

Legal Aspects of the Right to Freedom of Opinion in View of Jordan's 2023 Cybercrime Law

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Abstract

This study highlights the legal aspects of the right to freedom of opinion in Jordan after the issuance of Jordan's Cybercrime Law No. 17 of 2023. First, it discusses the concept of freedom of opinion in theory. Second, it highlights the protection of human rights and its impact on States. Third, it shows how States might limit the protection of freedom of opinion by criminalising cyber activities. This study relies on descriptive and analytical approaches to describe freedom of opinion and analyse its legal basis in accordance with national and international legal rules. It uses a case study of Jordan by analysing the Jordanian Cybercrime Law and its impact on the right to freedom of opinion. This study argues that Jordan's 2023 Cybercrime Law imposes stricter penalties on perpetrators of acts classified as cybercrime, exceeds the general rules in the penal code, and expands the scope of crimes related to freedom of opinion. The study produces several recommendations, the most important of which is that restrictions on the freedom of cyber activities in Jordan must comply with international obligations and that there is a need to amend the Cybercrime Law to conform to these obligations.

Keywords: International human rights law, the right to freedom of opinion, Cybercrime law, Jordan.

Introduction

The right to freedom of opinion is a fundamental human right that States must protect. It reflects the democracy of nations and has a significant impact on the political order in States (Howie, 2018 p.14). The human right to freedom of opinion enables the protection of several civil and political rights and has a positive impact on the human rights system (O'Flaherty, 2012 p.627). It has been enshrined in international law, and States must adhere to this important right as it reflects democratic orders and civilised nations. It is also firmly established in the constitutions of States where national laws must be consistent in their protection of this right.

Article 19 of the Universal Declaration of Human Rights (UDHR) protects freedom of opinion (United Nations, 1948). It states that 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions

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without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers'. The UDHR represents the basis on which the rest of the international conventions began. This requires monitoring the respect for the right to freedom of opinion and ensuring that it is implemented within the legal systems of States. Similarly, the International Covenant on Civil and Political Rights (ICCPR), to which Jordan is a signatory, acknowledges the right to free opinion (ICCPR, 1966). Article 19/1 of the ICCPR states that 'Everyone shall have the right to hold opinions without interference'.

Often, there are conflicts between the States and citizen rights. This is the case in Jordan regarding the enforcement of a new law. On 12 August 2023, the Cybercrime Law No. 17 of 2023 on combating cybercrimes was ratified by Jordan's king and published in the official gazette the following day. The new law penalises perpetrators of acts that it classifies as cybercrimes with a term of imprisonment, a fine, or both. This law was enacted on 12 September 2023. The law has several legal aspects as well as political and economic impacts. Since the beginning of 2023, the discourse in Jordan has focused on new laws. The impact of this law has reached international pressure to be minimised. However, the law has become a reality and the opinions of Jordanians have been limited since its implementation.

This raises the question of 'What are the legal aspects concerning the right to freedom of opinion in light of Jordan's 2023 Cybercrime Law?' To answer this question, this study puts forward the protection of human rights in Jordan in terms of achieving a balance between the rights and freedoms of citizens and the power of the State. It discusses the protection of the right to freedom of opinion in Jordan by examining the legal aspects of the new Cybercrimes Law.

Literature Review

The right to freedom of opinion is considered one of the most important freedoms, because it is connected to the expression of human ideas. According to the United Nations Human Rights Council Special Rapporteur's Report on the promotion and protection of the right to freedom of opinion and expression, since the Internet has become a tool for people to exercise their right to freedom of opinion, traditional provisions pertaining to that right also apply. This makes previously unavailable knowledge accessible, promoting societal advancement and the search for truth. In addition to the Internet, the Report states that Article 19(2) of the 1966 International Covenant on Civil and Political Rights 'was drafted with foresight to include and to accommodate future technological developments through which individuals can exercise their right to freedom of expression'. The United Nations Human Rights Council has suggested that

methods of expression include 'all forms of electronic and Internet-based modes of expression'. Therefore, all forms of opinion are protected, and individuals can express their opinions, including on the Internet.

The UDHR was issued in 1948. It can be said that the UDHR is part of the international customary law. The UDHR guarantees the right of every person, without discrimination, to enjoy freedom of opinion and expression, and explains what this freedom includes. This freedom allows individuals to embrace opinions that arise from their beliefs and ideas without being harassed by anyone. In addition, it allows them to circulate the news and ideas they receive through the means they deem appropriate. Therefore, the UDHR protects every person's right to enjoy freedom of opinion and expression without restrictions.

The UDHR was followed by the issuance of the ICCPR in a resolution of the United Nations General Assembly in 1966, which came into force in 1976. Its provisions are legally binding to the ratifying State. The ICCPR comprises of 167 States' parties. It contains several human rights, such as the right to a fair trial; the presumption of innocence; and freedom of thought, conscience, religion, and other rights, in addition to the right to freedom of opinion and expression.

