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Research Article

The Impact of Criminal Dangerousness on Aggravating the Criminal Penalty in Contemporary Criminal Legislation

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Abstract: This study focuses on what the concept of criminal dangerousness raises within the legal sciences of the criminal field, as it is closely linked to the essence and nature of the criminal individual's personality and to the emotions and impulses residing in the depths of his tendencies and feelings, which are a source reflected in his outward behaviours. This necessitates shedding light on the nature of the controls and criteria through which the extent of individuals' criminal dangerousness can be determined, and which serve as a guiding light for the judge by means of which he can assess and evaluate this or that state of dangerousness and its magnitude, and which will be a path to taking the appropriate therapeutic measure or penal sanction for it. Perhaps the motive for this entire legal activity is to impose protection and provide prevention for society from all dangerous behaviours latent in the criminal that may issue as an outward act from him, by preventing this dangerousness from reaching society. What distinguishes the idea of this study is that it examines one of the most important fundamental principles upon which most contemporary criminal policies are based, after they had previously adopted an approach in which the criminal sanction was based on the idea of the abstract crime and the criminal act, without seeking to know the criminal motives of the person and to reveal the causes of the criminal's dangerousness, which may have come about due to many factors, some of which may be related to his psychological state or his mental or organic health, or may be linked to social factors, and the extent of the impact of the presence of these factors on the existence of a state of criminal dangerousness. Accordingly, it was necessary to study the opinions, ideas, and theories presented on the idea of criminal dangerousness in order to determine its role and effects in providing protection for society, and the extent of its ability to prevent the danger of criminals. There is no doubt that the Iraqi legislator has adopted the idea of criminal dangerousness and sought to regulate it, primarily under the Penal Code, as a basis for imposing precautionary measures and aggravating the penalty in recidivism crimes. In doing so, he drew a mechanism for proving criminal dangerousness by law, definitively closing the door to the discretionary interpretations of judicial authority except in cases of criminal recidivism as an aggravating circumstance for the penalty in the cases specified by law, and most contemporary legislations have likewise tended in this direction.

Keywords: *criminal dangerousness; criminal penalty; criminal legislation; dangerous act; criminal behaviour; psychological factors; criminal psychology; precautionary measures; recidivism.*

1. Introduction

The study of criminal dangerousness is one of the most important studies at both the theoretical and practical levels, because of its great impact in drawing the frameworks of legal work from the practical aspect, and it is a foundation for understanding the extent of the danger of criminal acts and tendencies and the impact of their risks on the fabric of society, its interests, and its stability, which contributes to establishing effective mechanisms for combating them and drawing up a proactive policy to prevent the occurrence of criminal acts or to limit them or their effects. Perhaps criminal dangerousness is an indicator that places those responsible for upholding the law, with their different opinions and degrees, before a clear picture of what these indicators may carry of expectations that can be perceived through a deep understanding of the causes of their existence, the ways of their emergence and formation, and their risks, and then knowing the size and

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reality of their effects. Likewise, a scientific study of a phenomenon characterised by the fact that it may constitute a danger from the criminal aspect must be given academic importance so that it receives its share of academic examination and scrutiny, especially since it is also characterised by movement, change, and development as is the case with laws, which makes the idea of studying newly arising and emergent cases characterised by criminal dangerousness an approach that keeps pace with the established foundations in contemporary criminal policy. For this purpose, we will discuss this idea as follows.

1.1 Importance of the Research

The scientific importance arises from the state of probable danger whose existence is linked to crime in general and its effect on understanding the subject of this phenomenon and how to deal with it, given the importance it represents in the legal and judicial aspect in the mechanism of proving it alike. The importance of the study also lies in identifying the effect of criminal dangerousness and the extent of its connection with the idea of penal aggravation, which enables us to know the mechanism of combating it and the efficacy of rehabilitation in light of its continued existence.

1.2 Objectives of the Research

Through the study of criminal dangerousness, the research aims to reach scientific results of practical importance that may contribute, by clarifying the constants of its scientific truth, to developing the legal rules related to it so as to keep pace with its developments and to further enrich the theoretical and academic aspect that addresses the idea of criminal dangerousness.

1.3 Research Problem and Questions

The main problem of the study lies in the fact that the criminal legislator's authority in criminalisation and in imposing punishment as a result of criminal dangerousness is restricted by legal texts and is not absolute, and in the possibility of clarifying the extent to which the phenomenon of criminal dangerousness is attached to the circumstance of aggravating the criminal penalty and accompanying it, and the discretionary authority of the criminal judge in that. This refers us to numerous questions that make it a duty of research to answer them and to attempt to clarify their effect in building the legal rule related to the criminal penalty pertaining to it.

