

Electronic Sexual Harassment Crimes in the Jordanian Penal Legislation

Ahmad Al-Amawi¹, Muntaser Alqudah²,
Mamoon Alsmadi³, Ahmad Boutosh⁴ & Essa Al Samadi⁵

Abstract

The negative use of modern electronic means has led to the emergence of a new type of crime. It is committed in an electronic environment, including crimes that constitute an outrageous sexual assault on the victim's body, which requires a legislative response. The descriptive and analytical approach is used in this paper. The study showed that protecting the body from every illegal sexual practice is the interest that the law aims to protect when it intervenes in criminalization and punishment. The criminal touches the body of the victim without his/her consent by extending to his private parts or revealing them. The study concluded that the Jordanian Cybercrime Law punished sexual exploitation crimes committed against children and the psychologically and mentally handicapped. It is devoid of any special and explicit text criminalizing the act of sexual harassment committed by electronic means such as chat rooms and electronic social networking sites. Under Article 15 of the same law, the criminalization of these crimes can be subject to the legal model of the crime of sexual harassment contained in the Penal Code.

Keywords: Cybercrime, sexual harassment, criminal protection, penal code.

Introduction

The spread of the Internet and social media and the ease of using it helped the perpetrators exploit it in committing crimes that transcend the national borders of states. These crimes are different than traditional crimes as they are committed in an electronic environment, including crimes affecting the security and entity of society. These crimes affect public morals and public order. The type of crime committed by electronic means has been called electronic crime, including the crime of sexual harassment (Ababneh, 2005).

¹The Author is an Assistant Professor at the Faculty of Law at the Ajloun National University, Ajloun, Jordan. He can be accessed on ahmad.alamawi@anu.edu.jo

² The Author is an Associate Professor at the Faculty of Law at the Ajloun National University, Ajloun, Jordan. He can be accessed on montaseralqudah@anu.edu.jo

³ The Author is an Assistant Professor at the Faculty of Law at the Ajloun National University, Ajloun, Jordan. He can be accessed on Mamoon.alsmadi@anu.edu.jo

⁴ The Author is an Assistant Professor at the Faculty of Law at the Ajloun National University, Ajloun, Jordan. He can be accessed on boutosh@anu.edu.jo

⁵ The Author is an Assistant Professor at the Faculty of Law at the Ajloun National University, Ajloun, Jordan. He can be accessed on essa.smadi@anu.edu.jo

There is an absence of a special and direct text in the Jordanian Cybercrime Law. To avoid any conflict in judicial rulings when a crime of this kind occurs using electronic means, it is necessary to explain the nature of this crime. It is also important that the elements that must be available for its commission, and the extent to which it can be committed by electronic means. The legal basis that can be relied upon in this law to criminalize it, and the extent to which it can be subjected to the criminal provisions contained in the Penal Code regarding the traditional crime of sexual harassment (Abu Issa, 2019).

The research paper aims to clarify the concept of honor and to indicate the characteristics that must be available in the acts that constitute an assault and deflation of it. The paper aims to clarify the elements necessary for the commission of the crime as well as the extent of the possibility of committing it electronically. This paper also aims to clarify the criminal legislative policy of the Jordanian legislator and its approach to electronic crime law regarding the type of crime.

Methodology

The descriptive analytical approach is used in this study by examining the legal texts in the Penal Code and the Jordanian Cybercrime Law. The legal texts are analyzed and show the extent of their applicability to the crime of sexual harassment in addition to analyzing the judicial rulings issued in this regard. The ninth article of the Jordanian Cybercrime Law has punished the intended use of the information system or network to exploit groups of children and the psychologically and mentally handicapped in prostitution and pornography. This legal document talks about the exploitation of a group that does not have the legal capacity of children (minors) and the psychologically and mentally disabled for pornographic activities. It entails terms of undressing, nudity, and perverted sexual activities, and constitutes an assault to honor, exposing and prejudice to private parts, which makes the behavior of the offender subject to a crime of sexual harassment (Al-Atoum, 2021).

