

Protection of Human Rights under the Criminal Justice System of Jordan “An Analytical & Comparative Study”

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Abstract

The current study deals with the issue of protection of human rights of both offenders and victims of crimes under the criminal justice system of Jordan. It tries to explain the problematic issues concerning the efforts of humanizing the criminal justice administration in Jordan by focusing on series of procedural rights of the parties to criminal adversary under national criminal legislation in Jordan in comparison with international rules and principles that regulate the fair trial. The present study concludes that the current justice system of Jordan should be reformed to be more humanized, and for this many strategies were advocated as regard the role of judicial police, public prosecutors and judges, as well as number of recommendations were made finally to enhance the judicial reform in Jordan to be in harmony with international standers.

Keywords: Human Rights, Procedural rights, Criminal Trial, Criminal Legislation in Jordan

I. Introduction

The efficiency of *the* judicial system is essential for ensuring effective implementation of the governmental legal obligations, it is equally *essential* for democracy as to ensure the welfare and security of people and it is necessary for full and *effective* enjoyment of human rights⁽¹⁾. Prompt, fair and independent *administration of justice always amounts to* the promotion and *protection of human rights*, as it safeguards the rights of both victims and accused to be treated with *humanity and respect* for their *dignity*. A close analysis will show that the criminal justice system is not the solution to all public safety problems; such system is paralyzed to deal effectively with acts of mass violence, terrorism, organized crimes, cyber offences, crimes of finance and economy, as well as other aggravated forms of traditional crimes⁽²⁾. It has been rightly stated here that justice, within the concerns of our existing criminal justice system, is turning to be a crime by itself, which means that the present criminal justices system faces a real crisis⁽³⁾. The present-day concerns of our criminal justice system are rationality designed to preserve the maximum possible democratic institutions, values and ideals in a society. Thus, the protection and promotion of human and democratic values, in any society, is one the major tasks of the criminal justice system, which can not be achieved without having criminal law and procedures oriented towards protecting legal rights and benefits of citizens⁽⁴⁾. It is also of equal significance that the institutions established to accomplish this objective are well organized and designed as to command and deserve the respect of the rule of law.

The major objective of the current article is the identification of human rights in term of criminal proceedings and the role of different organs of criminal justice system in harmonizing the process of criminal justice system towards making a balance between the right of society and accused, as well as between the rights of victims and accused from other side.

II. Ambit and Scope of Human Rights:

The fundamental rights of Jordanian citizens safeguarded in Part II of the Constitution of Jordan comprise considerably the broad range of rights guaranteed in U.N. Charters and international Covenants to which Jordan is a signatory. The International Treaties guarantee the right to life, liberty and security of person as basic to all human rights and without it all other rights are meaningless⁽⁵⁾, the same is enforceable as fundamental right

¹. Eric Dubois, Christel Schurrer and Marco Velicogna, The functioning of judicial systems and the situation of the economy in the European Union Member States, Report prepared for the European Commission (Directorate General JUSTICE) , Strasbourg, 15 January 2013, p.6, available at http://ec.europa.eu/justice/effective-justice/files/cepej_study_justice_scoreboard_en.pdf (accessed on 20 April 2014)

². Muhammad Hakim Hussain Hakim: The General Theory of Reconciliation and Its Applications in Criminal Matters: A Comparative Study, Published Ph.D. Thesis, House legal books, Cairo, Egypt, 2005, p. 181.

³. See Omar Salem, Towards Facilitating Criminal Proceedings: A Comparative Study, Dar Al Nahda Al. Alarbiah, Cairo, Egypt, 1997, p. 29. See also Ashour Mbok, Towards an Attempt to Reconcile Opponents: A Comparative Analysis, Dar Al Nahda Al. Alarbiah, Cairo, Egypt, 2002, p 4.

⁴. Khairi Ahmad Alkabash, the Criminal Protection of Human Rights, Dar Al. eliem Lelmalian, Egypt, 2002, P. 23.

⁵. See Article 3 of the universal Declaration on Human Rights of 1948, Article 6 International Covenant on Civil and Political Rights

under Article 7 of the Constitution. As an essential part of the right to fair trial, a criminally accused has the right to speedy trial under International Covenant⁽¹⁾, while in Jordan this right has not protected as fundamental right under the Constitution. In Jordan, although the right to speedy trial is not explicitly contained within the text of the Constitution, Article 7 allows implicitly the accused in criminal proceedings the right to a speedy trial, which is embodied in sections 7, 63 (1) (2), 67, 100, 113, 114, 252 (1) of the Amended Criminal Procedure Code of 2001 and the same right in turn has been held by Cassation Court of Jordan as a principle right to fair trial⁽²⁾. Jordanian jurist, late Mohamed S. Najim⁽³⁾ advocates that the right to speedy trial is one of fundamental rights of person during both pre-trial and trial stages and in his opinion the criminal proceedings, either at the stage of criminal investigation by public prosecution or at the stage of final trial, should be achieved without unreasonable delay, as the speedy trial was implicit in the wide sweep and essence of Article 7 (1) of the Constitution. The speedy trial right has its roots at the very foundation of human and legal heritage and has been recognized as one of the most basic and fundamental rights⁽⁴⁾, and it is recognized by most of nations to be “a fundamental procedural right” that should be enjoyed by all persons involved with commission of crimes in term each accused has the right to a trial without undue delay⁽⁵⁾. The logic behind recognizing the speedy trial as a fundamental procedural right within the Jordanian legal jurisprudence has been explained as the speedy of criminal proceedings, at both investigation and trial stages are necessary for the determination of legal position of suspects or accused persons without undue delay, to protect criminal evidences against any possible changes, and to avoid the miscarriage of justice by denial of justice⁽⁶⁾.

The State is responsible for any undue delay in trial as it is duty to fulfil the obligation of ensuring the right to speedy trial to all persons, and the suspect or accused persons may claim the compensation for such delay as a justice denied. In Jordan, there is no specific legal provisions enforce governments to compensate persons affected by the delay of courts in adjudicating their cases, but some of Jordanian legal jurists advocate that the civil law imposes some sort of civil liability on the state for not guaranteeing the right to speedy trial⁽⁷⁾. In France, the evaluation of the period of time required for deciding criminal cases by courts is differ from one case to another and subjected to several considerations, such as misuse of the parties to the proceedings of the means of appeal, their behaviors during the trial, the nature of legal points that may need special and long term studied, as well as the complexity of separate cases⁽⁸⁾. The International Covenant on Civil and Political Rights of 1966, which has been ratified by Jordan,⁽⁹⁾ assures the right of compensation to persons being victims of the

of 1966, Article 6 of the Convention on the Rights of Child of 1990, Article 11 the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 2003, Article 10 of the Convention on the Rights of Persons with Disabilities of 2008, Article 4 of the African Charter on Human and Peoples' Rights of 1986.

