



PROTECTING THE DEBTOR FROM IMPRISONMENT UNDER THE SAUDI BANKRUPTCY LAW (AN ANALYTICAL STUDY)

Salih Mohammad M alhumami, Assistant Professor of Civil Law, Department of Regulations, College of Business Administrative, Najran University, Najran, Kingdom of Saudi Arabia

Ghaleb Mubarak S Alhamami, Assistant Professor of Administrative Law, Department of Regulations, College of Business Administration, Najran University, Najran, Kingdom of Saudi Arabia

Mohammed Ali M. Alasmari, Associate Professor in the Department of Fundamentals of Islamic Jurisprudence, College of Sharia, Islamic University of Madinah, Kingdom of Saudi Arabia

Ahmed Ahmed S Al-Tuwaili, Associate Professor of Criminal Law, Department of Systems, College of Business Administration, Najran University, Najran, Saudi Arabia

ABSTRACT

Undoubtedly, protecting the insolvent debtor is of considerable importance to economic life, insofar as it helps prevent commercial enterprises from collapsing. To this end, legislation has been enacted to allow the preparation of rescue plans as soon as early signs of economic difficulty appear.

The Saudi Bankruptcy Law prescribes the procedures to be followed for both creditor and debtor, and it establishes practical mechanisms that clearly safeguard the debtor's rights, attaching multiple legal effects that attest to the seriousness of this protection—including shielding the debtor from imprisonment for debt. This paper sheds light on that mechanism.

Keywords: Protection; Debtor; Imprisonment; Bankruptcy.

INTRODUCTION

Modern legal systems have sought to map out mechanisms for rescuing commercial enterprises from collapse and bankruptcy by putting frameworks in place that allow debtor-rescue plans to be prepared as soon as early signs of economic strain appear—whether in corporate enterprises or for individual merchants.

The Kingdom of Saudi Arabia has paid close attention to commercial legislation and market stability, including means to protect the rights of creditors and debtors and to give each party its due without prejudice to the other.



Among these means is protecting the debtor from imprisonment for debt. This study aims to highlight that mechanism and demonstrate its protective effect. (*Bankruptcy Law, 1439*).

SIGNIFICANCE OF THE STUDY

- Addressing a mechanism that protects the debtor from imprisonment, so as to safeguard dignity and humanity and to restrict cases of incarceration to the narrowest scope, constitutes a right, protecting tool.
- This mechanism pertains to public policy and may not be violated; no agreement to the contrary is permissible. (*Bankruptcy Law, 1439*).

RESEARCH OBJECTIVES

- To foreground this mechanism, present it to relevant stakeholders, and then clarify its role in safeguarding the insolvent debtor's rights.
- To delineate the effects of this mechanism in protecting rights; presenting those effects to stakeholders provides a clear indication of the seriousness of the protection afforded.

RESEARCH PROBLEM

Bankruptcy regimes primarily aim to protect the creditor, which at times results in neglect of the debtor's rights. The Saudi Bankruptcy Law sought to remedy this by setting out practical mechanisms to protect the debtor, among them shielding the debtor from imprisonment for debt.

Notwithstanding its importance, this mechanism is not expressly articulated in the wording of the Law, nor has it been consolidated in one context that reveals and clarifies it; nor has it previously been subjected to study and analysis.

PREVIOUS STUDIES

To the best of our knowledge, no standalone study has directly addressed this mechanism.



The study adopts an inductive reading of the provisions of the Saudi Bankruptcy Law and related regulations, together with an analytical method that infers rules relevant to this mechanism from the pertinent legal texts.

SCOPE OF THE STUDY

The study comprises a preliminary section, two chapters, and a conclusion.

DEFINING THE TERMS IN THE RESEARCH TITLE

Definition of Protection in Saudi Law

We did not find a dedicated technical definition of *protection* in Saudi legislation; the term is used by legal scholars and its meaning varies with the protected right. The *Dictionary of Legal Terms* defines protection as: “a precaution based on safeguarding a person or property against risks, and ensuring their security and safety through legal or material means” (Cornu, 1418).

