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The legal organization of the crime of child begging in light of Iraqi legislation

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Abstract. The crime of begging is spreading rapidly in most societies, especially in developing countries, where this crime has become a negative and dangerous impact on the social, economic and cultural levels. The reasons associated with this crime are many and varied, some of which may be due to the individual himself, in addition to the factors that affect society. Accordingly, our study deals with the topic of "the legal organization of the crime of child begging in the light of Iraqi and comparative legislation", especially since the category of children is characterized by its special and vulnerable nature, in addition to the fact that the impact of this crime is increasing in seriousness in light of modern technological and technological developments. In light of these challenges and in view of the importance of the child who enjoys protection and care in the majority of societies, many positive legislations have resorted to working to draw a legal structure that suits the special nature of the child "juvenile", by deciding reform measures that suit each juvenile individually and according to his circumstances and personality, which was followed by Iraqi legislation. The study raises the problem of combating begging crimes committed by children, because it deals with many legal, social and psychological aspects, in addition to preventive and precautionary measures, as well as demonstrating the ability of Iraqi legislation to confront. Our study was divided into two topics; we dealt in the first with the crime of child begging, and in the second we dealt with the elements of the crime of child begging and its penalties.

Keywords: Children, juveniles, begging, measures, punitive policies.

INTRODUCTION

The world is witnessing many developments at all political, social, cultural and social levels, although society still suffers from the seriousness of crime and its impact on societies, which led to the emergence of new patterns of crimes associated with children, such as the spread of the phenomenon of begging among children, which is an organized crime that affects an important segment of society.

The crime of begging is one of the cancerous diseases that have increased in the majority of societies, especially developing ones, in light of the multiplicity and diversity of causes associated with that crime. Begging is also characterized by its relative nature, according to which the percentage of beggars varies from one country to another and from one society to another, especially in light of the invention of many types of begging in light of the rapid developments taking place in societies.

However, it is clear to the statement that this crime has become a negative and dangerous impact on the social, economic and cultural levels, so it contributed to the emergence of this crime as a result of many reasons, some of which may be due to the individual himself, in addition to the factors that affect society.

In light of these challenges that result in child begging crimes, on the one hand, the impact of these crimes on societies, especially in light of the prevalence and spread of that crime as a result of the technical and technological developments that societies have achieved in recent times.

On the other hand, the category of children is characterized by its special nature, especially since the child "juvenile" is a creature whose mental maturity is not complete, and this has prompted many positive legislation at all national, regional, and international levels to work on drawing a legal structure that suits the special nature of the child "juvenile", by deciding reform measures that suit each juvenile individually and according to his circumstances and personality, and through this Iraqi legislation addresses the crime of begging in the penal law [28], in the Juvenile Welfare Law [29], and in the Anti-Human Trafficking Law [30], and the same behavior has followed the comparative Egyptian legislation [31].

These legislations included many policies aimed at reforming and correcting the juvenile, not punishing him. However, developments in societies must be taken into account in order to reduce the phenomenon of beggars, in addition to the adoption of many strict and varied policies aimed at combating crime and addressing its seriousness.

The importance of studying

The study is of great importance in theory and practice as follows:

1. The study is important, especially since the child enjoys protection and care in societies, and this matter will have an effective role in the progress and development of societies, and work on their development in the future, and the child's begging may crystallize through it the product of many circumstances of an economic, social and cultural nature...Therefore, it may not be scientifically feasible to adopt traditional legislative means, including deterrence, violence, or torture, to address children's deviations. Therefore, the legislator surrounds these groups with legislative treatment of a special nature that suits these groups, and aims to provide care and protection for the deviant child in general, and the beggar in particular.
2. The study is of great importance at the social level, because begging is one of the behaviors that all communities and groups of societies suffer from in their various stages of age, and it is more dangerous if this crime is committed by children, in light of its spread in societies, in addition to the fact that begging is of legal importance because it is one of the patterns of violence, and as a result, the study is important in order to confront the crime of begging.
3. The subject of the study acquires its importance, because the crime of begging is linked to many economic, social and psychological dimensions...Etc., and therefore the subject of the study manifests its importance due to the special nature related to the categories of children. Therefore, the elimination of these crimes must combine all the efforts of the men of jurisprudence and law, psychologists and sociologists, clerics, and others in order to achieve the care and protection of the child and work to correct and rehabilitate him again to society.

Second: Objectives of the study

The study seeks to achieve many goals, which are as follows:

1. The main objective of our study is to shed light on the legal organization of the crime of child begging in the light of Iraqi and Egyptian legislation, especially that the crime of begging has expanded, its patterns have multiplied, its scope has extended, and its seriousness and negative effects have increased in the majority of societies and countries.
2. Our study tries to clarify the concept of the crime of child begging, and its various causes.
3. A statement of the legal framework for the crime of child begging in accordance with the provisions of Iraqi and Egyptian law.
4. Addressing the elements of the crime of child begging, indicating the punitive policies and measures towards that crime.

The Study's Problem:

The subject of our study raises many problems at the legal level, in light of jurisprudential trends, and the reason for this is due to:

1. The problem of our study lies, in particular, that addressing the crimes of begging committed by children is not limited to the legal aspect only , but that addressing that crime must include many scientific aspects of social and psychological concern, in addition to preventive and precautionary measures.
2. The study raises a legal problem about the ability of the current Iraqi laws, whether represented in(criminal laws, and special legislation) towards combating the crime of child begging and addressing its seriousness, or the appropriateness of the texts of those legislations in order to absorb all crimes of begging, especially

in the current era in which many methods have emerged and the means of communication, transportation, and the rule of modern technical and technological applications have developed.

Accordingly, the questions raised by the study are as follows:

- What is the concept of child begging, and what are its distinctive reasons?
- What is the legislative framework for the crime of child begging in Iraqi and Egyptian legislation?
- Does the Iraqi legislator need positive legislation that regulates the provisions of the crime of begging and fits with recent developments, especially since the crime of begging evolves with the development of society?

