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Legislative Deficiency in Criminal Law Provisions.

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Abstract
Legislative inadequacy is a general legal phenomenon, inherent in all legislation within any positive legal system. Positive legislation, at any time and in any place, is a human creation and must therefore bear human characteristics, most notably limitations, resourcefulness, and an inability to achieve perfection. This inadequacy stems from the failure of those responsible for drafting legislation to adhere to sound principles of legislative drafting when enacting or amending laws, or from their limited knowledge of jurisprudence and other disciplines such as grammar, logic, and legal theory. It can also arise from the inability of legislation itself to keep pace with the ever-changing and evolving realities of life. Here, forms of legislative inadequacy naturally emerge, which may manifest as the absence of a legal provision to govern the specific case presented to the criminal judge, or as ambiguity in the text, or as conflict with another legal provision....
Keywords: Legislative inadequacy, Legislative drafting, Positive legislation, Legal provision, Criminal judge.

Introduction

First: Introductory Approach to the Research Topic No legislation is free from deficiency, and certainty in law is nothing but a myth. The undeniable truth that must be accepted is that deficiency in legislation and positive legal systems is inevitable. Legislative deficiency may exist even with the presence of legal provisions, as the legislator sometimes drafts legal texts in a manner marked by ambiguity and obscurity, whether for political reasons, due to the necessities of legal drafting, or by relying on flexible normative rules lacking clear boundaries, such as public order or public morals. These indicators are clear evidence of the inherent deficiency of criminal provisions, which, being human-made, are subject to the same shortcomings of all human efforts—incapable of achieving perfection or fully realizing their intended purpose or clarity. This appears in the deficiency of criminal provisions and in the ambiguity or obscurity of the expressions used in drafting them. The intended clarity is not merely linguistic but also conceptual clarity that emerges from penal provisions. Therefore, legal systems have guaranteed the establishment of foundations to address legislative deficiency, as evidenced by Article (1) of the Iraqi Civil Code No. (40) of 1951 and Article (1) of the Iraqi Personal Status Law No. (188) of 1959. In conclusion, legislative deficiency in criminal provisions is a reality that cannot be denied in any way. Claims of legislative perfection are philosophical opinions and logical justifications that collapse when confronted with practical reality and the emergence of unforeseen incidents at the time of enacting the law.
Second: Importance of Choosing the Research Topic Deficiency in criminal provisions is an undeniable reality. Legislative deficiency manifests in practice in various forms, such as the absence of legislative provisions or the inadequacy of provisions to suit prevailing social, political, or economic circumstances. This obliges the judge to resort to judicial interpretation to reach fair and urgent solutions to cases presented in the courts of justice. Hence, the importance of this study becomes evident.
Third: Research Problem The research problem revolves around legislative deficiency in the Iraqi Penal Code No. (111) of 1969. The principles of this law were limited and restrictive, as they were established during a period when there was no concept of electronic crimes committed via the internet and computers. This means that its principles were designed to confront traditional crimes. Moreover, the principle of criminal legality is not flexible enough to criminalize acts not explicitly prohibited by law. The problem lies in answering the following questions, the most important of which are:
What is the meaning of legislative deficiency?
What are the types of legislative deficiency, and what are its causes?
What are the manifestations of legislative deficiency in criminal law?
To what extent is Iraqi criminal legislation sufficient to confront legislative deficiency, and what are the means to address it?
Fourth: Research Hypothesis The obligation imposed on the judge to resolve disputes presented before him, pursuant to explicit provisions such as Article (30) of the Iraqi Civil Procedure Law No. (83) of 1969, raises many hypotheses: How can the judge address the deficiency of criminal provisions and reach a fair and just ruling? What is the scope of judicial interpretation in the absence of a legal provision? What mechanisms can the judge

employ to fill legislative deficiency? What means are available in such cases? What is the legal basis for judicial interpretation? And is the judge's authority in interpretation absolute?

Fifth: Research Methodology To answer the hypotheses of the study, we will rely on the descriptive-analytical method, which is based on describing the provisions as they are, without addition or omission, and then analyzing them to derive rulings.

Sixth: Research Structure To cover the subject of the study comprehensively and as balanced as possible, ensuring it is addressed from all aspects, the research has been divided into two requirements as follows:

First Requirement: Definition of legislative deficiency.

i: Definition of legislative deficiency

ii. Types of legislative deficiency.

Second Requirement: Manifestations of legislative deficiency in substantive criminal rules.

i. Legislative deficiency in confronting emerging crimes.

ii.: Emerging crimes requiring legislative treatment

First Requirement Definition of Legislative Deficiency: No matter how much the legislator strives to be precise in drafting criminal provisions, defects must inevitably be present, since legal drafting is a human effort and cannot be described as perfect. These defects may appear immediately upon completion of drafting or may emerge later, that is, after application by the relevant authorities, particularly the judiciary. What matters is that the drafter fully understands all his tools in a way that reduces these defects or makes them capable of being remedied in the future through means of addressing the shortcomings of legislative provisions. Accordingly, and based on the foregoing, we shall address legislative deficiency in drafting criminal provisions according to two requirements: in the first branch, we examine the definition of legislative deficiency, and in the second branch, we clarify the types of legislative deficiency, as follow:

i. Definition of Legislative Deficiency

Legislative deficiencyis considered one of the defects of legal drafting. It refers to the inability of the criminal [(1)] judge to find the legislative provision necessary to apply it to the dispute presented before him. Some also describe legislative deficiency as a "gap," which occurs when the law requires completion and filling, based on its particular context and the wisdom of legislation. However, if the law appears not to express the intended meaning due to perspectives unrelated to its particular context, then the situation is one of error in legislative policy, not legislative deficiency. Consequently, a distinction must be made between completing the law and correcting it.[(2)]

As for the definition of legislative deficiency, jurists have differed in this regard. Some of them have held that legislative deficiency means *the omission of a word in the legislative text in such a way that the text cannot stand without it*, or it is *the inability of the judge to find a provision in the legislation in order to apply it to the dispute presented before him.*

[3)(] It is observed regarding this definition that legislative deficiency in the criminal text does not occur merely because the criminal legislator has omitted a certain word in the legal drafting of the penal provision. Rather, the text may exist but be incapable of addressing the issue at hand. Some describe the state of legislative deficiency with the term "gap," which arises when there is an absence of a thing or a ruling that reality requires to exist, or when legislation fails to regulate certain legal consequences and resolve them in a definitive manner that leaves no room for doubt about the mechanism of their application. An example of this is when the law grants the right to appeal judicial rulings without specifying the time limit for exercising that right or the authority to which the appeal may be submitted. [(4)]In this case, the provision exists but is marred by deficiency, as it fails to regulate certain matters that it is supposed to regulate. Avoiding deficiency in the drafting of legislative provisions requires precise knowledge of the rules adopted in their formulation, which in turn necessitates specialization in this field that can only be achieved after years of practice and application. However, mastering the fundamental rules

(1) The origin of the word "deficiency" in the Arabic language is due to the triple verb (deficiency) in the sense of lettuce and decrease, as opposed to the word "increase", "decrease", "decrease", "decrease", and the object "deficient" is "deficient", as well as the word "deficiency" in another sense, which is "weakness" when we say: "lack of his mind or religion", and "deficiency": the amount going from the incomplete, Dictionary of the Arabic Language, Al-Wajiz Dictionary, Dar Al-Tahrir for Printing and Publishing, Egypt, 1989, p. 360.