¹. The right to speedy trial was protected since long time ago, it was substantially recognized by Magna Charta which stated that "To none will we sell, to none deny or delay right of justice." See in details Mark Gilbert Murov, Implementation of the Speedy Trial Guarantee in Louisiana, Louisiana Law Review, Vol. 33, 1973, P.568. See also Article 14(3)(c) of the International Covenant on Civil and Political Rights, Articles 20(4)(c) and 21(4)(c) of the Statutes of the International Criminal Tribunals for Rwanda and for the former Yugoslavia respectively, Article 7(1)(d) of the African Charter on Human and Peoples' Rights, Article 8(1) of the American Convention on Human Rights and Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms. For More details See Zvikomborero Chadambuka, Serious Offences and the Right to Trial within a Reasonable Time, available at// <http://projects.essex.ac.uk/ehrr/V9N1/CHADAMBUKA.pdf> (accessed on April 26, 2014)

². Cassation Court's Decision, Criminal Branch, No (148/1995), April 04, 1995, Journal of Jordanian Bar, 1995, p.2841, See also Cassation Court's Decision, Criminal Branch, No (380/1998), September 09, 1998, Adalah Center Publications, 1998, See also Cassation Court's Decision, Criminal Branch, No (156/1982), Journal of Jordanian Bar, 1982, p.1722. See also Sections 8 and 9 of Major Felonies Court Act, No 33 of 1976.

³. Mohamed Sobhi Najim, the Suspect or Accused's Right to a Fair Trial in the Criminal Procedure Code, Journal of Jordanian Studies, Science of Sharia and Law, Vol. 32, Issue (1), 2005, Pp. 132-33

⁴. Anne C. Conway, Speedy Trial: the Path to Protecting the Rights of Citizens and Defendants, available at http://www.law.ufl.edu/_pdf/academics/centers/cgr/11th_conference/Anne_Conway_SPEEDYTRIAL.pdf (accessed on June 13, 2013)

⁵. Aleksandar Sava Rakic, The Speedy Trial Rights of Suspected Pirate Detainees, Memorandum for the Attorney for General of the Seychelles, Spring Semester 2012, p.8

⁶. Mohamed Sobhi Najim, the Suspect or Accused Right to a Fair Trial, Supra Note No (8) at 132-133.

⁷ See Zaid Yousif Jebreen, State Civil Responsibility on Judicial Authority Acts: A Comparative Study, Mater Dissertation, Mu'tah University, 2006, in his study Jabreen recommends that “the Jordanian legislator shall adopt a special system to govern the responsibility of damages resulting from the judicial act”. See also Nidaa Mohammed Amin Abu – Alhawa, the Administration's Liability Related to Compensation against the Illegal Administrative Resolutions, Master Dissertation, Faculty of Law, Middle East University, Amman- Jordan, 2010. Pp.129-136. See Mohammed Abu Ganimh, Compensation for Judicial Arrest after the Verdict of Acquittal or a Declaration of Non-Responsibility, Ammon News, 01/06/2011, available at <http://www.ammonnews.net/article.aspx?articleNO=77400> (accessed on May 01, 2014)

⁸. See the decision of the General Assembly chamber of the Council of State of France in Garde des sceaux, ministre de la justice c. Magiera, A.J.D.A., juillet-août 2002, Chroniques, p. 596 ets. [Minister of Justice v. Magiera, published in A.J.D.A. juillet-Aout 2002 p599]. See in details about this case in Beirut Center for Research and Information, Compensation for the delay in issuing judicial rulings, available at <http://www.beirutcenter.net/Default.asp?ContentID=613&menuID=89> (accessed on May 01, 2014)

⁹. Jordan has ratified this Covenant on May 28, 1975, published in Official Gazette, No (2227), 15/06/2006.

criminal justice systems proceedings⁽¹⁾. Thus, the apex courts in Jordan have to apply the general rules of civil law in determining the civil responsibility of state for the damages and harms suffers by suspects and accused in cases of undue delay of justice⁽²⁾. The Cassation Court of Jordan has expanded the scope of human rights by a large number of judicial verdicts. By one of its landmark judgments, the Cassation Court has held that the right to life, human dignity and personal privacy guaranteed in the sweep of Articles 7, 10, 14, 15 and 18 of the Constitution and several international documents can not be restricted, except on the basis of law and its procedures, and all international treaties that contain this right have the priority in the application over national laws.⁽³⁾

However, it has been rightly stated that the criminal justice system of Jordan is "on the brink of collapse", despite the efforts made for humanizing the criminal proceedings, still the criminal justice system in this country faces lot of challenges caused by delayed trials, imbalance in favour of the criminal rather than the victim, breach of individual liberties and freedoms in the name of law, restrictions on judging the judges for judicial errors and absence of the doctrine of compensation for violation of human rights by various organs of criminal justice system...etc. On the same context, the efforts for establishing a strong foundation of expansion of human rights standards and norms within the administration of criminal justice in Jordan are taking its right direction, especially those efforts made by judges of criminal courts and apex court of cassation. It is, no doubt, the series of violation of human rights of people suspected or accused, during the various stages of the trial, is without stopping. Hence, the idea of applying the concepts of human rights within the criminal justice administration system in Jordan, and thus the transition to humanization of the criminal proceedings ordered by police, public prosecutors and courts are still far from the imagination of reality.

III. Court and Accused:

A. Expansion of Human Rights by Apex Courts:

The human rights of suspects and the accused are protected by Articles 6, 7 and 8 of the constitution. The Apex Courts of Jordan have amplified the scope of international human rights that should be applied in the country, the Court of Cassation has decided in case of *A.D.L.M.G v. The Owners of the Ship "H"* that all international treaties already ratified by Jordanian governments have a supremacy over national laws⁽⁴⁾, such judgment opens a new stage in the series of promoting human and procedural rights of accused and suspected persons especially those tried before the State Security Court, while the existence of this court till this moment is considered as a breach the international law and international treaties that already signed and ratified by Jordan and keeps human rights of people in jeopardy⁽⁵⁾. Moreover, there are many decisions related to human rights have been issued by Apex Courts of Jordan, which impose obligations on the government, and the various organs of criminal justice administration for the respect of human rights in order to apply and implement national laws in harmony with international laws and treaties guaranteeing these rights⁽⁶⁾. A few of recent judicial rulings can be worthy highlighted in this concern:

I. Arrest:

In Jordan, an arrested person has a right to be informed the reason for his arrest⁽⁷⁾, to communicate with

¹. Article 9 (5) of the International Covenant on Civil and Political Rights of 1966 provides that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

². See Zaid Yousif Jebreen, State Civil Responsibility; Supra Note No (12).

³. See Jordanian Cassation Court's Decision in Case No: (2426/1999), issued on April 25, 2000.