Study Methodology:

- In our study, we followed the descriptive and comparative analytical approach, which aims to describe and diagnose the subject of research and the systematic study of this subject in its various aspects, by studying and analyzing the legislative texts in Iraqi law, and in light of Egyptian legislation, as well as clarifying the jurisprudence of legal jurisprudence and the findings of judicial decisions, so that we can come up with recommendations that serve the subject.

V. Study Plan:

Our study on "The Legal Regulation of the Crime of Child Begging in the Light of Iraqi and Comparative Legislation" was divided into two main topics and concluded with a conclusion that includes many conclusions and recommendations, as follows: -

Introduction - It includes the importance of the study, its objectives, problem and approach. The study also includes the following division:

- The first topic: What is the crime of child begging?
- The first requirement: The concept of the crime of begging and its causes
- The second requirement: The legal structure of the crime of child begging
- The second topic: the elements of the crime of child begging and its penalties
- The first requirement: Elements of the crime of child begging
- The second requirement: Punitive policies and measures towards the crime of child begging
- Conclusion
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First Section

What is the crime of child begging?

Begging is meant as illegal material gain using many crooked methods and methods, and therefore begging has turned into a profession that generates many high profits, without the beggar making an effort in exchange for that work, and the seriousness of that crime increases if it is committed by children .

Accordingly, the phenomenon of child begging in most countries, including Iraq, is one of the complex and intertwined phenomena that have emerged as a result of many factors and causes. This crime, despite its multiple methods and forms, has its autonomy from other crimes.

In order to clarify the nature of children's begging, we will divide the study into two demands as follows:

The first requirement: The concept of the crime of begging and its causes.

The second requirement: The legal structure of the crime of child begging.

The First Section

The concept of the crime of begging and its causes

The concept of the crime of child begging is characterized by modernity in the field of criminal law, especially in light of the emergence of this concept with many crimes committed against children, especially since it is difficult to identify the attacks that occur on these groups in the modern era [24].

Accordingly, we will review in this request the definition of the concept of the crime of begging, indicating the most important reasons for this crime, and its distinctive features, in two sections as follows:

Section I: Definition of the crime of begging.
Section Two: Causes of Begging.

First Section

Definition of the crime of begging

From the linguistic point of view, begging is derived from the material of the question, because he said in his verses: "You have been given a question, Moses"(Surat Taha, verse 36), as well as begging is the kindness of people, so he stretches his palm and asks them for subsistence of sustenance and help [8].

Begging is one of the sedentary lifestyles, especially since the beggar represents a great danger to security in society to the extent that it may require the imposition of the appropriate penalty, and it is incumbent upon the beggar to impose punishment or punishment not in failing to work, but lies in the possibility of a dangerous situation arising in the future [7].

Within the framework of the trends of legal jurisprudence, some go to the definition of begging; that it is standing in public roads and asking for material assistance from passers-by or from shops or public places, claiming or pretending to perform service for others, offering acrobatics or performing an act that takes a slogan to hide begging or sleeping on the streets, next to mosques and houses, as well as exploiting injuries or disabilities or using any other means of fraud to gain the sympathy of the public [22].

This crime is also defined as any illegal act committed by a person or group of persons who exploit children, whether they are healthy or persons with disabilities, by any means with the intention of exploiting them in begging [24].

It also expresses begging; as begging people in the streets and public roads, by using several means to provoke their pity [17].

The seriousness of the crime of begging lies in the fact that it is the first seed that pushes the child or juvenile to take the path of crime, which means that begging may be the starting point for many more severe crimes that have negative and dangerous effects on members of society.

At the level of positive legislation, the Iraqi legislator did not explicitly address the definition of the crime of begging, while the Iraqi legislator dealt with the provisions and rules of that crime in the penal legislation, and many special legislations.

As for the Egyptian legislator, it is possible to derive the concept of begging in general, but implicitly, not explicitly, as it is equal that the beggar is male or female on the public road, in shops, or public places, even if he claims or pretends to perform a service for others, offer games, or sell anything (Article 1 of Egyptian Law No. 49 of 1933).

The Egyptian legislator also considered, in accordance with the provisions of the Child Law No. 12 of 1996, which was amended by Law No. 126 of 2008, begging as one of the cases of putting the child at risk [32].

The Egyptian Court of Cassation defines a beggar as"he is in the rule of law ..... Whoever finds a beggar on the public road or in public places, even if he claims or pretends to perform a service for others, offer games, or sell anything. It is clear from this text that the punishment for begging in public roads and shops requires that it be intended for its own sake, overtly or covertly (Egyptian Court of Cassation, Appeal No. 1782 of 34 S, Session 9/2/1965, Rulings of the Egyptian Court of Cassation, The Criminal Technical Office, First Issue - Year 16, Rule 27, p. 114.).

For our part, children's begging can be defined as asking for a gift or a grant from people, whether goods, money or otherwise, without a legitimate or legal right, whether in public or private places, so that the child has taken begging behavior as a way to earn money and profit illegally and contrary to values and morals.

Section Two

Reasons for begging

The crime of begging is one of the social phenomena that crystallizes as a result of many factors, which led to the spread and exacerbation of this phenomenon in many societies, where the causes and factors of begging are many things, whether social or economic, and may be the result of external factors, as it may be due to factors due to the individual himself, so it becomes a deviant phenomenon for some individuals.

The child beggar is also part of the humanitarian community, which is affected by the economic and social conditions he is going through, so he finds himself between obtaining charity to meet his needs, or following the path of crime.

Accordingly, there are many theories explaining the phenomenon of children begging, so a trend refers to the theory of the disintegration of social ties and the weakness of family relations and their physical breakdown (in the case of divorce or death, or family abandonment or imprisonment of one of them), and this family disintegration may take another moral form represented in the poor relations between parents [6], as well as the addiction of one of the parents to drugs or intoxicants contributes to the stability of the child within the family [21].

The conclusion of the above reasons is that they contribute to a prominent role in the increase in crime and delinquency rates, especially among children. Therefore, in the presence of social disintegration and the absence of institutions and social systems controlling individuals and groups, they in turn contribute to the spread of many habits contrary to the rules of society, including the emergence of the phenomenon of begging [9].