(2) Hussein Abdul Saheb Abdul Karim, Legislative Drafting in Iraqi Criminal Legislation, Research Published in the Journal of Law, Faculty of Law, Al-Mustansiriya University, Sixth Year, Volume (14), Issue (18) - 2012, p. 129.

(3) Haider Adham Abdulhadi, Principles of Legal Drafting, 1st Edition, Dar Al-Hamid for Publishing and Distribution, Amman, 2009, p. 103.

(4) Laith Kamal Nasrawin, Saddam Ibrahim Abu Azzam, Principles of Legislative Drafting (Concepts, Methods, Stages), Dar Al-Farqa for Publishing and Distribution, 2nd Edition, Amman, Jordan, 2022, p. 419.

adopted in drafting legislative texts would prevent the commission of errors and the occurrence of mistakes and flaws that affect the quality of the text and diminish its effectiveness. [5] Meanwhile, a part of jurisprudence has defined legislative deficiency as *the absence of legislative provisions that address the dispute presented before the judge, or the existence of legislative provisions that are incomplete in resolving a matter that ought to be regulated by a legal rule.*[6] .

Therefore, legislative deficiency converges with legislative inadequacy to the extent that one may say deficiency is but a form of inadequacy. Both occur within the same provision, and they agree in the inevitability of each. No matter how much the legislator strives to refine legislative drafting or to anticipate the possibilities and circumstances of applying the legislative provision, he will not be able to avoid the occurrence of legislative deficiency or to avert legislative inadequacy in keeping pace with new developments in various aspects of life and across different political, social, and economic levels, given the human nature of the criminal legislator, which is marked by deficiency and imperfection. Hence, legislative deficiency converges with legislative inadequacy to the extent that one may say deficiency is but a form of inadequacy. Both occur within the same provision, and they agree in the inevitability of each. No matter how much the legislator strives to refine legislative drafting or to anticipate the possibilities and circumstances of applying the legislative provision, he will not be able to avoid the occurrence of legislative deficiency or to avert legislative inadequacy in keeping pace with new developments in various aspects of life and across different political, social, and economic levels, given the human nature of the criminal legislator, which is marked by deficiency and imperfection. [7].

Therefore, it has become certain that legislation intended to establish social order cannot be free from deficiency, and at present this "inherent deficiency" is no longer a matter of doubt or dispute. A legislator who is described as a good legislator cannot retreat from the means that allow, under certain circumstances, the modification of the effects of the law, because inevitably there will arise facts that he did not anticipate, did not provide for, or could not have foreseen at the time of drafting the legislation. General rules can only take into account average cases, and it is natural that the legislator is unable to determine in advance the cases in which the judge must take his place. If he were able to do so, he would create for himself precedents that appear suitable in his view. Thus, there is no other source than authorizing the criminal judge to act as legislator when the application of the law is logically possible. Social relations do not remain fixed, but by their nature are in constant development, transformation, and renewal. And since criminal legislation, by its drafting, conveys meaning through words, its inadequacy in relation to future events is inevitable, for once meaning is confined within words, rigidity prevents it from keeping pace with new incidents and circumstances. Novelty in social relations is a permanent reality that cannot be avoided or denied. With all this in mind, those who undertake the preparation of legislative projects in general, and criminal legislation in particular, must endeavor to find solutions for all foreseeable cases, establish general rules and flexible standards to confront future developments, and provide multiple sources to resort to in order to find solutions[8]. Among the most prominent causes of legislative deficiency are: [9].

The law is limited by its provisions, yet it regulates a developing society. Therefore, the limited cannot be complete in confronting the unlimited. For this reason, legislation is incapable of keeping pace with the development occurring in the life of the society in which it is applied, relatively speaking.

The law is the product of human beings, and no matter how much effort humans exert, they cannot foresee future cases, since man is incapable of knowing the unseen. For this reason, the solutions he devises must inevitably be incomplete.

ii. Types of Legislative Deficiency

Legal scholars have stated that there are two types of legislative deficiency: the first is a technical deficiency in the drafting of legislation, and the second is a deficiency in the legislation itself.

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(5) Thamer Abdel Majeed Abdel Abbas Al-Saadi, Legal Formulation of Legislation Texts, New University Press, Alexandria, Egypt, 2019, pp. 155-156.

(6) Saad Jabbar Al-Sudani, Shortcomings in Legislative Drafting (A Comparative Study), Research Published in the Journal of Law, Al-Mustansiriya University, Volume (4), Issue (18), 2012, p. 7.

(7) Zahra Kilani, The Structural Role of the Constitutional Judge: A Comparative Study, Ph.D. Thesis, Faculty of Law and Political Science, Aboubaki Belkaid University, Tlemcen, 2019, p. 39.

(8) Esmat Abdel Majeed Bakr, Problems of Legislation: A Comparative Theoretical and Applied Study, Dar Al-Kutub Al-Ilmiyyah, Lebanon, 2014, p. 210 ff.

(9)Bassem Abdulzaman Majeed Al-Rubaie, The Theory of the Legal Structure of the Punitive Text, Ph.D. Thesis, Baghdad University, Faculty of Law, 2000, p. 72.

First: Deficiency in Legislative Drafting This type of legislative deficiency refers to the lack of compatibility of the legal text with the new circumstances prevailing in society. In other words, the existing legislative provision does not correspond with political and social conditions. This obliges the legislator, when drafting provisions, to ensure that they are as consistent as possible with the requirements of the situation intended to be criminalized, and that the provision is coherent, clear, and not separated into another text ([10]. This type of deficiency in drafting was adopted by one of the proponents of the philosophers of legal positivism, namely the jurist Hans Kelsen. He held that there is a deficiency in drafting, which he referred to as *technical deficiency*, and defined it as: the legislator deliberately leaving the regulation of a certain matter to another authority, in order to recognize that authority's discretionary power in applying the law. Accordingly, this type of deficiency occurs when the [11] legislator uses words that are defective in their meaning, such that their true meaning intended by the legislator in drafting the criminal provision is not understood. This requires those applying the provision to explain or interpret the deficient, defective, or scattered words in their meanings, in order to encompass every situation covered by the provision upon which an act is criminalized. On this basis, understanding the provision that addresses the case requires interpretation, not analogy. Therefore, legislative drafting plays an important role in criminal law [12] through its substantive and procedural provisions when applying the law, especially when determining the facts that are considered crimes—particularly newly emerging crimes such as electronic crimes. The proper characterization of this type of crime requires, in principle, two factors:

First factor: The authority applying the law, represented by the investigative bodies and the judiciary, must possess sufficient academic and professional preparation, competence, ability, and knowledge of the law.