The Crime of Sexual Harassment in the Jordanian Penal Code

When the criminal legislator intervenes to criminalize an act or behavior, the reason behind that is to protect an interest or a right that is protected by law. Defining this right or interest is very important to determine the behavior or act that is considered aggression against it. So, it is necessary to define the concept of "honor" to define the exact framework of criminal protection for it and its scope and to indicate the characteristics of the behavior that is considered an assault on it. This topic is divided into two requirements: the concept of honor, and the

second requirement deals with criminal protection for honor in the Penal Code (Al-Fatlawi, 2017; Al-Billeh, 2022a).

The Concept of “Honor”

The moral concept of honor is based mainly on religious rules, moral beliefs, and prevailing values in society. This concept obliges the individual to have morals and virtue and to stay away from everything that would prejudice them. Honor is considered preserved if the sexual practices of the individual are within the legitimate framework. The moral concept of honor is defined as a response to illegal sexual practices. According to this concept, honor is an individual idea, in the sense that it is linked to the individual and not to society. It constitutes a right for the individual to confront others and a duty for him to confront himself. So, it is a right for the individual in terms of protecting him from being assaulted by others. At the same time, it is obligatory for him in terms of not neglecting it, and there is no doubt that the matter in both cases depends on the availability of the will or not in the individual. If honor is disposed of against the will of its owner, this would be an assault on him. But if the act was of his own free will, that would be a form of negligence. Accordingly, honor according to the moral concept means protecting the body from every illegal practice of sex. Honor was defined idiomatically as honoring the body for both men and women (Al-Malat, 2006; & Al-Billeh, 2022b).

As for the social concept of honor, it is not linked to religious and moral content. What is meant by the assault on honor is that assault on personal freedom and not on honor itself, that is, the forced sexual practice that falls on the individual, and then the idea of the perpetrator and the victim appeared in the crimes of sexual harassment (Al-Manasah& Al-Zoubi, 2014; Al-Billeh, 2022c).

By examining the texts of the Jordanian Penal Code, we find that it has excluded voluntary sexual practices - in principle - from the scope of its protection and interference. If the practice is consensual, it is a legitimate practice from the point of view of the law. Even if it constitutes a sin from the point of view of religion and morals. Article 284 of the Penal Code does not allow the prosecution of the adulterer, male or female, except with the complaint of the husband or wife if the marriage exists between them. This means that the legislator does not interfere in protecting individual morals from illegal practices of sex unless it is rape or coercion without a legally valid will. It is considered as crimes of rape and sexual harassment according to what is determined by the legal model for these two crimes. The legislator dealt in Chapter One of the law with crimes of assault on honor including rape and sexual harassment in articles 292-301 (Al-Nawaisa, 2017; Al-Billeh, 2022d).

Criminal Protection of Honor in the Penal Code

The criminal protection of honor was established in the Jordanian Penal Code through the enactment of criminal penalties for anyone who assaults a person's honor with violence or threat. The penalty is increased if the victim has completed fifteen years of age and has not completed eighteen years of age. The perpetrator is punished with imprisonment with labor for a period not less than five years, and the minimum penalty is seven years if the victim has completed twelve years of age and has not completed fifteen years of age (Al-Qadi, 2013; Al-Billeh, 2022e).

If the act of sexual harassment was committed without violence or threat. If the victim was a child - male or female - who completed fifteen years of age and did not complete eighteen years of age, or he made him commit the act of sexual harassment, then the offender shall be punished with temporary hard labor for a period not exceeding ten years. The minimum penalty is five years if the victim has completed twelve years of age and has not completed fifteen years of age (Article 298 of the same law). The legislator increases the penalty if the victim was a child - male or female - who has not completed twelve years of age so that the punishment is not less than eight years of temporary labor. whether the assault occurred with or without violence and threats (Al-Saeed,2002; Alkhseilat et al., 2022). It is concluded from the position of the Jordanian legislator that the absence of valid consent emanating from free will due to the aggressive behavior of the victim is considered a pillar of the crimes of sexual harassment (Al-Safou & Fadel, 2017; AL-KHAWAJAH et al., 2022)

Preserving the body from every illegal sexual practice is the interest that the law aims to protect when it intervenes in criminalization and punishment. The scope of this protection extends to the intended acts that constitute an assault on honor and does not extend to the unintentional act. Such as if it occurred accidentally as if a person touches the private parts of a girl. Because of crowding without intending this touching and without his will heading to prejudice modesty. So, the criminal intent is considered not available in this case, which prevents the crime from being committed (Hegazy, 2004; Al-Billeh, 2022b; ALMANASRA et al., 2022).