⁴. Cassation Court's Decision, Civil Branch, No (2353/2007), April 08, 2007

⁵. Adel Hiari, the State Security Court.. for the Second Time, Alrai Newspaper, Amman-Jordan, November 11, 2013, available at <http://www.alrai.com/article/617191.html> (accessed May 3, 2014)

⁶. See Jordanian Court of Appeal, (Tripartite Panel), Decision No (45694/2009), March 25, 2012, Adaleh Center Publications, and Court of Cassation, (Criminal Panel of Five Judges), Decision No (1757/2011), November 14, 2011, Adaleh Center Publications. Court of Cassation, (Criminal Panel of Five Judges), Decision No (2174/2011), January 12, 2011, Adaleh Center Publications. Amman Court of Appeal, (Tripartite Panel), Decision No (36823/2010), October 10, 2010, , Adaleh Center Publications, and Amman Court of Appeal, (Tripartite Panel), Decision No (13781/2009), March 22, 2009, Adaleh Center Publications. Amman Court of Appeal, (Tripartite Panel), Decision No (40096/2009), September 13, 2009, Adaleh Center Publications, See also High Court of Justice, (Panel of Five Judges), Decision No (115/1997), October 15, 1997, Judicial Journal, 1997, p.551, and High Court of Justice, (Panel of Five Judges), Decision No (212/1997), October 01, 1997, Adaleh Center Publications, Magistrate Court, (Single Judge), Decision No (7658/1999), December 26, 1999, Adaleh Center Publications, Court of Cassation, (Criminal Panel), Decision No (51/1998), March 13, 1998, Judicial Journal, 1998, p. 403, High Court of Justice, Decision No (115/1997), June 20, 1997, Judicial Journal, 1997, p.695, and High Court of Justice, Decision No (105/1984), January 01, 1985, Journal of Jordanian Bar Association, 1985, p.756, and Court of Cassation, (Petitory Penal), Decision No (230/1947), November 13, 1974, Journal of Jordanian Bar Association, 1976, p.625, and High Court of Justice, Decision No (43/1968), January 01, 1969, Journal of Jordanian Bar Association, 1969, p.59

⁷. See Sections 115 of the Jordanian Cr. P. Code, 2001. In the criminal justice system of Jordan, the public prosecutor is empower to issue the warrant of arrest against persons suspected with commission of crimes, the same power can be carried by judicial police and police officers in some exceptional cases, such as the case of *flagrant delicto* crimes as provided by Section 99 of the Code.

a lawyer⁽¹⁾, not to be compelled to make any confession or admission against himself⁽²⁾, to be kept away from the custodies of persons who are serving a sentence⁽³⁾, and to be brought by police to public prosecutor within 24 hours and to be transferred by public prosecutor to a court of subject within 24 hours⁽⁴⁾. Police officers under criminal justice system of Jordan are not entitled with the business of criminal investigation; their major duty is only to bring suspects to public prosecutors or magistrates of peace after taking their statements within limited time of 24 hours. Police officers are not obliged explicitly by Criminal Procedure Code, 2001 to facilitate the right of an arrested person to communicate with external world because the absence of the legal provisions on this regard. In practice, suspects are entitled to practice the right to communicate with relatives and friends through the use of telephone or cell phone in order to inform them about their custody, such right is granted to both suspects during the period of their custody in the police stations and accused being in the custody of public prosecutors.

The right of an arrested person to communicate with relatives, friends⁽⁵⁾ and a lawyer of his or her choice⁽⁶⁾ has been guaranteed under several international documents and conventions. Thus, the right of arrested person to communicate under the Jordanian national law can be practiced in two levels: **firstly**, an arrested person is not entitled legally to communicate with external world during his presence in police station, as the absence of legal provisions in this regard, but police usually and informally facilitate him the practicing of this right and **secondly**, an arrested person is entitled an absolute right under Jordanian Criminal Procedure Code of 2001 to communicate at the moment of his presence before the public prosecutor and initiation of criminal investigation with the lawyer of his choice⁽⁷⁾, but the same right in the term of communicating with friends and

¹. The common features of the right to counsel has been provided by Section 63 of the Amended Jordanian Criminal Procedure Code No (16) of 2001, paragraph (1) ensures the right of an arrest person not make any statement in the absence of his advocate or lawyer, if an arrested person failed in appointing a lawyer within 24 then the criminal investigation may initiate without a lawyer. Paragraph (2) of the same section makes the case of emergency as an exception, where the investigation can be conducted without the presence of the lawyer and the legality of an arrest's statement focused on by paragraph (3) which states that the statement of arrested person should be recorded by public prosecutor's clerk and it should be signed by an arrested person, if he abstain from sinning it, then the clerk should mention this with explaining the reasons behind it and finally it should be euthanized by the public prosecutor and clerk.

². The right of an arrest person against self-incrimination has been guaranteed implicitly under Section 147 of the Amended Criminal Procedure Code of 2001, by which the arrested person have the right to be presumed innocent until convicted by final judicial decision.

³. See Sections 16 (1), 31 (1), 100 (1) (3), 104, 106 (1) and (3), 108 (1) and 116 of the Jordanian Criminal Procedure Code, No (16) of 2001

⁴. The Jordanian public prosecution in ordinary crimes is obliged to charge detainees within 24 hours, as the Criminal Procedure law of 2001 requires existing evidence that links the suspect to the crime in question, and it is entitled to issue order for extension of the period of detention for 15 days that can be renewed, however, the maximum extension of the period of detention shall not be more than 2 months for misdemeanors and 6 months for felonies (See Sections 100 and 114 (1) of the Jordanian Criminal Procedure Code, No (16) of 2001). Under the Jordanian Punishment Code, 1961 the act of an employee who arrest and detain a person, in ordinary circumstances, for more than 24 hours without bringing him before the public prosecutor as a punishable crime of "arbitrary deprivation of liberty" (See Section 113 of the Jordanian Criminal Procedure Code, No (16) of 2001).

The judicial order of detention made by public prosecution to a suspected person under Jordanian law is subjected to the discretionary power of public prosecutor, who may order a conditional release on bail to a detainee if the punishment of alleged crime is not in harmony with the detention, and in all cases public prosecutor studies all possibilities before ordering detention likelihood of escape of the suspect, or the possibility of committing new crimes or threats to witnesses. It should be noted here that there are some cases that the public prosecutor has no power to release arrested persons on bail, especially if the alleged crime is punishable with the death penalty or hard labor or life imprisonment (See Sections 122 and 123 of the Jordanian Cr. P. Code, 2001).

⁵. Principle 37 of the Standard Minimum Rules for the Treatment of Prisoners states that "prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits". Principle 44 (3) also provides that "Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution". See Basic Principles of 37 and 44 of the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

⁶. Principle 93 of the Standard Minimum Rules for the Treatment of Prisoners states stipulates that "For the purposes of his defense, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defense and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official". See also Article 14 (3) (b) of the International Covenant on Civil and Political Rights, 1966 grants an arrested person the right to communicate with a lawyer, it state that "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing". Basic Principle 6 of the Basic Principles on the Role of Lawyers Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, states that "Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services".

⁷. The right of an arrested person to communicate with external world is granted by Section 63 (1) of the Amended Jordanian Criminal Procedure Code No (16) of 2001. Paragraph (1) of Section 63 grants an arrested person explicitly the right to communicate

relatives is not absolute⁽¹⁾, as the public prosecutor may in some cases to restrict or prevent an arrested or detained person from communicating with relatives or friends for renewable **ten days**⁽²⁾. Moreover, the detainee has the right to have a private legitimate intercourse (conjugal right) with a wife, in a suitable place inside the reform and rehabilitation centres⁽³⁾,

2. Use of Handcuffs:

The use of handcuffs is sort of immoral force imposed upon somebody, which amounts always to an assault and is illegal unless it can be justified. The use of handcuffs by police during criminal proceeding should be justified not only on the basis of legality and due process, but also good objective grounds of both a proportionate and reasonability. The use of force by police is prohibited and restricted under international law; principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 restricts the use of force and makes it illegal except in narrow scope of circumstances⁽⁴⁾. Article 3 of the Code of Conduct for Law Enforcement Officials, 1979 ensures that the use of force by police officers should be exceptional at circumstances to prevent crimes, affect or assist lawful arrest of offenders⁽⁵⁾.