For the purposes of the Bankruptcy Law, protection may be expressed as preventing creditors or others from unlawfully infringing the debtor’s rights or assets in accordance with the Law’s provisions and procedures. (*Bankruptcy Law, 1439*).

Definition of Bankruptcy in Saudi Law

In legal doctrine, a debtor is “one who must perform the obligation or pay compensation” (Badawi, 1424).

The Saudi Bankruptcy Law defines the debtor as “a person in whose liability a debt is established,” and debt as “a financial obligation fixed in the debtor’s liability.” (*Bankruptcy Law, 1439*).

Definition of Bankruptcy in Saudi Law

The Law defines a bankrupt as “a debtor whose debts have absorbed all of his assets”. (*Bankruptcy Law, 1439*).



In general legal usage, *imprisonment* refers to the place of confinement of a person sentenced to a custodial penalty. Saudi law does not provide a conceptual definition; instead, it sets out penal rules and uses the term *sijn* (imprisonment) in the chapter on penalties. (Aburuman, 1999).

THE CRITERION OF MATERIAL LESION IN TRANSACTIONS UNDER SAUDI LAW

Although imprisonment is an exceptional enforcement measure intended to pressure a debtor - by restricting liberty for a set time after a competent authority orders incarceration under specific conditions, because of non-payment of a fixed debt (Aburuman, 1999), the Saudi Bankruptcy Law protects the debtor from being subjected to imprisonment as an enforcement measure.

The Law contains no provision mandating imprisonment before, during, or after the opening of any bankruptcy procedure; the legislator's silence indicates a clear stance against incarceration of the debtor in this context. (*Bankruptcy Law, 1439*).

The premise appears to be that debt attaches to the debtor's estate, not to the debtor's person; thus, rules focus on assets and business activities - ordinarily visible - and enforcement is directed at property, not at the person.

Where the Law restricts the debtor personally, that restriction is circumscribed, e.g., staying the debtor's authority in certain procedures: the court appoints a trustee to supervise the debtor's activity during financial restructuring; in liquidation, the debtor's hand is stayed upon the trustee's appointment; similarly in administrative liquidation, the Bankruptcy Commission manages the procedure. (*Bankruptcy Law, 1439*).

Therefore, staying the debtor's hand does not authorize imprisonment; absent a legal text permitting incarceration, imprisonment is not lawful merely because authority is stayed.

WHEN MAY AN INSOLVENT DEBTOR BE IMPRISONED UNDER SAUDI LAW?

The term imprisonment (*sijn*) appears in the Bankruptcy Law as a penalty for certain offenses,



not as an enforcement device to compel debt payment. Article 200 enumerates violations by a natural-person debtor, a manager, a board member, or similar persons that, if committed before opening any procedure and leading to its opening, or during its pendency, and causing harm to any party (including creditors), constitute offenses-among them: misusing assets or powers; fraudulent operation; continuing activity where liquidation cannot be avoided; reckless practices to evade or delay liquidation; entering transactions for no consideration or for unfair consideration; preferring certain creditors; or abusing bankruptcy procedures. (*Bankruptcy Law, 1439, art. 200*).

The Law provides for imprisonment among other penalties for such conduct-not as a coercive measure to force payment of debt. (*Bankruptcy Law, 1439*).

Saudi law takes a clear position, no imprisonment of the debtor as an enforcement tool; imprisonment applies only where the debtor commits a codified offense. Thus, incarceration is a penalty for wrongdoing, not part of bankruptcy enforcement. (*Bankruptcy Law, 1439*).

CONCLUSION

Findings

- This class of mechanisms protects the debtor's rights before and after the initiation of prescribed procedures.
- The Saudi legislator is keen to protect the debtor from imprisonment as a pressure tactic for debt repayment. (*Bankruptcy Law, 1439*).

Recommendations

We recommend developing methods to identify the debtor's estate with greater precision, since enforcement should focus on the estate rather than the debtor's person.

ACKNOWLEDGMENT

The research team extends its gratitude to the Deanship of Postgraduate Studies and Scientific Research at Najran University for supporting the research project through the Namaa program and the project code: (NU/GP/SEHRC/13/490-5).