The idea of the research asks about the legal effects accompanying the existence of criminal dangerousness? And does this dangerousness have effects in aggravating the criminal penalty? And to what extent is the idea of criminal dangerousness connected with the idea of penal aggravation? These are all questions that I hope this research will answer, and success and correctness come from God.

1.4 Limits of the Research

We examine criminal dangerousness in Iraqi, Egyptian, Jordanian, and Italian legislation.

1.5 Previous Studies

1. Shnawa, H. H. (2024). The impact of criminal dangerousness on imposing criminal penalties. *Al-Jami'a Al-Iraqia Journal*, 71(4).
2. Al-Fatlawi, S. H. S. (2004). *Criminal dangerousness and its impact on determining the criminal penalty* [Published doctoral dissertation]. University of Baghdad.
3. Al-Mubarak, A.-W. A.-K. M. (2023). Aggravation of penalty and its impact on criminal dangerousness. *Journal of Legal and Economic Studies*, 3(2), Arab Republic of Egypt.

1.6 Research Methodology

Perhaps the aim of this study is to find a solution to its posed problem, and to know the ways of that, the research methodology relied on a number of scientific methods, the most important of which is the historical method employed in this research and used to present historical glimpses when discussing some concepts. It also adopted two other methods, the descriptive and the comparative, which proceed with all the details of the research. The research plan was divided into an introduction, then sections, subsections, and branches, then the conclusion.

2. Section One: The Concept of Criminal Dangerousness and Its Elements

The development of criminal legislation kept pace with the change that accompanied human society and the transition from an agricultural society to an industrial society and the accompanying reinforcement of the value of the individual, which began to increase in all societies in various parts of the world. During the eighteenth century, an important turning point began in the history of the criminal system, when some legal scholars called for the criminal dangerousness of the offender and the importance of achieving deterrence in the penalty. The idea of punishment also came in Islamic criminal legislation as a kind of intended pain that affects the offender in pursuit of justice among people and as deterrence in return for the crime he committed (Nouri, 1999, p. 86). Before delving into the effects of criminal dangerousness, we must pause a little to clarify its definition and what it is, and how it historically became one of the subjects of criminal law, and we will discuss that briefly in light of what legal doctrine has said in defining it and its nature.

2.1 Subsection One: The Nature of Criminal Dangerousness and Its Characteristics

Most contemporary legislations have acknowledged the existence of criminal dangerousness and have taken to presenting its concept within the context of the texts of

their legislative approaches, considering that part of their criminal policy when drawing principles or when laying down legal rules regulating the frameworks of dealing with an important legal phenomenon such as the phenomenon of criminal dangerousness. Despite criminal legislations adopting the idea of criminal dangerousness, some of them did not set an explicit definition, while some legislations took it upon themselves to lay down rules regulating the provisions of criminal dangerousness in their texts, and they did well (Ahmed, 2020, p. 2).

2.1.1 Branch One: Definition of Criminal Dangerousness

The legislator did not define criminal dangerousness, while jurists differed in their definitions of it. Some jurists defined criminal dangerousness as "the extent of the probability that an individual will commit a future crime based on his behaviours or personal traits" (Hussein, 2023, p. 6). While some jurists defined it as "the person's capacity to become, to some degree of probability, a source of committing future crimes" (Al-Alfi, 2004, p. 123). However, these definitions faced criticism from the jurist Ranieri, as he believes that the psychological state lacks the element of continuity and that it may not last so as to be a matter to be feared in the future, and he also raised the difficulty of assessing or proving the extent of the connection between the psychological aspect of the criminal and the possibility of committing crimes in the future (Abu Anza, 2023, p. 528).

It should be noted that there is a segment of jurists who did not set a definition for dangerousness and believe that the term criminal dangerousness is a flexible expression; if it is defined, this definition may become a tool for undermining the freedom of the accused (Abu Anza, 2023, p. 528). It must also be said here that criminal dangerousness differs from the dangerous act, since the dangerous act is a legal idea and is a description that follows one of the elements of the material element of the crime, whereas criminal dangerousness is a description that follows the perpetrator and an idea that does not require the commission of a crime. It can also be said that a distinction must be made, according to the concept of contradiction, between it and the state of legitimate defence, in view of what is inferred from the provisions of the Penal Code in Article 42 (Iraqi Penal Code, 1969, Art. 42) and Article 63 (Iraqi Penal Code, 1969, Art. 63) — what is repelled is the exercise of a danger whose repelling the law has permitted (Muhammad, 2020, p. 3).

2.1.2 Branch Two: Characteristics of Criminal Dangerousness

It is noticeable when tracing the opinions of contemporary criminal doctrine that it agrees with the idea of distinguishing between criminal dangerousness in its legal concept, which is based on the fact that dangerousness is linked to the occurrence of the crime, and the state of criminal dangerousness that society feels from the crime, which has come to be known as societal dangerousness. The first is a subject that can be conceived in the contexts of legal orientations, since societal dangerousness cannot be confined to the legal idea only, but goes beyond it to many other dimensions, the most important of which are psychological, social, economic, and other dimensions (Shnawa, 2024, p. 16).