Second factor: The drafting of the criminal law intended to be applied to the dispute at hand must be clear and precise in its legislative formulation.[13]

For this reason, the idea of deficiency in the legal rule designated by the legislative provision to be applied may have a direct or indirect connection with the factual situation presented before the judiciary. ([14] This is what various laws suffer from, albeit to varying degrees, in terms of deficiency in legislative drafting—whether the deficiency lies in substantive rules or procedural rules—in keeping pace with the developments that occur in crimes in general. This leads to the accumulation of cases before the judiciary, which may undermine confidence in criminal justice. This applies to *traditional crimes*, but the matter is even more difficult with newly emerging crimes such as electronic crimes, as most courts face difficulty in pursuing this type of crime due to its nature and the manner in which it is committed. Therefore, legislative deficiency in the legal rule constitutes a flaw in the use of drafting tools, appearing in the form of a total deficiency. Yet in reality, it is the omission of a word or phrase that ought to have been mentioned in the legislative provision. This situation is referred to as *partial deficiency in legislation*. ([15]

On this basis, omission and error provoke constitutional review of the law, because they constitute an infringement upon the rights and freedoms of individuals due to the legislator's neglect of the substantive aspects of legislation[16]. Hence, if a provision is found to be in violation of the constitution, it is ruled unconstitutional. For this reason, legislative drafting varies according to the systems of governance prevailing in each country. In general, the drafting of laws ranges between flexibility and rigidity in expressing a particular situation. [17].

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(10) Muhammad Sharif Muhammad Ahmed, The Theory of Interpretation of Civil Texts, Ph.D. Thesis, Faculty of Law, University of Baghdad, Iraq, 1997, p. 157.

(11) Taha Awad Ghazi, The Unit of the Closed Legal System of Hans Kelsen, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1997, p. 47.

(12) Mamoun Mohamed Salama, The Limits of the Criminal Judge's Authority, 1st Edition, Dar Al-Fikr Al-Arabi, Alexandria, Egypt, 1975, p. 55.

(13) Hussein Abd Ali Issa, The Importance of Legislative Drafting of the Penal Code in Adapting Criminal Facts, Research Published in Tikrit Journal for Legal and Political Sciences, Tikrit University, Iraq, Volume (4), Issue (13), 2012, p. 65.

(14) Awwad Hussein Yassin Al-Obaidi, The Iraqi Legislator's Approach to Bridging the Legislative Shortcoming, Research Published in the Journal of Legislation and Judiciary, Dar Al-Kutub and Documents, Baghdad, Quarterly Magazine (April-May-June), Issue (2), 2011, p. 2.

(15) Ali Hadi Attia Al-Hilali, Al-Mustanir fi Tafsir al-Dasatir Rulings, 1st Edition, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2016, p. 44.

(16) Abdulqader Al-Sheikhly, Legal Drafting, 1st Edition, Dar Al-Thaqafa, Jordan, 2018, p. 104.

(17) Rafid Khalaf Hashem Al-Bahadli and Othman Salman Ghilan Al-Aboudi, Legislation between Industry and Drafting, 1st Edition, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2012, p. 43.

Second: Deficiency in the legislation itself: This type of deficiency means that there is no legislative text governing a particular situation or situations[18], and this deficiency may occur for a variety of reasons, it may be the result of the loss of the legal provision itself that makes it impossible to resolve the dispute, or the provision exists but is incapable of what the text suggests. Without specifying the amount and leaving the matter to the judge, as this type is different from the type that preceded the lack of drafting, the legislation is clear, so that in the first case, the text exists, but there is a defect in the legislative formulation, while in the second type, the text does not exist, which confronts a certain situation or situations, which suggests that the judge resort to a similar provision in the judgment, and this matter is not permissible for the criminal judge because it is bound by the principle of penal legality[19]. [20] The criminal rule plays an important role when drafted by the legislature because it contains the two parts of criminalization and punishment in a single text, and therefore the criminal rule consists of two parts, the first is the assignment clause (an order or prohibition addressed by the legislator to the person charged with submitting to the legal rule and obeying its contents).[21] The second is the part of the penalty (which the legislator imposes on those who commit a legally prohibited act that deserves punishment), and for this reason, the assignment and the penalty may not exist together in the same text, as the assignment may be repeated in one text while the punishment is guaranteed by another text[22]. to determine the penalty, leaving it to another text to determine the duty that this penalty would be imposed in the event of a violation[23].

In the case of the absorbed criminal text, there is a mandate in one text and a penalty in another text, and this is called the "fragmented criminal rule", i.e., it contains the two parts of criminalization or assignment and punishment, and it may be found in all of them in another text, but there is a case in which there is only the part of the penalty in the criminal rule without the part of the assignment, when this rule refers in determining the behavior that causes its punishment to a text that has not yet been issued, but it is intended to be issued to take over this determination, and it is called this Rule B (Criminal Rule on Blank)[24] An example of this rule is the article 58 of the Iraqi Income Tax Law No. 113 of 1982[25].

In order to answer this question, we say that some jurists, including Dr. Abd al-Razzaq al-Sanhouri and Dr. Ahmad Heshmat Abu Steit, have argued that the legal rule arises from the moment it exists in a position or situation that does not look at a particular person or a particular event, so that the rule applies to any particular case and the extent to which its conditions are met that are intended to be adjudicated.[26]In order to answer this question, we say that some jurists, including Dr. Abdul Razzaq Al-Sanhouri and Dr. Ahmed Heshmat Abu Steit, have argued that the legal rule arises from the existence of a center or situation that does not look at a specific person or a particular incident, so the rule applies to any particular case and the extent to which its conditions are available that are intended to be adjudicated, and therefore it is permissible for the judicial ruling to complement the criminal rule, and with regard to the criminal rule blankly, criminal jurisprudence differed about the

(18) Ahmed Kailan Abdullah and Maytham Faleh Hussein, The Role of Interpretation in Addressing Legislative Shortcomings, Research Published in the Journal of Law, Faculty of Law, Al-Nahrain University, Iraq, Volume (21), Issue (1), 2019, p. 66.

(19) Ali Hadi Attia Al-Hilali, op. cit., p. 48.

(20)Criminal Rule: It means the legislator's disclosure of his will by determining the forms of criminal conduct, whether such conduct is negative or positive, and coupling this determination with a penalty for those who violate the will, as the criminal rule is considered the most prominent legal rule because it is considered one of the sources of criminal legislation. Youser Anwar Ali, The Criminal Rule in the General Principles of Criminal Law, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1969, p. 73.

(21)See article 187 of the Iraqi Penal Code in force.

(22) Abdel Fattah Mustafa Saifi, The Criminal Rule, 1st Edition, Dar Al-Sharqia Sharqia, Beirut, Lebanon, 1967, p. 35.

(23) Ramses Behnam, The General Theory of Criminal Law, 1st Edition, Ma'arif Legal Books Establishment, Alexandria, Egypt, 1977, p. 191.

(24) Essam Afifi Abdel Basir, The Criminal Rule on White, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2007, p. 98.

(25)Article (58) of the Iraqi Income Tax Law No. (113) of 1982 stipulates that: "Anyone who is found to have used fraud or fraud to get rid of the tax imposed or imposed under this law shall be punished by imprisonment for a period of not less than three months and not more than two years."

