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## Position of the Jordanian Legislation and Jordanian Judiciary from the Moral Offender Compared To the Egyptian Legislation

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### ABSTRACT

This study aimed to know the position of the Jordanian legislation and the Jordanian judiciary, and the Egyptian legislation from the moral offender and the resulting consequences on that. This study is important since it is in accordance with the legal logic which assign the crime to its real doer, and to identify the responsibility of the moral actor as a whole, since we cannot consider him as a physical doer, since the legal logic and justice reject to use this mind for non penal responsibility person. The descriptive, analytical and comparative methods have been used. The study included a number of topic related to the moral offender. The study reached a set of results. The most important is that for the moral offender feature to be available in the criminal he should make positive activity and precise role in executing the crime, and the moral offender bears result of the crime as if he is the original offender. The study recommended a number of recommendations. The most prominent that the Jordanian legislator to set special text regarding the moral offender of the crime on solve he issue and to avoid the conflict.

**Keywords:** Moral Offender, Crime, Jordanian Legislation, Egyptian Legislation.

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### 1. Introduction

The crime might be committed by one offender without participation in it from any one, also a number of persons might participate in this crime. Those who participate might commit the material actions forming the crime. Then everyone is like as if he committed the crime by himself<sup>2</sup>.

Since everyone is considered the original offender in the crime as long as they all have the intention the engagement in it to come the existence.

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<sup>2</sup>Rashid, Ali (1974.) Criminal Law (Introduction and Fundamentals of General Theory), Cairo, Dar Al-Nahda Al-Arabiya, p. 435.

Some individuals, purposively committee actions that do not consider by themselves of the actions forming the crime's material pillar, but so important and dangerous without them the original offender could not commit his crime, like if someone gives the original offender a weapon, tolls, or directions help in committing the crime.

So, the criminal contribution might take multiple forms when the roles distribute between the partners, and everyone performs his material role, and everyone has his criminal wish towards aggression on the right protected by the law, towards completing the crime<sup>3</sup>.

Instigation is considered one of the most dangerous form of the criminal activity, because the instigator often is the one who prepares to commit the pre-planned crime and the main responsible for its execution. This why some legislations consider instigation as criminal contribution, with an independent text, considering the instigator as the offender. This instigator is the one who creates the criminal design in the offender's mind- some of the legislations – including the Jordanian – decide the instigator responsibility according to his criminal intent. They depend in that on the idea the separation between the instigator responsibility and the offender's responsibility<sup>4</sup>.

The sixth conference which was organized the "international association for the penalties law" held in Athena year 1957 has addressed the topic "the new trend in the idea the offender or the partner and the contribution in the crime". among its recommendation that the criminal contribution principles decided by each legal system should consider the differences between the contribution acts from every contributes in the crime from one side, and the differences between the contributors regarding the personal sin and the personality dangerous from the other side.

Also the conference recommended that the offender is the one whose behavior meets the material elements and the personal elements forming the crime, and consider in direct offender the one who push's to commit the crime, ad considers instigator if he push's someone to commit a crime, and he should not be punished unless the instigated person initiate in committing his crime. Although it is possible t enforce the penalty on the instigator if the instigation has no effect, but this penalty should be according to the provision determined by the law and in light of the instigator's criminal dangerous<sup>5</sup>.

Referring to the texts of the Jordanian penalties law we fine. The article A/80/ from law states that the person is considered instigator if he pushed or attempted to push another person to commit a crime by giving him money or present of by influencing hero by threat, trick, or deception<sup>6</sup>.

It is clear from reading this text that the Jordanian legislator punishes for instigation even if there is no effect of the instigation, considering that instigation is an independent crime, this means that instigation to commit the crime is (offence of misdemeanor) in itself a crime whether the instigated to do or to reject doing what is he asked to do. Confirming this, article 3/81/ from the penalties law states if the instigation does not result in committing a crime or misdemeanor. The penalty reduced min the two clauses from this article to its third, so the Jordanian legislates makes the instigation without effect as an independent crime relatively less than the penalty of the instigated crime, and even less than the instigation penalty if the instigator responded and committed the crime he is told to commit. The topic the moral offender of the crime has provoked many judiciary dialogue and discussion, some are with the idea that the moral offender, and some against it, also the penalties legislations were varied in the positions toward this topic<sup>7</sup>.