In Jordan, legal powers given to judicial police officers to use reasonable and appropriate force against suspects and accused persons are derived from various sources: Section 9 of the Public Security Act No. (38) of 1965 and its amendments, Section 4 of the Defense Law No. (13) of 1992⁽⁶⁾, Section 167 (2) of Punishment Code No (33) of 2002 and its amendments, Sections 119 and 120, of the Criminal Procedure Code No. (16) of 2001 and its amendments and Section 5 (a) of the Execution Act No (25) of 2007. On the same context, judicial police and police officers should be careful about the use of handcuffs, simply as it reflects some sorts of force that degrading the human dignity.

3. Police Remand and Torture

While drafting the Criminal Procedure Code, 1967 and its later amendments, the Jordanian law makers were careful about restricting Police powers especially during the different stages of criminal trials. They refused to vast this agency with real investigative authority, as police officers are legally not entitled to investigate crimes unless under the umbrella and upon an authorization of public prosecutors. Moreover, the role of police during criminal investigation and trial is confined to bring the suspected person to public prosecutor in case of misdemeanors and felonies or to magistrate of peace in case of violations, no arrest or house entrance without the prior permission issued by public prosecutor except in flagrant cases, and at all circumstances arrested persons must not be kept in police custody for more than 24 hours. In Jordan, police is prohibited to conduct interrogation, for this reason police agency in our country has no stigma as found in its counter partners of other countries; especially those states adopt accusatorial techniques and procedures for criminal investigation.

4. Speedy Trial

The right to speedy trial is implicitly guaranteed as fundamental right under Article 7 of the Constitution by catena of decision of apex court. This right has been also safeguarded under both international conventions and regional treaties⁽⁷⁾. To paraphrase Jordanian Jurist, Amjad Kurdi “the speedy trial doctrine is a constitutional

with a lawyer of his or her choice, the type of communication between an arrested person and a lawyer as presumed by this paragraph can be either virtual by any means of communication or physical by ensuring the short presence of a lawyer at the custody of an arrested person and the investigation proceedings. While the same right o communicate with relatives and friends is implicitly vested to an arrested person as part of communication with a lawyer during criminal investigation. See Mohammad Shibli Al Otoom, Invalidity of Pre-Trial Detention in the Amended Jordanian Code of Criminal Procedure No. 9, 196, Journal of Yarmouk Researches: Series of Humanities and Social Sciences, Vol. 27, Issue No (2), 2011, p.1304

¹. Section 13 of the Jordanian Law of Reform and Rehabilitation Centers No (9) of 2004 guarantees an arrested persons the right to communicate with their family and friends, both by correspondence and by receiving visits, Article 13 (3) and (4) states that “3- to enable the prisoner to inform his relatives about his location and 4- To correspond with family and friends and to facilitate contact with them”. also Section 18 of the same law ensures the right of the family of arrested person to be informed in case of transferring him to another institution within 48 hours, as well as Sections 13 (b) and 28 of this law authorizes the Interior Minister to give a permission to any one desire to visit the detainee or in special cases to visit inmates or patients inside such institutions.

². See Section 66 (1) and (2) of the Amended Jordanian Criminal Procedure Code No (16) of 2001.

³. See Abdel Hafez Yousef Alian Abu- Homaadh, The Prisoner’s Conjugal Right: A Comparative Study of Islamic Jurisprudence and Jordanian Law, Journal of the Islamic University for Islamic Studies, Volume XX, Issue I, January 2012, Pp. 85 - 09

⁴. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Available at// <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx> (accessed May 15, 2014). Principle 4 states that “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result”.

⁵. Article 3 of the Code of Conduct for Law Enforcement Officials, the General Assembly Resolution No (34/169) of 17 December 1979, provides that “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”.

⁶. Section 4 (c) of the Jordanian Defense Act, 1992 provides that “Searching people, places and vehicles without being restricted to the provisions of any other law, and ordering using suitable force in case of disobedience”.

⁷. See Article 14 of International Covenant on Civil and Political Rights, 1966, and Article 14 of Arab Charter on Human Rights,

right that to be guaranteed for all persons involved with criminal procedures at any of the three stages of criminal trial, namely in pre-investigation, criminal investigation and trial stage. It is the obligation of the state to safeguard the right to speedy trial during the stage of preliminary investigation made by police, and it is the duty of judiciary and apex courts to ensure this right by the proper implementation of the laws guaranteeing such right, as well as issuing directions for lower courts and judges to preserve it⁽¹⁾.

The speedy trial as a procedural right that designed for suspects and accused persons during the stages of criminal investigations and trials has been utterly safeguarded under the provisions of the Jordanian Criminal Procedure Code, 2001⁽²⁾. Accordingly, a felony case should be disposed of within six months, and two months in case of misdemeanours from the date of filling police report or complaint. However, this rule is not an absolute, where in some cases public prosecutor may decide to extend the term of detention for more than six months for felonies and two months for misdemeanours, but the term of extension should not exceed two months after taking the permission of court of competence⁽³⁾. In Jordan, the Court of Felonies has a wide jurisdiction over the cases related to intentional murder, rape, disgracing, kidnapping or in case of embarking of any of those crimes. The speedy trial rule is well guaranteed under the provisions of this Court, as the investigation procedures are limited by fixed periods within the Act and the decisions of suspicions and accusation are to be taking within given time without unreasonable delay⁽⁴⁾.

In the words of the Jordanian Justice, Taggreyd Hecmat, the former Judge of International Criminal Court, the speedy trial is always supported with the independence of judiciary and safeguarding the accused rights, as well as the implementation of international law of human rights on the basis of equality and non-discrimination⁽⁵⁾. On this context, it has to be noticed that since the major guarantee for the speedy trial is the trial judge himself, he or she should be enough in professional understanding, perfect in moral resolution and duly in conciliatory in personality in order to decide the case in a just way. In Jordan, such ultimate achievement has been activated by the creation of the judicial service, the so called the Jordanian Judicial Institute, that established in 1988⁽⁶⁾, aims to attract talented law graduates in judiciary on competitive basis, train them and provide the them with necessary skills and knowledge, recently the Judicial Institute applied a new programme called the "Judges of Futures" for the same purpose.⁽⁷⁾

B. Pre-mature Publicity in the Media

The publicity principle is guaranteed only to the parties of criminal case, which means in general that the criminal investigation by public prosecution should not be conducted in the absence of the accused⁽⁸⁾, except in cases related to emergency and urgency⁽⁹⁾. Under the Continental legal principles, which the Jordanian jurisprudence follows, the principle of publicity is not applied for public during the criminal investigation made by public prosecution, such rule is based upon the doctrine says that the accused is deemed to be innocent till he is proved guilty in the court of law. The secrecy of criminal investigation covers both public and media. Thus, the publicity of criminal cases in print and electronic media, while they are still under public prosecution investigation is prohibited by Section 64 (1) of the Jordanian Criminal Procedure Code, as it appears to cause a serious intimidation to the defence of the accused in such cases⁽¹⁰⁾.

