (), and some believe that the judiciary, in accordance with this concept of the principle of criminal legality, must comply well, while obtaining evidence, with the prevailing legal rules in the local community of the state, as well as the global legal rules of the contemporary international community as a whole. The penal legislator has explicitly stipulated this principle in Article 3 of the Penal Code.

The aim of the criminal court in any case it considers is to reveal the truth and reach it with all the legitimate legal means it possesses. The suspect or the agent of either of them, so that she collects the evidence of the proof and the evidence of the negation between her hands, to then weigh them in order to reach what she is reassured of about the truth that will be the basis for constructing the judgment that will be issued by her. The Court of Cassation confirmed this by saying:

“Judicial jurisprudence is stable that access to and revealing the truth is the purpose of the trial procedures, and exhausting all means of evidence to achieve this end is one of the court's duties, whether through clarification in accordance with Article (221/2) of the Code of Criminal Procedure or by automatic summons. Witnesses in accordance with Article (226/1) of the same law or at the request of one of the parties. Therefore, the omission of the Court of Appeal to hear the main witness in the case and whose testimony he relies on in establishing or denying the crime against the accused violates the law and requires cassation in accordance with the provisions of Article (274/1b), p) of the Code of Criminal Procedure”

The Public Prosecution assumes its responsibility to prove the accusation it has assigned to the accused or suspect, with all its legitimate means and means, including the statements of witnesses, and accordingly and in compliance with the necessity of legality of evidence, it does not include in its list of witnesses (evidence witnesses) any witness close to the accused or suspect (original Or a branch or spouse) unless he had accepted himself and chose to testify against his relative, adhering to the provisions of Article (153) of the Code of Criminal Procedure, but in order to reveal the truth, it has the right to discuss witnesses, whether prosecution witnesses or defense witnesses, and to direct questions to them Through the court, within the limits of the issues raised by their testimonies, as the legislator obligated the court to do so by providing the Public Prosecution with an opportunity and enabling it to defend the validity of its claim against the accused or suspect(), thus the Public Prosecution

asking questions to the nearby defense witness is not considered a contradiction or infringement. She has her powers related to witnesses, but it is part of her work and her duty to prove the validity of her claim against the accused or suspect, and so that it is not said at the end of the case that the Public Prosecution has failed to prove.

As for the court, the legislator has also granted it, in all cases, the right to question witnesses in order to reach everything it deems necessary to reveal the truth(), and therefore what the court concludes from these clarifications and what it concludes from the Public Prosecution's discussion of the defense witness will undoubtedly affect its conviction and play a role. In its decision to judge, it will also be committed to the principle of legality of evidence, which is part of the legality of criminal procedures in general; The court will ask the defense witness about the matters he touched on and their effects in his testimony in which he defends his relative, the accused or the suspect, and according to the facts of the case, and it is in this way and in order to form its conviction and when it relied in its condemnation of the accused or the suspect on the statements of one of the defense witnesses or part of those statements. It has complied with the provisions of Article (147/2) of the Code of Criminal Procedure, which allows it to issue a judgment of conviction based on the statements of a defense witness, even if he is the parent, offspring, or spouse of the accused or suspect.

Accordingly, the legislator, in approving this principle - the possibility of convicting the accused or suspect through the testimony of the defense performed by his relative - has adhered to the principle of criminal legality and took into account well what is required by the public interest of society in revealing and accessing the truth, so that he did not give priority to the private interest of the family and the preservation of the relationship. What is between the witness and his relative, the accused or the suspect, is in the public interest, but he looked at the issue in a comprehensive and balanced manner, and without this matter being any violation or prejudice to the right of defense that was previously discussed; The right of defense and its sanctity make it imperative for the court to compel the witness to attend and testify in defense of his relative, and at the same time, the witness is not permitted in any way to lie in his testimony in order to acquit his relative. Lying, and therefore the court's reliance on these statements is in the service of the case in general and with the aim of arriving at the truth without discrimination as to whether these statements are in the interest of the accused or suspect or vice versa.