(26) Abd al-Razzaq al-Sanhouri and Ahmed Abu Steit, Usul al-Qunun, Press, Committee for Authorship, Translation and Publishing, 1st edition, Cairo, Egypt, 1950, p. 242 ff.

complement of the This rule, due to the difficulty of determining the nature of this provision or the subsequent procedure by which the criminal rule is completed, does it have to be a law, an administrative decision, a regulation or a judicial procedure?
In order to answer this question, there are a variety of jurisprudential opinions: the first opinion is that Dr. Ahmed Fathi Sorour argues that the criminal law is based on the principle of penal illegality, and that the criminal judge may not rule without a provision in the law, since the source of the Penal Code is legislation only, and this is unlike the civil judge, who may rule in accordance with custom and the principles of Islamic law[27].
As for the second opinion, Dr. Mahmoud Naguib Hosni argued that if the original is the competence of the legislative authority (the issuance of legislation), then the constitution and the law may grant the executive authority limited legislative power, as the multiplicity of texts issued by it legislatively and is suitable to be a source of criminalization and punishment and to address the legislative deficiencies in the criminal law[28].
Second: Regulations are issued by the executive authority with an exception to the authority competent to legislate them, such as if there is a state of war that makes it difficult for the legislative authority to legislate[29]. [30] States and this is what the comparative legislation has followed.
As for the third opinion, Dr. Abdel Fattah Mustafa Al-Saifi argued that the criminal rules are independent and of the first degree are regulated by the special penal code, such as the provisions of theft and forgery, and they cannot be attributed to other rules unless they are rules of the second degree, i.e., the rules supporting the criminal rulings, such as the criminal contribution mentioned in the general section of the Penal Code. Like the provisions of the Civil Code, for example, the crime of theft requires proof that the thing belongs to someone other than the offender[31].
This kind of deficiency was taken by one of the philosophers of positive jurisprudential law (Hart), who I believe that the deficiency is in the legislation and not in the wording, which he expressed as the real deficiency, which was defined as the absence of the legal text or a precedent by which the judge rules, and this is the difficult situation facing the criminal judge. In an unlimited case, it depends on the judge's interpretation of the legislative text, which would include his cases in the existing text that the legislator did not include in this text[32]. [33] It is clear from this that the legislator regulated the case of the trustee's breach of the funds of others, but did not regulate the case of a person disposing of the money entrusted to him in the event of the act taking place on the computer and through the Internet, for example, the actor published the accounts of the insured, which facilitated

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(27) Ahmed Fathi Sorour, The Origins of Criminal Politics, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1972, p. 48.

(28) Mahmoud Naguib Hosny, Islamic Criminal Jurisprudence, Crime, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2003.

, p. 77.

(29) Raouf Obeid, Principles of the General Section of Punitive Legislation, 4th Edition, Dar Al-Fikr Al-Arabi, Alexandria, Egypt, 1979, p. 110.

(30)Legislative Delegation: It means the assignment by the legislative authority of a part of its legislative competence in a specific subject and for a specified period to the executive authority under a law called the Delegation Law in order to proceed through decisions that have the force of law. (to the President of the Republic and when necessary..... to issue decisions that have the force of law...)However, the Egyptian legislator retracted the authorization of the executive authority to issue legislation in this regard under the 2014 Constitution, while the Emirati legislator paid the first attention to the legislative mandate, as Article (113) of 1971 of it stipulates: "If something happens between the sessions of the Supreme Council that necessitates the expeditious issuance of federal laws that cannot tolerate delay, the President of the Union and the Council of Ministers may issue the necessary of them, in the form of decrees that have the force of law, provided that they are not contrary to the Constitution." 2005 It did not contain a provision authorizing legislative authorization. See: Ali Abdullah Jassim Al-Aradi, Delegation of Legislative Authority, 1st Edition, Bahrain Institute for Political Development, Bahrain, 2019, p. 18.

(31) Abdel Fattah Mustafa Al-Saifi, Conformity in the Field of Criminalization: A Jurisprudential Attempt to Develop a General Theory of Conformity, Al-Nahda Al-Arabi, Cairo, Egypt, 2nd edition, 1991, p. 42.

(32)Muhammad Sharif Ahmed, The Theory of Interpretation of Civil Texts, 1st Edition, Ministry of Endowments and Religious Affairs Press, 1982, p. 153.

(33)See article 453 of the Iraqi Penal Code in force.

the third party to hack his account and transfer his money to him or to another person, and in another case, which is the relationship between both the creditor and the debtor, the provisions of which are regulated by the Iraqi Civil Code No. 40 of 1951, when the debtor takes from the creditor When the debtor breaches his obligation and does not pay what he has committed to the creditor, most of the time the creditor does not affect his debt according to the long-term civil procedures, but rather resorts to another way, which is the penal procedures according to Article 453, and after moving the lawsuit, the creditor is surprised by the decision to reject the complaint and close the investigation completely, because there is no crime despite the fact that both the creditor and the debtor organized the trust receipt, which he believed When a creditor breaches its obligation, the debtor's act constitutes an offence under the Iraqi Penal Code, and in fact, the debtor's act does not constitute a crime[34].

The second requirement

Manifestations of the Legislative Deficiency in the Substantive Criminal Rules

On this basis, the legislator intervenes in order to develop legal rules in order to protect society against any danger that threatens its security and stability, which are represented by the rules of criminalization and punishment, and the purpose of these rules is to determine the appropriate punishment for the crime committed, as crime is not born of the moment, but exists in the presence of man on the surface of the world, and then it developed with the development of societies and crimes appeared in ways that did not exist In the past, perhaps the most important thing that this scientific progress has produced is the emergence of what is known as computers and the Internet, which connects the whole world, and despite the bright positive side of the age of technology, it does not negate the negative reflection produced by this technology, which is represented in the misuse and illegal exploitation of computer systems that harm the interests of the individual and society, as the tremendous development has led to the emergence of new types of crimes that constitute an attack on private and public life, and as a result of this development, it has become The nature of these crimes is complex in the ways in which they are committed, and the means of detecting electronic evidence in these systems are very difficult, because they differ from traditional crimes, as the cybercriminal can publish acts that violate public decency, steal and damage while he is in his home and has not left his place and without making any effort in doing so.

Many penal legislations have been devoid of dealing with these crimes, including Iraqi legislations, some developed countries have changed the face of the danger of these crimes by updating their laws to fill the legislative shortcomings such as the United States and some Arab countries such as Egypt and the United Arab Emirates.

Section One

Legislative Deficiency in the Face of Novel Crimes

In recent decades, the world has witnessed rapid transformations in various fields of social life, especially in the field of technology, communications and globalization, and these transformations have been accompanied by the emergence of new types of crimes that were not previously familiar, known in the contemporary legal literature as novel or purely legal crimes, which are crimes that are characterized by novelty in their means, subject matter, or scope of impact, so that it is difficult to fully subject them to the traditional frameworks that regulate crime and punishment. Behavior that has not been criminalized, as it has become a real danger to the legal and social system, such as (Internet crimes, money laundering crimes, transnational environmental crimes, human trafficking crimes, and bioterrorism).

Looking at the Iraqi criminal legislation, we find that most of the criminal texts contained in the Iraqi Penal Code No. (111) of 1969 were drafted under circumstances different from the modern reality, which raises questions about the adequacy and effectiveness of this law in confronting new crimes, such as cybercrimes, bioterrorism, and laundering. Money and other crimes.

