

# The Crime Prevention Law No. (7) of 1954 in Jordan from a Constitutional Perspective/ Analytical Study

Ali Jabbar Salih<sup>a</sup>, Hazem Suleiman Toubat<sup>b</sup>, <sup>a</sup>Dean of the Faculty of Law, Jadara University – Jordan, <sup>b</sup>Assistant Professor, Faculty of Law, Jadara University – Jordan, Email: <sup>a</sup>[dr\\_alijabbar@yahoo.com](mailto:dr_alijabbar@yahoo.com), <sup>b</sup>[toubathazem@yahoo.com](mailto:toubathazem@yahoo.com), [h.toubat@jadara.edu.jo](mailto:h.toubat@jadara.edu.jo)

Jordan's Crime Prevention Law No. 7 of 1952 gives governors the judicial jurisdiction to prevent crime. It came in response to certain political circumstances at a certain stage affected by the colonial character. As a result of these circumstances, the law sought to achieve specific purposes, regardless of the extent of its impact on the rights and freedoms of Jordanians, or the extent of its conformity with constitutional provisions. Utilising historical, descriptive and analytical approaches, this study examines the provisions of the Crime Prevention Law in Jordan from the perspective of its impact on rights and freedoms, and on constitutional principles. This study concludes that, despite the justification that it is importance in preserving the security and stability of society because it includes measures aimed at preventing crime before it occurs, this law violates the rights and freedoms of Jordanians, such as personal freedom and the right to freedom of movement. It also contradicts constitutional principles, including the principle of separation of powers, the principle that the accused is innocent until proven guilty, and the principle of the independence of the judiciary. This study recommends amending the Crime Prevention Law in a manner that makes it compatible with the provisions of the constitution, and the rights and freedoms of Jordanians while maintaining its goal of preventing and reducing crime.

**Key words:** *Administrative Detention, Administrative Governor, Arrest Warrant, Crime Prevention Law, Jordan, Jordanian Constitution.*

## **Introduction**

The Crime Prevention Law of 1954 in Jordan raised controversy about its unconstitutionality and its contradictions with some of the rights and freedoms guaranteed by the Constitution. There are those who criticise the law as contrary to constitutional principles such as the principle of the independence of the judiciary and the principle of the separation of powers. Furthermore, this law contradicts certain provisions of the Constitution that guarantee the exercise of certain rights and freedoms, such as the right to security and the right to freedom of movement (Hatamla, 2015). However, this law has those who support it and justify its existence, arguing that it is useful when urgently needed and for a specific category of citizens with a criminal record. In addition, it may be applied to people as a precautionary measure to protect their lives, especially in the cases of murder and adultery (Mor, 2015). The importance of this law, in their opinion, is to protect security and social peace (Al-Sharif, 2010).

Using historical, descriptive and analytical methods, this study reviews the provisions of the Crime Prevention Law in Jordan, and the extent of its violation of the constitutional provisions guaranteeing rights and freedoms. The first section deals with the circumstances, provisions and justifications for this law. The second section examines the extent of the law's contradiction with the rights and freedoms of Jordanians as stipulated in the constitution, while the third section examines the extent of the law's conflict with the principle of the separation of powers and the independence of the judiciary.

## **The Circumstances of the Issuance of the Crime Prevention Law No. (7) of 1954**

The Crime Prevention Law No. 7 of 1954 is a continuation of the Crime Prevention Law issued in 1927, during the British mandate to Jordan. This law (promulgated in 1927) was the first practical appearance of exceptional laws granting the administrative governor judicial powers. It was aimed at strengthening British hegemony and restricting the activities of revolutionary movements in Jordan and Palestine. Then, in 1935, the Law on the Defence of East Jordan was issued. This Law gave the administrative governors new and broader powers than those granted to them under the Crime Prevention Law of 1927, as the real authority to issue laws and legislations was in the hands of the British Mandate. These laws remained in effect even after the declaration of Jordan's independence in 1946 (Al-Basoul, 2010).

