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Impact of Hypnosis on Legal Liability under UAE Law: An Analytical Study and Legislative Reforms⁸

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Abstract

This research examines the impact of hypnosis on legal liability, focusing on its effects on legal capacity and its implications in both criminal and civil contexts. By analysing legal literature and judicial practices, the study explores how hypnosis can affect an individual's ability to make sound legal decisions and considers the broader legal dimensions associated with its use. The findings reveal that hypnosis can significantly impair legal capacity, potentially rendering actions taken under hypnosis void due to a lack of discernment. In criminal cases, the use of hypnosis may conflict with fundamental rights, such as the right to remain silent, raising concerns about the legitimacy of confessions obtained under its influence. The research also highlights that criminal liability may be shared between the individual under hypnosis and the hypnotist, depending on the degree of control exercised. Moreover, legal acts carried out under hypnosis may be deemed ineffective, allowing

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affected parties to seek compensation. Legislative reforms are proposed to close the existing legal gaps, including prohibiting the use of hypnosis in criminal proceedings and regulating its use as a factor affecting legal capacity. These recommendations aim to address the complexities of hypnosis in the legal realm and offer guidance for future legislative measures.

Keywords: Hypnosis and Legal Liability, Legal Capacity, Civil Liability and Hypnosis, Judicial Practices and Hypnosis, Freedom of Confession, Diminished Capacity, Hypnosis as Evidence.

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Wpływ hipnozy na odpowiedzialność prawną w prawie ZEA: studium analityczne i postulaty reformy legislacyjnej⁹

Streszczenie

Niniejsze badanie dotyczy wpływu hipnozy na odpowiedzialność prawną, ze szczególnym uwzględnieniem jej oddziaływania na zdolność prawną oraz implikacji zarówno w kontekście odpowiedzialności karnej, jak i cywilnej. Na podstawie analizy literatury prawniczej i praktyki sądowej wyjaśniono, w jaki sposób hipnoza może wpływać na zdolność jednostki do podejmowania świadomych decyzji prawnych, oraz zbadano szersze aspekty prawne związane z jej stosowaniem. Wyniki badań wskazują, że hipnoza może w istotny sposób ograniczać zdolność prawną, co potencjalnie skutkuje nieważnością czynności dokonanych pod jej wpływem z uwagi na brak rozeznania. W sprawach karnych stosowanie hipnozy może naruszać prawa podstawowe, co rodzi uzasadnione wątpliwości co do legalności zeznań uzyskanych pod jej wpływem. W badaniu wskazano ponadto, że odpowiedzialność karna może być rozłożona między osobę poddaną hipnozie a hipnotyzera, w zależności od stopnia sprawowanej przez niego kontroli. Czynności prawne dokonane pod wpływem hipnozy mogą zostać uznane za bezskuteczne, co uprawnia poszkodowanych do dochodzenia odszkodowania. Zaproponowano reformy legislacyjne, obejmujące m.in. zakaz stosowania hipnozy w postępowaniu karnym oraz uregulowanie jej jako czynnika wpływającego na zdolność prawną.

Słowa kluczowe: hipnoza a odpowiedzialność prawną, zdolność prawną,
odpowiedzialność cywilna a hipnoza, praktyka sądowa
a hipnoza, swoboda zeznań, ograniczona zdolność prawną,
hipnoza jako środek dowodowy.

⁹ Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

Introduction

In recent years, hypnosis has become a subject of significant interest in both scientific and legal circles due to the profound effects it can have on human perception and behaviour. Hypnosis is recognised as a medical tool that is used in various therapeutic fields; however, its applications raise numerous legal questions, especially concerning legal capacity and criminal liability. Recent research does suggest that hypnosis may lead to states of diminished will and consciousness, which could impact a person's ability to make decisions and conclude any legal acts.¹⁰

This phenomenon poses complex challenges for the legal system, where issues related to free will intersect with concepts of criminal and civil liability. Legal scholarship has recognised that emerging phenomena affecting human agency may require a conceptual rethinking of traditional doctrines of responsibility and contractual capacity.¹¹ Individuals under hypnosis may find themselves in a state of limited or absent discernment, raising questions about the extent of their liability for actions taken while in such a state. Similarly, the role of the hypnotist becomes significant in determining the scope of liability, particularly in cases where hypnosis is used to induce the subject to commit a crime or engage in a legal act that may cause harm to others.