Some legislations explicitly state the adoption of this idea, which other legislations did not mention this topic, as if left to the judiciary to say its word in it according to the conditions surrounding the committed crime<sup>8</sup>.

The Jordanian legislator did not explicitly state about the moral offender of the crime, rather limited mentioning the crime offender is the one who brings to the existence the presence of the element forming the crime or directly contributed in executing it (Article 75 from the penalties law), which gives this topic special importance. Clarify meaning of the moral offender, and to show its rule in

<sup>3</sup>Hosni, Mahmoud Naguib (1992) Criminal Contribution to Arab Legislation, Second Edition, Dar Al-Nahda Al-Arabiya, Cairo, p. 27.

<sup>4</sup>Jabour, Mohammad Odeh (2012). (Mediator in the Penal Code, General Section, Amman, Wael Publishing House, p. 305.

<sup>5</sup>Al-Saeed, Kamel (1983) Explanation of the General Provisions in the Jordanian Penal Code and Comparative Law, Second Edition, Dar Al-Fikr for Publishing and Distribution, Amman, p. 50.

<sup>6</sup>Qahwaji, Ali Abdul Qader. Explanation of the Penal Code (General Section), Beirut, Halabi Human Rights Publications, p. 501

<sup>7</sup>Al-Sarraj, Abboud (1982) Penal Code, General Section, Future Printing House, Damascus, p. 78.

<sup>8</sup>Al-Saeed, Kamel, Explanation of the General Provisions in the Jordanian Penal Code and Comparative Law, op.cit., P. 50.

the Jordanian law and the Egyptian law, demonstrating the position of the Arabic and foreign jurisprudence from this segment of criminals<sup>9</sup>.

### 1.1 Statement of the problem

Most legislations did not determine concept of the moral offender, so the objective of this study is trying to reach determination of this concept, and to know limits of the offender's criminal responsibility of the moral offender in the Jordanian legislation and judiciary and Egyptian, and the punishment of the effect of the material situations related to the crime and the personal conditions related to the moral offender.

### 1.2 Elements of the study problem

The study problem elements include the follow:

1. What is concept of the moral offender in the crime?
2. What is the difference between the moral offender and the original offender in the legislations under the comparison?
3. What are the limits of the criminal responsibility for the moral offender?
4. Does the offender exerts a kind of criminal contribution kinds?
5. What is effect of the crime's conditions and the offender's situations in the partner's criminal responsibility by help?

### 1.3 Objectives of the study

This study aims to reach determination about concept legislation and judiciary and in the different legislations the Egyptian. Also the study aims to show the comparative legislations in addressing the responsibility of the moral offender in the Jordanian legislation and judiciary and the Egyptian, and distinguishing it from other means of follow-up contribution such as instigation and the agreement.

### 1.4 Significance of the study

Studying responsibility of the moral offender in the Jordanian legislation and judiciary and the Egyptian has theoretical and practical significance, since the theoretical side the moral offender is considered one of the topics that have evoked long debate in the judiciary and the jurisprudence, since the criminal jurisprudence differed about finding a standard to distinguish between the moral and original offender in the crime.

While regarding the practical importance, by determining range of assistance accurately a result appears by the appropriate application of the idea the moral offender's responsibility the Jordanian legislation and judiciary in the judiciary rules to avoid the difference in the rules regarding it which will lead to conflict in the judiciary result.

## 2. Literature review

Al – Shathil, F, A (2001). Study entitle "The criminal responsibility". The researcher has dealtwith the criminal contribution, then mentioned the general rules for the criminal contribution regarding its pillars and the enacted penalty in the regarding its pillars and the enacted penalty in the original and the follow-up contribution.