After Jordan's independence and the promulgation of the 1947 constitution as the first constitution of the Hashemite Kingdom of Jordan, the election law was issued, according to which the first parliament was elected and a new government was formed. On December 17, 1948, the Jordanian parliament unanimously decided to request the government repeal a

number of laws that restrict freedoms, including the Crime Prevention Law of 1927, but the government did not respond to this request (Khair, 1993).

After the independence of Jordan, the Constitution of 1947 was issued as the first constitution of the Hashemite Kingdom of Jordan. A new (and still current) constitution came into effect in 1952, which provides for the rights and freedoms of Jordanians. It provides for the principle of the separation of powers and the existence of an independent judiciary (Jordanian Constitution of 1952, Articles 24, 25, 26). Nevertheless, the government continued to apply the exceptional laws. It abolished the Crimes Prevention Law of 1927, which was in force during the British Mandate, but was replaced by another one issued in 1954. This law, still in effect, is called The Crime Prevention Law No. (7) of 1954, which kept the wide powers given to the administrative governors.

### **Provisions of the Crime Prevention Law of 1954**

The Crime Prevention Law of 1954 consists of 17 Articles that outline the broad jurisdiction granted to administrative governors with the aim of preventing crime. As a result of reviewing this law and analysing its Articles, the following observations have been drawn:

**First:** According to Article (3) of this law, the governor has the authority to issue a request for any person to appear before them to if they have sufficient reason to believe that this person belongs to one of the following cases:

1. Every person who is present in a private or public place or in circumstances that may cause the Governor to consider that this person is about to commit a crime or to assist in its commission.
2. Anyone who is used to burglary, possessing stolen property, protecting or hiding thieves, or helping to conceal or dispose of stolen property.
3. Anyone who may pose a danger to others if left free without warranty.

After appearing before the governor, the person is obligated to sign a pledge of good conduct during the period specified by the governor. If the person does not appear within a reasonable period after receiving the request, the governor may issue an arrest warrant for that person. (Article 4 of the Crime Prevention Law of 1954). Although Article (3) identified people who are considered a threat to public safety, this restriction has been emptied of its content; it did not specify objective criteria for the administrative governor to determine who poses a threat to public safety, or is about to commit a crime, but left it to the unrestricted discretion of the administrative governor.

**Second:** Article (5) of this law gives the administrative governor powers to investigate and hear witnesses after swearing oath, interrogation, and assigning a person to submit a pledge if they deem it necessary according to their own conviction. Under the provisions of Article (8), the law also gives the governor broad powers enabling them to issue a decision to detain individuals without specifying the duration of this imprisonment and without specifying its controls. In addition, the administrative governor can issue the arrest warrant for an unlimited period to a person who refrained or failed to provide bail. The law permits the governor to condemn the person who made a pledge that they committed the crime of breaching the terms of the pledge and decides to confiscate the amount of the financial warrant mentioned in the pledge, or to require the sponsored or sponsors, or any of them to pay the amount pledged. The law considers that the governor's decision in this regard is final.

**Third:** The law permits the governor to place any person under police supervision for a period not exceeding one year, even if that person provides a warranty that they will be of good conduct (Article 12 of the Crime Prevention Law No. (7) of 1954). The following restrictions shall apply to the person who is placed under police supervision:

1. To reside in a populated place, and not to change their residence to any other place without obtaining a written permission from the mayor.
2. They are prohibited from leaving the neighbourhood, city, or village in which they reside, without obtaining written permission from the mayor.
3. To stay at their home an hour after sunset until sunrise. Police officers may visit them at any time to verify their compliance with this decision.

**Fourth:** The law includes broad general terms in the interest of the administrative authorities that gives them broad and absolute discretion. and from these words: (if he has something to believe), (if he sees that there are sufficient reasons), he may issue Has grounds to prevent it from being linked), (either on bail or otherwise), (during the period that the administrator may wish to specify).