basing on this ; Based on the data that was mentioned, if one of the relatives of the accused or suspect (parent, branch or spouse) was called to testify against his relative and he refrained from giving it in accordance with the right granted by the legislator, and during the hearing of the defense witnesses, the court deemed it necessary to listen to him because it was convinced that he had information. It may help in denying the accusation against his relative so that he was forced to give a defensive testimony because he does not have the right to abstain. This reliance on these statements is considered sound and in agreement with what is stated in Article (153) of the same law. It does not contradict or destroy the purpose for which it was decided to grant the nearby witness this right to abstain; The legislator has sought from behind this text (154) of the Code of Criminal Procedure and made it in this way to emphasize the manifestation of the truth that serves his accused or suspected relative and serves society at the same time, and to reach what can be reached in terms of achieving justice and without the slightest contradiction or conflict with What is stated in other legal texts regulating this issue.

Based on the foregoing, it can be said that what supports the validity of the principle approved by the legislator in relying on the statements of the defense witness in the possibility of convicting his accused or suspect relative and without the presence of that conflict or prejudice to the principle of legality, that testimony as evidence of criminal proof is one of the persuasive evidence that At the end of the road, it will be subject to the discretionary authority of the judge, so that the court will take from it what it is comfortable

with, and put the rest on the grounds that the criminal judge must have absolute authority in building the judgment based on adherence to the provisions of the law (), this guarantee is one of the guarantees of testimony (the principle of conviction). sentimental), which was previously discussed in some detail, confirms the legality of relying on the statements of defense witnesses relatives (origins, descendants or spouses) in proving the accusation without this causing any disruption in the consistency of the legal texts regulating this issue in general (the issue of testimony between Relatives in the defense and in the evidence), and what supports and also supports this is that the court, in its reliance on the statements of the defense witness or part of them in convicting the accused or the suspect, even if he is a relative of him, has already committed itself to its judicial and moral duty towards the society; As it is unreasonable for the court to close its eyes and close its ears to a part that came from the statements of a defense witness in which it indicated what could be a reason for convicting the accused. Indeed, the validity of the verdict that will be issued by her, she cannot ignore part of the statements of the defense witness if there is something that incriminates his relative, the accused or the suspect, on the pretext of preserving family ties between them.

In the same context, it can be argued that what is stipulated in some penal legislation regarding wasting any part contained in the statements of the nearby defense witness, in which what condemns the accused or the suspect and does not take them, is nothing but an exaggeration of the right of defense and a preference for him and the private interest in general over the importance of the investigation And on the most important and best protected interest, which is the interest of society in revealing the truth and punishing the offender (). Returning to the previous text (Article 154 penal assets), it can be concluded that this justification related to compulsion for the purpose of conviction is an exception to the general principle for which compulsion was legislated according to this text. In order to preserve the public interest represented in arriving at the truth, he stipulated the possibility of using that testimony to convict the accused or the suspect who is close to the witness, and in this matter (providing the possibility of conviction through defense testimony), he has already taken into account well that forcing him to the nearby witness to bear witness for the benefit of his relative, not only for defense, but for the service of the cause and the possibility of arriving at the truth in general, and without any contradiction with the human tendency he was keen on in organizing the issue.

While acknowledging the validity of what the legislator reached in forcing a nearby witness to testify in defense of his relative, and the possibility of reliance on these statements in the condemnation despite the presence of that social quality between them, this does not exempt from researching the effects that this compulsion may leave in the testimony in general on The criminal case, whether it relates to the psychology of the witness or the effects that may result from the validity of the testimony in general and the possibility of its invalidity and not being taken into account as a result of that compulsion, and accordingly, the talk in the next requirement of this study will be devoted to researching the effects of compulsion to perform testimony approved by the legislator in a text Article (154) of the Code of Criminal Procedure.

