

Impact of Criminal Evidence Using Modern Technology on Human Rights

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Abstract

The use of modern technology has led to a scientific revolution in the field of criminal evidence, which resulted in a great debate among criminal law jurists about the legality of using them, especially in light of the violation of individual rights and human dignity that their use may entail which raises the question about the impact of the proof process. Therefore, this study aims to evaluate the procedures of criminal evidence using modern technology, as adopted by the Iraqi legislator, and the extent to which they take into account the rights and freedoms of individuals, through a comparative approach, through which the provisions of evidence were compared by the means of modern technology for some Comparative legislation with what was mentioned by the Iraqi legislator. Rulings in order to provide recommendations to help him keep up with his findings, Technical and scientific development from recent evidence in criminal evidence, and an indication of ways to achieve a balance between its use and respect for legal guarantees that prevent infringement of the freedom and rights of individuals. This study reached a statement of the significant negative impact of the use of modern criminal evidence in violating the rights and freedoms of individuals. Some an ambiguous and provide guarantees to protect the rights and freedoms of individuals in what has been regulated.

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Introduction

The initiation of criminal procedures by competent judicial authorities may result in prejudice to the rights and freedoms of individuals in the various stages of criminal procedures related to research, investigation, and trial. This necessitates taking into account the rights and freedoms of individuals and establishing a balance between the public interest and the interests of individuals so that their rights are preserved. The debate about its legitimacy among criminal law scholars, especially as its use may result in the violation of individual rights and human dignity. This raises the question about the impact of using modern technology in the process of establishing guilt on human rights. Therefore, this study aims to evaluate the procedures of establishing guilt using modern technology methods adopted by the Iraqi legislator, and to what extent individual's rights and liberties are respected during those procedures.

This study compares between rules of seta blushing guilt using modern technology in Iraq legislation and other legislation. This aims to offer some recommendations that help legislators keep pace with scientific and technical advancements. It also suggests ways to achieve a balance between. Using modern technology and respecting legal guarantees that prevent the infringement of individual rights and liberties and their freedoms. The supremacy of establishing this kind of equilibrium underscores a wide systematic debate about the value of

criminal proof evidence by means of modern technology, such as DNA, in front of traditional evidence such as witness testimony, especially since jurisprudence believes that modern evidence that relies on technical and scientific expertise is accurate. Results are not subject to change.

While Bray toward another that this evidence is subject to error and its results are relative and inaccurate, it may prove the crime as well as it may deny it. And that may be. Contrary to reality, to and what other traditional means of proof prove. And between this and that, the means of modern technology while using them in order to obtain the truth may constitute an infringement on the freedom of the accused, and a flagrant violation of the principle of the presumption of innocence, which indicates that the use of this type of evidence in proof may lead to a collision between it and established principles in the law stipulated It is respected and protected in the various constitutions of the world and international conventions, such as not infringing on the freedom and will of the accused person, which raises the problem of the extent of the impact of the use of modern technology in criminal evidence on the rights and freedoms of individuals? Results of the study show the significant negative impact of some modern evidences used to establish guilt. This is shown in the violation of the rights and liberties of individuals, in addition to inaccurate results obtained by using such evidences.

This study recommends that the Algerian legislator clarify their position regarding modern means of establishing guilt, which must be unambiguously regulated and surrounded by adequate guarantees that protect the rights and liberties of individuals. Therefore, the research attempts to answer the following questions. What is the legitimacy of forensic evidence derived from the use of modern technology in modern criminal jurisprudence? - What is the authoritativeness of the modern means of transportation in the criminal evidence of the Iraqi legislator in comparison? What are the risks of criminal evidence using modern technology? - What are the guarantees that the Iraqi legislator guaranteed to the accused while using the means of modern technology in criminal evidence?

The importance of this research is that the subject of criminal evidence by means of modern technology has not diminished the attention of the state in Iraq, Despite the great development in the methods of committing the crime, therefore, this study came to clarify the procedures of criminal proof with evidence derived from the means of modern technology in Iraq and to indicate the extent of its impact on the rights and freedoms of individuals and compare it with the provisions contained in the various comparative legal texts and international conventions and covenants (Ahmed, 2011; Adly, 1989; Ibrahim, 1982).