Husni, M. N. (1999). Study entitle "The criminal contribution in the Arabic Legislations". The researcher has addressed the criminal contribution in the general theory of the crime and its pillars, also has addressed the instigation in the crime, and the due penalty on the original contributor in the different regimes, then he has addressed the follow-up contribution, its pillars, forms, and the follow-up contributor's penalty and the influence of the conditions on this penalty.

## 3. Methodology of the study

The researcher followed the following scientific methods in this study:

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<sup>9</sup>Abu Azam, M (2003). The assistance as a mean for the follow-up contribution in the crime: A Comparative crime". Dar Al-Nahda Al- Arabia. P. 14.

- The analytical method: to analyze the comparative regimes regarding determining the moral offender's responsibility in the Jordanian legislation and the Jordanian judiciary, and determining the enacted penalty.
- The comparative Method: the axis of the study is the comparison between the different legal regimes addressing the study.

### 3.1 First topic: Concept of the moral offender Idea of the crime

To show the moral offender concept of the crime, there is the need firstly for identifying it (first requirement), then distinguishing it from other contributors in the crime (second requirement).

#### 3.1.1 First Requirement: Identifying the moral offender of the crime

The moral offender of the crime is everyone who push's-by any means- another person to execute the act forming the crime if that person irresponsible criminally for it for any reason, moral offender of the crime is everyone who exploits another one in executing it, and that the other person is only the tool at his hand to execute the crime being disqualified to bear the criminal responsibility, such as the kid who does not distinguish, or the insane. The moral offender does not execute the material action which means se not execute the material action forming this crime. rather he push's another person with good will or criminally incompetent to commit the crime and complete its elements forming it<sup>10</sup>.

It is noted that the moral offender theory for the crime is limited to the case in which the offender of the crime is criminally incompetent or with good-will.

To avoid the narrow definition, there is a wide one for the moral offender, in which the person is considered moral offender for the crime if he instigates another one to commit the crime, if his instigation reaches in its influence the limit to create the crime idea in the mind of the material offender, because without this instigation otherwise he will not commit the crime, regardless of the will good or bad, and whether or not the material executes of the crime enjoys the criminal competence.

The instigator of a one with good will or the criminality incompetence is considered material offender of the crime as long as the one who executed it has been a tool at his hand. Because. The legislator does not distinguish between the tools used in committing the crime, and in all cases the offender will be real offender and not moral offender, and the executes is not more than a tool at his hand.

The broad definition eliminate the difference between the moral offender and the instigator to commit it, since the moral offender exploits the good-will of the executes about the issues, may be because he is very young, or for deficiency in his mind, so the one who push's them to execute the crime's material pillar will be the moral offender of the crime.

It is possible that the material executer of the crime is the victim of the crime, and this person is considered material offender of the crime not moral offender to it because he made purposive acts which led to a result that the offender worked for it.

#### 3.1.2 Second Requirement: Distinguishing between the moral offender for the crime from other offenders and the partners

Through the definition of the moral offender who execute the crime by others, when he push's a person irresponsible criminally to commit it, we find that this moral offender is distinguished from the material offender of the crime, and from the instigator to commit it.

The material offender of the crime is the one a lone who commits the crime through Voluntary behavior from his side resulting in criminal result the offender of the crime wanted to achieve.

While he moral offender does not achieve from the crime except its moral pillar, and another person only executes the material pillar, which means that the other person only has the material role through which the crime is executed without the presence of the moral pillar<sup>11</sup>.

In the material pillar of the crime consists of many acts, everyone who commits one of these acts is considered material executer of the crime, and will be asked about this crime as if he committed

<sup>10</sup>Mustafa, Mahmoud Mahmoud (1976) Model of the Penal Code, First Edition, Cairo University Press and University Book, p. 44.

