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# THE DECRIMINALIZATION OF FINANCIAL DISTRESS: LEGISLATIVE RESTRICTIONS ON DEBTOR IMPRISONMENT IN SAUDI JURISPRUDENCE

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## ABSTRACT

*The trajectory of modern insolvency law is marked by a decisive paradigm shift: the movement from punitive measures towards rehabilitative frameworks. Central to this evolution is the abolition of "debtors' prisons" and the restriction of custodial coercion in commercial disputes. This study investigates the legislative stance of the Saudi Bankruptcy Law regarding the imprisonment of insolvent debtors. By employing an inductive and analytical methodology, the research argues that the Saudi legislator has effectively "decriminalized" genuine financial distress. The findings reveal that the law bifurcates liability: it directs enforcement actions strictly against the debtor's estate (in rem) while reserving incarceration solely for proven criminal malfeasance, such as fraud or embezzlement. This approach aligns with international human rights standards and economic pragmatism, ensuring that bankruptcy procedures are utilized for asset distribution rather than punitive retribution.*

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**KEYWORDS:** Decriminalization of Debt, Civil Imprisonment, In Rem Enforcement, Saudi Bankruptcy Law, Article 200, Human Rights.

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## 1. INTRODUCTION

Historically, the inability to service debt was often conflated with moral failure or criminality, subjecting the debtor to harsh physical constraints, including incarceration. However, contemporary legal systems have increasingly recognized that the "commercial death" of an enterprise need not necessitate the "civil death" or imprisonment of the entrepreneur. The primary objective of modern bankruptcy regimes is to rescue viable enterprises and efficiently distribute the assets of non-viable ones objectives that are rarely served by imprisoning the management. In this context, the Kingdom of Saudi Arabia has enacted legislation that reflects a sophisticated understanding of market dynamics. The Saudi legal philosophy strives to balance creditor recovery with the preservation of the debtor's dignity and human capital. This vision is not isolated; it "aligns with a broader regulatory orientation in the Kingdom that operationalizes principles of prevention and oversight to protect life, property, and the environment through clear frameworks" (Alasmari & Zurib, 2025).

This preventive approach extends to protecting the debtor from the archaic practice of imprisonment for civil debt.

### 1.1. Significance of the Study

The significance of this research stems from its focus on the intersection of commercial law and civil liberties

- **Human Dignity** It addresses a mechanism designed to safeguard the humanity of the debtor, restricting incarceration to the narrowest possible scope.
- **Public Policy** The prohibition of imprisonment for mere insolvency is a matter of public policy; parties cannot contractually agree to bypass this protection.
- **Legal Certainty** By clarifying the boundaries between civil liability and criminal culpability, the study provides certainty to market participants.

### 1.2. Research Problem

While bankruptcy regimes are often criticized for being creditor-centric, the Saudi Bankruptcy Law explicitly seeks to remedy this by shielding the debtor from imprisonment. However, a specific statutory ambiguity remains: this mechanism is not expressly articulated in a single "immunity clause" within the text of the Law. The absence of explicit consolidation necessitates a comprehensive analysis

to piece together this protective shield from various statutory provisions.

### 1.3. Methodology

This article adopts an inductive method to survey the penal and procedural texts of the Saudi Bankruptcy Law, combined with an analytical method to infer the rules prohibiting civil imprisonment.

## 2. CONCEPTUAL FRAMEWORK: LEGAL DEFINITIONS

To ground the analysis, it is necessary to define the core terms within the specific context of Saudi jurisprudence.

### 2.1. The Concept of Protection

In the absence of a monolithic statutory definition, "protection" is understood functionally.

- **Lexical Definition:** It is a precaution based on safeguarding a person against risks and ensuring security through legal means.
- **Statutory Context:** For this study, protection is defined as the legal barrier "preventing creditors or others from unlawfully infringing the debtor's rights or assets". This includes the fundamental right to physical liberty during insolvency proceedings.

### 2.2. The Legal Status of the Debtor

The law defines the Debtor as "a person in whose liability a debt is established". This definition emphasizes "liability" (financial obligation) rather than personal culpability. Similarly, a Bankrupt is defined mathematically as a debtor whose "debts have absorbed all of his assets", a definition focused on the balance sheet, not the moral character of the individual.