Literature Review

In order to address this issue and answer the problem at hand, several previous studies have been reviewed for their security:

Faisal Musaed Al-Enezi, in his study, *The Impact of Evidence by Modern Technological Methods on Human Rights* (2007) addressed the general principles of the rules of criminal evidence. That The risks of evidence by means of modern technology on the human will, to conclude that there is no effect of the use of modern technology means of criminal proof on human rights as long as these means can reach the truth in a way that the judge is reassured of, but he excluded from that the means that are contrary to the morals of Sharia. This study agrees with the current study in that it touched on the legitimacy of the evidentiary evidence drawn from the means of modern technology and showed its impact on the rights and freedoms of

individuals, but they differ in the approach followed, so the previous study used the analytical approach While the current study used the comparative approach and they also differ in terms of scope, the previous study was limited to showing the extent of the legitimacy of modern evidence of criminal evidence in Islamic law and behind it the Saudi judicial system, while the current study expands to include a statement of the extent of the legitimacy of modern evidence of evidence in criminal jurisprudence on the one hand, On the other hand, the Alriagen legislator and some comparative legislation have (Al-Enezi, 2007). In her study of modern scientific evidence and its role in criminal evidence (2012), the researcher Amal Abdel Rahman Youssef Hassan touched on the general rules of evidence, where she clarified the general concept of evidence and its divisions. Genetics and forensic medicine to reach the conclusion that modern evidentiary evidence for the Arab judiciary is merely evidence to assist the judge in the formation of his belief, in contrast to the Western judiciary, which relies on the genetic fingerprint as evidence in criminal germination. This study agrees with the current study in explaining the importance of proof by means of modern technology, but they differ in terms of treatment method (Mauch & Park, 2003).

In her study, the researcher Ben Lagha Aqeela discussed the authoritative evidence of proof Modern Criminal (2012). The evidentiary value of the evidence derived from the means of modern technology, and then it was shown in the second chapter of its study. The high level of use of evidence derived from the means of modern technology, in the bathroom of her study, indicated that the use of evidence derived from the means of modern technology carries with it a violation of the most important right of the individual. It is an attack on the immunity of the individual's body and his freedom, so the legislator intervened (Adam, 2015).

Study Subdivisions

In order to study the subject, we divided this study into two sections, and then dealt with the first topic the value of modern technical means in criminal evidence, by examining the methods affecting the psychological and physical safety of individuals and the extent of their legitimacy in the first requirement, and then addressing electronic monitoring methods and the extent of their legality in The second requirement The night of the second topic The dangers of criminal evidence by means of modern technology were studied on human rights through a statement of the effects of the use of modern technology on human rights In the first requirement, the guarantees of the rights of the accused while using modern technology were indicated in the second requirement.

The First Topic is the Value of Modern Techniques Proof in Criminal

Evidence discussed the opinions of jurists regarding the value of modern technology means in proving between supporters and opponents of their use, especially since the majority of these The methods and means may lead to the prejudice of the rights and freedoms of the individuals subject to them, and before talking about the effects left by the means of modern technology in criminal evidence, we had to know the most prominent of these methods affecting the psychological and physical integrity of individuals and the extent of their legitimacy (the first requirement), not yet addressed This refers to electronic monitoring methods and the extent of their legitimacy (the second requirement) (Fouda Abdel-Hakim, & Al-Damiry, 1996).

The first requirement: the methods affecting the psychological and physical safety of individuals and the extent of their legitimacy

The multiplicity of methods and modern methods used in evidence and criminal investigation, but some of them are concerned with individuals' psychological and physical safety and are practiced in an apparent manner's the accused is aware of its initiation including the technique of using genetic fingerprinting and the use of lie detection technology as well as hypnosis. Below we study these methods in more detail as follows:

First, The Use of DNA Fingerprints Technology:

The genetic fingerprint means the genetic structure that indicates the identity of each specific person Al- Degheidy (2006) or a genetic structure resulting from DNA analysis. Stationed in the unilateral body, this analysis appears in the form of a strip of two chains, each of which is listed according to the sequence of amino bases on DNA, where one of the two chains represents the genetic traits acquired from the father, and the other chain represents the acquired genetic traits study divisions In order to study the subject, we divided this study into two sections, and then dealt with the first topic the value of modern technical means in criminal evidence, by examining the methods affecting the psychological and physical safety of individuals and the extent of their legitimacy in the first requirement, then addressing electronic monitoring methods and the extent of their legality in The second requirement The night of the second topic The dangers of criminal evidence by means of modern technology were studied on human rights by stating the effects of the use of modern technology on human rights In the first requirement, the guarantees of the rights of the accused while using modern technology were indicated in the second requirement from the mother (Hosni, 2009).