<sup>11</sup>Abu Aram, Mohamed Rashad (2003) "Assistance as a means of dependency contribution to crime, a comparative study", Dar Al-Nahda Al-Arabiya, Cairo, p. 14.

it a lone as long as there is a pre-agreement between the partners to achieve the criminality result, they distributed the roles between them for the criminality results (they all wanted it) to exist.

If role of those offender's is limited to the material pillar, and none of them had the criminality intent because they are irresponsible from the criminal side for being young madness, or good will, then the moral offender who exploited them as a tool at his hand to execute the crime will be responsible for it as its offender<sup>12</sup>.

Some of the jurisprudences distinguish between the moral offender and the offender by the means, and see even though there is a similarity between them in that the acts by the moral offender are limited to the instigation, while they are widened to the offender by the means for all forms of the criminal participation from agreement, intervention and instigation, compared to the offender by the means who push's an adult to commit his crime.

Those with the idea the distinguish between the moral and he material offenders see that often there is a mix between them, and we do not see clear differences between the moral offender and the offender by the means.

Some of the jurisprudence called the offenders by the means as the moral offender of the crime. this opinion sees that moral, the offender by the means is the one who exploits another person irresponsible criminally to execute the crime, in this case the crime has the presence of two offender's one material who executed he crime and the other, the moral offender who has exploited the first person o execute he crime and used him as a tool to achieve this purpose. And in the case if a person used the forceful method to make the other execute the material act of the crime. There is no space to apply the moral offender theory, because the criminal act is not attributed to forced person, rather to the one who practiced this coercion, since he is considered the direct offender of the crime not moral offender of it.

The moral offender differs from the instigator to commit the crime, since instigation is the creation of the crime's idea in the instigator and directing will and feeling to it, pushing him by specific means to commit the crime, also the material offender is distinguished from the meddler in the crime, the meddler who helps the original offender is asked for his intervention if his criminal intent presents, or the intent to achieve he result such as providing the original offender with the weapons or other tools t use in committing the crime, or providing directions serve in the occurrence of the crime, or presents at the site of the crime to strengthen the offender's to commit the crime, as a result, the meddler and the original offender has criminal intent to achieve the crime. The moral offender obtains his criminal behavior from himself and from the behavior he used, while the meddler obtains his criminality from the other who is the original offender of the crime.

### **3.2 Second Topic: The legal foundation of the moral offender idea for the crime**

The idea of moral offender has appeared at the hand of the German Jurists to face a position that the instigator could rescue from the punishment if the crime executor proved that he had no criminal intent when committing it, or without criminal competence such as the young and the insane<sup>13</sup>.

Hence, the moral offender theory is based mainly to find the excuse to consider the instigator the original offender of the crime. When he push's another person to commit the crime. the moral offender is called indirect offender or the offender by means. We find that the idea of the moral offender has emerged to bridge he defect that has appeared as a result of the jurisprudence adoption of the trend the absolute follow-up for the criminal participation. From this stance the jurisprudence has resorted to the idea the moral offender to be able to punish the one who push's another with good will or irresponsible to commit the crime, and considering him original offender in it<sup>14</sup>.

The German law has adopted the absolute follow-up with the provision asking the partner about the offender's act for the later to be criminal responsible which called the jurisprudence in Germany to call for the offender by the means theory – the moral offender – and as a result the German legislator left the absolute follow-up theory in may 1942 and he adoption of the relative follow-up

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<sup>12</sup>Awad, Mohamed Mohieldin (1956) Theory of Original Act and Participation in Sudanese Comparative Law with Saxon Laws and Egyptian Legislation, Journal of Law and Economics, Nos. 1 and 2, Sunnah 26, p. 56.

<sup>13</sup>P. Bouzat ET J. Pinatel, Ttaitetheorique ET Pratique de Droit Penal, Tome I, Dalloz, Paris, 1963.

<sup>14</sup>Al-Khamlich, Ahmed (1999) Explanation of the Criminal Law - General Section, Al-Maarif Library for Publishing and Distribution, Rabat, p. 34.

theory which means he partner is asked about the crime even if the material offender is irresponsible for it for a reason concerning him.