Despite the significance of hypnosis in medical fields,¹² its use in criminal investigations and evidence gathering is highly controversial. Resorting to this method to obtain confessions or influence behaviour may conflict with constitutional principles that protect individual rights, including the right to remain silent and the presumption of innocence. The UAE Constitution and the Penal Code provide a legal framework that guarantees the protection of fundamental rights; however, the lack of explicit provisions prohibiting the use of hypnosis in criminal procedures opens the door to its use in ways that may violate constitutional rights.

¹⁰ J.H. Linden, G. De Benedittis, L.I. Sugarman, K. Varga, *Hypnosis and Society*, [in:] *The Routledge International Handbook of Clinical Hypnosis*, Routledge 2024, pp. 739–788.

¹¹ E.A.R. Dahiyat, *Intelligent agents and contracts: Is a conceptual rethink imperative?*, "Artificial Intelligence and Law" 2007, 15(4), pp. 375–390.

¹² C. Morelot-Panzini, C. Arveiller-Carvallo, I. Rivals, N. Wattiez, S. Lavault, A. Brion *et al.*, *Medical hypnosis mitigates laboratory dyspnoea in healthy humans: a randomised, controlled experimental trial*, "European Respiratory Journal" 2024, 64(3).

In this context, there is a clear need for legislative intervention to regulate the use of hypnosis and define its impact on legal capacity and criminal liability. Hypnosis, as a tool with profound psychological effects, must be approached with extreme caution in legal settings to protect individual rights and uphold the integrity of justice.

From this perspective, this study addresses the various legal dimensions of hypnosis, focusing on its impact on legal capacity and criminal liability. It also reviews the stance of Emirati lawmakers regarding the use of this method in criminal evidence. Additionally, the study proposes legislative reforms to address the current gaps in UAE law and provide a legal framework that ensures justice and protects individual rights in light of the challenges posed by hypnosis.

Cognitive Effects of Hypnosis and Their Legal Relevance

Scientific literature generally describes hypnosis as a state of focused attention accompanied by reduced peripheral awareness and increased responsiveness to suggestion.¹³ Research indicates that hypnosis may influence cognitive control, perception, memory, and volitional processes, although the degree of impairment varies significantly among individuals.¹⁴

From a legal standpoint, the precise neurological mechanisms underlying hypnosis are less significant than its practical effect on awareness and volition. What matters in assessing legal liability is whether hypnosis leads to a substantial impairment of discernment, decision-making capacity, or freedom of choice. The degree of such impairment must ultimately be determined on a case-by-case basis, typically through expert evidence, while the final legal characterisation remains within the discretion of the court.

Hypnosis and Legal Capacity under Civil Law

Civil law constitutes the general framework governing legal capacity and the validity of juridical acts.¹⁵ Among its central issues are the concepts of incapacity

¹³ G.R. Elkins, A.F. Barabasz, J.R. Council, D. Spiegel, *Advancing research and practice: The revised APA Division 30 definition of hypnosis*, "American Journal of Clinical Hypnosis" 2015, 57(4), pp. 378–385; S.J. Lynn, J.-R. Laurence, I. Kirsch, Hypnosis, suggestion, and suggestibility: An integrative model, "American Journal of Clinical Hypnosis" 2015, 57(3), pp. 314–329.

¹⁴ J.F. Kihlstrom, *Neuro-hypnotism: Prospects for hypnosis and neuroscience*, "Cortex" 2013, 49(2), pp. 365–374; P.W. Halligan, D.A. Oakley, *Hypnosis and cognitive neuroscience: Bridging the gap*, "Cortex" 2013, 49(2), pp. 359–364.