2004, and see also Article 3 of the European Convention on Human Rights (ECHR) of 1950

¹. Amjad Kurdi, Practical Problems Faced by the Public Prosecutor in the Preliminary Investigation, Dar Alera for Publication & Distribution, Jordan, 2007, P.1.

². The right to speedy trial is guaranteed under section 63(2) of the Jordanian Criminal Procedure Code, which states that "it is permissible in urgent case because of the fear of loss of evidences". Section 67 of the same law, states that the public prosecutor must decide cases related to jurisdiction, prescription, and any acts that not penalized within a week from the date of leveling up the case, and fixed the deadline to appeal against this decision within two days

³. See Section 114 (1) and (4) of the Jordanian Criminal Procedure Code, 2001

⁴. Section 8 of the Court of Felonies Act No (33) of 1976 states that "Public Prosecution and Judicial Police conduct the necessary speedy investigation procedures under legal responsibility for any unjustified delay". Section 9 of the same Act provides that " Public Prosecutor is obliged to issue the decision of suspicion against the accused in any case subjected to this Act, within the period not exceeding seven days from the date closing the investigation or the case should be refereed to the General Attorney within three days from the date of issuance of the decision of suspicion, and the General Attorney should issue the decision of accusation in the case and refereeing it back to the public prosecutor within seven days from the date of referral, while the prosecutor should refer the case and bring the accused before the competent court within three days from the date of receiving the accusation's decision".

⁵. Taggreyd Hecmat, *The Role of the Judiciary in the Protection & Promotion of Human Rights*, A Seminar organized by Faculty of Law, Jordan University in collaboration with the Network of the Arab Academy for Human Rights and Raoul Wallenberg Institute of Human Rights and with the Support of the Swedish Agency for International Cooperation and Development on June 26, 2012

⁶. The Jordanian Judicial Institute has been established by the Judicial Institute Act, No (3) of 1988, and then this Act was replaced by the Regulation of the Jordanian Judicial Institute, No (68) of 2001 and its amendments.

⁷. The Programme of "Judges of Future" was established by Regulation of Scientific Missions No (63) of 2008 and it's New Amendment No (39) of 2009.

⁸. See Sections 64 and 66 of the Jordanian Criminal Procedure Code.

⁹. See Section 64 of the Jordanian Criminal Procedure Code.

¹⁰. Salem Rashid Al.Sharafī, *Methods of Disposition in the Criminal Investigation in the Saudi Law: comparative study*, Master Dissertation, Naif Arab University for Security Sciences, Department of Criminal Justice (Criminal Politics), Saudi Arabia, 2011,

Premature publicity against the accused is likely to affect the procedures of criminal investigations, and the prosecutors inspections made to evidences in the case, and it prejudices the minds of prosecutor and later the judge, apart from predisposing the minds of public and witnesses to the case. It also harms the reputation and honour of the accused besides defamation of the accused reputation, and his or her mental agony and trauma⁽¹⁾. It is the duty of criminal courts to prevent any type of undue publicity of the pre-trial stage because such behaviour from the side of media may erode the confidence of public in the criminal justice system as whole, and to preserve the accused right against undue publicity in away that serves the achievement of justice, by avoiding the violation the principles of fair trial, including the right to privacy at all stages of criminal trial.

C. Remedy by Contempt

To secure fair trial, the accused right to privacy during the stages of criminal trial has to protected, as the right is guaranteed under Article 7 (1) and (2) of the New Amended Constitution of Jordan, 2011 which provides that personal freedoms are guaranteed and any breach to public liberties and the sanctity of private life is punishable as a crime. The same was safeguarded under Press and Publication Act (8) of 1998 and Copyright Act (22) of 1992⁽²⁾ and the Jordanian Juvenile Act (24) of 1968.⁽³⁾

Section 190 of the Jordanian Punishment Code, 1960 and its amendments of 2010 defines the term of "contempt" as an insult addressed to the victim as a face-to-face talking or movements or by typing or drawing or telegram or telephone or rude treatment. Therefore, the practices of press and media may be treated as contempt of court as provided under Sections 141-145 of the Jordanian Criminal Procedure Code, 2001, but these provisions have to be amended along with section 190 of the Punishment Code of 1960 and Sections 37 (d) and 39 (a) of the Press and Publication Act (8) of 1998; and Section 26 of the Copyright Act (22) of 1992 in order to include disclosure of statements about criminal investigation to media either by prosecutors or their staff, media publication of any criminal evidences that collected during criminal investigation or preliminary investigation, publication or pronouncing of any statement or opinions the case under investigation before the final verdict of the court. Such acts should be criminalized and penalized as crimes of contempt of court under the Punishment Code and other related laws and Acts.

D. Strategies for Reducing Delay of Criminal Trial

The problem of delay of justice is a global complex matter. There are multiple and varied causations behind it, some of these causes are attributed to the haphazard functioning of courts and inefficient methods of scientific management with the judiciary⁽⁴⁾. Moreover, case-loads on the courts, increasing the rates of crimes and insufficient number of courts are also deemed as other reasons for delay of criminal justice. Sometimes, the complexity of the existing laws and negative role of bar members may cause the delay of justice, as well as lengthy process of trial⁽⁵⁾.

1. The "Speedy Trial" must be made as a constitutional right under the Constitution of Jordan, especially as this problem has not yet attracted the concern of either the constitutional nor criminal legislatures in our country.
2. There are real needs to evolve many issues related to delay of justice in criminal cases under Jordanian jurisdiction, including strengthening the role of prosecution and bar members, increment of number of courts and judges, reduction of case-loads, applying new scientific methods of management in court system and limiting the number of adjournment, as well as toning up of the investigation machinery.
3. The need for the creation of legal machinery to settle criminal disputes outside the judiciary by conciliatory board in order to share the court's workload and to deal with ordinary crimes and disposal of petty cases, such board should have a suitable structure by which its members should be elected on social and professional basis, and they should be legally trained and finally their function

p.30

¹. Mohammed Said Namur, Principles of Criminal Procedures: An Explanation to the Criminal Procedure Code, Da'ar Al.Thaqafah for Publishing and Distribution, Amman-Jordan, 2013, Pp.341-43

². The Press and Publication Act (8) of 1998 prohibits the publication and reporting matters related with personal freedoms of people and the pre-trial investigations as provided in section 37 (d) and 39 (a); and the Copyright Act (22) of 1992 prohibits in its section 26 the unauthorized publication of photographs, documents and materials which may encroach the personal dignity and reputation or social status of individuals.

³. Section 12 of the Jordanian Juvenile Act (24) of 1968 prohibits the publication of the names and photos of juveniles, and reporting their trial's sessions, or its briefs by any means of publication such as books, journalism and cinema.

⁴. Omar Mharima, A Strategy Aimed at Enhancing the Development of the Judiciary Independence, Integrity and Speed up Litigation, Addustour Newspaper, published in Amman-Jordan, on Saturday, February 20, .2010. . Available at//<http://www.addustour.com> (accessed May 29, 2014).

⁵. Jordanian Directorate of Public Security & the International Organization for Penal Reform, Final Statement of the National Conference of the Jordanian Penal Reform "Towards a National Strategy for the Development of the System of Reformation. Available at// <http://www.primena.org/ar/CASES/21> (accessed June 03, 2014).