Characteristics of Criminal Behavior that Includes Assault on Honor

Three characteristics must be present in the criminal behavior that constitutes an assault on honor, and we will deal with them in three branches, respectively:

First: Infringement of honorable behavior:

Criminal behavior that constitutes an assault on honor presupposes harming the body by an act that takes place directly on it. This means that the violation of the body is achieved even if the act is limited to revealing or forcing the victim to reveal what he is keen to conceal from his body. Even if the revealing of the body is not accompanied by immoral touching, as the mere disclosure is considered a disgrace to his honor (Hegazy, 2006a; Al-Billeh & Al-Qheiw, 2023).

This behavior must lead to a serious breach of the victim's modesty (the private's control). The violation is obscene in such situations, and the reference is in determining what is considered part of the private parts, which is the current custom among the members of society. If touching a part of the victim's body does not fall under the criterion of private parts, then it is not considered a crime of sexual harassment. The criminal behavior of sexual harassment is committed by a living person against another living person, regardless of the gender of the offender or the victim, whether it occurred from a man to a man, a woman to a woman, or a man to a woman, or a woman to a man (Hegazy, 2006b; Alshible et al., 2023; Al-Billeh et al., 2023a).

Second: Illegality of Behavior:

One of the important principles of criminal law is that there is no crime or punishment except based on the law. There is no doubt that the legislator intervenes by criminalizing when the act or behavior has the characteristic of aggression or transgression. So that this aggression is considered legally criminal because it assaults the interest legally protected, with the absence of any of the justification reasons that negate the criminal character of the act. The protection of honor is the protected interest in this crime, and the meaning of private parts as we have mentioned in this regard is determined according to custom and not according to the legal view. (Hosni, 1978; Isa et al., 2022).

Third: The Lack of Victim's Consent to the Act of Sexual Harassment:

The lack of the victim's consent to the behavior that is offensive to his honor is one of the material elements of this crime. This means that if the act or behavior of sexual harassment is done with the consent of the victim. Then crime does not exist in the first place. Provided that the consent that prevents the performance of the crime is the consent given by a person who has reached the age of maturity and enjoys his mental powers. The age of maturity according to Jordanian law is eighteen full calendar years. Article 43 of the Jordanian Civil Code No. 43 of 1976. It is noted that the Jordanian legislator has used the terms violence and threat to describe behavior that would prejudice honor. This means that this behavior is committed without the consent of the victim and against his will. See Articles 296, 298, 299, and 308 of the Penal Code (Kashkoush, 2012; Al-Billeh et al., 2023b).

Sexual Harassment in the Jordanian Cybercrime Law

This topic deals with electronic crime in terms of its nature, and the most prominent criminal texts related to the subject of the research in the Jordanian Electronic Crime Law. That is in Article 9 and Article 15 of this law, so this topic can be divided into three requirements: The first requirement deals with the nature of electronic crime. The second requirements deal with crimes of sexual exploitation under Article 9 of this law, while the third one deals with the criminalization of indecent Sexual Harassment under Article 15 of the same law, as follows:

The emergence of modern electronic means is one of the most prominent manifestations of scientific and technological development. Despite the many positive uses of these electronic means, their negative use of them has led to an increase in the number of crimes committed by electronic means. In addition to the emergence of new types of multiple crimes that are committed in an electronic environment, including crimes affecting the security of society and its entity, including what is harmful to honor and morals, and in general to public morals and public order. So, this type of crime committed by electronic means has been called electronic crime or technical crime. Some have defined cybercrime as “a crime that requires the perpetrator to be aware of computer technology”, and there are those who have defined it as “a group of information-related acts that can be punished”. It has also been defined as an attack on computer data and information transmitted through information systems and networks, especially the Internet. It has also been defined as a criminal activity where the computer system plays an important role in completing it (Najm, 2016; Al-Hammouri et al., 2023a; Al-Billeh, 2023a).