¹⁵ I.M. Jadalhaq, *Tort policy in a plural context: Pathways towards objective liability in UAE tort law*, "Issues in Legal Scholarship" 2019, 17(1).

and discernment, which directly affect the validity of legal acts and their legal consequences, including invalidity.¹⁶

Pursuant to Article (168) of Federal Law No. (5) of 1985 concerning the issuance of the UAE Civil Transactions Law, the grounds for legal incapacity are defined as minority, mental incapacity, and insanity. However, the legislation does not address the annulment of acts performed ^{under} the influence of hypnosis. This absence creates a potential legislative gap where altered volition may affect legal capacity without explicit regulation.¹⁷

Additionally, the provisions concerning the validity of consent do not cover this situation, focusing instead on deception leading to gross injustice, error, coercion, and exploitation, as outlined in Articles (176–198) of the aforementioned Law.

In this respect, hypnosis cannot be classified as a mental illness, as it differs from mental disorders that arise from causes beyond the individual's control.¹⁸ In cases of hypnosis, the hypnotised person may be susceptible to suggestion and compliant with the experience,¹⁹ despite similarities in outcomes, such as the loss of will, awareness, and discernment. Therefore, when a legal act is claimed to have been performed under the influence of hypnosis, it is essential to consult experts and specialists to verify the validity of such a claim.²⁰ The court has the power to assess the facts, circumstances, and context of a case, and can therefore accept or dismiss a claim. However, there are still other reasons leading to a lack of discernment that the legislation does not address, such as hypnosis, which necessitates legislative clarification as to whether it should be treated as a cause of incapacity or as a defect affecting consent.

The Concept of Hypnosis and Its Legal Relevance

Hypnosis is generally described as a state of heightened suggestibility in which critical awareness may be reduced.²¹ Its intensity varies depending on individual susceptibility,²² and in certain circumstances it may affect perception, judgement,

¹⁶ I.M. Jadalhaq, I.E. Abdulhay, E.M. Alqodsi, M.E.H. El Maknouzi, *A systematic review and meta-analysis of interruption of the statute of limitations for civil claims: A comparative study of Arab legislations*, "Heliyon" 2023, 9(6).

¹⁷ E.A.R. Dahiyat, *A legal framework for online commercial arbitration in UAE: new fabric but old style!*, "Information and Communications Technology Law" 2017, 26(3), pp. 272–292.

¹⁸ J.F. Kihlstrom, *op. cit.*

¹⁹ G. Mazzoni, A. Venneri, W.J. McGeown, I. Kirsch, *Neuroimaging resolution of the altered state hypothesis*, "Cortex" 2013, 49(2), pp. 400–410.

²⁰ H.T. Greely, *Reading minds with neuroscience – Possibilities for the law*, "Cortex" 2011, 47(10), pp. 1254–1255.

²¹ E. Cardeña, P. Jönsson, D.B. Terhune, D. Marcusson-Clavertz, *The neurophenomenology of neutral hypnosis*, "Cortex" 2013, 49(2), pp. 375–385.

²² L. Davidov, *Introduction to Psychology*, Al Dar Al Dawlia Publishing and Distribution 1992.

and volition. While hypnosis is not equivalent to mental illness, it may temporarily impair discernment and weaken autonomous decision-making.²³

From a legal perspective, the decisive issue is not the historical or therapeutic background of hypnosis, but whether it produces a substantial impairment of awareness sufficient to affect legal capacity. Hypnosis may involve either partial or complete loss of discernment, and the legal consequences depend on the degree of such impairment.

This distinction is reflected in UAE legislation, particularly Article (62) of the UAE Penal Code, which differentiates between total loss of awareness, which excludes criminal liability, and partial impairment, which gives rise to mitigating circumstances. Similarly, the UAE Civil Transactions Law distinguishes between complete lack of discernment, which renders legal acts void, and diminished discernment, which subjects acts to limited validity. Accordingly, the classification of hypnosis within this framework requires careful judicial assessment based on its actual impact on volition.

Hypnosis and Its Impact on Criminal Liability

The issue of hypnosis raises several important questions in the realm of criminal law, particularly with regard to criminal liability and the legality of its use as evidence.²⁴ In this section, the relevant aspects are examined in detail, which is accompanied by an analysis of the legislative position under UAE criminal law.

Liability of the Hypnotised

In criminal law, it is established that criminal liability for natural persons is based on the concepts of awareness and free will. Criminal liability further presupposes the existence of voluntary conduct and culpable intent (*mens rea*). Where hypnosis eliminates conscious control, the requirement of voluntary action may be absent, thereby preventing the attribution of criminal liability.