## **THE SECOND REQUIREMENT**

### **The Effect of Compulsion to Testify Due to Family Ties**

It may come to the reader's mind in the text of Article (154) of the Code of Criminal Procedure that the legislator, in regulating the issue of testimony between relatives in defense of each other in this way, has neglected a large part of the important aspects in it, which is the psychological aspect and the impact that compulsion may have a great deal on the psyche of the witness, and thus detracting from the role of this testimony in resolving the criminal case,

through the confusion that this compulsion may cause to the witness in his testimony in defense of his relative, especially if that testimony carries with it what may incriminate his accused or suspected relative, It may also occur to the reader that this compulsion to testify is nothing but coercion of the witness and thus causes the testimony to be invalid and invalid.

On that basis, and until the picture becomes completely clear, along with what was mentioned in the previous section, and then we can reach the truth that the penal legislator wanted from this compulsion and the extent of his success in that, and accordingly, the talk about the effect of this compulsion on the witness himself will be in The first branch, and then talk about its impact on the validity of the testimony in general in the second branch.

### **Section One: The Effect on the Psyche of the Witness**

It is agreed that man, by nature and instinct, tends to love helping others, especially the people close to him, such as his origins, his branches, and his spouse. Which are directed towards things or people per se, such as emotions related to the love of the mother, father or children, and moral emotions such as the love of good and hatred of evil ().

On this basis, when a person is called to testify in defense of his accused or suspected relative, he will often work to respond to the call and go directly to testify in defense of his relative, and he will not wait for the court to compel him to do so. Desiring to save him or mitigate as much as he can from the burden and impact of the accusation against him, but by looking at the issue on the other hand, we may arrive at the fact that this witness may try, and for the same purpose, which is to defend his relative, to stay away from the case in any way of shapes; This is because he is fully aware that what he may make before the court body may destroy and harm the interest of his accused or suspected relative and negatively affect the trial proceedings.

In this regard, it can be said that it is prevalent in criminal psychology () that there are various factors that greatly affect the psyche of the witness, and that his statements are originally nothing but an expression of what is going on inside him of a mental perception of the incident in which he will testify, and these factors affect In his psyche, including those related to his person such as his age, gender, health condition, culture and mental abilities (intelligence), and some are considered special factors that are mostly emanating from sources outside his control, such as factors and influences related to customs and traditions, or those related to his feelings and feelings towards the parties to the criminal case The feelings and feelings of the witness towards his accused or suspected relative will undoubtedly affect his statements, as when he realizes that his statements will have a great effect on denying the accusation against his relative, he will not hesitate to say everything he has; Feeling his duty towards him and his desire to serve justice, but when he suspects that the information he possesses about the incident may help prove the accusation against his relative, this may push him to distort the truth, especially if another witness was heard before him who is also close to the accused Or the presumed ones, so that this testimony will push him not to cause that near witness, such as the father, husband or son, for example, with embarrassment as a result of his statements contradicting the statements of that witness ().

In this way, and believing in the great role played by the motive of passion and being influenced by the family bond, whether the marital bond between the witness and the accused or the suspect, or the bond of the offspring or the origin, we can say that forcing the witness to testify in defense of his relative in accordance with the text of Article (154) of the Law of Origins Criminal trials may have a positive effect on his psyche, so that he will feel through the insistence of the court to hear his testimony and compel him to do so instead of preventing him or choosing him, his role and his place in saving his relative and serving him to justice, and not depriving him of performing it on the pretext of kinship between them, and that this positive feeling The witness will undoubtedly affect the course of the investigation in the court, by invoking a large part of the truth that he may have. He will experience fear and

anxiety if he performs that testimony in which there will be some harm to his relative, so that it is a cause for lack of optimism and a bad omen for him; Forcing him to testify in defense of his relative knowing full well that he has information that may harm him from near or far, and he is fully aware that the text of Article (154) of the Code of Criminal Procedure allows the court to use and record his statements against his accused or suspected relative, and that it may lead to a judgment Conviction instead of innocence, may be a reason to charge him with perjury and fall into it, especially if those feelings and emotions dominated him and began to move away in his testimony from the truth, for the witness, according to this compulsion, has fallen between two options, both of which are passed: telling the truth as it is, which means Harming his relative, or perjury, which means harming him himself and punishing him, so that his position turns from a witness defending his relative to a criminal who forges the facts and is hostile to the justice that his society seeks.