### 2.3. The Concept of Imprisonment (Sijn)

Generally, imprisonment refers to the confinement of a person sentenced to a custodial penalty. In the Saudi Bankruptcy context, the term is used exclusively in the chapter on penalties to denote punishment for specific crimes. It is distinct from "detention" used for procedural verification in some other jurisdictions.

## 3. THE TRANSITION FROM IN PERSONAM TO IN REM ENFORCEMENT

The fundamental argument of this study is that the Saudi Bankruptcy Law has shifted the focus of enforcement from the person of the debtor to the property of the debtor.

### 3.1. The Prohibition of Coercive Incarceration

Imprisonment has traditionally been used in some jurisdictions as a pressure tactic an "exceptional enforcement measure intended to pressure a debtor by restricting liberty". However, the Saudi Bankruptcy Law rejects this rationale.

- **Legislative Silence as Protection**

The Law contains "no provision mandating imprisonment before, during, or after the opening of any bankruptcy procedure". In legal hermeneutics, this silence is eloquent; it indicates a deliberate legislative stance against the incarceration of the debtor for mere insolvency.

- **The Nature of the Debt**

The legal premise is that "debt attaches to the debtor's estate, not to the debtor's person". Therefore, enforcement mechanisms must track the assets, business activities, and proceeds, rather than pursuing the physical body of the merchant.

### 3.2. Distinguishing Administrative Restrictions from Incarceration

The law does impose restrictions, but they are administrative, not custodial.

- **Staying the Debtor's Hand:** In procedures like Liquidation or Financial Restructuring, the court may appoint a trustee to supervise or take over management, and the debtor's authority is stayed.
- **Liberty vs. Authority:** The study clarifies that "staying the debtor's hand does not authorize imprisonment". Losing the right to sign checks or manage employees is fundamentally different from losing physical liberty. Absent a specific penal text, the administrative removal of the debtor from management cannot be conflated with incarceration.

## 4. THE PENAL EXCEPTION: CRIMINALIZING MALFEASANCE, NOT INSOLVENCY

The immunity from imprisonment is not absolute; it is conditional upon good faith. The law draws a bright line between "unfortunate insolvency" and "fraudulent bankruptcy."

### 4.1. Imprisonment as a Penalty, Not a Tool

The term "imprisonment" appears in the Bankruptcy Law exclusively as a penalty for codified offenses, "not as an enforcement device to compel debt payment". This is a critical distinction: the state punishes the crime, not the debt.

### 4.2. The Scope of Article 200

Article 200 of the Law enumerates the specific conduct that warrants incarceration. These are acts that undermine the integrity of the market. Imprisonment applies if the debtor, manager, or board member commits acts such as

- **Misuse of Assets** Dissipating assets or using them for personal gain.
- **Fraudulent Operation** Continuing business activities with the intent to defraud creditors or when liquidation is inevitable.
- **Preferential Treatment** Paying specific creditors to the detriment of others or entering into transactions for unfair consideration.
- **Procedural Abuse** Reckless practices intended to evade or delay liquidation.

### 4.3. The Condition of Harm

The law stipulates that these violations must "cause harm to any party, including creditors". Furthermore, the temporal scope is broad: acts committed before the opening of the procedure (leading to it) or during its pendency are equally punishable.

### 4.4. Conclusion on Penalties

The analysis confirms that "incarceration is a penalty for wrongdoing, not part of bankruptcy enforcement". The honest debtor who has simply failed due to market conditions faces liquidation of assets, but never the deprivation of liberty.

## 5. CONCLUSION AND RECOMMENDATION

### 5.1. Findings

The inductive analysis of the Saudi Bankruptcy Law leads to the following conclusions

1. **Comprehensive Immunity** The law provides a robust mechanism that protects the debtor's rights both before and after the initiation of procedures.
2. **Rejection of Coercion** The Saudi legislator has shown a keenness to protect the debtor from imprisonment being used as a "pressure tactic for debt repayment". The law prioritizes economic resolution over physical coercion.
3. **Asset-Centricity** The legal framework definitively shifts the focus of enforcement to the estate, establishing that the body of the debtor is not collateral for commercial debt.

### 5.2. Recommendations

To enhance the efficacy of this in rem enforcement model, the study recommends, "developing methods

to identify the debtor's estate with greater precision". Since the creditor cannot pressure the debtor's body, the legal system must provide advanced tools to

locate and seize the debtor's assets to ensure justice is served without resorting to incarceration.

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