Second, The Use of Lie Detector Technology

The use of this technique is one of the modern methods that are relied upon in criminal investigations, through which it is possible to verify that the person under investigation is truthful or not. This technique is used for investigations that spread to physical evidence (Osterburg & Ward, 2013). The work of lie detectors depends on the physiological changes of the person under investigation, such as high blood pressure, movement of the breath, and the degree of his sensitivity to electricity. These changes are translated by the device in the form of graphics and charts that enable those conducting the investigation to estimate the sincerity of the person under investigation. Opinions of criminal jurisprudence differed regarding the legality of using lie detectors, especially since they are considered a violation of physical integrity. And it constitutes a threat to personal freedom, so the jurisprudential opinion of considered that the use of lie detectors does not constitute any threat or infringement on the personal freedom of individuals. Because these devices only measure some indicators and changes that occur to the person under investigation. And this does not disable his will, as the person retains the entire parish and realize it (Kharashi, 2006).

Third, The Use of Hypnosis Technique

This method is known as the ability to make a person immoderate Between consciousness or not, in a way that enables the person to be controlled Subject to this hypnosis Ghaly et al. (2016) It has sparked a great controversy in criminal jurisprudence regarding the extent of legality According to this method, a jurisprudential opinion stated the legality and permissibility of using the hypnosis technique, provided that it is performed by a specialist and with the consent of the subject (Ghazi & Khashan2020).

The second requirement is the methods of electronic surveillance and the extent of their legitimacy:

It is known as eavesdropping and surveillance methods or wired and wireless conversations (Dripps, 2005). These methods have emerged as a result of the terrible technological development in the modern era, where the privacy of the individual is exposed as a result of electronic surveillance and the ability to intercept phone calls and hack personal pages on Networks In terms of comparative legislation, most of them prevented the use of technology Hypnosis, either directly or indirectly. Among the Legislations that prevented that German legislation in Article 136 of the Code of Criminal Procedure and Italian under Article 191 of the Code of Criminal Procedure.” In turn, the Algerian legislator did not explicitly refer to the issue of the magnetic calendar, but it can be said that this method is not permissible due to the impact of this method on freedom And the will of the subject to it, not to mention its violation of the provisions stipulated in the first paragraph of Article 100 of the Code of Criminal Procedures, which states: When the accused appears before him for the first time, the investigating judge verifies his identity and informs him explicitly of each of the facts attributed to him, and warns him that he is free not to make any declaration, and he would like to warn in Al-Maaser 1261 Internet |28In addition to the aforementioned electronic surveillance methods, photography is one of the methods used in surveillance operations, as the investigative authorities have recently adopted the surveillance method by taking pictures of accused persons to prove their presence in certain places that help convict them and contribute to reaching the truth Zubdah (2000) but given Due to the danger of using this method on the privacy of individuals, it is necessary to take into account the scientific and rich principles recognized in photography, and that it be The use of the phrase "followed by the fact that he is free not to make any statement" is evidence of the Iraqi legislature's respect for the will and freedom of the individual and evidence of the illegality of following any method of deriving criminal evidence that heals. This is the text of Article 136 of the German Criminal Procedure Code of April 7, 1987. Amended last time According to the law issued on December 22, 2010, the freedom of decision-making and scientific procedures may not be affected by those accused of ill-treatment, exhaustion, manual labor, celebrities, torture, illusion, or hypnosis, and the Kurds may not be applied except to the extent permitted by the law. Criminal proceedings, cornered threats to take unacceptable runs by regulations do the images are clear and clear beyond any doubt as to their authenticity 1301. With the advent of the Internet, crimes committed through the network have increased, which called for the necessity of relying on modern technology in proving this type of crime. Therefore, the position of jurisprudence on the use of electronic monitoring methods is clarified (section one), did the position of comparative legislation (section two).

The first section: the position of the jurisprudence of criminal by Use of Electronic Surveillance Methods: Opinions differed regarding the legality of using electronic surveillance methods, so some criminal jurisprudence, such as Dr. And international conventions, and in view of the attack on the privacy of the individual, his will and the confidentiality of his personal life, and they justify their position that the evidence obtained from these methods is the fruit of a poisoned tree (Sorour., 1963).

The second section: the position of comparative legislation on the use of electronic monitoring methods: Every person is keen on the sanctity and confidentiality of his private life, whether with regard to his phone calls, personal photos, or websites, so many comparative legislations

have sought to protect This privacy is stipulated in clear legal provisions, although there are other legislations that list some exceptions to this rule. The French legislator, like most other comparative legislation, stipulated the need to protect private life under Article 226-1 of the new Penal Code.