- should supervised by higher courts.
4. There is a real need to create National Academy responsible with recruiting young talented law graduates as joiner judges, training the working judges and judicial officers and investigating prosecutors as well as judicial police, and new statutory provisions related to elimination the problem of delay of justice must be made by parliament, therefore a new Speedy Trial Act is suggested and the separation of the wings of investigation and accusation authority is also vitally required.
 5. Efforts to support the adoption of alternative measures Instead of the deprivation of liberty sanctions and strengthening the role of civil partners in the process of judicial reforms and rehabilitation should be evolved.
 6. Strategies such as expanding the areas of computerization of the courts, the linkage with the relevant authorities to the judicial work and court services, implementation of human and criminal rights, development of operating procedures of notary and its supporting process and improvement of judicial and court infrastructure should be evolved.

IV. Court and Police:

A. Police, Prosecution and Criminal Courts

The police is a very important component in the criminal justice system of Jordan, as it is provided under Article 127(2) of the Constitution of Jordan, a new amendment of 2011, that the jurisdiction of police and Gendarmerie forces has to be regulated by special law. Police agency in Jordan is entrusted with two major functions; one relates to the achievement of criminal justice, by which it operates as judicial police for limited powers for the purpose of crime investigation under the umbrella of public prosecution, and the other relates to prevention of the very occurrence of crime by evaluation, regulation and curbing of causes and conditions, which facilitate the commission of crime.

In Jordan, the role of police in the investigation of crime is limited, for example police officers have to obtain a warrant issued from public prosecutor before making an arrest or detention for periods not exceeding 24 hours, except in the cases of flagrante. The criminal court is connected with first role of public prosecution, and the evidences brought by police during the preliminary investigation may be considered by criminal courts only if they are supported by public prosecutors⁽¹⁾. However, the State Security Court vested the judicial police with extraordinary powers to arrest and keep arrestees, who involved with any of the crimes that fall within its jurisdiction, under its custody for seven days, in cases of urgency, while in such cases including minor misdemeanors police may arrest and detain without a warrant of arrest⁽²⁾. Therefore, the success of investigation of crime depends mostly on the professional training, equipment and competence of the public prosecutors, as well as the judicial police officers. The interaction and cooperation between public prosecution and judicial police agency is also equally vital for success of the criminal justice administration, for this reason all actions made by police in this regard should be either under the permission or supervision of public prosecution.

Under the existing criminal justice system of Jordan, judicial police officer should always get legal assistance and advice from the prosecuting agency, which has accountability for the failure of cases in the court of law. The success of the criminal justice system in Jordan requires public prosecution agency to control the extraordinary powers given to judicial police made by special courts such as the State Security Court, and other powers given to the under the clauses flagrante cases provided by Criminal Procedural Code of 2001 and Police Act that will help to improve the efficiency of investigating agency of public prosecution with the assistance of judicial police agency at all levels of criminal investigation.

B. Political Interference in Law Enforcement

The public prosecution agency plays a key role during the criminal investigation stage; it is responsible for the protection of the rights of detained persons, by applying the principle of presumption of innocence for persons who have not been convicted with the commission of crime. Thus, the essential task of public prosecutors under Jordanian criminal justice is to accept only the legally obtained forensic evidence, and reject those obtained under torture and cruel treatment, simply because they are a violation to the human rights of the accused. The role of public prosecution appears in holding any one responsible for the use of torture and cruel treatment against detainees as legally accountable for such crimes in order to prevent its recurrence in future⁽³⁾.

In general, the quality of public prosecution performance is adversely affected by political interference.

¹. Raed S. A Faqir, Protection of Accused Rights in Jordan and India: A comparative Study, Ph.d Thesis, Faculty of Law, University of Delhi, India, 2014.

². See U.S Department of State, Diplomacy in Action, Bureau of Democracy, Human Rights and Labor, Report on Human Rights in Jordan, 2007. Available at <http://www.state.gov/j/drl/rls/hrrpt/2007> (accessed June 06, 2014).

³. Laith Kamal Nasrawin, the International Protection of Human Rights during the Investigation Stage, Amnesty International, the Regional Office for the Middle East and North Africa. Available at <http://www.amnestymena.org/ar/Magazine/issue18/HRProtectionDuringInvestigation.aspx?media=print> (accessed June 01, 2014).

In fact, the political interference hardly to be proved in case of public prosecution, but it is easily occurred in the police performance, simply because the public prosecution is part of judiciary in Jordan that theoretically and practically assumed independent from the interference of executive branch of the state, while police itself including judicial police are jurisdictionally falling under the executive heredity of the state. The unhealthy influence appears from the administrative decisions taken by governors, who are empowered with authorities of detention under Crimes Prevention Act of 1954; such powers are characterized as they affect the personal freedoms of people because of the arbitrary of those procedures, its motives and prolonged detention resulted by it⁽¹⁾.

On the same context, the features of police corruption may have the forms of functional bias; such behaviors which may take a variety forms such as impede law enforcement, abuse of power, lack of seriousness in the implementation of judicial orders, and to refrain from implementing the orders and decisions of the courts or the public prosecution are criminalized and panelized under section 182-184 of the Jordanian Punishment Code of 1961 and section 5 (h) of the Jordanian Corruption Act, 2006⁽²⁾. It is worthily to say that the interference in police functionaries is not merely coming from executive branch of government, but also there are other entities participate in police corruption, including politicians, industrials, capitalists and businessmen⁽³⁾.

C. Strategies for Controlling Judicial Police Corruption

Under the existing criminal justice in Jordan, judicial police officers are empowered with exclusive and exceptional authorities, especially under the circumstances of flagrant crimes, under which police functionaries may be potentially influenced by internal or external interferences, as police officers have the right to arrest and detain without the permission of public prosecution.

Thus, the following strategies are recommended to prevent any possible chances of police bias that may affect the whole process of consequent stages of criminal trial:

1. The exceptional authorities of judicial police officers in flagrant cases should be based on serious and strong presumptions and not on merely hearsays; otherwise the whole procedures of criminal trial will be legally invalid.
2. The police judicial officers should practice their extraordinary powers of entering dwelling houses and arresting people only in cases of flagrance as defined in section 28(1) of the Jordanian Criminal Procedure Code of 2001, and within a stated period with 24 hours from the moment of crime's occurrence as provided under section 28(2) of the same Code.
3. The arrest of persons within the jurisdiction of judicial police officers in flagrant cases should be carried out peacefully on the basis of preserving human dignity against humiliation, torture or violent treatment.
4. the "Fair Trial" needs to enact a new special Act in Jordan for arrest, search and seizure, as its present regulations under Jordanian Criminal Procedure Code are not sufficient and lack of coverage of all potential matters. This act should contain clear punishable provisions which must be imposed on judicial police for violation of human rights of arrestee, detainee and accused.

V. Court and Victims:

A. Law Inadequate in Favour of Victims

Human being is the central of criminal law, irrespective of being a criminal or victim. The Criminal Justice system of Jordan surrounds the accused and criminal with various numbers of guarantees that assuring for them the fair trial and just infliction of punishment in order to preserve their human dignity, while the same system ignored the rights of the victims of crime in speedy procedures which may enable them to be compensated and redressed. The present Jordanian Criminal Procedure Code dose not recognize the right of crime's victim to take part in prosecution of the case introduced on the foundation of public prosecutor's report. Under the Jordanian Criminal Procedure Code, there is no a single provision that defines the concept of "victim" of crime, but it uses the word in many occasions, as it stipulates that the initiation of criminal proceedings on the bases of complain made by the victim or his legal representative in some cases provided in the Code⁽⁴⁾. However, the criminal legislature differentiates sometimes between the term of "victim" and other terms of "injured or harmed"

¹. See the Crime Prevention Act of Jordan No (7) of 1954 and its Amendments.