Due to the seriousness of these crimes, many countries have enacted legislation to combat them and criminalize their perpetrators, and Sweden or those who have enacted special legislation (crimes related to computers and the Internet) in 1973, and this legislation dealt with the most important crimes such as the crime of fraud and illegal entry[35] , and the United States of America followed Sweden as it enacted many laws related to the new crimes, and among the laws passed by the United States Congress on October 10, 1984, and in 1988, a law specialized in crimes committed through computers was issued: (Fraud and abuse using computers) which fall on the regulations of the federal government, and the legislator did not stop at this limit, as it issued laws in each state to confront electronic crimes, such as the Communication Law of February 8, 1996, which included texts related to

(34) Ahmed Kailan, Abdullah and Maytham Faleh Hussein, The Role of Interpretation in Addressing Legislative Shortcomings, op. cit., p. 68.

(35) Abdel Aal Al-Derbi, Mohamed Sadiq Ismail, Cybercrimes, 1st Edition, National Center for Legal Publications, Cairo, Egypt, 2012, p. 39.

communications ethics and restricted the freedom of access to images and materials that violate public morals and are spread on the Internet, but what the federal legislator said is that the Computer Fraud and Violation Law No. 213 of 1986, which amends Law No. 1030/418, is the general law. The basis is in combating[36] new **crimes.**
,The United States Penal Code of Texas No. 1213 of 1986, as amended of 2015, sets out the new offences including two chapters, one on computer crimes and one on communications crimes, and this law defines this type of offence in chapter 33 as "unauthorized use of protected computer systems or data files, or intentional use against computers or stored data in order to benefit from any resource of a computer device, network, software By reviewing the Arab legislative texts related to confronting this type of crime, we note[37]".or computer system that they have been divided into legislations that have provided a definition of the new crimes and others that have come out of the equation, one of the legislations that defined the new crimes is the Saudi Anti-Cybercrime Law, which defined it as: "Any act committed including the use of a computer or an information network in Among the Arab legislations that came without a definition of this type [38]".violation of the provisions of this law of crime, the UAE legislation did not address this type of crime in the Penal Code No. 3 of 1987, and the legislator worked to avoid this legislative shortcoming and developed special legislation to confront the new crimes, which is the Federal Decree No. 34 of 2021 entitled Combating Rumors and Cybercrimes, and the legislator in Article ,under the term cyberattacks: (Any deliberate and planned targeting of information systems, infrastructure (1) electronic networks and information means that reduces the capabilities and functions of any of them, whether for a personal purpose, for the purposes of infiltration, penetration, leakage, or for the purpose of endangering The Jordanian legislature also did not define the [39](data or information or disrupting operations, and the like offences introduced in the Cybercrime Law No. 27 of 2015 and only criminalized acts committed by electronic ·means[40]
In Egypt, the legislature has made great efforts to confront and address the legislative shortcomings in the Egyptian Penal Code No. 58 of 1937, as a special law was developed to confront the new crimes, namely Law No. 175 of 2018 on combating information technology crimes.[41] In Article (1) of the above law, it is defined as: "Any means or set of interrelated means used to store, retrieve, arrange, organize, process, develop and exchange information or data, including everything related to the means used wired or wireless."[42]
As for the position of the Iraqi legislator, it did not address information or electronic crimes in the Iraqi Penal Code No. 111 of 1969 due to the novelty of these crimes, and the introduction of the Iraqi Penal Code, which has been legislated for a period of time, and which no longer keeps pace with the development taking place in the modern era and the emergence of technology, in addition to the existence of a legislative deficiency represented in the absence of a law that directly regulates criminal liability for these crimes, and despite the novelty of the Iraqi Electronic Signature and Electronic Transactions Law No. 78. The 2012 Act, which aims in article 2 to provide the legal framework for the use of electronic means in the conduct of electronic transactions, does not regulate these crimes[43], and as a result of the above, the new offences can be defined as: any illegal activity carried out by a natural or legal person using modern technological means with the intention of harming others.

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(36) Hatem Ahmed Battikh, The Evolution of Legislative Policy in the Field of Combating Information Technology Crimes, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2020, p. 20.

See (37)the text of Article (1) of the U.S. Penal Code in the State of Texas No. (1213) of 1986, as amended for the year 2015, published on the website, https://staatues.capitol.Texas.gor the date of visit, 15/4/2026, at 7:30.

(38)See Article 8 F1 of the Saudi Anti-Cybercrime Law No. M/17 of 2017.

(39) See the text of Article (1) of the UAE Anti-Rumors and Cybercrime Law No. 34 of 2021.

(40) Muhammad Shibli Al-Attoum, Information Technology Crimes: The General Theory of Cybercrimes, Dar Al-Farqa for Publishing and Distribution, Amman, Jordan, 2021, p. 21.

(41)This law consists of forty-five articles divided into four chapters, the first of which is the general provisions, the procedural provisions in the second part, the substantive provisions in the third chapter and the transitional provisions in the last chapter, and was published in the Official Gazette No. 32 bis on 14 August 2018.

(42)See: Article (1) of the Egyptian Law on Combating Information Technology Crimes No. (175) of 2018.

(43)Article (2) of the Iraqi Electronic Signature and Electronic Transactions Law No. 78 of 2012 stipulates that: "This law aims at the following: first: to provide the legal framework for the use of electronic means in conducting electronic transactions, second: to grant legal authority to electronic transactions and electronic signatures and to regulate their provisions, and third: to enhance confidence in the validity and integrity of electronic transactions."

Section Two
Justifications for addressing the legislative shortage in the field of combating new crimes

A review of the acts that are criminalized shows that what is criminalized in a society during a certain time may become permissible in the same society at another time, but it is usually observed that there is a persistence in the criminalization of a range of acts that violate public or individual interests that are considered by all societies and at all times to be social interests worthy of protection, and are called traditional or original crimes, because they involve aggression and violation of the basic social values and morals or individual interests that the group is keen to protect at all times and places. While the disparity is evident in the criminalization of another set of acts according to the different societies and the different times, which are called new crimes[(44)], **it is** natural that scientific progress is accompanied by the emergence of new patterns of behavior that constitute new crimes that most criminal legislation has not been able to provide legal protection against these acts, which has led the criminal legislature in most countries to intervene and enact new legislation that governs these acts in the enactment of special legislation in a manner that is consistent with it However, most of these legislations are still incapable of taking into account these acts, as the new crimes precede the legislation that governs them to a great extent[(45).] The field of combating new crimes stems from the fact that these crimes differ from traditional crimes in several aspects, and that the criminal law does not always develop as quickly as modern technology, especially since its texts were developed at the time, most of these crimes did not exist in it[(46),] and these crimes are committed by special technical methods, and the perpetrator has different characteristics and many motives that differ from the characteristics and motives of the perpetrator in traditional crimes, which makes these crimes have a special subjectivity, and therefore must The criminal legislature must take care of the new legal climate, keep pace with the development and address the legislative deficiencies in the criminal law in both substantive and procedural[(47)] **aspects.**

The most prominent forms of this shortcoming are that most of the penal laws, especially the laws of developing countries, are devoid of penal provisions for those who commit a behavior that makes them an actor or an accomplice, in a crime of the Internet or computer, so the necessity of imposing punishment on those who commit such crimes necessitates researching the traditional penal laws, and adapting the behavior of the offender according to the concept of ordinary crime, and this clashes with the principle of penal legality, which stipulates that criminalization and punishment are not permissible when the text is not available, which prevents Punishing the perpetrators of harmful or dangerous behaviour to society through computers or the Internet, as long as the criminal legislator has not enacted the necessary legislation to bring this behaviour within the scope of criminalization and punishment, which the judiciary must abide by, and on the other hand, it is not possible to rely on the broad interpretation of the texts, because it would expand the circle of criminalization, and this reality imposes legislative intervention, given the absence of texts governing the facts presented, and the uncategorically inapplicability of traditional texts to them. It is not open to interpretation and interpretation[(48)]**.**