This situation leaves many serious effects that affect the upbringing of children, which may lead to their displacement and their vulnerability to delinquency, and there is also a factor that is no less important than family or family fracture, which is the low level of educational understanding of parents, and the fact that one or both of them are far from following up their children, and their preoccupation with their life problems, and this exposes children to homelessness and the commission of crime [16].

One of the external social factors is displacement due to wars, which may be one of the driving factors that in turn contribute to the flight of refugees or escape from the effects of wars [23].

The existence of many cultural problems that may extend to the corruption that the educational system suffers from, which in turn leads to the exacerbation of the phenomenon of begging as a result of the disproportion between the curriculum and the mental and intellectual abilities of students, in addition to the excessive cruelty that characterizes many teachers as a result of the rigid school system, as well as the absence or lack of recreational and sports school activities and the increased pressure of parents on their children [15].

One of the economic factors and reasons that may lead to begging is the association of begging; that is, there is a close association with poverty, and the concept of poverty refers to that situation in which a person is unable to obtain a minimum level of human well-being [4]. The phenomenon of begging is also exacerbated by the lack of income and the large size of the family, in light of the inability of the family to meet various diverse needs [18].

This is an important factor when an individual engages in begging behavior, and this is done as a haven to supplement their insufficient income, allowing them to conduct a motive for crime such as theft, prostitution and drug trafficking [26].

Child begging is also associated with unemployment as a major factor for some individuals to beg for money, and unemployment means that a person stops working. There is no doubt that it affects the phenomenon of criminality [6].

The reasons for begging may lie in many internal factors of the individual; some of these factors may be due to individuals that contribute to providing a helping hand or assistance because of the lack of awareness and awareness of the dangers left by this phenomenon or their ignorance of the law that forbids such abnormal acts or the goodwill of the citizen and his belief in the sincerity of the beggar's need [20].

These factors may also be due to some of the reasons that are due to the individual himself, which may be represented in the physical factors due to the person's injury with one of the physical disabilities that would make him unable to do work, and unable to provide for his life needs, so he resorts to begging, taking advantage of his disability to obtain material and non-material benefits [19].

The role of the psychological factors of the child cannot be hidden as psychological conflict is generated in children due to the environmental pressures to which the child is exposed, the urgency of deprivation, and the contradiction of social values around him and may be the result of a disorder or failure to perform the functions of his internal organs [3].

Accordingly, the psychological aspect as one of the internal factors of the child has its effects, in order to obtain material benefits by practicing begging in order to live from them.

In addition, the weakness of the beggar's religious and moral scruples may be a major reason for begging, especially since the Islamic religion prohibits the individual from resorting to begging, especially if he has the ability to do work and obtain a good livelihood. Therefore, resorting to begging is tainted by the same money (Saht) and is taken by force [20].

For our part, we believe that there is great difficulty in relying on one reason or factor that motivates begging, as the dimensions of this phenomenon are combined with each other in many diverse factors. They are equal to being the result of social factors (family rift), or because of economic factors (widespread poverty, unemployment), or cultural factors (defects of the educational system, or cultural weakness), or because of internal factors that are due to the individual himself (physical, psychological), or religious (weak religious and moral scruples), and may be due to the external conditions of the society in which he lives (wars and crises).

Second Topic

The legal structure of the crime of child begging

Exploiting children and urging them to beg at an early age are dangerous social behaviors that help kill the child's ambition and desire to succeed, and it also represents a first step towards breaking the law [20].

Accordingly, most of the positive legislation has prevented and criminalized begging and combating it in various different ways, especially since begging may push the child to take the path of crime, which means that it is the beginning of the path towards deviation.

Accordingly, we will review the approach of Iraqi and Egyptian legislation by stating their position on this crime in two sections as follows:

Section I: The legal structure of the crime of child begging in Iraqi legislation.

Section II: The legal structure of the crime of child begging in Egyptian legislation.

Section One

The legal structure of the crime of child begging in Iraqi legislation

The protection and care of child begging crimes was not limited to the constitutional document, but also extended to the protection and care of these groups in more than one positive legislation, both at the level of the Iraqi Penal Code No. (111) of 1969 and its amendments, where the legislator prohibited begging and criminalized it under the provisions of the Iraqi Penal Code, and dealt with by organization (The Iraqi legislator, in Book II of the Penal Code, dealt with crimes harmful to the public interest and assigned nine chapters to them. In Chapter VIII, he addressed social crimes, including the crime of begging).

The legal framework for the crime of begging extends in many laws and special legislation represented in the Iraqi Juvenile Welfare Law, as well as in the Anti-Human Trafficking Law, and therefore we will address the subject as follows:

First - The legal organization of the crime of begging in the Iraqi Constitution:

The Iraqi legislator organized many economic and social rights, as these rights were considered among the duties of the state to take care of the Iraqi citizen in the following manner " (First): - The state guarantees the individual and the family - especially children and women - social and health security, and the basic elements of living a decent life, providing them with adequate income, and adequate housing. The state provides social and health security for Iraqis in case of old age, illness, disability, homelessness, orphanhood, or unemployment, and works to protect them from ignorance, fear, and poverty, and provides them with housing and special programs to rehabilitate and care for them (Article 30 of the Iraqi Constitution issued in 2005).

The text of the constitution is clear and does not need to be interpreted or interpreted. The state must establish many rights and guarantee them many guarantees that include the care of the Iraqi citizen without discrimination or distinction according to gender, age or social status.

Second- Legal regulation of the crime of begging in penal legislation:

The Iraqi legislator dealt in Article (390/First) (The same legal text was amended by Law No. 16 of 1999 amending the Iraqi Penal Code) of the Penal Code as: "He shall be punished.... Every person over eighteen years of age who finds a beggar on the public road or in public shops or enters without permission a house or a shop attached to it for the purpose of begging, and the punishment shall be imprisonment for a period not exceeding one year if the beggar fabricates wounds or impairment or uses any other means of deception to gain the benevolence of the public or reveals a wound or impairment or insists on begging.