Second topic: the dangers of criminal evidence using: There is no doubt that the use of modern technological means in criminal evidence infringes on human freedom and personal safety and burns the rule that it is not permissible for a person to present evidence for himself, especially since the results of these modern methods and methods did not reach conclusive results Awad (1989) and based on In this section, we will discuss the implications of using these means in proving the guarantees (the first requirement) in a way that enables us to know the rights of the accused while using the means of modern technology (the second requirement).

The first requirement is the implications of the use of modern technology on human rights: The use of some modern methods such as hypnosis and the use of polygraphs to obtain incriminating evidence. It carries with it, as we have previously detailed, a kind of assault on private life and a violation of the serious integrity of the individual. This is because one of the most prominent effects of the use of the debtor of the two methods is the disruption of the mind and perception and the killing of the will, which represents a clear violation of human rights and freedoms Sorour (1993) and therefore these two methods were banned by the majority of comparative legislation, as previously indicated in this study. As for the use of DNA technology, although this technology contributed to providing data closer to certainty, its use raised many legal issues. This is because their use contradicts the principle of infallibility of newcomers, especially in cases where the accused refuses to submit to this procedure, as it is considered that any interference on the body is based on the legal texts mentioned above. One of the most violating and infringing pieces of evidence on the sanctity of private life. The principle is that this type of evidence is practically unacceptable in proof unless it is searched for and obtained within the limits of the provisions of the law and respect for the values and ethics of justice (Bin Lagha, 2012). In applying this, the French Court of Cassation ruled in one of its rulings that evidence derived from the recording of a telephone conversation arranged by a policeman was illegal. During the interrogation between the accused and another person, he obtained confessions from him about the questions that this policeman had prepared, and this procedure was considered contrary to the legal rules and a violation of the personal life of the accused in all or little, representing an infringement of the sanctity of the body (Hosni., 2009).

The second requirement: guarantees of the rights of the accused while using the means of modern technology: Since the conviction of an innocent person constitutes an assault on his dignity and freedom, the various comparative legislations have taken care of the guarantees that aim to limit the infringement on the freedom of the accused, and placed restrictions that limit his right to defend himself.

Results and Discussion

However, the use of modern technology in criminal evidence has generated a great debate about the value of evidentiary evidence derived from modern technology, and about its violation of the basic rights and freedoms of individuals when applied. Therefore, the following results were reached through this study; (1) It was decided to exclude techniques that harm psychological integrity, such as the use of the lie detector and the method of hypnosis, based on the general rule that the search for evidence of crime is restricted to the requirements of preserving human dignity; (2) The person's right to physical and psychological integrity,

although it is one of the fundamental rights recognized for the individual constitutionally, but the enjoyment of this right remains relative, as it may be restricted when necessary, outweighing the interest of society more than the interest of the individual, especially in light of the escalating danger of crime in our time, The failure of traditional methods and evidence to prove it; (3) Although the Algerian legislator adopted the use of the DNA technology, he did not regulate the controls for dealing with this technology, nor did he specify the authority that has the right to order its implementation, and it cannot be measured only by other procedures such as inspection or expertise, which may not be sufficient in many cases. For criminal evidence; (4) The results obtained from the means of modern technology are characterized by an objective nature, as they depend on very accurate scientific criteria, which lead to bringing the judicial truth closer to the actual truth, and reduce the possibility of judicial error.

Conclusion

This study is intended to demonstrate the impact of criminal evidence using modern technology means, and behind it the great jurisprudential controversy about the approval or opposition to the use of these means in criminal evidence, especially in light of the great scientific development that contributed to the emergence of new criminal patterns with which the traditional means of germination became unable to keep pace with these Modern criminal patterns, which led to the acceptance that the use of technical means .The modern system of evidence based on traditional evidence, also observed through this study, may succeed the difference in the assault on basic human freedoms associated with the use of modern techniques in criminal evidence, as the enemies are no longer physical.

Recommendations

In line with the results reached in this research paper, we present the following set of recommendations: The Algerian legislator must define his position on modern means of criminal evidence in a categorical and unambiguous manner, especially since the Algerian legislator has only addressed some exceptions under which he authorized the possibility of objection. Correspondence and taking pictures in exceptional cases only, while he did not address the rest of the other modern means of proof such as the DNA fingerprint, where he must define the controls for dealing with this technology and specify the authority that has the right to order it, and it would be useful to seek the help of the leading comparative legislation in this field Following the example of French legislation and benefiting from the provisions related to regulating this issue.

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