Another distinguishing observation that distinguishes it here is that criminal dangerousness is focused on a criminal incident actually committed, whereas societal criminal dangerousness includes a future probable state based on the fear of society as a whole — including the legislator — that the criminal will commit future crimes that constitute a danger to society, but which in reality are now not occurring and are not realised at the present time (Masouda, 2021, p. 18). This probability may cause legal problems based on the imposition of probable restrictions that may be harsh or unfair, or may violate legal principles firmly established in imposing or aggravating the criminal penalty on the accused, thus missing the opportunity to achieve the desired justice on the one hand. On the other hand, it may contribute to creating an incorrect legal environment based on probability, and this contradicts a principle firmly established in criminal law based on certainty generated from complete determinism (Ahmed, 2020, p. 5). Despite this, the idea of adopting criminal dangerousness cannot be neglected because of its practical importance, but it is necessary to distinguish between it and societal dangerousness, in addition to observing all legal controls that safeguard the rights of the accused. Hence, many juristic theories and schools arose that addressed the study of criminal dangerousness (Al-Toumi & Bouzitouna, 2020, p. 13).

2.2 Subsection Two: The Elements of Criminal Dangerousness and How to Determine Them

For criminal dangerousness to exist, essential elements must be available through which it is possible to know the extent of the availability of dangerousness or not. The importance of the existence and determination of these elements also lies in drawing a legal framework that precisely defines the mechanism and foundations under which those working in the legal and criminal judicial field operate and resort to in determining criminal dangerousness (Shnawa, 2024, p. 18). Therefore, the matter of affirming the existence of criminal dangerousness is not absolutely permissible from the legal aspect, but is a matter regulated by law. Article 103 of the Iraqi Penal Code, which approved the adoption of criminal dangerousness and permitted the imposition of some sanctions on the ground of criminal dangerousness, is the same article that prevented the permissibility of imposing the same sanctions except with the existence of what legally justifies them (Iraqi Penal Code, 1969, Art. 103). We will discuss, in order to determine these elements, from different angles, as follows.

2.2.1 Branch One: Indicators of Criminal Dangerousness

It is necessary to determine the legal features for determining the existence of criminal dangerousness and its conformity with the indicators that the law draws for determining it or not. The legislator prevented the imposition of a penalty outside what the law draws, and he did well. The legislator has stated that there are two indicators for determining the existence of criminal dangerousness, and these two indicators are:

First: The proven commission of a legally criminalised act.
Second: That the state of the act be considered dangerous to the safety of society.

This prohibition or non-permissibility took two forms (Wahida, 2020, p. 21). The first of them is inferred from the text of paragraph 1 of Article 103 of the Iraqi Penal Code, which stipulated: "No precautionary measure prescribed by law may be imposed on a person unless it is proven that he has committed an act that the law considers a crime and that his condition is considered dangerous to the safety of society." It required the availability of two essential elements: the proven commission of the crime and that its acts be among the dangerous acts that threaten the safety of society. As for the second of them, it is the absolute non-permissibility of imposing the penalty, with the exception of the cases stipulated by the legislator, and this is inferred from the text of paragraph 2 of Article 103 above, as it stipulated: "No precautionary measure may be imposed except in the cases and under the conditions stipulated in the law."

From the foregoing, it can be said that criminal dangerousness, for its existence, includes the existence of several internal and external elements in addition to the availability of probability and the inevitability of the belief in the occurrence of the subsequent or following crime. Perhaps we should clarify the most important of these elements and detail them as follows:

First: Internal and external elements. These elements determine the availability of historical, environmental, social, and psychological factors (Al-Toumi & Bouzitouna, 2020, p. 8).
Second: Probability — the probabilistic state in criminal dangerousness.
Third: The subsequent or following crime.

Despite the existence of this probability, considering that the criminal act is the outward state expressing the existence of dangerousness, and the characteristic of the presumption that indicates it, evidence must nevertheless be established that it is available in reality so that the penalty can be imposed. This was left within the discretionary authority of the criminal judiciary to choose the nature of the appropriate penalty without specifying forms or controls in themselves or the nature of the elements forming this dangerousness. Nevertheless, dangerousness here, for its existence, must be realised and actual and not presumed dangerousness, because presumed dangerousness is as a state within the scope of the judge's discretionary authority, but in this state it is subject to the assessment of the legislator himself, based on the elements of the legal, moral, and material incident and the qualities and circumstances available in the perpetrator himself (Mustafa, 1979, p. 32).

