

## **Legislative Confrontation of Cyberbullying in Jordanian Law**

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### **Abstract**

Cyberbullying has become increasingly common in recent years, especially through social media. It inflicts danger on individuals and groups by harassing them via digital technology. This fact necessitates addressing this crime by criminalising its perpetrators through the establishment of appropriate legislative texts. Unfortunately, the Jordanian legislature did not treat bullying as a separate offence. However, some provisions of other bullying-related crimes may be used to combat this crime effectively. Therefore, this manuscript conducted an analysis of the Jordanian legal texts applicable to various forms of cyberbullying, specifically the crimes of electronic defamation (cyber-libel) and slander, the crime of violating the sanctity of private life, and the crime of cyber extortion. The article also described this crime in terms of its concept, elements, types, and penalties. So the main result of this research is that the crime of cyberbullying may be convicted under the mentioned crimes, but this possibility doesn't negate the need for texts specific to this crime. Therefore, the study suggests the need to reconsider the punitive laws related to the crime of bullying, both traditional and electronic, and to develop special texts that punish it.

**Keywords:** Cybercrimes, cyberbullying, Defamation (cyber-libel) and slander, violation of the sanctity of private life, cyber extortion.

### **Introduction**

Due to their numerous advantages, information technology and the Internet have become integral to people's daily lives. But unfortunately, they have also facilitated a new type of crime known as cybercrime. In fact, the Internet has become a broad stage for committing various cybercrimes, which are done against or through technical data.

The rapid emergence of these cybercrimes in society has led to various scenarios where the law has been created to address these offences, including the criminalization of the violation of someone's right to privacy, cyber libel, and hacking

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into data systems, networks, and websites. Furthermore, the legislature's delay in establishing specific provisions to address these crimes contributed to the scenario in which some of these crimes went unpunished. As a result, the judiciary was left to determine the proper penalty, which may have required adapting some statutes they deemed appropriate (Issa, H.A., Alkhseilat, A., 2022, p. 111–112).

Cyberbullying is one of the more controversial offences, as it can be addressed under different laws. Bullying is defined as an intentional act that causes psychological and social harm to others, defames them, and undermines their value.

Unfortunately, this crime has increased and become commonplace, mainly when prominent social or political occasions are utilised to perpetrate it on a considerable scale, leading to a significant impact; for example, it can result in the personal assassination (Alshible, 2020).

In Jordan, the legislator doesn't define the crime in general but maybe he indicates its provision (Alshible, M., Abu Issa, H., & Al-Billeh, T, 2023). This happened to cyberbullying, also there is no legal provision for cyberbullying, which raises the question of how to confront this crime by adopting and adapting other legal texts. Therefore, it was necessary to investigate crimes that may fall within the phenomenon of bullying, as bullying may take the form of defamation and slander and may include threats and blackmail, as well as violating the sanctity of private life (Al-Faqih, 2020, p. 19).

As a phenomenon, cyberbullying refers to actions taken via electronic communication, particularly social networking sites, with the intent to cause harm to others, such as publishing content that contains threats, defamation, or other forms of slander (Saleh, 2021, p. 3526). It is a deliberate crime, in which there is no room for error, that is committed when the victim is subjected to verbal or written abuse through the use of technology to humiliate and undermine him (Al-Najjar, 2020, p. 141).

It was also defined as aggressive behaviour that occurs via the Internet or electronic or digital media and that an individual or group carries out by constantly sending hostile or aggressive messages that aim to harm others. The bully's identity may be unknown or known to the victim, as bullying may occur electronically everywhere and at any time, and its effects are permanent (Saleh, 2021).

In light of this, the researcher considers cyberbullying to be one of the contemporary forms of bullying. Bullying occurs when virtual social settings replace traditional social settings via various social media platforms and techniques. It has become more widespread due to the excessive openness, ambiguity, and anonymity that

define electronic communication and are easily accessible to bullies. As a result, cyberbullying has intensified and is now one of the most significant issues social networking sites suffer from.

Cyberbullying can be performed in several ways: through social media, video clips, and audio recordings, or by altering photographs and adding offensive expressions using an image editing application (such as Photoshop) (Saleh, 2021).

Cyberbullying may come from mental illnesses that use social networking sites and technological advancement as a means of self-expression (Shobaki, 2021, p. 3). Additionally, it could be done orally, through images, videos, bogus links, and comments posted on Facebook, Instagram, and other platforms (Ghaibi, 2020, p. 98).