What support taking the idea the moral offender theory the criminal in committing his crime, he might uses his hands or one of his body's organs to achieve the crimes materials, and might use separate tool from his body to be able to execute his crime. this means that the law does not distinguish between the tools the criminal uses in committing his crime, and there is no difference between he used tools in the crime.

Also what support the idea taking the moral offender idea is that the offender cannot be considered only instigator to commit the crime, rather is the original offender of the crime is only a tool at his hand. And instigation is directed only to the person eligible for the criminal responsibility, acknowledged about what he is required to do, and knows also about he criminal result of this act<sup>15</sup>.

The standard for distinguishing between the offender and the partner is based on the presence of the offender's intent to dominate on the criminal project. The one who has this intent is the crime offender whatever is the kind of the act he makes<sup>16</sup>.

### 3.3 Third Topic: Field of applying the moral offender idea for the crime

Moral offender idea is applied to the one who push's a person who cannot distinguish to commit a crime, such as pushing a child or on instant to let fire, in this case the material offender is just a tool at the hand of the moral offender who plays clear and positive role in completing the crime to deserve attributing the crime to him, and to be punished as if he has initiated its material pillar by himself.

Also, the idea the moral offender is applied -on the same basis- when the crime executer is having a good-will, no criminal intent, such as a person handles a bag contains drugs as a cloths bag to take it with him and to handle it to one of his relatives. The first person is considered the crime offender. The modern jurisprudence has expanded in the field applying the moral offender idea to include all the cases in which there is no will for the crime executer, also, as the case of the one who uses the material coercion on another person to execute his crime. the coerced person has no will, so he cannot be responsible because the act he did does not consider an act in the legal meaning of this word, rather the act is considered from the one who practiced the coercion. Also, it is possible to apply the moral offender idea in case of crimes require special feature in the offender, and these crimes are those that cannot be committed only by persons who have the ability to do the acts forming the material pillar for them directly, and by their acts they touch the interest under the legal protection<sup>17</sup>.

There is no doubt that the special feature to commit some crimes evokes difficulty when applying the moral offender idea for the crime. with our appreciation to this opinion, we see that the moral offender idea should not be seen from the instigation angle to commit the crime, rather from defining he offender. In this case the moral offender is asked for the crime, since there is nothing preventing punishing him for the crime, and in this case he will be trailed in front of civil courts, not in front of military courts according to the legal usage provision.

In determining the criminal acts committed by the moral offender and setting the legal adjustment to them the resort is to penalties law principles number 16 year 1960. We support the jurisprudence in that there is nothing preventing the existence of the moral offender feature for the crime in the cases in which there is no material responsibility of the offender because of the presence of one reason of the justification reasons or the available of case of the necessity cases under the condition the moral offender has a decisive role in executing the crime<sup>18</sup>.

If the act of the material offender stopped at the attempt limit, then the material offender for the crime is asked about the attempt to commit it, this is an issue according to the legal logic, since the material executer has been a toll at the hand of the moral offender, and as long as the activity of this

<sup>15</sup>Sorour, Ahmed Fathi (1981) Mediator in the Penal Code, Part I, General Section, Dar Al-Nahda Al-Arabiya, Cairo, p. 56.

<sup>16</sup>Al-Saeed, Mustafa Al-Saeed, (1942) Attitudes of the Court of Cassation in Concerning the Distinction between the Actor and the Partner in Crime, Journal of Law and Economics, No. 1, Sunnah / 12, p. 29

<sup>17</sup>Mustafa, Mahmoud Mahmoud (1983) Explanation of the Penal Code, General Section, Tenth Edition, Cairo University Press, p. 34.

<sup>18</sup>Al-Qahwaji, Abdul Qader (1999) Penal Code, General Section, Alexandria University House, p. 23.

executes is far from completing the crime, which means stopped at the attempt limit, the moral offender is asked only about the attempt<sup>19</sup>.