². Section 182 (1) of the Jordanian Punishment Code provides that Police officers who abstain from enforcing judicial decision or an order issued by concerned authorities are panelized with punishment of imprisonment ranging from one month to two years. See also sections 183 and 184 of the same Code. See also Section 5 (h) of the Corruption Compacting Commission Act No (62) of 2006 and its Amendments.

³. Kamil Al.Said, Explanation of the Penal Code- Crimes against Public Interest: Comparative Analytic Study, House of Culture for Publishing and Distribution, Amman-Jordan, 2008, 556. See also Naseem Mohamed Bani- Amer, Combating Corruption in Jordan within the Parliament & the Anti – Corruption Commission, Master Thesis, Yarmouk University, Jordan, 2012.

⁴. See Section 3 of the Jordanian Criminal Procedure Code, the New Amendment of 2001.

persons⁽¹⁾. It is not fair to say that the legal position of the victim in criminal proceedings is merely a witness in a state versus case, The legal position of the victim of crime differs from one case to another, as in general crimes he is considered one of the parties to the litigation in partnership with the public prosecutor, while the victim in special crimes is considered as an independent party, where he enjoys all the rights enjoyed by the accused, such as providing applications and evidence and appealing against judicial decisions and judgments Etc Law allows the victim or his representative to attend the seasons of criminal investigation and to be informed of any legal procedure was taken in his absence, such guarantee is seen as useful defensive point⁽²⁾. The victim of personal plaintiff has the right under section 59 of Cr. P. Code to review papers and documents that not disclosed to him before, especially in case if the victim's residence was out the local jurisdiction of the public prosecutor.

In Jordan, the victim has no rights during the stage or preliminary investigation conducted by judicial police, except of submitting complaints, receiving healthy treatment and protection, protecting witnesses who are in his interest⁽³⁾. The criminal procedures during criminal investigation are designed basically to safeguard the rights of accused persons rather than victims, but they may indirectly guarantee the rights of victims of crimes. The rights of victims of crimes are guaranteed during criminal trial stage through applying many principles, including secrecy of investigation procedures for public, publicity of investigation of the parties to the case and their legal representatives⁽⁴⁾, registration and confidentiality of the investigation procedures⁽⁵⁾, ensuring the attendance of victims or their legal representatives through the whole steps of criminal investigation⁽⁶⁾, speedy investigation⁽⁷⁾, handling the victim over all seized items and victim belongs before the initiation of final trial⁽⁸⁾, protection of the crime witnesses⁽⁹⁾ and the judicial nature of the agency of investigation or public prosecution agency⁽¹⁰⁾.

The inefficiency of law in favour of victims is shown also under many provisions of the Jordanian Criminal Procedure Code, where all these provisions are designed also to protect the accused rights during the final stage of criminal trial. Somehow, it is advocated by the Jordanian jurists that the protection of the victim rights are embodied in the privileges and advantages given to the public prosecution agency, because it is chief task to function as a deputy to the victim in criminal proceedings⁽¹¹⁾.

B. Compensation Rule and Judiciary

The right of the victims of crime in compensation has been ensured by both Punishment Code, and Criminal and Civil Procedure Codes. The Jordanian Legislature conferred jurisdiction no the criminal and civil courts under Section 43(1) of the Punishment Code and Section 269 (2) of the Civil Code for rewarding and bringing the rights of victim as it was before the commission of crime. For example, the court is obliged to compensate the victim by returning back the money to him in cases such as fraud, theft, and embezzlement, or such as returning back the kidnapped chilled to his or her parents. The compensation of the victim, whose property was looted or rubberized, may be by re-placing his hand on such property⁽¹²⁾.

The criminal courts in Jordan are powered to award compensation to the victims of offences by returning back all items and property which were sized as the result of crime in such a liberal way, that the victim may not have to rush to the civil courts for compensation, before or at the time of passing judgement of convention⁽¹³⁾. Moreover, the public prosecution may issue a decision for returning back the sized property to the victim upon his demand, or it may issue a suitable order concerning the sized items and property of unknown owner as stipulated under Section 269 of the Jordanian Civil Law⁽¹⁴⁾. The administrative governors have enough legal

¹. See Ahmed Abdel-Latif Al-Feki, the Police and the Rights of Victims of Crime, Dar Al.fajer for Publishing and Distribution, 2003, p 49. See also Sections 2(2), 52, 129(4), 336(3) of the Jordanian Criminal Procedure Code, the New Amendment of 2001.

². See Mahmoud Kbaish, Participation of the Victim in Criminal Proceedings, the Police Thought Journal, Sharjah Police, United Arab Emirates, Vol. 1, Issue 4, 1993, Pp. 185-187. See also Section 64 (1-3) of the Jordanian Criminal Procedure Code, the New Amendment of 2001.

³. See Sections 8, 20, 49 and 50 of the Jordanian Criminal Procedure Code, the New Amendment of 2001.

⁴. Mohammed Saed Namor, Principles of Criminal Procedure: A Explanation to the Code of Criminal Procedure, 1st edition, the House of Culture for Publishing and Distribution, Amman, 2005. See also Section 335 of the Jordanian Punishment Code, No (16) of 1961. See also Sections 7 and 64 of the Jordanian Criminal Procedure Code, the New Amendment of 2001.

⁵. See Section 63 (3) of the Jordanian Criminal Procedure Code, the New Amendment of 2001.

⁶. See Section 64 (3) of the Jordanian Criminal Procedure Code, the New Amendment of 2001.

⁷. Farouk Al. Kilani, Lectures in the Criminal Procedure Code: Jordan and Comparative Laws, Amman, 1981.

⁸. See Sections 43 and 44 of the Jordanian Punishment Code, 1960. See also Sections 90 and 91 the Jordanian Criminal Procedure Code, the New Amendment of 2001.

⁹. See Section 77 of the Jordanian Punishment Code, 1960

¹⁰. Muhammad Ali Ayad Al-Halabi, Al. Wasiet on the Explanation of the Code of Criminal Procedure, Volumes 1, 2 and 3, the House of Culture for Publishing and Distribution, Amman, 1996.

¹¹. Kasim Muhammad Hasan Al.Hyesat, The Rights of Victims under National Legislation and International Documents, Ph.d Thesis, Faculty of Higher Legal Studies, Amman Arab University, 2007, P.185

¹². See Section 488 (1) of the Jordanian Punishment Code, 1960

¹³. See Sections 174 and 177 (1) and (2) of the Jordanian Punishment Code, 1960

¹⁴. See Section 44 of the Jordanian Punishment Code, 1960

jurisdictions under Jordanian Legal system to compensate victims of crimes by enforcing the criminal or his relation to pay to the victim or his/her family, such compensation is made easily and speedy as the result of reconciliation between the parties to the criminal litigation⁽¹⁾. In Jordan, the victim of some type of crimes may be compensated through the system of insurance, where insurance companies have a compulsory duty to compensate the victim of traffic incidents for the harms inflicted upon them as the result of such incidents⁽²⁾. Unfortunately, the courts are paralyzed in some cases to activate the rule of compensation of victims of offences, and may not apply the above mentioned provisions simply as accused persons may be acquitted of the charge on benefit of doubt or any technicalities of law.