2.2.2 Branch Two: Legal Criteria for Determining Criminal Dangerousness

Despite the existence of indicators that determine the elements of criminal dangerousness, and just as there must be legal criteria for determining the features of this dangerousness on the one hand, and determining the appropriate penalty to be imposed according to them on the other hand, there must be criteria that regulate this entire process from the legal aspect, and they can be summarised as follows:

First: Legality — the availability of the legal and juristic basis upon which the legislator relies and which determines criminal dangerousness (Iraqi Penal Code, 1969, Art. 103). The legislator also granted the judge discretionary authority for that purpose (Habib, 1980, p. 186).

Second: The proven commission of a crime. Some jurists believe that criminal dangerousness can be proven by two means: presumed dangerousness, and the determination of the criminal factors that are the subject of proof or from which criminal dangerousness is deduced (Al-Toumi & Bouzitouna, 2020, p. 10).

Third: That its acts be among the dangerous acts that threaten the safety of society — among them are what some contemporary criminal texts have indicated, including paragraph 1 of Article 103 of the Iraqi Penal Code and Article 133 of the Italian Penal Code (Iraqi Penal Code, 1969, Art. 103; Italian Penal Code, 1930, Art. 133).

Fourth: The availability of seriousness in the criminal that increases the probability of his embarking on committing another crime. Despite the generality and fewness of these criteria, their existence indicates that some contemporary legislations have gone towards creating legal criteria governing the subject of criminal dangerousness, including Iraqi law.

3. Section Two: The Effects of Criminal Dangerousness

Every act must have an effect, and the existence of criminal dangerousness as a legal state must entail effects that may extend to numerous legal and judicial dimensions, but we will attempt to discuss them within the scope of our research in two separate subsections. In the first, we address its effect on aggravating the penalty, and in the second, its effect on rehabilitation and its important role in prevention and limiting criminal dangerousness.

3.1 Subsection One: Its Effects on Penal Aggravation

Perhaps the most prominent purpose in this regard of imposing and aggravating the penalty is to achieve deterrence and prevent the commission of crimes, and in many cases it is an effective means of achieving the purpose that the legislator hopes for, which is preventing the criminal dangerousness of the person (Al-Najjar, 1971, p. 131). Perhaps the importance of the penalty in criminal deterrence on the one hand, and the gravity of the availability of criminal dangerousness in the criminal act on the other hand, obliges the legislator to adopt the idea of penal aggravation, seeking thereby to achieve a reduction in criminal dangerousness and to provide means of prevention from the effects of criminal dangerousness as a state that may threaten the security and peace of society. For this purpose, the legislator should create legal foundations for this aggravation based on the idea of the relationship between the two essences of cause and effect and the extent of the connection of criminal dangerousness with societal security. This is what we will discuss in the following two branches, as follows.

3.1.1 Branch One: The Foundations of Penal Aggravation and Its Concept

The state of punishment in the past was characterised by inequality among offenders, and penalties took on a character of cruelty and excessive severity, and the amount of the penalty did not proportionate the gravity of the crime. The reason for this disproportion was that the penalty was based on taking into account the social status of the criminal. This was due to the dominance of rulers and their despotism over authorities, which drove them to brutalise their criminal opponents (Abd, 2014, p. 40). But this situation changed with the development of criminal policy and the existence of law and the imposition of its oversight, as legislation was created to protect the right, and its rules defined at the same time the type of penalty that proportionate the amount of criminal dangerousness, seeking thereby to achieve deterrence as well (Al-Shammari & Abd, 2021, p. 210). It is self-evident that some criminals may proceed to commit the crime out of a conviction formed in them, or the reason may be due to a deficiency in the penal system in achieving its highest goal of limiting the occurrence of the crime or preventing its commission, or due to a condition specific to the criminal's own preparedness, as he may be the motive for repeating the same similar criminal behaviours. Accordingly, such considerations and probabilities certainly do not lead us to assert that every criminal who has committed a crime will inevitably return to committing crimes, for there is what is known as the accidental or emotional criminal, and this type of criminal may not fit the description of criminal dangerousness, since the characteristic of the crime here is an accidental or temporary characteristic, as dangerousness is absent from some simple crimes that do not constitute a danger to society (Mahdi, 1976, p. 28).