### **Justification of the Law from the Perspective of its Supporters**

Although the Crime Prevention Law gives the administrative governor broad jurisdiction, there are those who justify the existence of the law, by saying that:

- The Crime Prevention Law is a preventive law. It does not aim to limit personal freedoms, but rather aims to prevent crimes that undermine the security of the community, especially crimes of murder, honour and thefts before they occur, where the Governor intervenes to protect individual lives and property within specific controls (Mor, 2015). In addition, this law is limited to specific cases of persons who are outlaws

and very dangerous. As a result, these groups are captured by the administrative governor in order to preserve the security and lives of others (Al-Sharif, 2010).

- The presumption of innocence of some persons who repeat crimes may pose a grave danger to society, public order and morality, where the judge considers the case of the accused person and relies on evidence and witnesses. Therefore, the judge may sentence the accused to acquittal or irresponsibility for the absence or lack of evidence, despite their personal conviction that the accused committed the act attributed to them but that there is insufficient evidence to indict them (Al-Sharif, 2010).
- The administrative governor knows better than others about the problems that society suffers from. Therefore they arrest someone based on their criminal record where their crimes pose a threat to security and public order, whereas the public prosecution or the court does not pay attention to the criminal record of the accused or the extent of the risk in leaving them free without arrest (Mubaideen, 2018).
- Administrative Governors believe that the administrative detention authority granted to them under the Crime Prevention Law plays an important role in resolving cases of murder and honour. Arguing that the administrative detention is the best way to resolve issues of honour or murder when the offender completed their sentence without performing tribal reconciliation procedures by their relatives. Therefore, administrative detention is a means of exerting pressure on relatives of the perpetrator to implement tribal reconciliation procedures. Hence, leaving the perpetrator, who has completed their sentence for murder and honour crimes, free, without tribal reconciliation, poses a grave danger to their life and the lives of their family members. This is a result of the prevailing tribal customs in Jordanian society (Report of the National Centre for Human Rights, 2009).
- The implementation of administrative detention against some girls and women comes in order to protect their lives, especially when the girl or woman ends her sentence with the offense of adultery or any other offense affecting honour. Therefore, leaving this girl or woman free may lead to her being killed by her family or her husband (Mor, 2015).

In reviewing the justification given by supporters of the Crime Prevention Act (i.e. that the law provides for precautionary measures aimed at preventing crime), it can be said that relevant measures already exist in the Penal Code. The Penal Code is the main law entrusted with the task of identifying crime and establishing measures to limit it. It provides for punishment, as well as devoting a special chapter called “the precautionary measures” to outlining these measures, regulating them and setting out methods for their application. Therefore, there is no need for the "Crime Prevention Law", since it regulates legal matters that are originally organised by the Penal Code, thus resulting in a duplication of jurisdiction. Moreover, allowing the administrative governor to prosecute a person for acts they committed and were tried for before the competent judicial authority is contrary to the legal principle that “a person shall not be tried for the same offense twice.”

## **The Impact of the Crime Prevention Law on Rights and Freedoms**

The Jordanian Constitution devotes an entire chapter to Jordanian rights and freedoms, which gives these rights a clear and unequivocal constitutional value. Some of these rights can be exercised absolutely without restrictions. Other rights must be exercised within the limits of the law, where the constitutional text is accompanied by the words “in accordance with the provisions of the law”, “in cases determined by law” or “within the limits of the law”. However, Article (128) of the Constitution places controls on the laws regulating the exercise of rights and freedoms. These laws must not affect the essence of rights and freedoms, where the purpose of such regulation should be to protect other rights and freedoms, not to empty these rights from their content (Toubat, Mahafzah, & Balas, 2019).

Among the rights guaranteed by the Jordanian Constitution are the right to security and the right to freedom of movement. Nevertheless, the crime prevention law is criticised as a violation of these rights because it gives the administrative governor broad powers that run counter to the constitutional guarantees of these rights (HRW World Report, 2019).

### ***The Impact of the Crime Prevention Law on the Right to Security***

The right to security is one of the most basic individual rights on which the exercise of other freedoms depends. This right means, in one of its aspects, the inviolability of personal freedom. Ensuring personal freedom means protecting the individual in their private life, family, residence, correspondence, and free movement within and outside the country. Accordingly, it is not permissible to infringe on the privacy of a person's personal life (Marshall, 2008).