C. Innovative Approach of International Law

Under Jordanian criminal justice system, the state is not obliged to compensate the victim of undue legal process, or in case of inability of an offender to compensate the victim of crime. In contrary to situation in Jordan, the rules of international law make the state responsible for protection of the foreign national against unlawful death and it is therefore responsible for compensation of their families⁽³⁾. The UN's instruments invoke series of rights to the victim of crimes that including the right to access of justice and fair treatment⁽⁴⁾. The General Assembly of United Nations has recommended payment to the victims of crime by the state, when compensation is not available from the offender or other sources⁽⁵⁾. Article of 24 (7) of the International Convention for the Protection of All Persons from Enforced Disappearance of 2006, provides that the victim of crime has the right to obtain reparation and prompt, fair and adequate compensation⁽⁶⁾. On the same context, the right of the victim of crime to obtain reparation and compensation for offenders or states was guaranteed under Article 2 of the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983, and Article 75 of the Statute of the ICC, 1998 provides for the right of the victim of crime to obtain reparation and compensation for any damage, loss or injury.

Unfortunately, the present criminal justice system of Jordan does not encourage the state to compensate the victims of communal riots, rape, arson and dacoity, as the compensation system has its civil features that requires the existence of the three tort components of "wrongdoing (intentional or unintentional), damage and causal relationship" as the bases for compensation. Under Jordanian Civil Law, the obligation for compensation of the victim of crime may be based on a simple mistake or a heinous crime. In criminal cases, the victim's legal position becomes so stronger to obtain compensation and reparation if the offender was charged and brought to criminal court through a criminal case⁽⁷⁾. The Government in Jordan is not obliged expressly by any legislation to compensate the victims of crime, such situation contradicts with the obligations made by international conventions and resolutions and both the legislative authority and judicial authority should be adhered to those international directions by both introducing new legal rules and judgment to activate the responsibility of the state in reparation and compensating the victims of crimes for any damage, loss or injury, especially with absence of compensation from the offender or other sources.

D. Strategies for the Enhancement of the Victim's Rights

The rights of victims should be activated during all stages of criminal trial, here we recommend some strategies to be followed in order to guarantee the rights of victims under the criminal justice system in Jordan:

1. Victim's participation in criminal proceeding of criminal investigation is required, especially in cases need a complaint from the victim for its initiation, through providing him with the necessary legal aid and judicial police should also work with the victims in a high levels of secrecy and flexibility.
2. Media is responsible to adopt a positive role in encouraging the victims of crime about the necessity of making complaints against person involved with crimes, and not to keep silent in order to reduce the rates of crimes. The mass media must abstain from publishing materials about victims of crimes either related to scene of crime or other stages of criminal trial.

¹.Saad Jameel Almtirien, Victim's Rights in the Egyptian & Jordanian Laws: A Comparative Study, Master Dissertation, University of Jordan, 1991, P.237

².See the Jordanian Regulation of Compulsory Insurance System on Passengers No (29) of 1985. See also Section 921 of the Jordanian Civil Code.

³. Carmel Whelton, the United Nations Compensation Commission and International Law: A Fresh Approach, 25 OTTAWA L. REV. 607, 611 (1993).

⁴. See the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, adopted by A/RES/40/34 of 29 November 1985 and the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by A/RES/47/133 of 18 December 1992.

⁵. See the International Convention for the Protection of All Persons from Enforced Disappearance, Adopted by A/RES/61/177 of 20 December 2006.

⁶. See Article 24 (7), Ibid.

⁷. Lina Shabeeb, Some of the Preconditions (procedural and/or other) in Realizing Remedies for Human Trafficking Victims in the Jordanian Legal System, MENA Regional Consultation on the Right to an Effective Remedy for Trafficked Persons, held on Thursday, 9 January 2012, Amman, Jordan

3. Judicial police officers must be careful in dealing with victims of crimes during the stage preliminary investigation, in term they have to treat them peacefully, and to avoid harassing them with unnecessary questions especial in sexual cases as well as to provide them with the urgent medical treatment, payment coverage of traveling from and to police station.
4. Protection of the witnesses of victims of crime and their families must be ensured by amending the present Criminal Procedure Code, or by enacting a special Act for “Witness Protection” during both criminal investigation stage and trial stage.
5. the victim of crime dose not enjoy a clear-cut protection under the Criminal Procedure Code of Jordan, niter at the criminal investigation stage nor at trial stage, as the provisions are designed only to guarantee the accused right rather than the victim of crime. Hence, a new amendment to this Code is requested and suggested to introduce new clear protection of the victim during all stages of criminal trial.

VI. Conclusion

The deep problematic issue of the present criminal justice system in Jordan as regard the victim of an offence, as well as the accused needs the mutual interference of both judicial and legislative branches of the state of Jordan. Courts should landmark reasonable directions and guidelines for protection of human rights of the parities to criminal adversary, especially in the case of the absence of legal provisions. The Court of Cassation and the newly Constitutional Court must play a positive role, through their various judicial pronouncements, to protect the human rights of all concerned. It is really needed by all persons involved with criminal proceeding, either being victims or accused persons, those serious actions to be adopted by both parliament, as well as apex court in order to protect and secure their human rights against arbitrary actions of the executive public authorities. To achieve the legal, procedural and constitutional obligation, legislative power should evolve a policy of amending the present criminal laws in Jordan to humanize the criminal justice system in harmony with the international conventions, moreover the Jordanian apex courts should escape away from its silence as to the violations of human rights of both offenders and victims in the name of law, Therefore, the following summarized recommendations and suggestions may help in solving the dilemma of the Jordanian criminal justice in dealing with human rights of the parties of criminal adversary :

1. Establishment a judicial service commission with members from judiciary, law society and human rights commissioner in order to replace the current judicial council, such commission will play positively in reforming justice sector in Jordan with the support of society and in accordance with Article 97 of the Constitution of Jordan.
2. Creation of National Academy for preparing new appointed judges and training senior judges, judicial staff and criminal court’s amenities, as well as preparing and training both junior and senior public prosecutors and lawyers. .
3. Establishment of a new agency of public prosecution with two separate wings one for investigation and the other for accusation, such agency should be operated outside of the umbrella of the ministry of justice in order to preserve its intendance and impartiality.
4. Creation of new social agency for settling, disposing of petty criminal cases outside of courts but under the supervision of judiciary by activating the system of conciliation and the role of mediation in limiting punishment and judicial procedures in criminal justice.
5. Enactment new special laws within the jurisdiction of Jordan, such as Speedy Trial Act, Victim’s Compensation Act, and Fair Trial Act, as well as New amended Criminal Procedure Code, Punishment Code, and Independence of Judiciary Act in order to humanize the criminal law in Jordan.
6. New Penal Statutory should be enacted to regulate the trial business against the interference of police, media, politicians, businessmen or any other social sections....etc.