It is no secret that there are general foundations that apply to all or most crimes, including, for example but not limited to, the case of recidivism, and others that are special and apply to a specific description or specific crimes defined by law. Both of these foundations show the wisdom of the legislator when he created them and sought to aggravate the criminal penalty therein in order to achieve criminal deterrence. The researcher believes that the legislator's wisdom has encompassed the importance of this approach because of his awareness of the disparity between crimes and criminals, and he did well. When researching the foundations upon which the severity of the measure based on the availability of criminal dangerousness rests, a distinction must be made between two cases that the law has addressed with differing visions, and these two forms are:

First: The case of the availability of dangerousness before the issuance of a judicial judgment. This can be clarified in the case of what the law has permitted the examining magistrate to impose precautionary detention as a preventive measure that the law has taken as an approach when the justifying condition is available, which is the danger of the accused fleeing or influencing the course or conduct of the investigation (Muhammad, 2021, p. 81). This is what Article 109 of the Code of Criminal Procedure No. 23 of 1971, as amended, indicated. The basis for aggravation here is based on two bases: the danger of flight or the danger of influencing the course and conduct of the investigation (Iraqi Code of Criminal Procedure, 1971, Art. 109). As for the Jordanian legislator, he made the legal framework for regulating the provisions of precautionary detention in Articles 141–152 (Jordanian Code of Criminal Procedure, 1961, Arts. 141–152), and Article 33 (Jordanian Penal Code, 1960, Art. 33) stipulated the provisions of precautionary bail as a precautionary measure.

Second: The case of the availability of dangerousness during and after the issuance of a judicial judgment. If criminal dangerousness is available, it has effects during and after the issuance of judicial judgments. Among these effects, for example, is the classification of prisoners according to their circumstances, so that each of them receives treatment consistent with the circumstances of each case. Accordingly, what later emerged from this orientation was the so-called penal school, which aims at individualising treatment for prisoners (Mulla Bakheet, 2018, p. 11).

As for the Iraqi legislator, he adopted the personal orientation when laying down the provisions of criminal dangerousness, which can be inferred from the text of Article 103, that it is a state that raises the belief in the probability that the person who previously committed a crime will proceed to commit a new crime, based on the personality of the criminal. The Iraqi legislator referred to the role of the criminal's dangerousness in the penal individualisation system, which requires the suitability of the penalty or sanction to the personal state of the

criminal, which is represented by the internal formative and psychological factors and takes into account the external social factors, and took into consideration the material elements forming the crime, the methods of its commission, and the amount of damage inflicted on the victim and society. The penal individualisation system is concerned with the personality of the criminal (Al-Mubarak, 2023, p. 29).

3.1.2 Branch Two: The Extent of the Connection of Criminal Dangerousness with Penal Aggravation

Most jurists believe that there must be, along with the existence of a set of rules of conduct that regulate human relations and their various activities, and perhaps the most important of these rules are those that regulate and concern themselves with clarifying the forms of criminalisation and the type and amount of appropriate punishment, which have come to be known as the Penal Code (Abd, 2014, p. 40), and other laws that regulated the rules of dealing and laid down provisions and conditions and clarified effects, including what those legislations clarified regarding the subject of criminal dangerousness, which we will discuss as follows.

First: Conditions for Imposing Precautionary Measures

Through reading the text of Article 103 of the Iraqi Penal Code, I see that the Iraqi legislator laid down two conditions for imposing precautionary measures as a penalty against the person of the criminal (Iraqi Penal Code, 1969, Art. 103). They are:

1. A condition related to the objective aspect: which is the commission by the criminal person of a previous crime.
2. A condition related to the personal aspect: the availability of criminal dangerousness, in which the judge has been given broad discretionary authority with the assistance of expertise.

Second: The Effects of Criminal Dangerousness on Penal Individualisation

Perhaps among the effects of the existence of the phenomenon of criminal dangerousness is the legislator's adoption of policies that acknowledge penal individualisation, through which the appropriate penalty for the criminal act can be determined. According to this concept, criminal dangerousness has a clear effect on penal individualisation, in its three types: legislative, judicial, and executive (Nouri, 1999, p. 57).

Accordingly, before discussing its effects, we will clarify the concept of each of them as follows:

1. Legislative individualisation: The legislator undertakes to lay down general and special criteria through which criminal penalties can be determined and the extent of their suitability to the circumstances surrounding the criminal and the crime. Perhaps the most important criteria adopted by the legislator are the excuses that entail exemption or mitigation or aggravation of penalties.
2. Judicial individualisation: It is what allows the judge methods and systems through which he can determine the appropriate penalties.
3. Executive individualisation: It is giving the competent administration all the necessary authorities to execute penalties in order to determine the penal treatment in a way that ensures the reform of the person sentenced to a penalty depriving of liberty (Nouri, 1999, p. 57).