The kinship between the witness and the accused or the suspect is one of the important factors that motivate him to commit the crime of perjury. The affection and affection that this kinship creates may push him to lie and take sides in his testimony with his relative and not be impartial in it(), and perhaps this crime is considered one of the serious crimes in societies; As it mainly aims to distort the facts and take them out of their origin, and that its main goal is to shade justice, in addition to its great impact on the integrity and results of the investigation, and it may also cause judges and investigators to distrust the statements of relatives witnesses, especially these categories (origins, descendants and spouses).

According to this saying, forcing a nearby witness to testify in defense of his relative instead of giving him his choice, as in the opposite testimony stipulated in Article (153) of the Code of Criminal Procedure, and the negative impact it has on his psyche - has indirectly affected the public interest The purpose of the testimony, which is the interest in finding the truth that serves the case and leads it to safety; The witness when the judiciary relies on him to be able to settle the criminal case, then he comes to court by the force of the law and without the slightest desire to do so and says other than the truth, then this will have already harmed the interest of the investigation and did not serve him anything, and accordingly, and in the sense of the violation, the near witness when given the option When he testifies in defense of his relative, similar to his testimony against him, and he is not forced to do so, the possibility of him staying away from telling falsehood will be greater, as he may not dare to testify if it harms the interest of his relative, and therefore his statements in that testimony if he performs it voluntarily by his choice without Forced by the court, you will be closer to the truth; Where he is not afraid or worried about the possibility of harming his kinship and causing him to fall into him, and because her performance will be based on complete conviction on his part.

What supports the idea that this compulsion to testify and what he does and creates in the feelings and psyche of the witness may affect the interest of the investigation and harm the case before the court is that the judge ( ) when he listens to the statements of the nearby witness - in defense of his accused or suspect relative (origin, branch or spouse) - He will undoubtedly be affected when he knows well how keen the witness is to defend his relative, so that the judge will make every effort and put all his experience in checking the statements of this witness and noticing his emotions and all his movements during his testimony, and therefore this feeling of the judge towards the nearby witness who came to testify Forced, not voluntarily, he will play a major role in the extent to which he appreciates the value of that testimony and is convinced of it, and the judge is absolutely certain of the possibility of that witness concealing or changing facts he knows about his accused or suspected relative, while the judge has this feeling towards the witness and his fear that he will lie or hide Something in his testimony might be somewhat less if the witness had the right to refuse to testify; In this case, the court, as soon as he was given his choice and alerted to his right to refrain from giving testimony, may find out the extent to which he can be truthful in his testimony or not, so that an idea may form in the court through the witness's insistence on giving testimony

and not refraining from it, that he has facts that he wants to deliver to the judiciary that serve his relative. And if it were not for his possession of these facts, he would have chosen to abstain instead of testifying, which might cause him to be criminally prosecuted for the crime of perjury.

And based on the idea of the negative impact that this coercion might have on the psyche of the witness and its negative impact on the public interest in the investigation as well as on the private interest of the witness, especially in terms of the false testimony that he may perform in order to defend his relative, the question that is raised here and awaits an answer: If we assume that the criminal legislator did not lose sight of the psychological aspect of the nearby witness, and did not lose sight of the fact that this compulsion to testify may force him to give false testimony, and thus be subject to criminal prosecution for that testimony, which ultimately does not serve the public interest or the private interest of the witness or for the accused or the suspect, if we accept that, is there a measure taken by the legislator to prove the extent of that concern for the psyche of the witness, and that when he instituted and approved this compulsion, he took well into account all the harm that might result from that witness or the testimony in general?