In order to prevent the perpetrators from getting away with it, there must be penal texts that define the criminal acts in information technology and the appropriate penalties for these acts, which achieves the protection of the rights and freedoms of individuals, and the offender receives the punishment he deserves, and therefore it is necessary for the legislator to address this, take into account scientific and technological advancements, and develop its necessary means to deter these types and forms of behaviors that have accelerated and increased without legal deterrence, by developing legal texts that Criminal protection is provided to interests worthy of protection ([49(,] and **the justifications for addressing the legislative inadequacy in the field of new crimes are as follows:**

[(44)] Mahmoud Mahmoud Mustafa, Modern Trends in the Draft Penal Code in the United Arab Republic, research published in the Near East Magazine, Faculty of Law and Economic Sciences, Beirut, Lebanon, 1967, p. 916 ff.

[(45)] Hatem Abdel Rahman, Information Crime, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2002, p. 5; Abdel Fattah Bayoumi Hijazi, Crime in the Age of Globalization, 1st Edition, Dar Al-Fikr University, Alexandria, Egypt, 2007, p. 61.

[(46)] Ahmed Mahmoud Mustafa, Computer Crimes in Egyptian Legislation, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2010, p. 5.

[(47)] Fathi Mohamed Ezzat, Crimes of the Modern Era, Dar Al-Fikr wa Qanoon, Mansoura, Egypt, 2010, p. 640.

[(48)] Ahmed Mahmoud Mustafa, Crimes of Computers in Egyptian Legislation, op. cit., p. 5.

[(49)] Fathi Muhammad Ezzat, op. cit., p. 640.

First: The principle of regionalism is the dominant principle in the application of criminal law in terms of location, but this principle loses its validity in relation to cybercrimes that transcend the boundaries of the place, as cybercrimes transcend borders do not know geographical boundaries, as the perpetrator may be in one or more countries and commit the crime in another country or countries, as in the case of penetration of networks with the intention of information espionage, espionage that threatens national security, or theft of money through electronic means(50).

Second: Cybercrimes are global crimes, as they are related to the automated processing system of information and data, as they are new technological and technical innovations that each State aims to protect, which has encouraged States in recent years to cooperate in combating this type of criminality at the regional and global levels(51).

Third: The lack of legislative rules in the field of protecting the circulation and transfer of information and confronting its theft, as cybercrimes have been overshadowed in a different way, in a way that information security has become threatened by criminal methods, which have not been known in the criminal law before, such as: attempts to infiltrate the means of processing information, storing, retrieving and transferring it with the intention of modifying, altering or disabling it, until there is a fertile field for criminality, and multiple forms of it in the assault on the rights associated with it, and therefore these challenges cast a shadow on the shoulders of the agencies. Criminal justice in the face of this range of crimes, and the inadequacy of the traditional rules in the Penal Code to address them(52).

Fourth: The application of the traditional texts in the Penal Code to cybercrimes has resulted in many legal problems, as the opinions of jurists differed in the application of the legal texts to these acts, which are considered new forms of cybercrime, which led to the conflict of judicial rulings in the same country, as some provisions apply the provisions of the traditional texts to any behavior related to computers or information processing systems, while according to other judicial rulings, it is considered permissible behavior, because there is no criminalization provision in the The Penal Code or its complementary laws, and this comes in respect of the principle of penal legality, which stipulates that: "There shall be no crime or punishment except by a text." (53)

Fifth: One of the most important negative consequences of the legislative shortcomings in the Penal Code in the field of confronting cybercrimes is that it enables some perpetrators to escape punishment, as the criminal judge cannot do anything towards non-criminal acts, because he is restricted by the principle of penal legitimacy, and therefore the legislator must set the rules to deal with these cases and end the state of shortcomings in the Penal Code, because the protection provided by the rest of the laws – even if we assume that they exist in such a way Cases – not at all sufficient to achieve the justice sought by penal legislation(54).

Section III

New Crimes to be Addressed by Legislation

First: Crimes of violating public modesty using the means of information technologies: The sanctity of public and private life is one of the most important basic principles stipulated in constitutions and laws, as every person has the right to keep the secrets of his private life hidden and not to be seen by others, with the spread of the use of modern technologies, the privacy, secrets and information of individuals have become inside electronic devices and information networks, and daily transactions have become dependent on electronic media in an almost basic way, exposing correspondence and conversations taking place in an environment Digital and private data of individuals are kept electronically, which raises the question of whether the sanctity of private life or the privacy that the criminal legislator dealt with in the nineteenth century and the traditional texts for it is the same privacy that we are talking about in the age of modern information technology, or whether this technology has an impact on creating a new concept of the sanctity of public and private life, represented by digital privacy or information privacy.

(50) Abdel Fattah Bayoumi Hijazi, Al-Hadath and the Internet, Dar Al-Fikr Al-Jama'i, Alexandria, 2000, p. 21, and the same author, Forensic Evidence and Forgery in Computer Crimes, Dar Al-Kutub Al-Qanoon, Mahalla Al-Kubra, Egypt, 2002, p. 10.

(51) Ahmed Khalifa Al-Malt, Cybercrimes, 2nd Edition, Dar Al-Fikr Al-Arabi, Alexandria, Egypt, 2008, p. 137.

(52) Mohamed Abdel Latif Farag, Contemporary Criminal Policy, 1st Edition, Police Press, Cairo, 2013, pp. 33 ff.; Ghannam Mohamed Ghannam, The Appropriateness of the Penal Code in Combating Computer and Internet Crimes, Faculty of Sharia and Law, United Arab Emirates University, 2000, p. 5.

(53) Adel Youssef Al-Shukri, General Provisions for the Abolition of the Punitive Text, 1st Edition, Zain Al-Halabiya Publications, Beirut, Lebanon, 2017, p. 111.

(54) Fathi Mohamed Anwar Ezzat, Crimes of the Modern Era, Dar Al-Fikr and Law, Mansoura, 2010, p. 635.

Deep fake[55]: The crime of deepfakes is one[56] of the new crimes that emerged with the advent and development of artificial intelligence, as this technology generates fake content, whether visual or audio, through the use of a set of tools and methods that allow the production of fake content for people who say or do actions that they did not actually do through the use of machine learning and deep learning.[57] On this basis, deepfakes are the most common field, as today they have produced what is known as "artificial intelligence"[58], which is the work of mimicking the human mind, as these applications were impossible a few years ago, but learning and the use of computers have produced electronic fields that have been used badly, such as pornography in Hollywood movies.[59] The activity carried out by the perpetrator by producing images or videos and making it into an act that violates public decency is an act that causes harm, defamation, notoriety and loss of trust in society and on social media.[60]

[55]Deep fake: The term "deep fake" refers to the deception and counterfeiting by professionals in electronic programs by manipulating people's faces, as this term first appeared in 2017 when a computer user posted modified pornography clips and was displayed on the American platform (Redit), and users of this technology digitally processed faces by installing or replacing the faces of actors in movies with prominent figures in society with political and social positions. This technology was also used in 2018 when a video was created showing US President Barack Obama mocking his ally Donald Trump, and another video showing the Ukrainian president (Zelensky) in a speech telling the army to drop their weapons in the ongoing fight against Russia. Reality has something to do with reality, as user technology has helped to make a great discovery in the progress and recognition of images and faces, through artificial intelligence programs. Karima Ghadiri, Deepfakes Originated and Its Effects, Research Published in Al-Risala Journal for Media Studies, Algeria, Volume (5), Issue (4), 2021, p. 125.