A person who commits a criminal act without awareness and free choice cannot be held criminally liable. This principle is affirmed by Article (62) of the UAE Penal Code, which conditions criminal liability upon awareness and free will. The provision adopts flexible wording by enumerating certain instances of incapacity

²³ J.A. McLaughlin Jr, *Hypnosis – Its Role and Current Admissibility in the Criminal Law*, "Willamette L. Rev." 1980, 17, p. 665.

²⁴ K. Beaven-Marks, *Influence or ignorance: an analysis of the influence of the hypnotherapy national occupational standards on hypnosis and hypnotherapy teaching and learning, and professionalism in the UK*, University of Greenwich 2013.

without limiting the scope of exemption to an exhaustive list. This legislative formulation raises the doctrinal question of whether hypnosis, where it substantially impairs awareness, may fall within the category of legally recognised grounds for exemption from criminal liability, and consequently whether liability should instead be attributed to the hypnotist.

Impact of Hypnosis on Awareness and Perception

Hypnosis is a suggestive process through which the hypnotist gains control over the individual, with the subconscious mind remaining alert,²⁵ thereby allowing the hypnotist to influence and control the hypnotised person's behavior. From a criminal law perspective, the decisive issue is whether such influence amounts to a substantial deprivation of autonomous will. Criminal liability presupposes the existence of voluntary conduct and culpable intent (*mens rea*). Where hypnosis eliminates conscious control, the requirement of voluntary action may be absent, thereby preventing the attribution of criminal liability. The process of hypnosis is an intricate technique that causes the person undergoing hypnosis to fully submit to the power of suggestion.²⁶ This is achieved by shifting the individual from a state of consciousness to unconsciousness, in which they yield to the control of the hypnotist.

Hypnosis has varying degrees. At the basic level, the subject experiences relaxation and a partial loss of sensation. At the intermediate level, the subject enters a state of deep sleep. At the deepest level, the subject becomes fully receptive to the suggestions of the hypnotist.

It is clear that hypnosis has a direct impact on a person's will. Scientifically, hypnosis varies in intensity, and in legal contexts it may lead to either partial or complete loss of awareness and perception, both of which affect criminal liability. The UAE Penal Code, particularly in Article 62, distinguishes between cases where a person experiences total loss of awareness and perception, resulting in the absence of criminal liability, and cases where the loss is partial or incomplete. In such instances, criminal liability is not excluded but is subject to mitigating circumstances. Therefore, the effect of hypnosis on criminal liability depends on its degree and on its impact on the individual's awareness and perception. It may either negate criminal liability or act as a mitigating factor under Article 62 of the UAE Penal

²⁵ *Ibidem*.

²⁶ R.I. Silfiah, K. Sulatri, Y. Ismail, *Legal Protection of Consumers with Online Transactions*, "Journal of Law, Politic and Humanities" 2024, 4(6), pp. 2584–2595.

Code. Ultimately, the determination of this effect is left to the discretion of the court, based on expert evidence.

Hypnosis as a Ground for Exemption from Criminal Liability under the Flexible Wording of Article (62) of the UAE Penal Code

The UAE legislator has paved the way for hypnosis to be considered one of the grounds for exemption from criminal liability through to the flexible wording of Article (62). After enumerating some conventional reasons that typically negate criminal liability, such as insanity and loss of consciousness resulting from the unknowing consumption of mind-altering substances, the legislator included wording that extends scientifically recognised cause of loss of awareness and perception. This is reflected in the clause: “or for any other reason determined by science to result in the loss of awareness or will...”. The doctrinal challenge lies in determining whether hypnosis should be analogised to insanity, automatism, or irresistible coercion, as each classification entails different legal consequences. As previously mentioned, hypnosis is a method whose nature and effects on perception have been examined by research. It is scientifically established that hypnosis is a process that may lead to the psychological control of an individual, guiding them from a state of consciousness into a state of unconsciousness. In this state, the hypnotist exerts control over the subject, effectively managing their responses and actions.