Returning to the crime of perjury stipulated in the Penal Code and its relationship to the psychological factors of the witness, we find that the legislator had previously assumed the possibility of the nearby witness falsifying and distorting facts during his defense of his relative, as he stipulated that he is exempted from the penalty of this crime "the witness who is likely to be exposed - If he says the truth - to a gross harm that affects his freedom or honor, or his wife, even if he is divorced, or one of his ascendants, descendants, brothers, brothers, or in-laws of the same degrees, is exposed to this grave harm, and on this basis, it can be said that the legislator has taken good care of Feelings of the witness and his fear of falling into the crime of perjury, through his subsequent exemption from the penalty prescribed for this crime or reducing it from half to two-thirds(), in the event that it is proven to the court that that witness when he lied in his testimony and moved away from the truth required of him was motivated by fear of exposure To prejudice his freedom or honor or the freedom or honor of his relatives from the ascendants, descendants, brothers and in-laws of the same degree, since although the legislator did not mention the accused or the immediate suspect of the witness explicitly in the text, and that the general idea speaks of the possible harm that may occur to the witness or one of his relatives. In general, regardless of its source, we can say that the conviction and sentence that may affect that relative (the accused or the suspect) in any judgment that deprives him of his freedom or generally harms his reputation as a result of that testimony, can be considered as the damage intended by this. The text, so that we can say with it that the reason for the witness to give false testimony was the result of fear of this harm (conviction) to his relative.

For the legislator to stipulate this exemption or reduction of the penalty prescribed for the near witness, demonstrates the extent of his concern and consideration for the witness's psychology on the one hand, and the extent of his keenness to strengthen family ties between the witness and the accused or suspect on the other hand, and also confirms that the goal he seeks from testimony is the truth and nothing Others, as if he wanted to send through this text a message that his more important goal than this compulsion is to listen to the testimony of that witness in order to arrive at the truth even if it contains something that condemns the accused or the suspect, and in order to enable that accused or suspect to defend himself, so that none of his relatives (especially his spouse or one of his ascendants or descendants) could make excuses for his inability to testify for fear of telling falsehood, except in specific and special cases (the case of obscene harm); With which the witness is forced to change or conceal the truth or part of it as a result of this fear, and this confirms the extent of the legislator's interest in this testimony and his keenness on the necessity of its performance, and not to be lenient with the witness who changes the truth except in such cases, which need him to prove the validity of its existence.

In any case, and no matter how exaggerated the psychological impact of that coercion on the psyche of the witness, and the extent of its impact on his testimony in the courtroom, the reliance on the submission of testimony in the end to the personal conviction of the criminal judge, and regardless of the effects that conviction may have, remains He is the master of the situation; Considering that the intelligent judge, who has knowledge of the requirements of judicial psychology, can reveal the truth of any witness who appears before him by simply noticing his emotions and the extent to which he adheres to his statements, and other matters (), the testimony, like other evidence, remains within this guarantee of judicial guarantees (submission to emotional conviction). For the judge) which was confirmed and keen on the penal legislator, therefore knowing to what extent the legislator was successful in this compulsion requires us to study the effect on the validity of the testimony itself, so that it is necessary to distinguish whether it is possible to consider that compulsion and the psychological impact it has on the witness It is close to a form of compulsion that nullifies the testimony, or did it not reach that limit, which is what will be addressed and talked about in the last section of this research.

### **The Second Section: The Effect on the Validity of the Certificate**

Returning to what was previously mentioned regarding the reasons that prompted the penal legislator to compel a nearby witness to testify in defense of his accused or presumed relative (parent, branch or spouse), and not providing for his choice to abstain from that testimony as in the opposite testimony, we find that they are sufficient reasons It deserves this attention, whether it relates to preserving the right of the accused or suspects to defend himself, or those related to society's right to access the truth and punish the criminal.

Despite these justifications and their importance, the criminal policy, both punitive and procedural, makes it imperative for the legislator to respect the rights of the witness and preserve his dignity and humanity. This is in view of the great interrelationship between the rule of free will and the safety of the penal procedure ().

Proceeding from this principle, the answer to the question posed in this section, which is to what extent can forcing a witness to give testimony in defense of his relative be considered coercion, and the extent of its impact on testimony? This requires us to understand the concept of coercion and its types, its effects, and the conditions necessary for its realization.

The concept of coercion refers in general to any material or moral pressure exerted on a person that leads to the deprivation of his freedom and influence on his will, so that he acts according to what the person being pressured wants, not according to his will. Or a word without his desire to do so, and it is in the penal code of two types: material coercion and moral coercion ().