The content of the aforementioned article raises that the Iraqi legislator has set a maximum legal age that the beggar must have to be at the age of eighteen, and therefore the person who is less than this age falls within the scope of the juvenile, or the child (Article (5) of the Juvenile Welfare Law No. 76 of 1983 indicated that "the provisions of this law shall apply to a juvenile who turns eighteen years of age during the investigation). In the latter case, the juvenile is referred to the juvenile court and the provisions of juvenile responsibility apply in the event of a violation (Refer to: the second paragraph of Article 390 of the Iraqi Penal Code).

The Iraqi legislator also referred in the Penal Code to the authority of the criminal judge towards the beggar. Article (391) we will review elsewhere in the study. Article (392) of the Iraqi Penal Code also dealt with the crime of inciting children to beg.

Third: The legal regulation of the crime of begging in the Anti-Human Trafficking Law No. 28 of 2012:

The Iraqi legislator addressed the definition of this crime in Article 1 of the Anti-Human Trafficking Law (The same law was published in Al-Waqa Al-Iraqiya, Issue No. 4236, dated 23/4/2012) by saying, "Human trafficking means the recruitment or transfer of persons for the purposes of this law by means of the threat or use of force or other forms of coercion, kidnapping, fraud, deception, or the abuse of power to give or receive sums of money or benefits to obtain the approval of an authority or guardianship over another person with the aim of selling them or exploiting them in prostitution, sexual exploitation, forced labor, slavery, begging, or trafficking in their human organs or for the purposes of medical experiments."

It is clear from the definition set out by the Iraqi legislator that it shares the text of Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention of 2000(Human trafficking is defined as: "the recruitment, transportation, transfer, harboring or receipt of persons by Threat or use of force or other forms of coercion, abduction, fraud, deception or abuse power or abuse of a position of vulnerability, or by giving or receiving payments or benefits to achieve the consent of a person Control over another person for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others forms of sexual exploitation, forced labor or service, slavery or practices similar to slavery, servitude or removal of organs).

According to the above, begging may take its criminal form in international dimensions when the criminal project is carried out by one of the organizations that bring individuals for the purposes of begging or obtaining their money. It is also clear that exploitation in begging is one of the forms of forced labor that force the victim to beg.

It should be noted that for human trafficking crimes, the victim's consent is irrelevant; therefore, once the use of deception, coercion, force, or other prohibited means is established, the victim's consent becomes irrelevant and cannot be used as a means of defense [25].

This is explicitly confirmed by the Iraqi legislator that the consent of the victims of the crime of human trafficking is not considered in all cases (Article 10 of the Anti-Human Trafficking Law No. 28 of 2012), and therefore the explicit or implicit consent of the child to commit the crime of begging falls within the scope of criminalization.

Fourth: The legal regulation of the crime of begging in the Juvenile Welfare Law No. 76 of 1983, as amended:

The Iraqi Juvenile Welfare Law dealt with the phenomena of homelessness and begging, as this law states that"a young person or juvenile shall be considered homeless if he is found begging in public places or making injuries or disabilities or using fraud as a means to win the sympathy of the public with the aim of begging"(Article (24) of the Iraqi Juvenile Welfare Law No. 76 of 1983, as amended).

The law also stipulates that "the juvenile court may, at the request of a relative of the child or juvenile or the Public Prosecution, decide to revoke guardianship over the child or juvenile for a period it determines in the following cases:..... If the guardian is sentenced in accordance with the provisions of Article (30) of this Law." (Paragraph (III) of Article 32 of the Iraqi Juvenile Welfare Law No. 76 of 1983, as amended).

With reference to the provisions of Article 30 of the Law, it stipulates that "A penalty of imprisonment for a period not exceeding one year or a fine of no less than one hundred dinars and no more than five hundred dinars shall be imposed on any guardian who drives a juvenile or youngster to vagrancy or deviation of behavior."

It is clear from the above that the Iraqi legislator has identified the cases according to which the decision to deprive the guardian of guardianship is issued in many categories that depend on the request of a relative of the child or juvenile, or the Public Prosecution.

The question arises whether the criminal judge has discretion in issuing the decision to take away guardianship from the guardian?

With reference to the aforementioned legislative text, it is clear that the Iraqi legislator does not grant the criminal judge a discretionary authority to issue a decision to deprive the guardian of guardianship, but rather that it was limited to many of the aforementioned categories without giving the judge that right.

For our part, we criticize the conduct of the Iraqi legislator in that matter. It was first of all for the Iraqi legislator to grant the criminal judge a discretionary authority regarding the issuance of a decision to take away guardianship from the guardian in light of the facts of the case and its documents. The reason for this is the seriousness of the guardian's act, which resulted in the displacement of the juvenile.

Section Two

The legal structure of the crime of child begging in Egyptian legislation

Many Egyptian legislations have explicitly guaranteed the adoption of the protection and care of the child at the constitutional and legal level, especially since the child is considered the cornerstone of future development.

First - The position of the Egyptian Constitution:

The Egyptian Constitution of 2014 recognized the constitutional protection of the rights of the child by stipulating that “every person who has not attained the age of eighteen years shall be considered a child...Every child has the right to early education in a children's center until the age of six, and it is prohibited to employ the child before he exceeds the age of completion of basic education, and it is also prohibited to employ him in work that exposes him to danger..."(Review the text of Article (80) of the Egyptian Constitution issued in 2014).

It is clear from this regulation that the constitutional legislator has decided many of the rights of a child who has not reached the age of eighteen years, such as prohibiting his employment in works that endanger him or that may predict the occurrence of a crime in the future, including acts of begging.

Second-The Egyptian Child Law:

The Egyptian Child Law No. 12 of 1996, as amended by Law 126 of 2008, stipulates in Article 96 the limitation of cases that constitute the child's exposure to danger, as the same article dealt with the statement of many cases(The text of the same article was replaced by Law No. 126 of 2008 – Official Gazette No. 24 bis on June 15, 2008), including the seventh case, "If a beggar is found, it is considered an act of begging to offer trivial goods or services or to perform acrobatics and other things that do not suit a serious resource for living."

