

# An Overview of the Pros and Cons of the Jordan Pandemic Defense Order 28: The Case of the Hashemite Kingdom

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## Abstract

**Objectives:** The COVID-19 pandemic has severely influenced the corporate sector worldwide. Likewise, the Hashemite Kingdom of Jordan also seems to bear most of its effects. In Jordan, border closures, movement restrictions, and national lockdowns have forced enterprises to close or limit their business activities. Despite the Jordanian government's efforts to mitigate the adverse economic effects of the pandemic, the effects have been severe for businesses and workers. Citing the harsh economic conditions amplified by the spread of COVID-19, the government issued defense order 28 in March 2020, suspending the imprisonment of individuals convicted for defaulting on paying off debts with a value of less than 100,000 Jordanian Dinars (JD), approximately \$141,000. This study discusses the pros and cons of Jordan Defense Order 28. **Methods:** The study has adopted a qualitative review design to amass relevant material on the given topic. The free-access literature has been sorted to gather the desired info. **Results:** The findings drawn from the review have unveiled that although the suspension of debtors is put off, it still permits the continuance of litigation among the litigants and offenders. However, if condemned, imprisonments will be deferred, and rather the sentenced will be banned from traveling. **Conclusions:** To sum up, owing to the decree, the creditors have grave concerns that abolishing and preventing debtor imprisonment will further strengthen the debtors who intentionally deceit to avoid adverse consequences. Hence, a criterion is needed that could identify and distinguish the debtors who are unable to pay from those who are willfully fraudulent.

## Keywords

Jordan, COVID-19, Defense Order, Defense Law, Debtor, Creditor, Debt Imprisonment

## 1. Introduction

With the issuance of a royal decree in March 2020, enforced by the Jordan National Defense Law 13 of 1992 granted by the Prime Minister (PM) (FAOLEX Database, 1992), the widespread authorities have been mandated to undertake all necessary measures to combat the COVID-19 pandemic in the Kingdom, including the temporary suspension of ordinary legislation (El-Haija, 2022). In addition to shutting down decision for public and private sectors, and all borders were closed at that time to face the pandemic and some small sectors had to close and stop their activity in Jordan for financial issues, since curfew and shutting down spent over two years for some sectors like wedding halls. And of course, the decisions were strict and high penalties enforced reached to putting in jail and fine.

The pre-pandemic situation in Jordan allowed debt imprisonment. Failure to repay even small debts was considered an illegal act that carried a penalty of up to 90 days in prison annually per debt and up to two years for a bounced check (Kayyali, 2021). Courts routinely sentenced people without even holding a hearing in some cases. The law did not take into consideration the causes of repaying since it did not make an exception for lack of income and disability to repay or other reasons and factors that impede borrowers' ability to repay, and the debt remained even after having served a sentence (<https://www.hrw.org/>).

Under the provisions of Defense Order 28, the PM suspended the imprisonment of debtors until the end of 2021, which was recently extended until the end of June 2022 (Jordan News Agency, 2021). This decision was based on the harsh economic and financial situation that resulted from COVID-19.

## 2. Materials and Methods

The current study entails a review design. The priory published body of literature has been thoroughly reviewed to get an overview of the scenario developed by the commencement of the given law. The sources utilized to gather the relevant data involved reports concerning Jordanian laws, newspaper articles in this context, and other facts and statistics concerning the topic. Moreover, platforms such as Google Scholar and PubMed are also searched to accumulate the most pertinent studies.

## 3. Discussion

Although the suspension of debt defaulters is suspended since March 2020 till now regarding to defense order number 28 and to PM decisions in December 2020 to extend it for extra six months where in June 2021 decided to extend it to end of December and soon, it allows for the continuation of litigation between plaintiffs and defendants. However, in case of conviction, jail sentences will be suspended, and anyone convicted will be banned from traveling. Recognizing the fact that Jordan is one of the few countries in the world that allowed imprisonment of debt defaulters and the fact that the use of checks is a widespread

practice in Jordan to buy and sell merchandise, the PM decision was an impediment to creditors to reach out to courts to help them collect their debts. Furthermore, the PM's decision to suspend the imprisonment of debt defaulters gave swindlers a loophole to put off paying back debts of less than JD100,000 putting creditors in a severe financial jam.