Based on the foregoing, among the most prominent effects resulting from criminal dangerousness according to Iraqi legislation under the texts of the Penal Code are those effects related to criminal individualisation. I see that the idea of criminal dangerousness is the axis of the criminal policy related to punishment with the Iraqi legislator. Accordingly, it can be said that these effects came in multiple forms, as follows:

1. Its effects through legislative individualisation: This appears in the case of the absence of criminal dangerousness when the legislator acknowledges the mitigating excuses for the penalty or the exempting ones according to Article 128 of the Iraqi Penal Code, or his acknowledgment of the aggravating circumstances of the penalty that confront all forms of latent dangerousness (Iraqi Penal Code, 1969, Art. 128).
2. Its effects through judicial individualisation: Its effects came through the quantitative gradation of the penalty from the minimum upwards to the maximum, or through the qualitative gradation between two penalties as in the case of Articles 401 and 446 of the Iraqi Penal Code, or its effects in the judicial circumstances mitigating the penalty according to Articles 132 and 133, and the aggravating circumstances when committing a crime with a base motive or exploiting one's position or using brutal methods according to Article 135, or its effects in suspending the penalty when dangerousness is absent according to Article 144 in the case of a criminal who has not been previously sentenced and whose morals, age, or past the court believes will not return him to crime.
3. Its effects through executive individualisation: The effects of criminal dangerousness here came through several laws taking several forms of these effects, including parole, which is linked to the good conduct of the criminal and the disappearance of his danger according to Articles 331–337 of the Iraqi Code of Criminal Procedure (Iraqi Code of Criminal Procedure, 1971, Arts. 331–337), or the obligation to classify prisoners within reformatory

institutions and prisons on the basis of their dangerousness according to Articles 2 and 17 of the Law of the General Institution for Social Reform (Law of the General Institution for Social Reform, 1981, Arts. 2, 17), or what came in Articles 74 and following of the Iraqi Juvenile Care Law, which obligated monitoring the behaviour of the juvenile after his delivery to his family (Iraqi Juvenile Care Law, 1983, Arts. 74–86).

4. Its effects in imposing precautionary measures: The forms of precautionary measures in the Iraqi Penal Code came in multiple forms of measures according to what was drawn by Article 104 thereof (Iraqi Penal Code, 1969, Art. 104), and the articles following it, which are as follows:

A. Precautionary measures depriving or restricting liberty:

1. Detention in a therapeutic shelter (Iraqi Penal Code, 1969, Art. 105)
2. Prohibition of frequenting bars (Iraqi Penal Code, 1969, Art. 106)
3. Prohibition of residence (Iraqi Penal Code, 1969, Art. 107)
4. Police surveillance (Iraqi Penal Code, 1969, Art. 108)

B. Precautionary measures depriving of rights:

1. Forfeiture of guardianship, trusteeship, and custodianship (Iraqi Penal Code, 1969, Art. 111)
2. Prohibition of practising work (Iraqi Penal Code, 1969, Art. 113)
3. Withdrawal of the driving licence (Iraqi Penal Code, 1969, Art. 115)

C. Material precautionary measures:

1. Confiscation (Iraqi Penal Code, 1969, Art. 117)
2. Undertaking of good conduct (Iraqi Penal Code, 1969, Arts. 118–120)
3. Closure of the premises (Iraqi Penal Code, 1969, Art. 121)
4. Suspension and dissolution of the legal person (Iraqi Penal Code, 1969, Arts. 122–123)

The general provisions governing the imposition of precautionary measures in the Iraqi Penal Code also came in various places, addressed by Article 103 and Articles 124–127 thereof.

3.2 Subsection Two: Its Effects on Rehabilitation and Criminal Recidivism

As for the case of crimes whose penalty the law proceeds to aggravate, this aggravation may be linked to those crimes that were committed and in which the dangerousness of the criminal became clear. The reason for aggravation here is linked to the clarity of the dangerousness of the motive of the criminal for committing them. As for the second case calling for the adoption of the idea of penal aggravation, it is based on the wisdom of the legislator in aggravating the penalty due to the existence of criminal dangerousness in itself. The criminal judge has the authority to assess the penalty in both the qualitative and quantitative scopes of the penalty, according to many contemporary penal legislations, and the purpose of this authority is to show the effective impact in achieving deterrence (Sidqi, 1998, p. 65).

3.2.1 Branch One: Aggravation of the Penalty as an Effect of Criminal Dangerousness in the Case of Criminal Recidivism

Some criminal jurists have defined penal aggravation, which entails aggravating the penalty, as "a legal system that enables the judge or obliges him to raise the amount of the penalty prescribed for the crime originally to a higher limit, based on specific circumstances stipulated by law that show a greater criminal dangerousness in the offender or a greater gravity of the act committed" (Tharwat, 1998, p. 71), such as the case of criminal recidivism, or exploiting a certain influence, or committing the crime against vulnerable groups. What is meant by the concept of criminal recidivism is "a person committing a crime after having been sentenced for a previous crime and the judgment therein having acquired finality" (Al-Nu'man, 2022, p. 2). From this concept, it becomes clear that there is criminal dangerousness in the criminal towards society, as he possesses a motive and inclination towards crime, heedless of the penalty. Recidivism in this concept is thus an aggravating circumstance, and this is what the Iraqi legislator adopted, laying down its controls and conditions (Iraqi Penal Code, 1969, Arts. 139–144).