If hypnosis completely impairs awareness and perception, the provisions of Article (62) of the UAE Penal Code, which exempt the individual from criminal liability, become applicable.

At this point, it should be noted that the flexible wording of Article (62) of the UAE Penal Code, which allows for the expansion of grounds for exemption from liability for any reason recognised by science as affecting awareness and perception, is consistent with the principle of legality of crimes and punishments. This principle prohibits expansion and analogy in matters of criminalisation and punishment, as there can be no crime or penalty except on the basis of a legal provision. However, it simultaneously leaves the door open for expansion and analogy in areas that do not concern criminalisation and punishment, such as grounds for exemption from liability. Thus, expansion and analogy in this domain reinforce criminal justice and represent a sound application of criminal law. If the legislator has established an exemption from criminal liability in cases of insanity and the consumption of substances that affect the mind without the individual’s knowledge and consent, on the grounds that the individual lacks awareness and perception, then justice requires a similar exemption where the perpetrator of a criminal act

is likewise devoid of awareness and perception. This expansion does not pose a threat to individual freedoms. Where hypnosis results in complete deprivation of awareness, liability logically shifts from the hypnotised individual onto the hypnotist. However, partial impairment gives rise to shared and more complex attribution, requiring careful judicial classification.

Criminal Liability of the Hypnotist

If a hypnotised person who commits a criminal act under the influence of hypnosis benefits from an exemption from criminal liability, accountability may shift to the hypnotist. Criminal liability may be attributed to the individual who exercises effective control over the commission of the offence, even where the material execution of the act is carried out by another, which brings us to the concept of the moral agent. An indirect perpetrator is a person who uses another to commit a crime, making the material perpetrator an instrument through which the elements of the offence are realised. Examples include using another individual who lacks awareness, such as a person who is insane or a minor lacking discernment, or employing a trained animal to commit a crime. In such cases, the unaware individual or trained animal is regarded as a tool in the hands of the principal offender, who is regarded as the indirect perpetrator. The concept of indirect perpetration is based on the principle that most legal systems treat the various means used by an offender to commit a crime as legally equivalent. The offender may use their own hand, a specific tool or instrument, or even an unaware individual, a trained animal, or a well-meaning person as a means of carrying out the act.

Hypnosis may be regarded as an application of the theory of indirect perpetration, provided that it has completely impaired the subject's awareness and perception. In this context, it is essential to distinguish between complete and partial loss of awareness and perception in relation to the theory of indirect perpetration.

Distinction between Complete and Partial Loss of Awareness

For an exemption from criminal liability to apply to an individual who commits a criminal act under the influence of hypnosis, the effect of hypnosis on their awareness and perception must be complete. The decisive legal criterion is the absence of autonomous volition at the moment of the act. In such cases, the hypnotised person is treated as a mere instrument in the hands of the hypnotist, thereby attributing principal liability to the latter under the theory of moral agency.

The UAE Penal Code explicitly addresses this scenario in Article 44, which states: "A person is considered the perpetrator of the crime if they commit it alone or are a direct accomplice. A person is considered a direct accomplice if they use

another person by any means to commit the act that constitutes the crime, and that person is not criminally responsible for any reason.”

As previously mentioned, the UAE Penal Code exempts from criminal liability any individual who completely loses awareness and perception. However, where the loss of awareness and perception is partial, Article (62) provides the individual with a mitigating excuse rather than a complete exemption from criminal liability. This distinction directly affects the application of the moral agency theory. Where impairment is partial rather than total, the hypnotised individual retains a residual degree of volitional capacity sufficient to sustain personal liability.

Accordingly, Article (44) of the UAE Penal Code operates in harmony with Article (62). Those who partially lose their awareness due to hypnosis benefit from mitigating circumstances but do not qualify for exemption from liability. In such cases, the hypnotised individual cannot be regarded as a mere instrument in the hands of the hypnotist. Consequently, the condition required to characterise the hypnotist as a moral agent is absent. In this scenario, both parties may bear criminal liability: the person subjected to partial hypnotic influence is deemed the perpetrator of the crime and benefits from mitigation, while the hypnotist may be regarded as an accomplice by instigation. This doctrinal distinction preserves coherence within the structure of the UAE Penal Code by aligning Articles (44), (45), and (62) within a unified framework of attribution and culpability.