The [56]meaning of forgery in the Arabic language means mediocrity and cheating, and it is derived from the word zaf, zaf, falsehood, and the source of (falsehood) is from zaf al-dirham, which means falsity, and the falsity of a man: his smallness and his contempt. See: Abu al-Fadl Jamal al-Din Muhammad bin Makram bin Manzoor, Lisan al-Arab, vol. 9, 1st edition, Dar Sader, Beirut, Lebanon, 1988, p. 143. Abu al-Hasan Ali bin Ismail, known as Ibn Sayyida, Al-Muhakam wa al-Muheem al-Azam, vol. 11, 1st edition, Dar al-Kutub al-Ilmiyyah, Beirut, Lebanon, 2000, p. 93.

[57] Emile Jabbar Ashour, Sabreen Jassim Maktouf, The Legal Adaptation of the Crime of Deepfakes: A Comparative Study, Research Published at the Faculty of Law, Maysan University, Maysan Journal for Comparative Legal Studies, Issue (Thirteen), Volume (1), 2025, p. 520.

[58]Artificial Intelligence: One of the computer sciences in understanding and applying technology that depends on computer simulation of the qualities of human intelligence, as it works on learning, programming, and self-correcting, that is, the artificial intelligence program has the ability to respond to all electronic simulations, as machine learning is part of the artificial intelligence system and its goal is that the god can disguise without being externally programmed, and the term artificial intelligence first appeared in 1956 as a term and not a technology by Johan Maccathy. Attempts were made to reproduce models capable of producing simple behaviors such as learning, but these attempts were not successful due to the common behavior of the technology used, but after the development of technology on the computer, it became a rapid use in mimicking the human mind. Zain Abdel Hadi, Artificial Intelligence and Expert Systems in Libraries: An Empirical Approach to Expert Systems in the Field of References, 1st Edition, Academic Library, Cairo, 2000, pp. 19-20; Omar Abbas Khudair Al-Obaidi, Contemporary Applications of Crimes Resulting from Artificial Intelligence, 1st Edition, Arab Center, Egypt, 2022, pp. 20-21.

[59]Now Bonnet and translated by Ali Sabri Farghi, Artificial Intelligence: Its Reality and Future, 2nd Edition, Dar Alam Al-Ma'arifa, Kuwait, 2016, p. 13.

[60] Hossam Mohamed El-Sayed Mohamed, The Criminal Confrontation with the Phenomenon of Revenge Pornography, Research Published in the Journal of Legal and Economic Studies, Faculty of Law, Sadat City University, Egypt, Vol. (5), No. (2), 2019, p. 26.

With regard to the Iraqi legislator in the Penal Code No. (111) of 1969, the term currency counterfeiting was dealt with in articles (9/2, 99/A, 280, 302/2, 303[61] and therefore these articles are outside the scope of our study, and therefore the criminal legislator in the Penal Code criminalizes acts that violate public decency in article (400) in the event that the perpetrator commits an act that violates public decency and without the consent of the victim or against her, and in article (401) whoever commits an act in public in violation of public decency, the legislator punished the Article (402) Anyone who solicits matters contrary to public morals, whether male or female, or who is exposed to a female with statements that offend her modesty[62], and also in article (403) anyone who makes, imports, acquires or transfers with the intention of independence, or who makes or distributes films or other things that violate public morals, and in the same article any person who makes an announcement that is presented to the public and promises an aggravating circumstance if he commits the crime with the intention of corrupting morals, shall be punished. Article 404 stipulates that any person who utters obscene songs or statements that violate public decency, whether done by himself or by means of a mechanical device, in a public place[63].

The Iraqi legislature has also adapted them to the act of electronic threats in accordance with articles (430-432) of the Iraqi Penal Code in force, and that these articles in the penal texts are related to traditional crimes, and in the event that the crime of deepfakes is committed, they will be adapted according to the crime of threats.[64]

In the Iraqi draft law on combating cybercrime in 2019, when defining the terms of electronic in the law, it did not refer to the term "deepfakes", but rather to the term "content" intended in whatever form of content, such as text, image, audio clip, video, etc.[65] [66]

Therefore, we find that the legislator implicitly mentioned this term, when he punished the publication and promotion of materials that violate public decency in Article (8) in paragraphs (first and two) of the draft law on combating cybercrime 2019[67].

Cyber prostitution[68]**:** In light of the prevalence of the act of electronic prostitution in all States as a result of the lack of control over websites and the absence of special legislation to address the legislative deficiencies that

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[61]Articles 9/2, 99/A, 280, 302/2 and 303 of the Iraqi Penal Code.

[62]Article 400 of the Iraqi Penal Code in force stipulates that: "Whoever commits an act of indecency against a male or female person without his or her consent shall be punished by imprisonment for a period not exceeding one year and a fine not exceeding one hundred dinars, or by one of these two penalties." Article 401 of the same law stipulates that: "Whoever commits an act that violates indecency publicly shall be punished by imprisonment for a period not exceeding six months and a fine not exceeding fifty dinars, or by one of these two penalties." Article 401 stipulates that (402) of the same law stipulates that: "Whoever asks for immoral acts from the last male or female, or by a person who is exposed to a female in a public place with words, deeds or gestures in a manner that violates her modesty, shall be punished by imprisonment for a period not exceeding six months and a fine not exceeding one hundred dinars if he repeats the commission of another crime. of the same type of crime for which he was sentenced within one year from the date of the previous sentence).

[63]See articles 403 and 404 of the Iraqi Penal Code in force.

[64] Emile Jabbar Ashour, Sabreen Jassim Maktouf, The Legal Adaptation of the Crime of Deepfakes: A Comparative Study, op. cit., p. 531.

[65]Article (1/Thirteen) of the Iraqi Draft Law on Combating Cybercrime 2019 stipulates that: "Content: The content of the electronic material, regardless of the form of the content therein, such as text, image, sound, video, and the like."

[66]Akram Karim Khudair, An In-Depth Study in the Philosophy of Criminal Law, 1st Edition, Academic Center and Library of Arab Studies, Alexandria, 2023, p. 123.

[67]Article (8) of the Iraqi Draft Law on Combating Cybercrime 2019 stipulates that: (First) Anyone who uses computers or the like or the information network for the purpose of publishing, promoting, buying, selling, or importing pornographic materials shall be punished by imprisonment for a period of not less than one year and not more than three years. for seven years and not more than ten years, and with a fine of not less than (5000000) five million Iraqi dinars = and not more than (1000000) ten million Iraqi dinars if the subject of the pornographic content is directed to a juvenile who has not reached the age of eighteen.