Some jurists believe that the ordinary penalty has proven unsuccessful in achieving its objectives against those with criminal dangerousness, as not much time passes after the end of the previous penalty before they return to recidivism in crime (Al-Mubarak, 2023, p. 445). Among the clear effects of criminal dangerousness that in turn contributed to aggravating the criminal penalty is what the Iraqi legislator explicitly stipulated in Article 140 of the Iraqi Penal Code (Iraqi Penal Code, 1969, Art. 140), taking into account the conditions stated in Article 139 thereof (Iraqi Penal Code, 1969, Art. 139). Although this aggravation contained in Article 140 is not obligatory on the criminal judge and came as permissible, it indicates that the Iraqi legislator made the case of recidivism one of the forms of criminal dangerousness that requires legal aggravation as a legislative effect of the penalty, leaving its adoption to the discretionary authority of the criminal judge in the court of the case according to the circumstances of the incident, and he did well. Whereas the effect of criminal dangerousness came in the form of

obligatory aggravation in Article 141 of the same law, coupled with a circumstance that necessitated aggravation, namely the multiplicity of crimes accompanying the criminal act (Iraqi Penal Code, 1969, Art. 141).

The Egyptian legislator also arranged effects for criminal dangerousness through aggravating the penalty for crimes linked to cases of criminal recidivism according to Articles 49–51 of the Egyptian Penal Code (Egyptian Penal Code, 1966, Arts. 49–51). Whereas the Jordanian legislator went towards using the term "repetition" instead of "recidivism" as one of the forms of criminal dangerousness that calls for aggravating the penalty, and devoted to it the texts of Articles 101–102 of the Jordanian Penal Code, which made repetition a general aggravating circumstance for the penalty in felonies and misdemeanours (Jordanian Penal Code, 1960, Art. 101).

Accordingly, the importance of this comparative study emerges in clarifying the aspects of similarity and difference, and revealing the effect of criminal dangerousness on aggravating the criminal penalty in one of its clear forms, namely the case of criminal recidivism, and the extent of the efficacy of this aggravation in achieving balance between the principle of special deterrence and protecting society from all forms of criminal dangerousness. The Iraqi legislator also arranged in Articles 24–25 of the Juvenile Care Law the imposition of preventive measures on juveniles despite their not having committed crimes, in cases of behavioural deviation and vagrancy, adopting the concept of dangerousness of a social character, which differs in reality from dangerousness according to the opinions of criminal doctrine (Iraqi Juvenile Care Law, 1983, Arts. 24–25).

3.2.2 Branch Two: Its Effect on the Criminal Prevention Policy and the Rehabilitation Approach and Its Programmes

The legislator's sense of the danger that assails society as a result of the criminal dangerousness latent in the person of the criminal has contributed directly and greatly to the pursuit of finding solutions that protect society and contribute to repelling the harm of these potential risks from its members. Therefore, he resorted to a concept broader than the abstract penalty, namely reform and rehabilitation. This aggravation of a special character is in reality nothing but an aggravation calling for ending the state of dangerousness with unconventional visions that ultimately aim at several matters, the most important of which are protecting society, reforming the individual, and reducing the gap in the number of criminals within society. The more effective the means followed in reform and rehabilitation, the lower the proportion of danger threatening society.

Despite this, not all offenders are professionals of crime; among them are accidental criminals or those whom circumstances led to committing crimes without prior planning on their part, or due to lack of awareness and perception, or due to their young age, or their commission of a criminal act without free will on their part, or other similar cases, which placed the legislator before a great challenge due to the necessity of achieving suitability between the penalty and the personality of the criminal, and what the matter requires of delving into the study of his personality to reach the impact of criminal dangerousness on that personality on the one hand, and its effect on him and on society and the necessity of protecting society on the other hand. This challenge has made the protection of societies of great importance, requiring the adoption of preventive criminal policies whose approaches rely on programmes for the rehabilitation of criminals.

It is true to say that the crime and its circumstances often reveal the extent of the dangerousness of its perpetrator, and the judge is before it the most capable and knowledgeable of the personality of the offender and his circumstances, and thus he is able to choose the penalty or measure most suitable for protecting society from this dangerousness on the one hand, and protecting the criminal and imposing the penalty that ensures his rehabilitation and reform on the other hand (I. F. Kazim, 2018, p. 51).

It is known that determining criminal dangerousness falls originally on the judicial authority, but within the scope of the research, the question of most researchers in this field may come to mind about how the judicial authority can determine the amount of criminal dangerousness despite its being latent in the human psyche, and identify the different orientations of the criminal, and impose the measures appropriate to the personality of the criminal presented to it (R. A. Kazim, 2018, p. 87).