Under this legislative text, the Egyptian legislator considered the child to be a beggar in the case of the child's exposure to passers-by seeking help, and it is equal in that regard that such assistance is of a material, financial, or in-kind nature, represented by his practice of doing one of the works, whether selling one of the goods and services, wiping the car glass at traffic lights, selling paper napkins, or one of the products, or performing acrobatics in exchange for obtaining a financial reward. Therefore, these behaviors are included in begging, and the Egyptian legislator mentioned these cases, for example, but not limited and specific because he added to the list of actions any resource that is not suitable as a source of livelihood or subsistence [22].

Third – Begging in the Egyptian Begging Law:

The Egyptian legislator took over the regulation of the Egyptian begging law under Law No. (49) of 1933, as amended, in which it was stipulated that....(1)Whoever entices juveniles under the age of fifteen years to beg. (2) Whoever uses a young person of this age or hands him over to another for the purpose of begging. If the accused is a guardian or trustee of the child or is entrusted with his observation, the punishment shall be....(Article (6) of the Egyptian Begging Law No. (49) of 1933, as amended).

It is clear from the above that the Egyptian legislator has criminalized cases of begging, which is the temptation, use, or delivery of the juvenile child to another, as this matter is subject to being less than fifteen years old.

Fourth- Begging in the Anti-Human Trafficking Law No. 64 of 2010 :

The Egyptian legislator stipulated in the Anti-Human Trafficking Law No. 64 of 2010 that "Anyone who deals in any way in a natural person, including selling, offering for sale, buying, promising, using, transporting, delivering, harboring, receiving or receiving, whether within the country or across its national borders – if this is done by the use or threat of force or violence, or by abduction, fraud, deception, abuse of power, exploitation of a position of vulnerability or need, or the promise to give or receive sums of money or benefits in exchange for the consent of a person to trade in another person who has control over him – all of this - if the dealing is for the purpose of exploitation in any form, including exploitation in prostitution and other forms of sexual exploitation, exploitation of children in that and in pornography, forced labor or service, slavery or practices similar to slavery, servitude, begging, or the removal of human organs or tissues or part thereof"(Article 2 of the Anti-Human Trafficking Law No. 64 of 2010).

The Egyptian legislator followed the same approach taken by the Iraqi legislator, which stipulates that begging may take its criminal form internationally and carry out criminal activity. It is one of the criminal organizations

that bring individuals for begging purposes. Begging may also fall as the element of exploitation in begging is one of the forms of forced labor that forces the victim to beg.

Second Section

Elements of the crime of child begging and its penalties

The crime of begging - as one of the crimes - which represents an attack on one of the values of society worthy of protection requires that it has many elements, whether represented in the presumed element of the crime, the other elements must also be available, whether material, in addition to the moral elements, and the crime of begging, like other crimes, in order for the perpetrator to deserve the prescribed punishment, which we will clarify on two demands as follows:

The first requirement: Elements of the crime of child begging

The second requirement: Punitive policies and measures towards the crime of child begging

The First Section

Elements of the crime of child begging

We review the elements of the crime of child begging, which are the presumed element and the material element related to the crime of child begging, in addition to indicating the moral requirements of the crime in three consecutive sections as follows:

First Section

Presumed corner of the juvenile (child)

The Iraqi legislator dealt in the Juvenile Welfare Law No. 76 of 1983 with many categories that fall under the concept of juveniles, as the Iraqi Juveniles Law stipulates in Article 3 that “First – is considered a young person who has not completed nine years of age. Second – He is considered a juvenile who has completed nine years of age and has not completed eighteen years of age. 3. A juvenile shall be considered a boy if he has completed nine years of age and has not completed fifteen years of age. 4. A juvenile shall be considered a young person if he has completed fifteen years of age and has not completed eighteen years of age. 5.Provided that "the provisions of this law shall apply to a juvenile who is eighteen years of age during the investigation (Article 5 of the Juvenile Welfare Law No. 76 of 1983).

Based on the above, the provisions of begging stipulated in the Iraqi Juvenile Welfare Law shall be applied, provided that he is eighteen years of age during criminal investigations.

On the other hand, the Egyptian Child Law No. 12 of 1996, which was amended by Law No. 126 of 2008, addressed the definition of a child as "a child means anyone who has not exceeded the age of eighteen full Gregorian years....(The first paragraph of Article 2 of the Egyptian Child Law No. 12 of 1996, which was amended by Law No. 126 of 2008).

The Egyptian Court of Cassation ruled in a judgment issued on March 25, 1996 - before the contested judgment issued on February 23, 1997 - Law No. 12 of 1996 promulgating the Child Law superseding the provisions of Law No. 31 of 1974 on juveniles, and stipulated in Article 2 thereof that the child in the field of care stipulated in this law means anyone who has not reached eighteen full Gregorian years (Ruling of the Court of Cassation, Appeal No. 9870 of 67 Hearing of 18/4/1999 Q 50 p 1, p 224).

Criminal responsibility is established at the moment when the age of the child is determined at the time of the commission of the crime or when he is in one of the cases of exposure to delinquency, which means that no reliance is placed on the time when the juvenile is brought to trial or the court ruling is issued [2].

Section Two

Material element of the crime of begging

The material element of the crime of begging, like other crimes, where this element consists of the criminal act or behavior of the child, and links between the criminal act and the criminal result a relationship or causal link between them.

Criminal conduct is that external physical activity that constitutes the crime. Without it there is no crime, for the law does not punish mere internal intentions in general.

The concept of the material element, as referred to by the Iraqi legislator, means that criminal behavior that is carried out by virtue of committing an act criminalized by law or refraining from doing an act ordered by law(See Article 28 of the Iraqi Penal Code). Whereas, the nature of begging as a crime in which the negative behavior of refraining from doing an act or action is not imagined, and therefore the criminal behavior of begging is considered a positive behavior committed by a person who commits it (child beggar).

Criminal behavior may be associated with the crime of begging if the perpetrator makes or pretends

(Child beggar) He was injured by one of the serious wounds, or one of the disabilities, or through the use of various means and methods of deception with the aim of begging to win the sympathy, charity and generosity of individuals [20].