This manuscript aims to explain the position of the Jordanian legislator regarding the crime of cyberbullying, which has become one of the most dangerous crimes that affect people's lives in various aspects without the legislator having a specific and frank position on it.

As for the questions of the study, they appear two main questions: Did the Jordanian legislator allocate punitive texts for cyberbullying crimes or leave it to diligence by trying to apply other texts for similar crimes?

The researcher used the descriptive analytical approach by analyzing the subjects that are applicable to the crime of cyberbullying within the Jordanian Penal Code and the Cybercrimes Law. In addition to describing the crime of cyberbullying as a dangerous social phenomenon,

It should be noted here that there are no previous studies related to cyberbullying in Jordan, but the closest study to this manuscript was the study of the researcher Sakhr Al-Khasawneh, which is written in Arabic and entitled "The extent of the adequacy of Jordanian legislation to confront cyberbullying. Al-Khasawneh's study followed a scientific, inductive, and analytical approach to the provisions of the Jordanian Cybercrimes Law No. 27 of 2015 to adapt the images and forms that fall under the name of cyberbullying, which may constitute a crime punishable by law. This manuscript differs from Al-Khasawneh's study in that it focused on the social dimension of the crime of bullying without the criminal aspect; in addition to that, it focused on the cybercrime law, which includes only one crime close to the crime of cyberbullying, which is the crime of defamation (cyber-libel).

Accordingly, it is possible to apply the provisions of the crimes of violating the sanctity of private life, defamation, libel, and contempt, as well as the crime of threat to the crime of cyberbullying, which will be discussed during this study, to clarify the possible mechanisms for combating bullying in Jordanian law until appropriate legislation is enacted.

First: Considering Cyberbullying as the crime of Attacking the Sanctity of Private Life via electronic means

The notion of the sanctity of private life was also known as the right to confidentiality, the right to intimacy, the right to privacy, and the right to individuality (Naim, 1997, p. 80). Violating privacy or interfering in the lives of others is one form of bullying. As the violation takes place under four primary conditions according to the jurist (Prosser), which are (Al-Ahwani, 2010, p. 59):

- 1- Spying on someone's private life, particularly their family and emotional state,
- 2- The disclosure of information, especially private information about individuals, such as letters, telegrams, and employment statuses
- 3- Publishing false information that offends the sources' rights holders and creating false information by, for example, using sound or visual montage to portray an incorrect viewpoint.
- 4- Misusing personal information for financial gain, such as using someone's name, voice, or details of their life in commercial advertisements without their permission,

The elements of the crime of attacking the sanctity of private life via electronic means include the following:

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### ***1. Actus reus***

The actus reus in violating private life takes several forms, such as publishing, recording, broadcasting, or distributing items related to a person. Once this crime is committed, it is considered a formal offense, and the perpetrator is subject to legal punishment. Therefore, the Jordanian legislator may consider the actual damages that may result from this crime and look at the potential dangers that may result from it that may endanger primary interests in society, such as disclosing a person's privacy by publishing information or data that he does not want to share with others. For this reason, the confidentiality of the crime of violating privacy through social media

requires the availability of a means to commit this act, for example, publishing the person's data or photographing him while he is in a private place (Al-Hiyari, 2010, p. 93).

The *actus reus* of the crime generally consists of three main elements (Abu Issa, H., Ismail, M., and Aamar, O., 2019, p. 105): the act (*actus reus*), the individual's mental state at the time of the act (*mens rea*), and the causation between the act and the effect (typically either proximate causation or but-for causation) (Alamuor, N., & Mahmud, R., 2018).

The *actus reus* in the crime of attacking private life via electronic means is achieved when the perpetrator commits any or each of the acts stipulated in Article Five of the Cybercrime Law: capturing, interfering with, or intercepting what is transmitted through an information network or any information system. In addition to eavesdropping, obstruction, modification, and deletion Each of these acts has a different concept from the others, although they all represent an attack on private life (Al-Nawaisa, 2017, p. 274).

As for the result, such activities would jeopardise people's private lives in a way that could put them in danger or injure them psychologically, morally, or physically. Because of how it is carried out, cyberbullying that violates private life is considered a potential crime. Anyone who attempts to hack into one of a specific person's accounts to take information and images of that person, publish them, and bully that person may succeed in doing so or may not. They may also cause the victim physical harm, psychological harm, or simply anxiety about being exposed, undermining his dignity, and devaluing him.

## **2. The *Mens rea***

Because the invasion of privacy is an intentional crime, the perpetrator's malice must be evident. However, the laws varied from one another in terms of the kind of purpose involved. Therefore, the *men's rea* of invading a person's right to privacy is general criminal intent with two components: knowledge and will<sup>(2)</sup>.