Civil Liability of the Hypnotised Subject

The civil implications of hypnosis require examination of both the validity of juridical acts performed during the hypnotic state and liability for harm caused therein. The core issue is whether hypnosis affects legal capacity, the validity of consent, or merely the degree of discernment necessary for a valid legal act.

Civil legislation, including the UAE Civil Transactions Law, does not expressly regulate hypnosis as a cause of incapacity. In the absence of explicit provisions, a hypnotised person may fall within one of two categories: complete loss of discernment or diminished discernment. Where hypnosis results in total deprivation of discernment, the individual may be analogised to a person lacking legal capacity. In such circumstances, legal acts performed during the hypnotic state should be regarded as void due to incapacity. Where damage results from such acts, the contracting party may seek compensation from the hypnotist under general tort principles, provided that fault and causation are established.

Where hypnosis is voluntarily undertaken, the situation may be characterised as self-induced impairment. In such cases, the legal consequences of acts performed during hypnosis may remain attributable to the individual, subject to judicial

assessment of the actual degree of impairment and the extent to which discernment was affected.

If hypnosis results in diminished rather than total loss of discernment, the individual's legal acts may be treated analogously to those of a minor possessing limited capacity. Accordingly, acts that are purely harmful are void; acts that are purely beneficial are valid; and acts falling between benefit and harm require approval by the legal representative.

With respect to civil liability for harmful acts, Article (282) of the UAE Civil Transactions Law provides:

"Any harm caused to others obligates the perpetrator, even if they lack discernment, to compensate for the damage."

This provision reflects an objective conception of civil liability, whereby compensation is owed irrespective of discernment.²⁷ Accordingly, the hypnotised individual may remain liable for harm caused during hypnosis.

In addition, the hypnotist may incur independent tort liability where their conduct constitutes fault contributing to the harm.²⁸ In such circumstances, both the hypnotised person and the hypnotist may bear civil liability towards the injured party.

To address the existing legislative gap, it is recommended that the UAE legislator regulate hypnosis as a cause of incapacity or diminished capacity. The following provisions are proposed:

"A legal act performed by a person under hypnosis shall be considered void if the person lacks discernment, and such acts shall be treated as those of a minor with limited capacity if discernment is diminished."

"Any legal act performed by an individual under hypnosis shall be valid if that individual has undergone hypnosis willingly and voluntarily."

Hypnosis in Criminal Evidence

The pursuit of truth and the identification of offenders are among the primary concerns of justice systems worldwide.²⁹ With scientific advances, new methods for uncovering the truth have emerged. However, the tension between the state's

²⁷ I.M. Jadalhaq, E.M. Alqodsi, Civil liability for misuse of online communication through websites: An analytical study of UAE law, "Information and Communications Technology Law" 2018, 27(3), pp. 284–303.

²⁸ B.D. Fountain, Hypnosis: Understanding Its Use in the Criminal Process, "Tex. Tech L. Rev." 1979, 11, p. 113; G.F. Wagstaff, Is there a future for investigative hypnosis?, "Journal of Investigative Psychology and Offender Profiling" 2009, 6(1), pp. 43–57.

²⁹ V. Osmolian, A. Avsievich, V. Parandiy, O. Okhman, N. Loginova, *Forensic and legal significance of hypnosis during a criminal investigation*, "Georgian Medical News" 2023, 344, pp. 137–146.

interest in seeking the truth and individuals' rights to personal freedoms has given rise to numerous concerns, leading to restrictions on the state's use of certain methods.

Hypnosis is one of the methods proposed for uncovering the truth in criminal investigations. However, its use remains highly controversial, with arguments both for and against it. Proponents argue that hypnosis should be employed only exceptionally and in the most limited circumstances.

Supportive View on the Use of Hypnosis in Criminal Evidence

This perspective advocates the legitimacy of using hypnosis in criminal investigations, provided that it is subject to several safeguards.

Among the most important conditions that lend legitimacy to this method are the consent of the individual being hypnotised, the involvement of a qualified expert, and the use of hypnosis only when necessary in cases involving serious crimes.