There is a question which evoked about the responsibility of the moral offender in the case in which the material offender of the crime is unable to perceive reality of the criminal feature of the act at the time. The instigator will does not move to reach the criminal result, even if his will directed only to complete the act which is called the unintended crimes, in which the instigator's will is directed to complete the act without reaching the result, is it possible to consider him moral offender in this unintended crime?, the answer to this question is that it cannot be possible to accept the moral offender theory in the unintended crimes, because all forms of participation in this kind of crimes are considered as original engagement, and considered offender of the crime. This makes the instigator or for the good-will original offender in the unintended crime and there will be no need to resort to the moral offender idea, although part of the jurisprudence sees that there is no difference between the intended and the unintended crimes if field of applying the moral offender theory, since it is not perceived that absence of the intent of the moral offender, rather attributes to him an intentional error<sup>20</sup>.

Also, it is impossible to apply the moral offender idea to the crimes committed by the refrain, because such refraining from the commitment imposed by the law on the good-will executer. This cannot be explained by the executer being under the exploitation of the moral offender of under his influence, and refrained to do what he is supposed to do as a result of one who instigated him to refrain does not consider moral offender of the crime, and there is no crime at all, because the executer who refrained in good-will to perform what he should do does not consider committing a crime, since there will be no refrain crime in which the material executer of it is not criminal responsible.

Also, the activity of the moral offender can take the form the assistance provided by the material executer to the crime, like one person hinders another person from escape from a dangerous mad person and enabled this mad person to kill him. This person is considered material offender of the crime, because of him the crime will not have happened<sup>21</sup>.

### **3.4 Fourth Topic: The moral offender of the crime in the legislation and the comparative jurisprudence**

Although the idea of the moral offender has emerged through the jurisprudence, especially the German jurisprudence, still this theory has been applied in may Arabic and foreign legislations, also it has multiple applications in the Arab and foreign jurisprudence and judiciary.

#### **3.4.1 First Requirement: Moral offender theory for the crime in the comparative law**

Some of the Arabic legislations took the idea the moral offender, and stated in their laws, of these legislations, the Algerian penalties law, since article 45 of the law stated that any person push's a person who is not subject to the punishment because of his status, condition or his personal feature o commit a crime is punished by the stated punishments for it.

Also, Article 3/47/ from the Kuwaiti penalty law stated that anyone who instigates another person to commit a crime, is not eligible to the criminal responsibility, or a good-will person, and the crime is committee based on this instigation.

The Iraqi article number 3/47/ from the Iraqi penalties law stated that the person is considered offender of the crime if he by any means push's another person to execute the act forming the crime, if this person is irresponsible from the criminal side for any reason.

Also, the Morocco penalties law in Article (131) has addressed responsibility of the moral offender by the text "Any person instigates a non-punished person because of his conditions of his personal feature to commit a crime he is punished by the crime punishment committed by this person".

Article (44) from the U.A.E penalties law stated that partner is direct in the crime if he exploits other person by any means to execute the act forming the crime, and this person is criminally irresponsible for any reason (1/A) the Bahrain penalties law, article (43) from the law states if that the

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<sup>19</sup>R. Merle ET a. Vitu, *Traite de DroitCriminel*, 2eme edition, Cujas, Paris 1973.

<sup>20</sup>Alyed. Gad, Sameh (1987) *Principles of the Penal Code*, Arab Renaissance House, Cairo, p. 67.

<sup>21</sup>Homed, Abdul Wahab (1959) *General Penal Rights*, Fifth Edition, Syrian University Press, Damascus, p. 3.

person is considered offender by the medium he pushed to commit a crime executer but irresponsible some Arabic legislations did not state the idea of the moral offender like the Egyptian, Syrian, and Lebanese penalties law, concerning this situation, there is the need to refer to the general principles in the law to find out if it is possible to apply the moral offender idea relative to these laws<sup>22</sup>.