The Jordanian legislator punishes violating private life in Article 348 bis of the Penal Code. Where it stipulates: "Whoever violates the private life of others by

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<sup>2</sup> Article (63) of the Jordanian Penal Code is defined as: "Intent is the will to commit the crime as defined by law," and it becomes clear to us from the foregoing that the criminal intent is based on two main elements, which are knowledge and will.

eavesdropping on hearing or sight by any means, including audio recording, taking photos, or using binoculars, shall be punished, based on a complaint by the aggrieved party, with imprisonment for a period not exceeding three months. And the penalty shall be doubled in case of repetition."

### **Second: Cyberbullying as a crime of defamation and slander**

The most common type of cyberbullying is libel, slander, and undermining the victim (Al-Khasawneh, 2020, p. 58). The Jordanian legislator dealt with the traditional crimes of defamation, slander, and contempt in the Penal Code. Wherein it was defined as: "the imputation of a certain matter to a person—even if it was done with doubt—which might negatively affect his or her honour and dignity and expose him or her to the hate and scorning of society regardless of if such matter is punishable by law or not."<sup>(3)</sup>

Article 11 of the Cybercrime Law deals with defamation, slander, and electronic contempt. It stated that "anyone who intentionally sends, re-sends, or publishes data or information through the information network, website, or any information system that involves defamation, slander, or contempt of any person shall be punished by imprisonment for a term not less than three months and a fine of no less than (100) one hundred dinars and not more than (2000) two thousand dinars".

The following aspects of the crime, both *actus reus* and *men's rea*, must be present to apply the law of defamation and slander to cyberbullying:

#### **1. The *actus reus* of the crime of cyber-libel and slander**

The *actus reus* of the crime of slander is represented by an act that the offender knowingly, intentionally, and willingly does in which a topic is attributed to the victim by any means of regular or electronic expression that would undermine his honour and consideration or expose him to people's hatred and contempt.

Defamation may be in person (face-to-face) or *absentia*, provided the element of publicity is available. However, as stated in Article 189 of the Jordanian Penal Code and Article 11 of the Cybercrime Law, it must be via the information network, website, or any information system. As for the forms of cyber libel and slander, Article 11 categorises them as sending, re-sending, or publishing data or information by electronic means, including defamation and slander. According to general rules, Article 189 of the Jordanian Penal Code also categorises them into four types. In contrast, the

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<sup>3</sup> The text of Article (188 / first paragraph) of the Jordanian Penal Code No. 16 of 1960

fourth paragraph of Article 189 deals with slander and defamation that occur through publications, including daily, weekly, monthly, and periodic gazettes and newspapers.

Slander is similar to defamation in that it harms the victim and may result in an altercation between the two parties to the crime, but it is less dangerous because it does not assign the victim's person a particular incident or action; instead, it assigns the victim a particular flaw without mentioning any specific events. As an illustration, calling the victim "immoral," "a thief," or "a drunkard" He might also be labelled as having a physical disability, such as being called "blind." The presence of the "Actus reus" in slander is also proven if the offender expressly or implicitly wants the victim to suffer harm, such as death or destruction (Jordanian Court of Cassation, No. 73/1964, 6/18/1964).

Accordingly, the actus reus of slander is based on an action taken by the perpetrator against the victim by publishing or sending electronic information that would diminish the victim's dignity or honour. This information can be in symbols or forms, explicit or implicit, direct or indirect, or in any other state.

It is important to note that contempt and humiliation cannot occur electronically since they always occur in the victim's presence, in contrast to slander and defamation, which can appear in person or in writing. Similarly, humiliation doesn't happen in public, in a setting where others might hear it, in a group or individual meeting, nor does it occur through a medium that is used to disseminate information, like publications, because doing so would constitute libel or slanderous speech (Al-Khasawneh, 2020, p. 58).

## **2. Element of publicity for the crime of cyber-libel and slander**

Publicity is the public's awareness of an act that degrades the victim's honour and damages his reputation. The Jordanian legislator connected the physical component of the crime to the element of notoriety, limiting slander to instances where it occurs in a public setting or a location that is accessible to the general public or when it is witnessed by someone who was not involved in the act. Publicity is obtained through speaking, yelling, speaking out, or sending it electronically, provided that someone not involved in the situation hears it. Using sensory performance tools, publicity enables the dissemination of an idea or a feeling to the general public via manual, automated, or electronic means. Computers, the Internet, and mobile phones are the devices used to transfer content from one person or group of people in one location to another. This is done by simply downloading and displaying the posted content to everyone in the receiver's possession. Publicity is either general or relative. The former represents the

dissemination of unlawful infringement to the public in general. In contrast, the latter represents the choice of the perpetrator of specific sects with particular ties with the victim, which intensifies their efforts to prevent the spread of what was circulated among them to the general public (Al-Hanbali, Mazen, 2004, p. 29).