Proponents of this view believe that using hypnosis does not constitute an infringement on human dignity. They argue that resorting to this method falls within the broader concept of prioritising the public interest over individual interests. The community's interest in uncovering the truth and identifying criminals to establish justice and ensure societal security is regarded as the paramount concern.

The principle of favouring the public interest over individual rights is often used to justify certain legal procedures that limit personal freedoms, such as arrest and search. Therefore, the use of hypnosis fits within this rationale. Moreover, hypnosis is regarded as less intrusive than these other procedures, as it may lead to favourable outcomes for the accused, such as the dismissal of charges or acquittal.

If hypnosis is viewed as a process that exerts pressure on the hypnotised person and influences their will, it is not the only method that has this effect. Interrogation and detention are also coercive measures that may similarly affect an individual's will.

This perspective holds that the use of hypnosis should remain subject to judicial oversight, as are other legal procedures. English courts have, in some cases, admitted evidence obtained through hypnosis.³⁰

Arguments Opposing the Use of Hypnosis

This perspective rejects the use of hypnosis in criminal evidence on the grounds that the results obtained through this technique may lack reliability and that its use may violate generally established legal principles.

³⁰ K. Kocsenda, *Hypnosis Evidence: Admissibility*, "Journal of Criminal Law" 2007, 71, p. 497.

According to this perspective, hypnosis is considered an unreliable method due to its potential to produce inaccurate results. A hypnotised person may give statements that are more a product of imagination than fact. Additionally, the use of hypnosis conflicts with the principle of voluntary confession, which is essential for the validity of a confession in criminal proceedings. Since hypnosis disrupts the subject's conscious mind and places their subconscious under the control of the hypnotist, it compromises free will, thereby undermining the validity of any resulting confession. Furthermore, hypnosis is regarded as conflicting with the concept of human dignity, as it allows the hypnotist to delve into the subject's subconsciousness, potentially violating the individual's right to privacy.

In fact, the justifications for rejecting the use of hypnosis in criminal evidence are more compelling than those supporting its use.

While proponents of this method justify its use on the grounds of prioritising the public interest over private interests, this justification should not be accepted uncritically. The predominance of the public interest over individual freedoms necessitates a set of restrictions grounded in the principle of necessity, which must be carefully calibrated. Although the concept of prioritisation justifies arrest and search due to the pre-eminence of the public interest, these procedures remain subject to tangible safeguards that can be monitored. In contrast, hypnosis lacks such oversight; the safeguards proposed for it are often ineffective in protecting rights and freedoms. This raises a critical question: is there any effective safeguard capable of regulating the disclosures made by the hypnotised individual, who may reveal personal information concerning themselves or their family?

Moreover, this method undermines the accused's right to silence and non-self-incrimination, a right derived from the presumption of innocence. The accused is presumed innocent until proven guilty, and this presumption grants them a firmly established right to remain silent. Therefore, any attempt to compel them to speak is deemed unlawful.

The accused's consent cannot be invoked as a justification, nor can it be compared to consent given for the search of an accused's home. First, the accused is in a vulnerable position, and they may agree to hypnosis out of fear that refusal could be held against them. Second, hypnosis affects the mental and psychological integrity of a person, which, like physical integrity, is a matter of public concern and cannot be waived through individual consent. Third, while some legal systems recognise consent to a home search, such consent remains controversial because it concerns a constitutional right – the sanctity of the home. Additionally, concerns arise as to whether such consent is genuinely voluntary, given the accused's weaker position before justice authorities. Unlike a home search, which concerns a physical space, consent to hypnosis involves the psychological sphere of the individual.

Position of the UAE Legislator

The UAE legislator has not explicitly regulated the use of hypnosis in criminal evidence. However, various provisions in both the UAE Constitution and the Code of Criminal Procedure support the conclusion that the use of this method in criminal investigations to obtain confessions from accused persons is unlawful. Hypnosis, as the artificial induction of an unnatural sleep accompanied by changes in an individual's psychological and physical state, alters the natural exercise of will and the faculties of the mind. Therefore, it may be considered as a means of coercing and disabling free will, resulting in effects similar to those produced by traditional forms of violence.