#### **First: Physical Coercion**

Physical coercion means that physical force that falls on the human body and controls it, which forces him to say or do what he does not want, in order to get rid of this control or reduce its impact on his body, so that there is not the slightest connection between what that person did and what it is heading to him his true will (), the essence of this type of coercion is based on physical force and violence that is exercised on the human body, so it takes away his will and makes it subject to the will of the compulsion ().

There is no specific standard or fixed percentage of physical coercion by which it can be relied upon before the court, so the severe violence that occurs on the human body is equal to the simple or less severe violence, the lesson in that is due to the extent of the effect of this coercion on the body of the person who is subjected to it, It is something that the court appreciates according to its conviction, which it reaches through the facts and circumstances

of the case, and through its observation of the nature of that person who has been subjected to violence ().

In this type of coercion, there are multiple forms that the compulsory may take to weaken the will of the compulsory and control him, in order to do so he may resort to beating, restraint or any other form of physical violence, and it can be said that the physical coercion that falls on the witness may not be possible At the stage of the final investigation that takes place before the court; This is in view of the nature of the trial procedures stipulated in the Code of Criminal Procedure at this stage, which are characterized by openness and clarity, while that physical coercion may be achieved on the body of the witness during the hearing of his testimony at the stage of the preliminary investigation by the Public Prosecutor, in which the witness is heard privately, in order to preserve the confidentiality of the investigation.

### **Second: Moral Coercion**

By this type of coercion, he means the moral effect that falls on the human soul, which changes his will and diverts it from its true direction (Abu Alim, 1997).

This type of coercion takes multiple forms, such as deception, deception, or a promise of a certain thing, so that such behaviours may be practiced on the accused by the investigator to urge him to confess (). During which pressure on his feelings and psyche, in order to direct him towards a specific behaviour completely different from what is inside him, and this threat that affects the psyche of the witness may be due to internal factors and external factors, among the internal factors, which may threaten the witness and push him to change the truth or conceal part of it and not be exposed To him, is the effect of emotion on him and his feeling of fear of false testimony that he might perform in his defense of his relative as a result of his adherence to those feelings and their control over him. By killing or harming ... etc. (), and it can be said in this regard that the coercion that can be said is that which comes from external sources, and that there is no room for compulsion that comes from within; This is on the grounds that a person should control his feelings and sacrifice for the sake of truth.

And coercion is considered to be bothersome: material and moral issues that invalidate testimony (), which the court must address, otherwise its judgment is considered invalid and requires cassation (), for coercion to testify is considered one of the essential defenses, which may be adhered to in all stages of the case, and the court decides it On its own, as it is a matter of public order.

The penal legislator emphasized the extent of his interest in the witness's freedom and not to exercise any kind of coercion against him, whether physical or moral, and among that, he made the prohibition of coercion on witnesses among the important justifications and strong reasons on which the Public Prosecutor relies in his reasoning for the arrest decision. It also singled out a special penalty for anyone who publishes news, information or criticism that would influence witnesses(), however, the legislator, despite this concern about not coercing the witness, and enabling him to give his statements with complete freedom, did not explicitly provide for the invalidity of the testimony taken Under duress, he may not see a need for this, considering that it is one of the essential issues that are involved under the text of Article (7/1) of the Code of Criminal Procedure. However, it is recommended that the legislator specifically stipulates this matter as stated in some penal legislation other( ); This is in order to give more attention to this matter (taking into account the issue of non-coercion of witnesses), so that there is a clear message to the investigators, especially at the preliminary investigation stage, of the importance of taking into account not being coerced in any way by witnesses, because this coercion may have a significant impact and a dangerous negative role. on the fate of the criminal case, which may reach a dead end as a result of that coercion; So that will result in the invalidity of that certificate completely, and perhaps the invalidity of the procedures that follow ().

In order for it to be possible to say that the testimony is invalid due to coercion, we must first know its conditions, for the coercion that affects the will of the witness and invalidates the testimony must meet three combined conditions, so that it must be the product of an unlawful matter, and it must be worldly, not religious, And that there is a real correlation between this effect and the resulting result ().