Forms of slander, defamation, and contempt may spread through discussion groups or through what is distributed to a group of participants in the form of writings, caricatures, or drawings. In addition to using electronic publications to defame individuals through daily newspapers and journals that include articles containing acts of slander and defamation sent to the newsgroup (Al-Nawaisa, 2017, p. 66),

### **3. The *mens rea* of the crime of cyber libel and slander**

Defamation, slander, and contempt are crimes that require the availability of general intent to punish the perpetrator, the instigator of its commission, or the one who participated in committing the act of defamation under the rules of original or consequential liability in the case of defamation in person (Rabih, 2005, p. 993). Keeping in mind that defamation is an intended crime that cannot occur due to error or negligence (Mustafa, 1984, p. 405), In the event of defamation in absentia, it is sufficient for the bully to know that what he is doing will be disseminated or aired among people or that it will be given to a group of people by writing, drawing, or caustic images (Rabih, 2005, p. 993 et seq.). Additionally, the offender was aware that the victim would receive these words in an open letter, a postcard, or through the media listed in the fourth clause of Article 189 of the Jordanian Penal Code.

However, when adapting the crime of cyberbullying as one of the crimes of defamation and slander, the penalty for it is as stipulated in Article 358 of the Jordanian Penal Code, which states that "Whoever defames another person using one of the means stipulated in Article 188., he or she shall be punished by imprisonment from two months to one year." Furthermore, article 191 of the same law specifies that: "Defamation shall be punishable by imprisonment from three months to two years if it is directed to Parliament or one of its members during his or her work, or as a result of what such member has done as part of his or her work, or if it is directed to an official body, the courts, the army, public administrations, or to any public official while carrying out his or her duties, or as a result of what he or she had done in the course of his or her duty."

In the same context, Article 193 of the same law stipulates: "Insult is punishable by imprisonment from one to six months or by a fine from ten to fifty dinars (JD10-50) if it was directed to the persons mentioned in Article 191." Article 359 also specifies that "slander directed to a person through the use of one of the means stipulated in



articles (188 and 189); and humiliation committed through the use of one of the means stipulated in article (190), shall be punished by imprisonment from one week to three months or by a fine from JD5 to 25."

Based on the aforementioned, cyberbullying may only consist of disseminating false information about someone online in an effort to incite hatred in the hearts of others or actively taking part in their reputation being tarnished online.

### **Third: Cyberbullying as a crime of digital extortion**

Cyberbullying sometimes takes the form of extortion or blackmail (Al-Khasawneh, 2020, p. 57). Extortion involves obtaining and exploiting the victim's private information, photographs, or film resources (Ahmed, 2019, p. 107). Others view it as "a type of robbery intended to obtain funds, assets, or bonds, or to induce signing under the threat of dishonourable publication of secrets, whether they are genuine or not" (Hassan, 2019, p. 111).

The definition of the crime of electronic extortion in the provisions of the Jordanian Electronic Crimes Law No. (27) of 2015 was not explicitly addressed, but instead, it made general reference in Article (15) of this law to crimes committed through the information network (Internet) and punishable by other laws. However, in the sense that the act's illegal description could be found in another statute, the Jordanian legislator specifically stated the punishment for this offence in Article (415) of the Jordanian Penal Code, as jurisprudence sees the possibility of applying the text of Article (415) penalties to the crime of electronic extortion. The Jordanian Electronic Crimes Law has considered that the use of electronic means or the use of the information network does not exempt from punishment, nor does it change the criminal description of the act if it is committed by these means, based on Article 15 of the Jordanian Cybercrime Law (Saad, 2020, p. 25).

However, Article 415 of the Jordanian Penal Code states, "1. Whoever threatens another person to reveal his or her secrets, which would affect the reputation or honour of the person or the reputation or honour of one of his or her relatives, shall be punished by imprisonment from three months to two years and a fine of JD 50 to 100.. 2. Whoever threatens another person to compel him to bring an unlawful benefit for them or another party shall be punished by imprisonment of not less than three months to two years and a fine of JD50–200. 3. The penalty of imprisonment shall be for two years and a fine of fifty dinars if the alleged matter is related to a traffic accident and if it does not involve a threat or is not liable to undermine the value of this person, his honour, or the honour of one of his relatives."