Accordingly, the Egyptian Court of Cassation ruled that "the crime of begging is merely caught while committing an act of begging from others, and the law did not make professionalism one of its pillars (Judgment of the Egyptian Court of Cassation, Appeal No. 774 of 42 Technical Office 23 pages No. 1009, session of 8/10/1972). Out of the works of begging comes folklore in the streets (The Egyptian Court of Cassation ruled in a court ruling that "....Since folk singing has become an authentic art that stems from an environment that nourishes it with its feelings and feelings and seeks and works for it, it is no longer an amusement, entertainment, luxury and free, but rather a kind of popular culture and literature that responds to its people, through which people express on various national occasions and special holidays what their thoughts are in their natural fields in an honest fence of public morals, people's customs and traditions and the custom established among them and under the patronage of the state, which has opened the horizons of people's taste for it by their own means and then through the various media and means of encouragement without imposing on it restrictions that stand in the way of its prosperity and spread...)

See the judgment of the Egyptian Court of Cassation, Appeal No. 1782 of the 34th Judicial Year, session of February 9, 1965, Cassation Rulings, Technical Office, Criminal, First Issue, Year 16, p. 114.).

The crime of begging is considered one of the crimes of danger and not one of the crimes of harm, and therefore the criminal result of the act is not required [10], and therefore the legislator is satisfied with the integration of the material element of the crime just a possibility of achieving a harmful result, or a noticeable threat to the safety of money protected by the criminal legislator [14], in other words, these crimes do not occur by their nature any harmful material result (with the occurrence of the criminal result), nor does he conceive of attempting this crime, because it either occurs completely with the occurrence of criminal behavior, or does not occur at all if such behavior does not occur [1].

Third Part

The moral element of the crime of child begging

It is not enough for the material element of the crime to be available, but the materiality’s of the crime must be reflected in the psychology of the perpetrator [24]; it is achieved by the availability of the moral element (sin), especially since the last element is the psychological and mental component of criminal activity, that is, the psychological and mental elements that the legislator means in the texts of punishment and criminalization [12].

Accordingly, the moral element of the crime is not established unless the legally considered will of the perpetrator is tainted by sin, that is, criminal sin [27].

The moral element of any crime is considered one of the psychological motives and is also called "criminal intent". Therefore, in order to complete the elements of the crime of begging, it must have a moral element because the extension of the hand of the questioner for urgent and unintentional need to exploit others, and the looting of their water does not take the act as a description of the crime, and the reason for this is the absence of criminal intent, and therefore the moral element is the beggar's intention to exploit others by lying and claiming need and sometimes urgency, leaving the official with no choice but to submit to his requests, and to provide his assistance until the crime is achieved and the perpetrator deserves punishment [11].

The crime of begging is one of the crimes of general criminal intent (The first paragraph of Article 33 states that the criminal intent is to direct the perpetrator's will to commit the act constituting the crime aiming at the result of the crime that occurred or any other criminal result), in which the element of knowledge is represented, that is, the perpetrator knows that he is carrying out illegal behavior and knows that an act is contrary to values and morals, and the will of the act constituting the crime tends to commit this behavior, the result of which is the attack on the right protected by law and the will of each incident that determines the significance of the criminal act and is part of the materiality of the crime [13].

The criminal intent is achieved in the crime of begging that the will of the perpetrator or beggar is directed to carry out the material work constituting the crime, which is the request or begging, and that his will is directed towards achieving the criminal result that occurred from this material work, which is to obtain the request from money, clothing, food, etc. [20].

We are questioned about the criterion of motive in that crime?

The Iraqi legislator pointed out that "the motive for committing a crime is not considered unless the law stipulates otherwise (Article 38 of the Iraqi Penal Code), and therefore that crime may be committed by the person concerned with a noble motive or a low motive, and hence the motives differ in the crime, and there is no lesson for these motives in the criminal act of begging.

Second Topic

Punitive policies and measures towards the crime of child begging

The majority of national laws criminalize the crimes of begging - in general - as a serious crime that affects the civilized appearance of the state and the public interest. In the same regard, Iraqi and Egyptian legislation punishes the crime of begging children, as it is noted on the course of legal texts that the crime of begging has fluctuated between felonies and misdemeanors, and multiple penalties have been imposed on the perpetrator, although begging may be a major source towards the conduct of the crime.

Accordingly, the punitive policies and measures towards the crime of child begging require dividing them into two branches as follows:

First Section

Punishment for the crime of child begging in Iraqi legislation

In this area, we will address the punishment of this crime under the criminal laws created by the Iraqi legislator, which ensure criminal protection for this important segment of society:

I. Punishment for the crime of child begging in the Iraqi Juvenile Care Law:

The Iraqi legislator addressed in Article (390) (The same legal text was amended by Law No. 16 of 1999 amending the Iraqi Penal Code) of the Penal Code that: "Imprisonment shall be punished for a period of not less than one month and not more than three months.... Every person over eighteen years of age who finds a beggar on the public road or in public shops or enters without permission a house or a shop attached to it for the purpose of begging, and the punishment shall be imprisonment for a period not exceeding one year if the beggar fabricates wounds or impairment or uses any other means of deception to gain the benevolence of the public or reveals a wound or impairment or insists on begging.

The content of the aforementioned article raises two penalties; the first is the imposition of a penalty of imprisonment for a period of no less than one month and not exceeding three months, as the request to apply this penalty is subject to the availability of many conditions, which are as follows:

1-The beggar must be of legal age to be eighteen years old.

2- Carrying out acts of begging on the public road or in public shops or entering without permission a house or shop attached to it for the purpose of begging.

The second penalty shall be imprisonment for a period not exceeding one year under the following conditions:

1-The beggar makes a wound or a disability.

2. Use any other means of deception to gain the benevolence of the public.

3- Disclosing a wound, disability, or urgency in begging.

The Iraqi legislator also granted the criminal judge a discretionary authority towards the beggar, which was dealt with in the text of Article (391) of the regulation, which states: " The court may, instead of sentencing the beggar to the punishment stipulated in the previous article, order that he be placed for a period not exceeding one year in a house for employment if he is able to work, or that he be placed in a shelter or a recognized charity if he is unable to work and has no money to live from, whenever it is possible for him to join the appropriate place for him."

It is clear from this legislative text that the Iraqi legislator did not consider begging a crime, and did not assign a criminal penalty to the beggar, but dealt with the beggar with more humanitarian motives by placing him in an operating house if he is able to work or by placing him in a shelter or a home for the disabled or a charitable institution if he is unable to work.