In Jordan, the suspension of debt imprisonment is a contentious issue. It is too difficult to recoup loans and debts without the threat of imprisonment. However, debt imprisonment increases the burden encountered by the Jordanian authorities to detain those who stop and fail to repay debt or a bounced check. Besides overcrowded and under-resourced prisons and courts caused by debt imprisonment, many families whose heads of household are disabled to repay or are imprisoned end up relying on economic aid provided by the National aid fund, which hardly covers essential needs and mostly is insufficiently riddled with gaps. The most informal lending in Jordan takes place through the informal check and instrument of promissory notes. In Jordan, the use of check and promissory notes is widespread due to the ease with which they are issued. Under pre-pandemic Jordanian law, before courts, it constitutes direct and perfect proof of debt and, as such, enough to result in complaints that frequently lead to prison terms for the borrowers when they fail to repay (<https://www.hrw.org/>).

In some cases, easy access to loans and credit may be necessary for specific conditions and circumstances. Debts, loans, and their repayment must not act as a stand-in for the state's duties to guarantee a reasonable and adequate standard of living for the community, including by providing a basic income, social security, living wages, and otherwise. Further, loans and debts should not be unsustainable or push anyone below a suitable and adequate standard of living. This means that the state is also required to interfere and practice its role to ensure that the regulations around debt ensure that payments are affordable and that interest rates are acceptable and regarding debts ability and are not so high as to impact the ability of creditors to attain a suitable and an adequate standard of living. The proponents of debt imprisonment in Jordan ensue and claim that threatening debts by imprisonment is the only effective way to force people to repay their debts and address the financial rights of creditors. Meanwhile, most countries outside the Middle East believe that debt impressment is not a sure way to push debtors to pay; hence these countries abolished the practice in widespread recognition of its inefficacy as a debt collection mechanism. According to a 2017 World Bank study, "Even debtor's prison is not a sure method of coercing debtors to pay, and the tragic irony of imprisoning debtors in order to goad them into working to pay creditors ought to be obvious. Imprisonment for debt was abandoned in most areas...it was spectacularly ineffective in producing payment for creditors."

The situation of the aforementioned countries coincides with the international human rights covenant that unequivocally prevents and prohibits the deprivation of debtors' liberty for failure to fulfill civil and contractual obligations either by creditor or state. According to article 11 of the International Covenant on

Civil and Political Rights (ICCPR), which Jordan ratified in the seventies last century and published in the Official Gazette in the year 2006, “No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation,”. This involves the prohibition of the lack of personal freedom either by the state or the creditor in case of failure to repay debts. Although the Ministry of Justice has declared that this is constitutionally inapplicable as it is not by the Parliament, the Jordanian courts have favored the ICCPR’s supremacy. Moreover, in either way, Jordan is obliged to conform to the covenant, having to approve it irrespective of its standing in the domestic law. Therefore, Article 22 of the Execution Law of Jordan visibly and patently goes against Jordan’s international human rights agreement’s compulsions.

For the same reasons, it is expected that the Jordan government to issue a new decision next April that embodies the extended abolishing of debt imprisonment for a few months. What ensures this expectation is the draft of an enforcement law where it prohibits debt imprisonment when the debt amount does not exceed five thousand JOD.

#### **4. Conclusion**

Creditors express concerns that abolishing and preventing debtor imprisonment in light of missing effective ways will encourage borrowers and debtors who maliciously scam to avoid any adverse consequences. Therefore, a criterion is needed that can separate and distinguish between those who are unable to pay and those who willfully deviates.

Issuing a defense order that suspends the imprisonment of debt defaulters retroactive to pre-pandemic situations is unfair to creditors who have already lent funds based on the prevailing laws. To ensure fairness to all parties, laws passed post COVID-19 pandemic should apply to post-pandemic situations.

#### **Recommendations**

It is apparent that Jordan is among the states that have laws that have allowance for the imprisonment of debtors. Imprisonment is ineffective and does not guarantee repayment of debts. Most countries, including countries in the Middle East such as Bahrain and the United Arab Emirates, have adopted laws and regulations that protect the rights of all parties. The government of Jordan should follow best international practices to regulate the use of promissory notes, adopt alternatives to imprisonment which provide means for creditors to recoup debts, and allow individuals to declare personal insolvency in lieu of incarceration.

Courts should work with creditors and debtors to come up with a reimbursement strategy affordable to the borrower. The court may initiate criminal fraud proceedings if the borrower is willfully refusing to repay debts. The central bank should cap interest rates at affordable levels without forcing borrowers into destitution and provide low-income individuals access to regulated credit, so they do not resort to informal lenders.

## Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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