What helped the perpetrators to commit such crimes is the proliferation of Internet networks connected to computers. It has become easier for them to exploit them to commit their crimes. Since they are committed to a digital or electronic environment. Which is one of the crimes that transcend the national borders of countries, and it makes it a global crime. In addition to that, the perpetrators who commit this type of crime have sufficient knowledge of computer technologies and information systems and the skills to use them (Al-Atoum, 2021; Al-Hammouri & Al-Billeh, 2023; Al-Billeh, 2023b).

This type of crime does not require physical effort, unlike traditional crimes. It is characterized as easy to commit and does not require a long time to commit. This would encourage the perpetrators to achieve illegal benefits or gains away from the eyes of security control, so these crimes are described as white-collar crimes (Al-Fatlawi, 2017; Al-Billeh et al., 2023a).

Sexual Exploitation Crimes According to Article 9 of the Cybercrime Law

To address the phenomenon of pornography and sexual exploitation of children committed by electronic means, the international community has sought to combat this phenomenon, and one of its fruits has been the conclusion of many agreements (Ababneh, 2005; Al-Billeh & Al-Hammouri, 2023). At the national level, Article 9 of the Jordanian Cybercrime Law dealt with crimes of sexual exploitation of children. It punished three criminal forms. See items A, B, and C of Article 9 of the Cybercrime Law, ranging from misdemeanor punishment to criminal punishment. The first form is the crime of sending or publishing material (video, audio tape, or written) that includes pornography and is related to the sexual exploitation of children who have not completed eighteen years, and the transmission or publication is through an information system or information network (Hegazy, 2004; Al-Billeh & Abu Issa, 2023a; AL-KHALAILEH et al., 2023; Al-Khawajah et al., 2023).

The second criminal form is represented in the use of the information system or network to influence those who have not completed eighteen years, or who are psychologically or mentally disabled, or direct and incite them to commit a crime, by creating, preparing, saving, processing, displaying, or printing or publish or promote pornographic activities or works. As for the third form, the material element of the crime is the use of the information system or network to exploit those under eighteen years of age. Who are psychologically or mentally handicapped in pornography and prostitution (Al-Safou & Fadel, 2017; Al-Hammouri et al., 2023a).

During the subject of our research, which is the crime of sexual harassment, an analytical pause must be made for the third criminalization form mentioned above. To begin with, we can say that this crime is based on the mere intended use of the information system or network to exploit the groups in prostitution and pornographic acts. It is not required that the intended result be achieved for the crime to take place, rather it is sufficient for the perpetrator to have used the information system or network for this purpose. The legislator stipulated for the occurrence of this crime that the special criminal intent represented by the intended purpose be present in addition to the general intent (Al-Saeed, 2002; Al-Hammouri et al., 2023b).

Therefore, the perpetrator is punished with the penalty stipulated in this criminal form, which is a criminal punishment. Even if the required result is not achieved, i.e. achieving the purpose of exploiting the persons in prostitution and pornography and the gains accruing to the perpetrator. If the perpetrator was able to achieve his goals, there is a moral multiplicity of crimes against him. Exploiting

the category of children and the psychologically and mentally handicapped in prostitution and pornographic activities. What it entails in terms of undressing, nudity, and perverted sexual activities, constitutes a violation of honor and exposure of nakedness and prejudice to it (Al-Qadi, 2013; AL-Hammouri et al., 2023c; Al-Billeh, 2023c).