The right to freedom in one's personal life is guaranteed under Article (7/1) of the Jordanian Constitution, which ensures its exercise and safeguards it from any interference. It is also not required that the exercise of this right shall be within the limits established by law, but that it be left absolute. However, Article (13) of the Crime Prevention Law allows the administrative governor to place the person who refuses or fails to make a pledge of good conduct under police supervision. They can also force that person to stay indoors from sunset until sunrise. A flagrant violation of the constitution is that the Crime Prevention Law allows the police to visit a person at any time to ensure that they are home. This visit is not only embarrassing for this person but also for their family, children and wife. Their neighbours may be disturbed, especially if the police come to this person after midnight, as family members sleep. This is undoubtedly an attack on personal freedom and private life. Moreover, the Constitution considers that the attack on rights and freedoms or the inviolability of private life is a crime punishable by law. Entry into the house to ensure the presence of this person is a breach of the sanctity of the house, guaranteed by Article (10) of

the Jordanian Constitution. It states that "houses are inviolable and may not be entered except in the cases set forth in the law and in the manner provided for therein". Furthermore, Article (8) of the Constitution states that any person who is arrested, detained or restricted in their freedom is treated in a manner that preserves their human dignity. Likewise, they must not be subjected to torture or physical or mental harm in any way. The provisions of the Crime Prevention Law are inconsistent with the provisions of this article of the constitution, because the procedures stipulated are incompatible with human dignity. It also causes moral harm to a person.

### ***The Impact of the Crime Prevention Law on the Right to Freedom of Movement***

The right to freedom of movement is one of the main pillars of personal freedom. It is inherent in the human personality, where movement and mobility are characteristics of human nature, especially as they relate to the demand for livelihood and knowledge. The Jordanian Constitution recognises freedom of movement under Article 9 (2), which states, "Jordanian citizens may not be prohibited from being anywhere, prevented from travelling, or compelled to reside in a specific place except in the cases specified in the law." Through this Article, the constitution guarantees freedom of movement and mandates laws to regulate the exercise of this right in order to protect the basic interests of society and the rights and freedoms of others without these laws affecting the essence of the right to movement.

The provisions of the Crime Prevention Law are incompatible with the provisions of the constitutional Article discussed because they touch the essence of the right to movement. Administrative detention is an exception, so the law must establish strict and specific controls for this type of detention, and the scope of the exception should not be expanded. Whereas Article 4 of the Crime Prevention Law allows the governor to issue an arrest warrant for anyone that the governor considers a threat to public security. Article (13) of the Crime Prevention Law obliges the person under police supervision not to leave their home an hour after sunset until sunrise. Additionally, police officers may visit them at any time to verify their commitment to staying at home.

The argument against the purpose of this legal provision being to maintain public security and public order is that there is no clear and explicit evidence that the persons mentioned in Article (3) of the Crime Prevention Law pose any threat to public security. However, restricting their freedom of movement is based on the belief that came to the ruler's mind. Moreover, the administrative detention stipulated in the law is inconsistent with the constitutional and legal principles stipulated in all legal systems such as: "the accused is innocent until proven guilty". It is not permissible to punish a person for their intention before committing an act, no crime or punishment except with a legal text, and it is not

permissible to punish anyone twice for the same crime. However, the Crime Prevention Law did not establish specific and strict controls on administrative detention.

The lack of specific controls that prompted administrative rulers to expand the scope of resorting to such detention in accordance with the justifications for necessity and the maintenance of public order and other justifications that in most cases undermined the principle of the rule of law, and thus injustice to the criminal justice system. Therefore, administrative detention in the absence of controls opens the door for further violations of the rights of individuals. On the other hand, administrative detention may be unfair to persons who do not pose any threat to public order and security, such as arresting traffickers who protested against the treatment of market watchers, arresting people because of pending cases, and arresting people to compel them to reconcile with their opponents (Report of the National Centre for Human Rights in Jordan, 2009).