Many conferences have called for the criminal judiciary — the judge — to resort to the necessary means and expertise to assess cases that may be tainted by criminal dangerousness, and to adopt the opinions of competent specialists such as doctors, psychologists, and experienced social researchers who provide a kind of assistance to the judge in his task, and the judge's exercise of his discretionary authority when assessing criminal dangerousness, which is considered among the legal facts whose nature is dominated by the difficulty accompanying the inference thereof. The judge, when facing the legal fact as a material act, must investigate the best means to assess the dangerousness represented by this act, so that he can determine the penalty suitable for it in accordance with the directives drawn by the legislations (Al-Badrani, 2002, p. 12).

The penal policy of the Iraqi legislator is based on a philosophy whose purport is the reform of the inmate (Law of Reform of Inmates and Detainees, 2018, Art. 3), considering it the goal that the reformatory institution aims at. The legislative framework has come to regulate this in its criminal policies in the Law of Reform of Inmates and Detainees No. 14 of 2018, which replaced the Law of the General Institutions for Social Reform No.

104 of 1981. Iraqi law, through its adopted programmes, focuses on a scientific classification of inmates, each according to his age and the amount of criminal dangerousness (Law of Reform of Inmates and Detainees, 2018, Art. 1), and seeks to provide education, literacy, and vocational training programmes within specialised reformatory workshops with the aim of professionally integrating them after the expiry of the penalty.

Juveniles also receive attention through behaviour-modification programmes before the penalty. Despite this, these programmes still face many challenges. The Iraqi legal system lacks aftercare institutions whose activities extend beyond release in a way that prevents relapse, in addition to structural challenges related to prison overcrowding and the lack of specialised technical bodies that follow up the penal treatment. Among the effects of criminal dangerousness on penal individualisation is also what the legislator has granted to the executive authority represented by the prison administration when it adopted the idea of parole and the individualisation of penal treatment (Iraqi Code of Criminal Procedure, 1971, Art. 331).

Parole is a system that permits the executive authorities to release a person sentenced to a penalty depriving of liberty before the expiry of the penalty period adjudged, if it is proven to the court that the sentenced person is of good conduct and good behaviour during his stay in the reformatory detention places, provided that he remains of upright conduct after his release, specifically during the probation period (Al-Zubaidi, 1997, p. 126). The Iraqi legislator specified the provisions of parole in Articles 331–337 of the Code of Criminal Procedure, and permitted thereby the release of a person sentenced to a penalty depriving of liberty if he has served three quarters of its period, provided that it is not less than six months, requiring proof of his good conduct and behaviour during that period. It is worth noting that the Iraqi legislator's approval of the parole system means his interest in the idea of criminal dangerousness, since that system is based on looking at the person of the offender and scrutinising the behaviour that emanates from him during the period of his execution of the penalty adjudged against him (Al-Ta'i, 2017, p. 95).

4. Conclusion

In the conclusion of this research, it becomes clear that criminal dangerousness has a direct and clear effect on aggravating the criminal penalty, which many contemporary criminal legislations have addressed, and it has been a direct effect in making it one of the causes of penal aggravation, including the case of criminal recidivism and many circumstances related to the state of the criminal's psyche.

5. Results

1. Many contemporary criminal legislations, even if they differed in their criminal policy, have adopted criminal dangerousness.
2. Criminal dangerousness has a direct effect on aggravating the criminal penalty according to the gravity of the danger represented by the person of the criminal through his habitual commission of crime.
3. Although the Iraqi legislator did not grant absolute authority to determine criminal dangerousness, he granted broad discretionary authority to the criminal judge through the possibility of resorting to experts, for example to prove mental and psychological health, or through the possibility of ascertaining the criminal history of the criminal through the possibility of knowing his criminal antecedents to prove the state of criminal recidivism. Both reveal to the judge and enable him to prove the existence of a state of criminal dangerousness and thus enable him to aggravate the criminal penalty or impose precautionary measures for the purpose of protecting society from crime.
4. It cannot be denied that there is difficulty in determining the features of criminal dangerousness and the means of proving it, as it is a state concomitant with the psychological state of the criminal's person.

6. Recommendations

1. We propose to the Iraqi legislator to stipulate explicitly to define the concept of criminal dangerousness and its domains, and not to content himself with implicit reference, and to end the state of legislative deficiency in many criminal topics related to the concept of criminal dangerousness.
2. We call upon the legislator to adopt methods of disseminating legal culture and to stipulate them explicitly by obligating the concerned parties applying the law to conduct studies, hold seminars, and legislate to organise reform programmes that limit criminal dangerousness.

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