If we look at the texts of these laws in an examiner view we find that article (40) from the Egyptian penalties law we find that it considered the instigation a mean of the criminal contribution means, and did not constrain this instigation with the provision the crime executer to be eligible to hold the criminal responsibility, and has he criminal intent, since he moral offender activity in itself instigation to commit a crime, and in this case he is considered partner in this crime. in addition article (42) from the Egyptian penalties law states that if the crime offender un punished because of the absence of the criminal intent or for other conditions specific to him. The partner should be punished by the punishment stated in the law.

While in the Syrian legislation and the Lebanese legislation it is noted that article (211) from the Syrian penalties law and article (212) from the Lebanese penalties law have identified the crime offender as the one who brings to the existence the elements forming the crime. This definition expands to the one who commits the crime using his body organs, as a tool to hold the criminal responsibility or the good-will. The legislator Syria, Lebanon, and Jordan did not determine the means to resort to them by the offender in executing his crime<sup>23</sup>.

Among the foreign legislations that confirm the presence of the moral offender idea is the British legislation which states that the crime might be committed directly, or execute through a good-will another person which is called (Innocent Agent). And anyone who instigates another person illegible with good-will to commit a crime is considered offender from the (Principle Offender) not only as a partner, because there is no other offender helping him to commit the crime to consider him offender from the second degree. While the Italian penalties law does not distinguish between the offenders and the partners in the crime, rather considering them as contributors in it and apply on everyone. The crime penalty in which the participate in committing the crime<sup>24</sup>.

Article (111) from the Italian penalties law stated he condition upon which based the state of the moral offender for the crim. Regarding the French legislator, referring to text of article (121-6) and article (121-7) from the new penalties law, we find that these two articles determine participation means and the partner's penalty in committing the crime, and there is no difference when applying the two articles, and no difference whether the criminal intent exists for him or not. The one who instigates a person with good-will or illegible to commit a crime of helping him in that, he is a partner in this crime, and some of the other texts in the French penalties law confirm principle of equality between the one who commits the crime by himself or the one who commits it by the instigation. Some jurists call the one who commits the crime by the mediator the moral offender and is asked as the direct offender although his role does not exceed the instigation to commit he crime. for example article (441-6) from the French penalties law punish the one who push's a public employee to deliver him on official document by using tricky methods by arrest for two years and a fine 200.000 frank<sup>25</sup>.

### 3.4.2 Second Requirement: Moral offender theory for the crime in the comparative Jurisprudence

The German jurists were the first to set the idea the moral offender idea in the modern era, they called it the indirect offender theory, and the judiciary in Germany adopts this theory, and the judiciary in Germany adopts this theory and the resulting consequences from it, because it has been placed to treat a situation in which the real offender of the crime can escape were the material offender of the crime is a good-will, or when this executer is without criminal competence.

The German jurists have determined the cases in which the instigator's responsibility is due-considering him the offender of the crime. From the cases in which the moral offender theory is applied, when a person put a knife at the hand of an instance person to kill another person, also

<sup>22</sup> Abu Amer, M. Zaki (2000) Lebanese Penal Code, General Section, University House, Beirut, p. 34.

Rassat M- L., Droit Penal, Pressuniversitaire de France, 1988.

<sup>23</sup> Rashed, Ali (1974) Criminal Law, Introduction and Fundamentals of General Theory, Second Edition, Dar Al-Nahda Al-Arabiya, Cairo, p. 23.

<sup>24</sup> Salama, Mamoun Mohamed (1979) Penal Code General Section, Dar al-Fikr al-Arabi, Cairo, p. 67.

<sup>25</sup> G. Stefani ET G. Levasseure, Droit Penal General, 8eme edition, PrecisDalloz, Paris, 1975.



considered moral offender the instigator who mislead a good-will person and push's him to give a sick person a toxic substance (Zerneekh) instead of the medicine<sup>26</sup>.