### **The Impact of the Crime Prevention Law on the Principles of the Separation of Powers and the Independence of the Judiciary**

The principle of the separation of powers is one of the elements of the legal state. This principle means the distribution of state functions (legislative, executive and judicial) to the different and separate authorities. Each of them is eligible to perform one of these positions. There is a legislative authority to enact laws, an executive authority to implement these laws, and a judicial authority to adjudicate disputes according to laws enacted by the legislature (Sultana, 2012).

For these three powers to function, each authority must be granted independence from the other powers. The French philosopher Montesquieu, in his book "The Spirit of Laws", called for the separation of powers in order to prevent the tyranny of all power, saying that the separation of powers is a means for ensuring the disposal of absolute rule (i.e. the concentration of power in the hands of a single ruler). The principle of the separation of powers has many advantages that can be realised when applied properly. These advantages are, contributing to the realisation of the principle of legality and the establishment of the legal state, highlighting the benefits of the division of state functions, and contributing to the maintenance of freedoms and the prevention of tyranny (Strauss, 2018).

The Jordanian constitution adopted the principle of the separation of powers in Articles (25, 26 and 27). Article (25) granted the legislative authority to the National Assembly and the King, whereby Article 26 entrusted the executive authority to the king who exercised it by his ministers. With regard to the judiciary, Article 27 states: "The judiciary is independent and is ruled by courts of all kinds and degrees." Moreover, the Jordanian constitution defines the powers of these authorities. Article 45 provides for the powers of the executive authority

represented by the Council of Ministers and its various branches. The Council of Ministers is responsible for managing all internal and external affairs of the state, except those entrusted to any person or other body by the law or constitution (Al-Qaaida, 2017).

Article 102 has entrusted the function of the judiciary to the civil courts. It states that “The Civil Courts in the Hashemite Kingdom of Jordan shall have jurisdiction over all persons in all matters, civil and criminal, including cases brought by or against the Government, except those matters in respect of which jurisdiction is vested in religious or private courts in accordance with the provisions of the present Constitution or any other legislation in force”. According to the previous provisions, the Jordanian constitution did not assign the function of the judiciary to the executive branch, but rather gave this jurisdiction in general to the civil courts.

The constitution was clear and explicit in limiting the judicial function to the judiciary. This is because the function of the judiciary is linked to the essence of human rights and freedoms. Given the importance of the work of the judges, the constitution gives them full independence in their rulings. Article 97 states "the judges are independent and have no authority other than the rule of law." This independence is not available to the administrative rulers who are linked to their superiors by the association of dependency. Therefore, the rulings issued by them may have the aim of satisfying the officials and influential persons, who may seek to achieve personal goals. These constitutional texts give a clear indication that judicial work is of great importance and should not be practised except by the competent authorities. Therefore, the exercise of the judicial function by administrative governor is a clear violation of the constitution and the principle of the separation of powers. It is also considered closer to abstaining from the spirit of justice, because the administrative governor does not know the laws except for the provisions of the Crime Prevention Law without looking at the rest of the other legal and constitutional texts, which must be observed and linked with each other to reach a fair judicial decision.

Review of the provisions of the Crime Prevention Law highlights that many of the texts are inconsistent with the principle of the independence of the judiciary. While the constitution limits judicial work to the regular courts, Article 4 of the law gives authority to the administrative governor to issue an arrest warrant for a person who does not appear before them when asked to do so. This action is considered a judicial work granted under the Crime Prevention Law, which constitutes an attack on the jurisdiction of the judiciary. As for Article 8 of the Crime Prevention Law, it makes the administrative governor a judge in the comprehensive sense. It stipulates that if a person who is issued a decision instructing them to give a pledge fails to submit this pledge on the date specified by the administrative governor, the administrative governor may imprison them. It also gives the administrative ruler the right to accuse, arrest, and investigate people, and to issue judgments against them, including

imprisonment up to six months. Article 14 of this law stipulates that whoever is placed under police control and fails to observe one of the conditions set forth in the administrative ruler's decision, shall be punished by either detention for a period not exceeding six months, or by a fine not exceeding fifty dinars, or both.