Given that hypnosis suppresses free will, it constitutes an infringement of personal freedom, which is guaranteed under Article (26) of the UAE Constitution.

Since the use of hypnosis in criminal investigations to obtain confessions constitutes a violation of the accused's right to silence, that right is one of the consequences of the presumption of innocence. Therefore, the use of this method contradicts Article (28) of the UAE Constitution, which enshrines the constitutional principle that "the accused is presumed innocent until proven guilty." Given that hypnosis affects the psychological integrity of an individual, that person's consent to its use does not cure its invalidity under Article (222) of the UAE Code of Criminal Procedure and Article 225 of the same Law.

Paragraph (3) of Article (2) of the UAE Criminal Procedure Law explicitly prohibits causing physical or mental harm to the accused. It provides that any evidence obtained through methods that inflict physical or psychological harm on the accused is invalid.

Conclusion

In light of the foregoing, this study presents complex legal challenges concerning the balance of rights and obligations within the framework of criminal and civil liability. The impact of hypnosis on awareness and perception can significantly affect legal capacity, necessitating a re-evaluation of the legal provisions governing its use. As a recognised medical tool, hypnosis must be approached with great caution when applied in legal contexts. Given that hypnosis can lead to states of diminished will and awareness, it is essential to establish a clear legal framework governing the treatment of legal acts performed under its influence. Accordingly, addressing the legal challenges posed by hypnosis through the development of clear and comprehensive legislation is imperative.

Before presenting the findings and recommendations, it is essential to emphasise the need to balance the protection of individual rights with the requirement of justice in legal proceedings, particularly in cases involving hypnosis. In this regard, the proposed legislative measures aim to address existing legislative gaps and provide a legal framework that promotes justice while safeguarding individual rights from the unintended effects of hypnosis.

Findings

1. While hypnosis is used in medical fields, its application in criminal investigations to obtain evidence conflicts with the principle of voluntary confession and contradicts the presumption of innocence, which grants the accused the right to remain silent. Therefore, the use of hypnosis undermines these fundamental rights.
2. Criminal liability arising from hypnosis under the UAE Penal Code may extend to both parties involved in the hypnotic process. The liability of the subject varies depending on whether the hypnotic impairment is complete or partial. In the case of complete hypnosis, criminal liability is excluded. However, in cases of partial hypnosis, the individual remains liable but benefits from a mitigating excuse. Conversely, the hypnotist may be held accountable under the theory of moral agency where hypnosis is complete. Where the hypnosis is partial, the hypnotist may be regarded as an accomplice by instigation.
3. Legal acts performed by an individual during a hypnotic state are considered void due to a lack of legal capacity. In such cases, the party contracting with the hypnotised individual may seek compensation from the hypnotist under the principles of tort liability if harm is suffered.
4. If a person voluntarily undergoes hypnosis, their legal acts should be considered valid, and the legal consequences of those acts should remain attributable to them.
5. If the subject of hypnosis has diminished discernment, their legal acts will be treated similarly to those of a minor possessing limited capacity. Thus, such acts will be considered void if they are purely harmful, valid if they are purely beneficial, and subject to the approval of a legal representative if they fall between benefit and harm.

The civil liability of a hypnotised person for harmful acts committed against others is established because the UAE Civil Transactions Law does not require discernment as a condition for liability. Additionally, the hypnotist may also incur

tort liability for harm caused to the injured party. This creates a situation of concurrent liability, in which both the hypnotised person and the hypnotist may be responsible for compensating the injured party.

Recommendations

1. The UAE legislator should expressly prohibit the use of hypnosis in criminal investigations and criminal evidence in order to resolve the ongoing debate surrounding this method.
2. The UAE legislator should criminalise the use of hypnosis in non-medical contexts, such as its use in criminal investigations and its use to compel another person to commit a crime.
3. It is recommended that the UAE legislator regulate hypnosis as a cause of incapacity or diminished capacity. The following provisions are proposed:

“A legal act performed by a person under hypnosis shall be considered void if the person lacks discernment, and such acts shall be treated as those of a minor with limited capacity if discernment is diminished.”

“Any legal act performed by an individual under hypnosis shall be valid if that individual has undergone hypnosis willingly and voluntarily.”

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