Also, the English law admits the moral offender theory and working on it. The moral offender is considered original offender of the crime and the basic provision to accept the offender idea is the crime's executor is unaware about the criminal feature of his act<sup>27</sup>.

If the Italian legislator when decided the moral offender did not use the word (the offender). But the severe punishment on pushing to the crime another person irresponsible or unpunished. This means that the legislator considers the instigator is the dominator over the criminal project when he exploits others to execute the crime, so he is the responsible for the committed crime.

While the French jurisprudence, his stance from the moral offender theory is crystalized in light of the judiciary in some of its rules in this issue.

Although the French legislator has determined the engagement cases, and made it limited to the instigation and the assistance to make sure not expanding by the judiciary in identifying the offender, still this judiciary not always. Committed o this standard, enacted considering some of the contributes in the crime.

In reality, moral offender theory did not find acceptance among the French jurists, because the one who instigates for committing the crime is partner in it. In Egypt, the moral offender theory has evoked a debate in the jurisprudence, and he Egyptian legislator did not define this theory because it contradicts with many of the penalties law's rules. This law defined the theory and applied it in some texts in which the instigator is considered offender, because the offender or the acts forming the crime was not more than a tool at the hand of the instigator he used to reach his goal.

Some legislator see that the Egyptian legislator. The idea the moral offender in some of the exceptional conditions, because of the legislators estimation of the instigator's behavior and the role he plaid in the rime, and in some cases equalized between what the criminal committed by himself, and whether his role has been limited only to the instigation.

Example on that what has been mentioned in article (126) from the Egyptian penalties law punishing every employee or public employee ordering to touch them or did that by himself to force him to confession, and article (206) from the same law punishing who imitates of specific things by himself or by the other<sup>28</sup>.

Also, the article (288) from the Egyptian penalty low states that everyone who kidnaps a child by trick of coercion did not reach 16 years old by himself or by others punished by imprisoning. But the Egyptian jurisprudence in its majority does not take the moral offender theory, saying that this theory does not apply to the Egyptian penalties law's texts, and the Egyptian legislator considers the moral offender theory to the crime, also article (39) from the Egyptian penalties law committed to the offender making a material act which is not applied to the moral offender, also the partner feature does not change if the crime offender is unpunished for specific conditions to him – the partner does not transform to the offender<sup>29</sup>.

Article (75) from the Jordanian penalties law does not distinguish between whether if the crime offender executed it by himself or by other who has been only a tool at his hand. The law generally does not care about the means the criminal uses in executing his crime as long as the moral offender has the intent to complete the crime, he will be asked about it even if the executor is a non-criminal responsible. We incline to take this a pinion.

#### 4. Conclusion

Through studying the moral offender theory, it became clear that the crime offender is not limited to the material offender who executed the material act or acts forming the crime, rather it also extends to the one who exploits others in executing the action. The material executor is the tol at his hand he used to bring the crime's element to the existence.

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<sup>26</sup>Smith and Hogan, Criminal Law, 5<sup>th</sup> edition, Butteworths, 1983.

<sup>27</sup>Alsayed. Gad, Sameh, Principles of the Penal Code, op.

<sup>28</sup>Ismail, Mahmoud Ibrahim, Explanation of the General Provisions in the Egyptian Penal Code First Edition, op. Cit., P. 72.

<sup>29</sup>Abu Amer, Mohammed Zaki, Lebanese Penal Code, General Section, previous reference, p. 34.

There is no doubt the need to consider the moral offender idea to bridge the gap in the punishment system, because activity from the punishment, it is just to say that the moral offender is the crime offender, he is responsible for the crime and punished by the due punishment in the text of the law.

It will be better for the Jordanian legislator to set special text about the moral offender for the crime to solve the issue and to avoid any conflict that might emerge about applying this idea on texts of the penalties law like the criminal legislator in Algeria, Kuwait, Iraq and Morocco who explicitly adopt the offender theory and included in legal texts considering the one who uses others in committing the crime original offender whether the crime executer has the good-will or illegible for the criminal responsibility.

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