- Al-Qūnī, ‘A. ‘A. (2010). *Husn al-niyya wa-atharuhu fī al-taṣarrufāt fī al-fiqh al-islāmī wa-al-qānūn al-madanī* [Good faith and its effect on dispositions in Islamic jurisprudence and the civil law]. Alexandria, Egypt: Dār al-Maṭbū‘āt al-Jāmi‘iyya.
- Al-Rashdan, M. ‘A. (1431). *Al-ghabn fī al-qānūn al-madanī* [Lesion in the civil law] (1st ed.). Amman, Jordan: Dār al-Thaqāfa li-al-Nashr wa-al-Tawzī‘.
- Al-Sanhouri, ‘A. R. (2004). *Al-wajīz fī al-naẓariyya al-‘amma li-al-iltizām* [The concise work on the general theory of obligation] (A. M. al-Marāghī, Ed.). Alexandria, Egypt: Munsha‘at al-Ma‘ārif.
- Badawi, A. Z. (1424). *Ma‘jam al-muṣṭalahāt al-qānūniyya* [Dictionary of legal terms] (2nd ed.). Cairo, Egypt: Dār al-Kitāb al-Miṣrī.
- Aburuman, M. (1999). *Habs al-madīn fī Qānūn al-ijrā’ al-Urdunī al-jadīd* [Imprisonment of the debtor under the new Jordanian Procedure Law] (1st ed.). Amman, Jordan: Dār Wā’il li-l-Ṭibā‘a wa-l-Nashr.
- Badawi, A. Z. (1424 AH). *Ma‘jam al-muṣṭalahāt al-qānūniyya* [Dictionary of legal terms] (2nd ed.). Cairo, Egypt: Dār al-Kitāb al-Miṣrī.
- Cornu, G. (1418 AH). *Ma‘jam al-muṣṭalahāt al-qānūniyya* [Dictionary of legal terms] (M. al-Qāḍī, Trans.; 1st ed.). Beirut, Lebanon: Al-Mu’assasa al-Jāmi‘iyya li-l-Dirāsāt wa-l-Nashr wa-l-Tawzī‘.
- Kingdom of Saudi Arabia. (1439 AH). *Bankruptcy Law* (Royal Decree No. M/50, 28/5/1439 AH).
- Cornu, G. (1418). *Ma‘jam al-muṣṭalahāt al-qānūniyya* [Dictionary of legal terms] (M. al-Qāḍī, Trans.; 1st ed.). Beirut, Lebanon: Al-Mu’assasa al-Jāmi‘iyya li-al-Dirāsāt wa-al-Nashr wa-al-Tawzī‘.
- Kingdom of Saudi Arabia. (1439 AH/2018). *Bankruptcy Law* (Royal Decree No. M/50, 28/5/1439).
- Majma‘ al-Lugha al-‘Arabiyya. (1999). *Mu‘jam al-qānūn* [Dictionary of law]. Cairo, Egypt: al-Hay’a al-‘Āmma li-Shu‘ūn al-Maṭābi‘ al-Amīriyya.
- Nakhla, M. (2007). *Al-kāmil fī sharḥ al-qānūn al-madanī: Dirāsa muqārana* [The complete commentary on the civil code: A comparative study]. Beirut, Lebanon: Manṣūrāt al-Ḥalabī al-Ḥuqūqiyya.



- Qarman, 'A. S. (1441). *Al-awrāq al-tijārīyya wa-ijrā'āt al-iflās ṭibqan li-al-anzima al-qānūniyya al-munaffidha li-Ru'yat al-Mamlaka 2030* [Commercial papers and bankruptcy procedures under the legal systems implementing Vision 2030] (2nd ed.). Riyadh, Saudi Arabia: Dār al-Ijāda li-al-Ṭibā'a wa-al-Nashr wa-al-Tawzī'.
- Alasmari, M. A. M., & Zurib, M. A. G. (2025). *Activating the Purposes of Islamic Sharia through the Regulations of the National Center for the Prevention and Control of Plant Pests and Animal Diseases in the Kingdom of Saudi Arabia: A Review*. Indian Journal of Animal Research, 59(9), 1450 1457. <https://doi.org/10.18805/IJAR.BF-1856>.