Based on the preceding, we conclude that for the cyber threat crime to be established, the following elements must be met:

### **1. The *actus reus* of the digital extortion crime**

The *actus reus* of the digital extortion crime consists of the act, the criminal result or consequences, and the causal relationship between them (Nammour, 2017, p. 313). The act of threatening can be verbal, explicit, or implicit. However, it must be understood from the act that the offender threatens to divulge the victim's secrets if he does not comply with his request. Also, by referring to the text of Article 415, Penalties, we find that the Jordanian legislator did not specify a specific means of threatening. Additionally, Article 733 of the Penal Code that relates to the means of publicity includes the phrase "or published by electronic means that enable the public to read or view it without restriction." This means considering electronic means as one of the public means that are required for the crime of extortion or other crimes. A criminal consequence or result occurs as soon as the perpetrator threatens the victim by divulging one of his secrets, which he considers something others should not know. Therefore, the threat was illegal as long as it caused fear and panic and affected the psychological will of the victim, who feared that the blackmailer would carry out his threat.

### **2. The *mens rea* of the digital extortion crime**

Since this crime is one of those that is intentionally committed, it does not occur accidentally. As a result, one of the fundamental factors in determining the nature of the committed activity and modifying it to determine the texts that need to be applied is the availability of the *mens rea* in electronic threat crimes (Al-Hiti, 2005, p. 157).

The *mens rea* in the crime of threatening or extorting by electronic means takes the form of general criminal intent. The perpetrator must be willing to make the threat, not coerced, aware of the elements of the crime and that he terrifies the victim. The criminal intent is present regardless of the offender's goal because the goal that the perpetrator pursues through the act of threat is not an element of the crime. Additionally, the criminal intent to threaten does not necessitate that the perpetrator intends to carry out the order he threatened because the intention to do so is unrelated to the act that led to the creation of the crime. The threat is made with enough severity to give the victim reason to assume that the perpetrator means to follow through on his threats, which undoubtedly impacts the victim's mental state.

Nevertheless, there is no consideration for the reason for the threat or its goal because it has nothing to do with the criminal intent in this case, whenever the

threatening expressions are serious. Instead, they serve as proof of the availability of the intent where the offender is punished for the crime when he aims to achieve the intended result, which is to terrify the victim, whether the motive is retaliation, obtaining money, or even just curiosity and the desire to test the victim's bravery or simple foreplay or joking (Al-Qadi, 2016, p. 44). Here we have to note that legislator generally doesn't care about crime motive (Abu Issa, H. and Al Shibli, M. 2022, 112-127).

### **Conclusion**

The study concluded that there aren't any direct texts imposing penalties for the crime of cyberbullying. But it may be criminalised through other crimes, such as the crime of violating the sanctity of private life, defamation, slander, or threats, despite the idea that these crimes still suffer from legal problems in terms of criminalization between traditional texts and modern texts.

So the crime of cyberbullying can be considered among the crimes of violating privacy stipulated in the Penal Code in Article 348. However, at the same time, there was no provision for violating privacy in the Cybercrime Law.

Article 11 of the Cybercrime Law and the Penal Code specifies that the perpetrator of the crime of cyberbullying may be charged with the crimes of defamation, slander, and contempt.

Also, although there is no specific provision for it in the Cybercrime Law, the perpetrator of the crime of cyberbullying can be judged to have committed one of the extortion and threat crimes listed in Article 415 of the Penal Code.

Finally, the crimes of digital extortion are intended crimes that are not done deliberately and in which the general aim is sufficient without the necessity for the unique intention, regardless of how other laws have adopted them.

Based on the foregoing, the researcher recommends that the Jordanian legislator allocate special punitive texts appropriate to the crime of cyberbullying and not leave it to the possibility of applying texts related to other crimes to avoid errors of application and adaptation. Bearing in mind that there are no provisions for this crime, whether in the Penal Code or in the Cybercrime Law,

### **Recommendations**

1. The Jordanian legislature must take cyberbullying seriously and impose a penalty on those who engage in it that is commensurate with how quickly and easily the crime spreads and its consequences.
2. The researcher urges the Jordanian legislator to keep up with the rest of the world by re-examining the penal laws to include bullying, whether in person or online, as a crime and developing texts specifically for it.
3. Recognising cyberbullying as a new criminal phenomenon calls for a unique illegal approach distinct from dealing with more conventional crimes.

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