It is noted that the text of Article 9 of the Cybercrime Law is limited to protecting the category of children and the psychologically and mentally handicapped. The provisions of the Penal Code related to the crime of sexual harassment give comprehensive protection to the person regardless of the age group to which he belongs, whether he has reached the age of majority or not. Without that, whether he enjoys his mental faculties or not, if the act occurred to him without his consent (Al-Nawaisa, 2017; Khashashneh et al., 2023; Al-Billeh & Abu Issa, 2023a).

Criminalizing Sexual Harassment Article 15 of the Cybercrime Law

Criminal policy is a science that focuses on drawing the lines of the future and its legal aspirations and ambitions (Al-Manasah & Al-Zoubi, 2014; Al-Billeh & Abu Issa, 2023b).

About the legislative policy of the Jordanian criminal legislator, we have mentioned previously that, because of the novelty of electronic crimes. The first law dealing with this type of crime was not enacted except in 2010 when the temporary Information Systems Crimes Law was issued. This lasted until 2015 when it was replaced by the Crimes Law. It is mentioned previously that this law dealt with several electronic crimes only and was not comprehensive in its provisions for all crimes that are committed electronically. The Cybercrime Law is devoid of any provision that criminalizes the act of sexual harassment committed by electronic means. Therefore, according to Article 15 of the same law, it is necessary to refer to the legal model for this crime contained in the Penal Code. The question that arises in this regard is how the crime of sexual harassment can be committed electronically (Al-Malat, 2006).

It can be said that the violation of honor may be through physical touching of the private parts, whether they are unclothed or over the clothing, and the violation of honor may be by forcing the victim to reveal his private parts, even if it is not associated with physical touching, as long as the act was done without the consent of the victim and against his will (Al-Fatlawi, 2017).

Accordingly, the crime of sexual harassment can occur using electronic means, such as using the information network or website, especially electronic social networking sites. To take and publish explicit pictures or videos revealing the private parts of the victim without his/her consent and his/her will. Therefore,

the material element for the commission of the crime is to be available in all its elements, including prejudice to the honor by exposing the private parts. Because of the outrage of modesty of the victim, and since such taking and publishing of pictures is only intentional, the moral element represented by the criminal intent is also available (Al-Atoum,2021). Based on the foregoing, the electronic sexual harassment crime takes place using electronic means such as chat rooms and electronic social networking sites. Without physical contact with the victim's private parts. Rather, it is based solely on the perpetrator making the victim reveal his/her private parts and taking revealing pictures of his/her body (Abu Issa, 2019).

Finally, we point out that the perpetrator of the crime of sexual harassment shall be punished with the penalties stipulated in the Penal Code (Ababneh, 2005).

Conclusion

Preserving the body from every illegal sexual practice is the interest that the law aims to protect when it intervenes in criminalization and punishment. The scope of this protection extends to the intended acts that constitute an assault on honor through obscene physical harm to the body of the victim without his consent and extending it to his private parts or by revealing it. The Jordanian legislator used the term (sexual harassment) as an expression of this criminal behavior.

The Cybercrime Law is devoid of any provision that criminalizes the act of sexual harassment committed by electronic means in a specific and explicit way. According to Article 15 of the same law, its criminalization can be subject to the legal model of sexual harassment contained in the Penal Code. Assault may occur by forcing the victim to reveal his/her private parts without his/her consent, even if it is not associated with physical contact. The crime of sexual harassment can occur using electronic means. Such as chat rooms and electronic social networking sites, by forcing the victim to reveal his private parts and take revealing pictures of his body and publish them.

It is recommended that the Jordanian legislator singles out a special text for the crime of sexual harassment committed by electronic means. Whether in the Penal Code or the Cybercrime Law and to establish a severe penalty like the rest of the electronic crimes mentioned in the last law, in which the legislator's criminal policy was characterized by the nature of tightening the penalties prescribed for the electronic crimes contained therein. Since the offender is often disguised in the electronic environment in which the crime is committed. It is easy for him to commit it. In addition, the resulting damage to the victim is more

serious than the damage that occurs to him in a conventional crime. if we consider that its effects may extend in a wide temporal and spatial range, unlike traditional crime, which may be temporarily and spatially confined.

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