However, in most cases, human rights defenders, journalists, and bloggers are arrested and convicted for publishing and speaking about human rights and their protection, or even to direct criticism targeting authorities, governments, and their policies (Xenos, 2012 p.767). In addition, individuals are vulnerable to having their opinions restricted by penal laws enacted by States, which constitutes an obstacle to their entitlement to this right. Therefore, it is necessary to focus on freedom of opinion and highlight its importance because achieving it is also related to ensuring the realisation of all human rights. Additionally, social, economic, and cultural interests rely on the protection of freedom of opinion and expression (O'Flaherty, 2012 p.631). One may argue that international human rights legislation should not exclude national criminal laws from its supervision.

Thomas and Loader (2000 p.3) define cybercrime as 'computer-mediated activities which are either illegal or considered illicit by certain parties and which can be conducted through global electronic networks'. Gordon and Ford (2006 p.14) define cybercrime as 'any crime that is facilitated or committed using a computer, network, or hardware device'. The function of technological confrontation is to protect the cyberspace of persons, entities, and State institutions as information crime because it targets persons and entities that strongly target State systems and institutions (Aldulaimi et al., 2023). This has led States to criminalise several cyber activities and govern the Internet.

The terms internet governance and cyber governance are sometimes used interchangeably. Recently, the idea of governance has become prominent and has implications for governance systems worldwide (Bajraktari, 2023 p.152). Therefore, the idea of cyber governance has evolved as a logical consequence of cyberspace. To improve the efficiency of cyber governance, States must uphold human rights. These elements include transparency and accountability within governance (Albalas et al., 2022 p.3). Consequently, Internet governance requires States to establish penal legislations to reduce the severity of cybercrime; however, this should not affect the fundamental rights and freedoms of individuals.

States have concerns about the Internet as a tool for practising the right to freedom of opinion; this should not have an impact on the transfer of opinions among people. It has been argued that concerns about cybercrimes, the dissemination of false information, terrorism, and national security have all been the subject of a proliferation of attempts to criminalise opinions and Internet abuse (Shepard, 2017 p.76). However, several of these attempts violate the right to freedom of opinion. (Shepard, 2017 p.76). In addition, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has promoted the idea that the Internet is ‘an indispensable tool for realising a range of human rights, combating inequality, and accelerating development and human progress... facilitating access to the Internet for all individuals, with as little restriction to online content as possible, should be a priority for all States’ (UNGA, 2011). Therefore, freedom of opinion should not be considered criminal content.

Although key human rights treaties have strengthened the protection of freedom of opinion, States have grounds for speech restrictions. There are two contested categories of speech where international law not only concedes the low value of such speech but specifically mandates its prohibition in national law. They are the incitement of hatred and glorification of terrorism (Hamilton, 2021 p.193). States that introduce broadly framed speech restrictions may claim to satisfy this prohibitory requirement. Consequently, this reduces the intensity of any ensuing international scrutiny (Hamilton, 2021 p.193).

Some States may classify the ownership or distribution of a variety of computer-generated content as illegal. In this regard, the right to freedom of opinion is a fundamental right guaranteed by international human rights treaties, in addition to the principle of State sovereignty. From this perspective, international law allows specific legally mandated limitations on human rights. (Cassese, 2005 p.103). Particularly, in terms of national security (Morris, 2020 p.132). In addition, States are obliged by international law to outlaw extreme kinds of expression,

such as forms of hate speech, incitement to terrorism, child pornography, and direct and public incitement to commit genocide.

Because laws intended to regulate cybercrimes that can restrict freedom of opinion the United Nations Office on Drugs and Crime found that cybercrimes are particularly relevant when debating the criminalisation of online speech (UNODC, 2013). Many laws have been passed to control the lack of a precise definition for cybercrimes. This has the potential to control online content and restrict freedom of opinion (UNODC, 2013). Human rights advocates are becoming more concerned about this, as several of them have been the targets of a surge in arrests and convictions brought about by cybercrime legislation, which is a rising attack on their right to free speech (UNODC, 2013).

Freedom of opinion, according to the General Comment No. 34, covers 'all forms of opinion', 'including opinions of a political, scientific, historic, moral or religious nature' (UNHRC, 2011). There are concerns regarding the diminishing rights to protests. This is because protests concern the freedom of expression and assembly (Howie, 2018 p.13). People express themselves verbally and through non-verbal expressions, such as holding up placards (UN Human Rights Committee, 1994). The more broadly a limitation on free expression is constructed, the harder it is to demonstrate that the limitation is justified. The United Nations has warned against the use of overly vague and broad legislations (Kaye, 2017).

In its General Comment No. 34 on freedom of opinion and expression, the UN Human Rights Committee states that it is incompatible with paragraph 1 of Article 19 of the ICCPR to criminalise the holding of an opinion (UNHRC, 2011). The Committee demonstrates that 'the harassment, intimidation, or stigmatisation of a person, including arrest, detention, trial, or imprisonment for reasons of opinions they may hold, constitutes a violation of Article 19, paragraph 1' (UNHRC, 2011).