The Iraqi legislator also stipulated the crime of incitement to begging in Article (392) of the Penal Code: "A penalty of imprisonment for a period not exceeding three months and a fine ..., or one of these two penalties... Anyone who entices a person under the age of eighteen to beg . The penalty shall be imprisonment for a period not exceeding six months and a fine ..., or one of these two penalties if the offender is a guardian or trustee or is entrusted with the care or observation of that person. "

It is clear from the conduct of the Iraqi legislator that incitement to begging is considered a serious crime, especially if the beggar has not reached the age of 18, and the punishment is aggravated for the guardian, guardian, or person entrusted with the care and protection of the beggar who is not an adult.

Second -Punishment for the crime of child begging in the Iraqi Juvenile Care Law:

The Iraqi legislator has punished the crime of begging, or inciting to commit it, as the punitive attitudes towards that punishment are as follows:

In the event that the juvenile commits the crime of begging, he shall be subject to the punishment of begging prescribed in accordance with the provisions of the Juvenile Welfare Law stipulated in Articles 24 and 25 of the same law, which requires the juvenile judge to place the juvenile in a homeless house, as well as conduct a personal study of the juvenile, and refer him before the Juvenile Court, and thus these procedures are more effective in following up cases of begging under the Juvenile Welfare Law and more effective than the Penal Code. "

The Iraqi legislator also stipulated in Article 30 of the Juvenile Welfare Law that the penalty imposed on the guardian of the juvenile who forces the juvenile to vagrancy shall be imprisonment for a period not exceeding one year or a fine (Thus, it is clear that the Juvenile Welfare Law took the severity of deterring the guardian of the juvenile who forces him to beg, while previously the punishment for those who entice the juvenile to beg was imprisonment for a period not exceeding three months under Article 392 of the Penal Code).

It is clear from this legal text decided by the Iraqi legislator, especially with regard to the penalty imposed on the guardian of the juvenile(child) who is forced to be homeless, many observations are as follows:

A. The judge has the discretionary power to impose the appropriate punishment on the guardian of the juvenile(child) who forces him to be homeless, as the Iraqi legislator used the condition tool (or) in the criminal text, which indicates the choice between one of the two penalties.
B. The Iraqi legislator considered this crime a misdemeanor, and decided for it either to impose a penalty of imprisonment or a fine.

For our part, we do not support the behavior of the Iraqi legislator in approving the penalty of imprisonment and fine because these penalties are insufficient to achieve the deterrent effect, because the punishment is not commensurate with the crime committed. Therefore, we call on the legislator to increase the penalty prescribed for that crime, provided that the penalty is doubled in case of recidivism.

Third-Punishment of the crime of child begging in the Iraqi Anti-Trafficking in Human Beings Law:

The Iraqi legislator pointed to the adoption of many punitive policies in the event of the exploitation of children - or others - in the crimes of begging as one of the patterns of human trafficking crimes by dividing the punishment and considering it a felony(Thus, it is clear that the Juvenile Welfare Law took the severity of deterring the guardian of the juvenile who forces him to beg, while previously the punishment for those who entice the juvenile to beg was imprisonment for a period not exceeding three months under Article 392 of the Penal Code), as follows:

1. Considering the crime a felony punishable by the legislator with temporary imprisonment and a fine of no less than (5,000,000) five million dinars and no more than (10,000,000) ten million dinars, whoever commits one of the acts stipulated in Article (1)(Paragraph 2 of Article 5 of the Anti-Human Trafficking Law), and in the context of those criminal acts includes the crimes of begging.
2. Considering the crime a felony punishable by imprisonment for a period not exceeding (15) fifteen years and a fine not exceeding (10,000,000) ten million dinars, whoever commits the crime of trafficking using one of the following means (Article 5 of the Iraqi Human Trafficking Law):
    a) The use of any form of coercion, such as extortion, threat, or seizure of travel documents or official documents.
    b) Using fraudulent methods to deceive or deceive victims.
    c) Giving or receiving sums of money or benefits to obtain the consent of those over whom he has authority or guardianship.
3. Considering the crime, a felony punishable by life imprisonment and a fine of no less than (15000000) fifteen million dinars and no more than (25000000) twenty-five million dinars, whoever commits the crime of human trafficking .... If the victim has not completed (18) eighteen years of age (Article 6, paragraph (I) of the Iraqi Anti-Trafficking Law).

Section Two

Punishment for the crime of child begging in Egyptian legislation

The Egyptian legislator touched on many punitive policies in many legislations, which we review as follows:

I. Punitive Policies in the Children's Law:

According to what the legislator referred to in the seventh paragraph of Article (96) of the Egyptian Child Law, the child is considered endangered, if he is found begging, and it is considered an act of begging to offer trivial goods or services or to perform acrobatics and other things that do not suit a serious resource for living. "

The legislator further decides that " if the child is found in one of the situations of risk (including the case of begging), his order shall be presented to the Subcommittee on Child Protection to implement its affairs stipulated in Article (99 bis) of this law, and the Committee may, if it deems it necessary, request the child's prosecution to warn the child's guardian in writing to avoid the reasons for his risk, and this warning may be objected to before the Child Court within ten days from the date of its receipt, and the procedures prescribed for objection in criminal orders shall be followed in consideration of this objection and adjudication thereof, and the judgment thereon shall be final.... (The Article (98) of the Egyptian Child Law).

Thus, it is clear that the date of ten days is the date of falling. By the passage of ten days without objecting to the warning, its delivery becomes final, while the legal objection to the warning is considered by the Child Court in the same objection, which is either to rule to uphold the warning, or to rule to cancel it and its ruling is final (reviews Articles 327and 328 of the Egyptian Code of Criminal Procedure).