**That the Effect was the Result of an Unlawful Matter ():** The influence or coercion that invalidates the testimony is required to be an influence related to an unlawful or illegal reason, but if this effect stems from a legitimate reason and has a legal origin, it is not considered as coercion that invalidates the testimony; Because it aims to regulate the course of the procedures in the criminal case and not to lose rights, and thus ensure the regular conduct of the criminal case without any obstacles that hinder the way in order to reach the truth that society seeks in order to provide security and tranquility. To guarantee their rights and achieve justice ().

**The Compulsion Should Be Worldly:** Whether the coercion exercised on the witness is material or moral, so that we can argue its invalidity and consider it actually coercion, it must be the result of a worldly, not religious matter. Or by saying something contrary to it, it can be considered as a kind of worldly influence that affects the psyche of the witness and generates fear within him, and accordingly there is no justification for saying, for example, that the requirement of the legislator to take an oath on the witness is considered a matter of compulsion; As this is considered as a moral and religious influence that was legislated to alert the witness and confirm it by telling the truth ().

**The Causal Relationship:** In order for the coercion to invalidate the testimony, it is required that there is an actual correlation between the contradicting statements made by the witness and the influence or threat that he was exposed to, which is an issue that is evaluated and reached its truth through the subject judge, after he carefully examines all the psychological factors and procedures that were required of the witness. Make those statements, and this interdependence needs to be proven, so that the court cannot base it on a mere claim from here or there, and in that the Court of Cassation went to say that it is necessary to discuss the witness and not reject the testimony and put it in advance on the pretext that the witness was coerced in his statements because of Some people were present while he was testifying before the public prosecutor.

Applying these conditions and dropping them on the issue of forcing a witness to testify in defense of his relative, we can say that this compulsion - and given its justifications that were mentioned previously - is a form of legitimate and stipulated legal procedures with the aim of not wasting any right in the criminal case, whether it is related to Including the litigants, such as the right of defense, or society in general, such as the right to access the truth, and its performance by the witness, is one of his main duties through which the criminal case is ensured regularly and eventually reaches the desired result in the possibility of resolving the issue.

Therefore, compelling a witness to testify in defense of his relative, even if there is something in it that can condemn that relative, does not prevent us from saying that this compulsion is not considered coercion, and what confirms and reinforces this is that the legislator did not obligate the witness to attend and testify only. Rather, he obliged him to another duty, which is to tell the truth without adding or subtracting, so it can be said that being forced to say something other than the truth is considered coercion that invalidates the testimony, while it cannot be said with regard to being forced to testify.

## CONCLUSION

There was talk in this research about the penal legislator obliging the witness to testify in defense of his parent relative, descendant, spouse, or even the partner of any of them in the

same accusation. This subject has been addressed by talking about the most important reasons and justifications for which the legislator relied on following this approach, and clarifying the most important effects that compulsion plays in the criminal case in general, whether that affects the psyche of the witness or the validity of the testimony, so that this study ended with: A number of findings and recommendations are as follows:

In view of the justifications that made the criminal legislator compel a nearby witness to testify in defense of his accused or suspect relative (parent, descendant or spouse) in accordance with the text of Article (154) of the Code of Criminal Procedure, this cannot be considered a legislative contradiction with the provisions of the provisions Article (153) of the same law; Rather, this is considered an affirmation from him of the need to preserve family and marital ties between these groups, as there is also a higher interest that the legislator wanted to achieve, which is to enable the accused or suspect to defend himself fully.

In addition to preserving family and marital ties and emphasizing respect for the right of defense and its sanctity for the accused or suspect, the other wisdom that the legislator wanted to compel the witness to testify in defense of his relative in accordance with the text of Article (154) of the Code of Criminal Procedure, is to reach the truth that serves Justice, by providing for the possibility of relying on these statements in convicting the accused or suspect.

A relative witness, and when he is compelled to appear in court to testify in defense of his relative, all testimony procedures will apply to him and without any influence of that kinship on these procedures, and the court may not put his testimony aside on the pretext of that kinship as long as it conforms and supports the rest of the evidence.