## **Conclusion**

The Jordanian Crime Prevention Act of 1954 is the law that clarifies the powers of administrative governors to prevent crimes from occurring. This law gives administrative governors powers that fall within the jurisdiction of the judiciary, making it oscillating between two different independent powers. It works within the executive branch, and at the same time, it exercises judicial powers. Despite justifications that this law aims to prevent or limit the occurrence of the crime, it is a customary and unconstitutional law. It contains provisions that contradict the rights and freedoms of Jordanians that are guaranteed by the constitution. It also contradicts the constitutional texts that established the principle of the separation of powers, the principle of the independence of the judiciary, and the principle that the accused is innocent until proven guilty by a final ruling. The Crime Prevention Law is also inconsistent with the Penal Code, because the Penal Code is the primary law charged with the task of identifying the crime, setting the necessary measures to reduce it, and determining the punishment required for each crime. Therefore, the Crime Prevention Law regulated legal issues that were already regulated by the Penal Code, leading to duplication of jurisdiction. As a consequence, this study recommends amending the Crime Prevention Law in a way that aligns it with the provisions of the constitution and the rights and freedoms of Jordanians, so that the power to issue arrest warrants is withdrawn from the administrative ruler and made the prerogative of the public prosecution. This study further recommends transferring the authority of house arrest to the judiciary and limiting it to cases of repeat criminal offence in cases of assault, taking into account both the principle of the appropriateness of the disciplinary procedure and criminal risk.

## REFERENCES

- Al-Basoul, Omar. (2010). Explanation of the crime prevention law. Amman, House of Culture
- Al-Sharif, Nabil (2010). A press conference for the minister of state for information and communication affairs. Held at the Prime Minister's House on 2/6/2010
- Al-Qaaida, M. S. (2017). The separation of powers in the Jordanian constitution. Jura: A Pecsí Tudományegyetem Állam-és Jogtudományi Karának tudományos lapja, 142.
- Constitution of The Hashemite Kingdom of Jordan. (1952). Available at; [https://www.constituteproject.org/constitution/Jordan\\_2011.pdf](https://www.constituteproject.org/constitution/Jordan_2011.pdf)
- Hatamla, S. (2015). Administrative Detention and Its Objective and Procedural Warrantees: A Study of the Jordanian Law. Journal of Arts and Social Sciences [JASS], 6(3), 75-96.
- HRW World Report. ( 2019) . Jordan: Events of 2018. <https://www.hrw.org/world-report/2019/country-chapters/jordan>
- Khair, H. (1993). The Practical Development of the Jordanian Constitution between 1921-1989. Amman.
- Mobaideen, S. (2018). The crime prevention law preserves social and civil peace and rights. A press statement published in Al-Dustour Newspaper. April 18, 2018. 12:00 a.m. <https://www.addustour.com/articles/1006837->
- Mor, T. (2015). Feminist rule of law reform and health impact of legal systems premised on women as communal gauges of honor. University of Baltimore Law Review, 44(2), 08-112.
- National Center for Human Rights. (2009). Administrative detention judicial powers by executive hands. <http://www.nchr.org.jo>
- Nesheiwat, F. K. (2004). Honor crimes in Jordan: Their treatment under Islamic and Jordanian criminal laws. Penn St. Int'l L. Rev., 23, 251. 112-126.
- Sulaiman Al-Mousa. (1991). Emirate of eastern Jordan: its origins and development in a quarter of a century (1921-1946), Amman-Jordan, 1991.; Munib Al-Madi and Sulaiman Al-Mousa, Modern History of Jordan, The Emirate of Amman (1921-1946). Amman – Jordan.



- Sultana, T. (2012). Montesquieu's doctrine of separation of powers: A case study of Pakistan. *Journal of European Studies*, 28(2). 118-126.
- Strauss, P. L. (2018). Separation of powers in comparative perspective: How much protection for the rule of law?. Forthcoming. Oxford University Press book on Comparative Administrative Law, edited by Peter Cane, Herwig Hofmann, and Peter Lindseth.
- Toubat, H. S., Mahafzah, E., & Balas, H. A. (2019). Oversight on the constitutionality of laws: a case study of the Jordanian constitutional Court. *JL Pol'y & Globalization*, 82, 17. 156-163.