1. As for the punishment prescribed for the guardian of the child who was neglected after being warned, and as a result of this negligence, the child begged:
   The Egyptian legislator indicated that "whoever, after being warned in accordance with the first paragraph of Article (98) of this Law, neglects to monitor the child and consequently exposes him to danger in one of the cases referred to in the first paragraph of Article (98) of this Law, shall be punished with a fine not exceeding three hundred pounds (The Article (113) of the Egyptian Child Law).
   By this criminalization, the legislator aims to force the guardian of the child (who was warned to monitor his good behavior) to carry out his obligation to monitor the child and protect him from being delinquent(begging), and the penalty approved by the Egyptian legislator is a fine not exceeding three hundred pounds, and this punishment is not deterrent in light of the consequences that may result from that negligence.
2. With regard to the penalty imposed on the person to whom the child was handed over who neglected to perform his duties, which led to the child's exposure to danger or delinquency:

The legislator decided this means to protect the child from exposure to danger or delinquency, as the Child Law stipulates that: "A fine of no less than two hundred pounds and no more than one thousand pounds shall be imposed on anyone who is handed over to a child and neglected to perform one of his duties if this results in the child committing a crime or endangering him in one of the cases set forth in this law . If this results from a serious breach of his duties, the penalty shall be imprisonment for a period of no less than three months and no more than one year and a fine of no less than one thousand pounds and no more than five thousand pounds or one of these two penalties. (Article (114)of the Egyptian Child Law).

This penalty falls within the description of misdemeanors, but it is twofold. In its simple form, a fine of not less than two hundred pounds and not more than one thousand pounds is imposed on anyone who is handed over to a child and neglects to perform one of his duties if this results in the child committing a crime or endangering him in one of the cases described in this law.

In its grave form, if there is a serious breach of the duties of the person to whom the child was handed over, which led to the child's exposure to danger or delinquency, the penalty shall be imprisonment for a period of no less than three months and not exceeding one year and a fine of no less than one thousand pounds and not exceeding five thousand pounds or one of these two penalties.

3. Punishing the incitement of the child who commits the crime, even if this does not have an effect.

The Egyptian legislator addressed this crime in the Children's Law, which stipulates that: "Without prejudice to the provisions of the criminal contribution, every adult who incites a child to commit a misdemeanor, prepares him for it, helps him or facilitates him in any way, and does not reach his intention, shall be punished, not exceeding half of the maximum penalty prescribed for that crime. The punishment shall be imprisonment for a period no less than six months if the perpetrator uses with the child means of coercion or threat, is one of his ascendants, is responsible for his upbringing or observation, is surrendered to him in accordance with the law, or is a servant of any of the aforementioned. In all cases, if the crime is committed against more than one child, even

at different times, the penalty shall be imprisonment for a period of no less than one year and no more than seven years. Any adult who incites a child to commit a felony, prepares him for it, assists him or facilitates him in any way, and does not communicate his intention shall be punished with the punishment prescribed for the attempt to commit the incited crime (Article (116) of the Egyptian Child Law).

For our part, we support what was approved by the Egyptian legislator to establish a special crime related to inciting a child to commit misdemeanors and felonies, even if this incitement does not have any legal effect, within the means it decides to confront cases of children being begged.

II. Punitive Policies in the Anti-Human Trafficking Law

The Egyptian legislator shall punish the crime of human trafficking in its simple form, as he considers it a felony, for which the legislator shall impose a penalty of rigorous imprisonment and a fine of not less than fifty thousand pounds or a fine equal to the value of the benefit to the perpetrator, whichever is more (Reviews Article 5 of the Anti-Human Trafficking Law).

The legislator stipulated this crime in its aggravated form if the aggravating circumstances of the penalty prescribed for this crime are available, including the fact that the victim is a child. The legislator stipulates in the Anti-Human Trafficking Law that "whoever commits the crime of human trafficking shall be punished with life imprisonment and a fine of no less than one hundred thousand pounds and no more than five hundred thousand pounds if the victim is a child, incapacitated or disabled (The sixth paragraph of Article 6 of the Anti-Human Trafficking Law).

CONCLUSION.

Through the above presentation of the subject of our study, which is of interest to an important segment of society and who are the nucleus of society, we have reached the following:

First: Results

1. The concept of the crime of child begging is characterized by modernity in the field of criminal law, but the seriousness of the crime of begging lies, because it is the first seed that pushes the child or juvenile to take the path of crime, along with the serious effects in society.
2. Child begging is defined as asking for a gift or grant from people, whether goods, money or otherwise, without a legitimate or legal right, whether in public or private places, so that the child took the behavior of begging as a means to obtain money illegally.
3. It is difficult to rely on one reason or factor that motivates the crime of begging, as the dimensions of this phenomenon are combined with each other in many diverse factors, such as being the result of social factors (family rift), or because of economic factors (widespread poverty, unemployment), or cultural factors (defects of the educational system, or cultural weakness), or because of internal factors that are due to the individual himself (physical , psychological), or religious (weak religious and moral scruples), and may be due to the external conditions of the society in which he lives (wars and crises).
4. The majority of positive legislation has been settled to prevent, criminalize and combat begging, which was referred to by the Iraqi and Egyptian legislators at the constitutional level under the provisions of the Constitution. The legal framework for the crime of begging extends in many laws. Besides the Penal Code as the general law, the special legislation related to the Juvenile Welfare Law, as well as the Anti-Human Trafficking Law, dealt with the provisions of this crime .

Second: Recommendations

1. The various state institutions should give primary importance to the crime of begging children by many specialists, jurists, religion, psychologists and sociologists through the various media "read, audio and visual", and by holding many seminars, speeches and invitations, and holding counseling, educational and religious lectures to show the importance of work and earning halal money.
2. We recommend the Iraqi legislator to reformulate paragraph (III) of Article (37) of the Constitution of the Republic of Iraq and to explicitly emphasize the criminalization of begging through the exploitation of children.
3. We recommend the Iraqi legislator to include a legislative text that tightens the punishment for each of the guardians of the child or juvenile who is neglected in the upbringing of the child, and we also recommend that the punishment be imposed on the instigator who contributes to the same crime while

expanding the application of preventive measures and procedures towards the juvenile delinquent child towards the crime of begging.

4. We recommend the Iraqi legislator to add a paragraph to the text of Article (6) of the Anti-Human Trafficking Law that criminalizes the establishment, management, assumption or participation of the leadership of an organized criminal group for the purposes of human trafficking.

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