The coercion established in accordance with the text of Article (154) of the Code of Criminal Procedure may negatively affect the psyche of the witness, which may be reflected in his statements in the case, however, the emotional conviction of the judge remains the master of the situation and the guarantor of that testimony from that effect.

In view of the conditions necessary for the achievement of coercion nullifying testimony and looking at the justifications for compulsion contained in the text of Article (154) of the Code of Criminal Procedure, it cannot be said that such compulsion is considered as a form of compulsion that nullifies testimony.

Through the results that have been reached, it is advisable for the legislator to clearly indicate the issue of compelling a nearby witness to testify in defense of his relative (parent, descendant or spouse) or partner of any of them in the same accusation, by adding an explanatory paragraph to the text of Article (154) of the Code of Criminal Procedure; With the aim of eliminating any possibilities of applying the text and taking it other than what it intended.

## REFERENCES

- Abu, A.-R., & Ahmed, B. (2005). *Criminal investigation, disposition and forensic evidence*, Alexandria: Modern University Office.
- Alshible, M. (2020). Women additional protection in the Jordanian penal code in light of the principle of gender equality. *International Journal of Psychosocial Rehabilitation* 24(10), 821-827.
- Al-Rabi', I.M, (1999). *The Authenticity of the Testimony in Criminal Evidence*, (1st Edition) (Book), Amman: House of Culture for Publishing and Distribution.
- Al-Shawarbi, A.H. (2007). *Criminal Invalidity*, Alexandria. The Modern University Office.
- Abu Alim, N.M. (1997). *Coercion in criminal law - A comparative study between Arab and foreign laws and Islamic law*. (Unpublished Master's Thesis), Al al-Bayt University.
- Al-Darawshah, H., & Noah, M. (2015). *The extent of the legitimacy of evidence derived from modern scientific methods in penal evidence: A comparative study*. (Unpublished doctoral thesis), University of Islamic Sciences.
- Al-Ghammaz, I. (1980). *Testimony as evidence in criminal matters*, Cairo: The World of Books.
- Abdeen, M. (2012). *Testimony in criminal, civil, sharia and perjury matters*, Alexandria: Dar Al Fikr Al Jamia.

- Awwad, K.M. (2011). *Sharia and Legal Controls of Criminal Evidence in Islamic Jurisprudence and Positive Law*, (I 1), Alexandria: Dar Al-Fikr Al-Jamii.
- Fadel, R.M. (2022). The prerequisite (the presumed element) in the crime of torturing the defendant (comparative study). 7(2022): WBML.
- Hemn, A.M., Muhsin, H.B., & Delshad, H.D. (2019). State's responsibility to respect constitutional guarantees of the rights of the accused. *International Journal of Psychosocial Rehabilitation*, 23(03).
- Ihjeleh, A.M. (2007), The defendant's right to silence in the pre-trial stage. (Unpublished Master's Thesis), Al al-Bayt University, Jordan.
- Jordanian Code of Criminal Procedure No. 9 of 1961 and its amendments, published on page No. (311) of the Official Gazette issue (1539) on March 16, 1961 AD. <http://atwanlaw.com/library/22.pdf>
- Military Penal Code No. 58 (2006). Military Penal Code No. 58 of 2006 and its amendments published on page No. 4274 of Official Gazette No. 4790 dated 1/11/2006.
- Najm, M.S. (2000). Code of Criminal Procedure No. 9 for the year 1961, "Applied Provisions and its Content", (1st Edition), Amman: Dar Al-Thaqafa Library for Publishing and Distribution.
- Nourhan, F. (2020). Egypt's empowered prosecution and threats to fair trial guarantees. The Tahrir Institute for Middle East Policy.
- The Jordanian Constitution and its amendments for the year (1952) published on page No. (3) of the Official Gazette issue (1093) dated 1/19528/1952 AD.
- The Egyptian code of criminal procedure and its amendments No. 50 (1950). Egypt : access to justice system and legal aid.
- Youssry, S., & Partners (2020). Trial proceedings in criminal cases before Egyptian courts. Youssry Saleh Law Firm.

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