[68] Prostitution: The language of a noun and its source (prostitution) and its effect (Muttaqi), and the nation is prostitute, and the nation is prostitute, and prostitution: in the sense of prostitution, and the prostitute: the

accompanied the penal laws in Iraq, this act has spread significantly, due to various social, economic or political reasons, and the widespread spread of technology among Iraqi society[(69)]In article 399 of the Iraqi Penal Code in force, the Iraqi penal legislature punishes anyone who incites a male or female to commit debauchery or who has taken debauchery as his profession, and emphasizes the criminalization of those referred to in article 393/B if he is a relative, guardian, guardian or guardian of him[(70)].

We note that the Iraqi legislator in Article 399 of the Iraqi Penal Code in force punishes any act of incitement committed against a juvenile who has not reached the age of eighteen, whether male or female, and this means that there is no penalty for incitement or assistance to a person who has reached the age of eighteen. The offender intends to gain and profit, and in this sense, there is no penalty in the event that the offender's goal is not to obtain a profit, and this constitutes a defect and deficiency in the wording of the legislative text, so the legislator must address this legislative deficiency.

As for the Iraqi Anti-Prostitution and Homosexuality Law No. (8) of 1988, as amended for the year 2024, prostitution is defined in its first article: (Repeating the practice of adultery with more than one person with or without pay) and we note on this text that the legislator stipulated the act of prostitution in more than one person, i.e., that one act falls on a person who has not been punished, and this is considered a clear and explicit legislative defect in the wording of the penal text, and therefore we propose to amend the above text to be in the wording The following is a punishment in Article (3) of the above Law for the act of brokering or for the operator of a shop that allows the public to enter the act of prostitution, even if it is for the purpose of marketing his shop, and also in Article (5) paragraph (1) anyone who keeps a male or female for prostitution or sodomy in a shop by deception or[(71)] threats.

In the Iraqi draft law on combating cybercrime of 2019, article (8/V) punishes the act of prostitution under the term prostitution when using the Internet or a computer device with the intention of inciting or enticing a male or female to engage in prostitution or assisting him to do so[(72)].

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nation or the free prostitute. As for the terminology, it means the practice of illegal acts, whether the perpetrator is male or female, that would satisfy the desires of others. Comparative legislation differed in dealing with this term in their own criminal laws, as the Egyptian legislator addressed the term "anti-prostitution" in the Egyptian Anti-Prostitution Law No. (10) of 1961, and criminalized every act Incitement to debauchery and prostitution, while the Emirati legislator criminalized this act in Chapter V in its articles (360-370) under the title of incitement to debauchery and prostitution, while the Iraqi legislator does not define the term prostitution in the Iraqi Penal Code No. 111 of 1969, but has established a special law to criminalize legally prohibited acts in Law No. (15) of 2024, the First Amendment Law of the Anti-Prostitution Law No. (8) of 1988, and this law defines the crime of prostitution in Article (1/First) as: (Repeated practice of adultery with more than one person with or without pay). See: Abu al-Fadl Jamal al-Din Muhammad Makram Ibn al-Manzoor, Lisan al-Arab, vol. 14, vol. 12, Dar Sader, Beirut, Lebanon, 1990, p. 78. See: Article (1) of the Egyptian Anti-Prostitution Law No. (10) of 1961. See: Articles (360-370) of the UAE Penal Code No. (3) of 1987. See: Article (1) of the Iraqi Anti-Prostitution Law No. (8) of 1988. See: Abd al-Rahman bin Jabr Seif, The Crime of Prostitution in Islamic Sharia and Egyptian Law, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 90 ff.

(69) Muhammad Ezzat Fadel and Nawfal Ali Al-Safo, Information Technology Crimes that Violate Public Morals, Dar Al-Sanhouri, Baghdad, Iraq, 2017, p. 109.

(70)Article 399 of the Iraqi Penal Code in force stipulates that: "Anyone who incites a male or female under the age of eighteen years to commit debauchery or to engage in debauchery as a profession or facilitates them thereof, shall be punished by imprisonment, and if the offender is a member of the offender provided for in paragraph (b) of article 393 or intends to profit from his act or receives remuneration for it, he shall be punished by imprisonment for a period not exceeding ten years or by imprisonment." Article 393/b of the same law stipulates that: (If the offender is a relative of the victim up to the third degree, or if he is one of those in charge of his upbringing or observation, or who has authority over him, or if he is a servant of the victim or any of the above-mentioned persons).

(71)See article 3 of the Iraqi Anti-Prostitution and Homosexuality Law No. 8 of 1988.
Article (5) paragraph 1 of the law reads the same.

(72)See: Article (8/V) of the Iraqi Draft Law on Combating Cybercrime for the year 2019

Conclusion

With the help of God Almighty, this study at the end of our research, which was dedicated to studying the legislative deficiency in the drafting of the substantive criminal text, yielded a number of conclusions and suggestions that can be presented according to the following:

Legislative inadequacies are an inevitable phenomenon in laws and no law is (almost) devoid of them.

The legal jurisprudence on the subject of the perfection of the law has differed between two directions, the first considers the perfection of the law and its lack of deficiency, while the second direction, which we supported, determines the deficiency in the law and considers it a fixed phenomenon in it, and we found that the deficiency in the criminal text does not impede the work of the criminal judge because the latter is governed by the principle of the legality of crimes and punishments, and therefore the judge is obliged to acquit the accused if his act does not constitute a crime because it is not stipulated in it, but this does not prevent the deficiency from being considered a defect that affects the criminal legislation It increases the gap between law and reality, and therefore legislation must always be completed, and the way to complete it is to provide for the situation that is not governed by the text.

The legislative deficiency is limited to two areas: the first area: the lack of legislation, which is meant that the legislator does not address an issue in the law, and the second area: the deficiency in the wording of legislation, which is achieved when the legislator addresses a certain issue with criminal provisions, but the legislative formulation does not accommodate all the forms of conduct that the legislator intended to criminalize through the text.

There are many forms of legislative deficiencies in the Iraqi Penal Code, the most important of which are the lack of addressing information crimes, the lack of protection in the field of display and family, and crimes against the public interest.

Sound legislative foundations play an important role in avoiding and addressing the legislative deficiencies in the criminal text, as they provide the legislator with the proper rules to be observed when drafting legislation to avoid drafting errors and to avoid shortcomings in the legislation.

Among the aforementioned results, we have shown the importance of legal drafting and the need for this wording to be sound because legislative deficiencies often lead to judicial error, and this in turn, as we have seen, leads to a lack of a sense of criminal justice, which is one of the reasons for the increase in crime in society based on what criminology dictates, and all of this assures us that the goal of this research (the legislative deficiency in the formulation of the substantive criminal text) has been clarified.

Second: Proposals

1- Accelerating the adoption of the Cybercrime Law in order to contribute to addressing the legislative deficiency suffered by the amended Iraqi Penal Code in force.

2- We call on the criminal legislator, when drafting a law on cybercrimes or when amending the Penal Code, to define the definition of cybercrimes in a way that focuses on behavior, the outcome, and everything related to the conditions and elements of this crime in the advanced technical and technological sense.

3- We propose to the criminal legislator the establishment of a central body to formulate the criminal policy of the State, which will be formed in cooperation with the competent authorities, whose task will be to develop the general frameworks of criminal policy in general, whether at the level of criminalization and punishment policy or at the level of preventive policy, so that the criminal system will be able to deal with what will happen in the future and avoid any legislative deficiency in it..

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