Research Questions

The purpose of this study is to answer the main research question of what are the legal aspects concerning the right to freedom of opinion in light of Jordan's 2023 Cybercrime Law? Accordingly, the study attempts to answer the following questions: How States criminalise cyber activities according to its national laws, and how this might limit the protection of freedom of opinion? How Jordan's Cybercrime Law No. 17 of 2023 may have a political impact on the right to freedom of opinion in Jordan? How the new law undermines the basic freedom guaranteed by the Jordanian Constitution and international law? To what extent

the new law might undermine Jordan's international obligations concerning the protection of the right to freedom of opinion?

Research Methods

This study uses descriptive and analytical methods with a single case study design. In reaching its results, this study relies on descriptive and analytical approaches to describe the protection of human rights in Jordan, focusing on freedom of opinion. This study analyses the legal basis in accordance with international human rights laws, in addition to the basis of protection stated in the Jordanian Constitution. As a case study of Jordanian law, this study analyses the legal aspects accompanying the Cybercrime Law of 2023.

Results and Discussion

The Jordanian Constitution protects the freedom of opinion under Article 15(1). The article stipulates that the State guarantees freedom of opinion, and every Jordanian may freely express his [or her] opinion through speech, writing, photography, and other means of expression, provided that it does not exceed the limits of the law'. Article 7 of the Jordanian Constitution considers 'any attack on public rights and freedoms or the sanctity of the private life of Jordanians is a crime punishable by law'. The Jordanian Constitution also guarantees protection of the right to freedom of opinion. Article 128 of the Jordanian Constitution stipulates that 'the laws issued pursuant to this Constitution to regulate rights and freedoms may not affect the essence of these rights or touches on its basics'. Therefore, it can be said that the constitutional protection of the right to freedom of opinion in Jordan is compatible with its international protection enshrined in treaty law.

In 2010, the Jordanian Government approved the Information Systems Crime Law of 2010 as a temporary law in the absence of the House of Representatives. The provisions of the law addressed crimes that may occur on the Internet, such as hacking websites, bank credit cards, and impersonation, among others. At the time, the law was considered to be 'flexible and could affect anyone according to their mood' (Hussain, 2023). The Jordanian Bar Association denounced the government's attempt to pass the law in the absence of the House of Representatives. It considered that many of its articles included 'a blatant attack on public freedoms and freedom of opinion guaranteed to the citizens by the Constitution' (Hussain, 2023). The law has been criticised for its referral to other criminal laws (Qutieshat, 2013 p.97). In 2015, the House of Representatives approved an updated version of the Information Systems Crime Law with a new name, the Cybercrime Law of 2015.

In early 2023 the Jordanian Government proposed a draft of a new law to regulate cybercrime. According to the Jordanian Government, there are several reasons for proposing the 2023 Cybercrime Law (Al-Mamlaka, 2023). The law came after the increase in the severity and type of cybercrimes in Jordan; the discussion focused on the problems and cases that have increased since 2015, reaching six-fold, and there are currently 20,000 defendants and more than 16,000 cases (Al-Mamlaka, 2023). Additionally, there is a need to regulate and control the cyberspace. Considering the rapid development in the field of information technology, which necessitated criminalising some acts conducted by electronic means and punishing their perpetrators, the Jordanian Government sought to achieve public and private deterrence and harmonise the law with the Arab Convention on Combating Information Technology Crimes ratified by Jordan and international standards (Al-Mamlaka, 2023).

Furthermore, the 2023 Cybercrime Law was introduced to provide protection for public and private rights and freedoms from attacks, such as blackmail, electronic fraud, incitement to violence and hatred, contempt for religions, violation of the sanctity of private life, attacks on electronic payment methods and banking services, and the protection of critical infrastructure (Al-Mamlaka, 2023). In addition, the law was proposed to reorganise some numerical control procedures and judicial procedures to achieve complete and effective justice and to organise relationships with social media platforms outside Jordan (Al-Mamlaka, 2023).

Regarding the Jordanian case, Jordan's legal framework includes provisions that criminalise various cyber activities, such as unauthorised access to computer systems, data interception, system disruption, and data tampering. These laws provide a solid foundation for prosecuting cybercriminals and deterring cyberattacks. However, there is a lack of clarity regarding several terms used in the law, specifically the following: fake news, character assassination, and illegal content. These terms can be described as ambiguous, and therefore, unconstitutional. The texts criminalising these acts despite their conflict with the constitutional principle of *nullum crimen sine lege*—no crime or punishment without law enshrined in Article 3 in the Jordanian Penal Code. This wording undermines the principle of the right to expression, addressing public authorities, and freedom of the press, in contrast to the provisions of Articles 15, 17, and 128 of the Jordanian Constitution.

The 2023 Cybercrime Law includes 41 articles related to incidents that occur on the Internet, including the dissemination of false news, defamation, slander, and the spread of rumours. It assigns the Prime Minister and other ministers the task of implementing provisions. In other words, no specific ministry

or official body is responsible for implementing or reviewing the laws. Therefore, it is independent and not linked to any law and repeals Cybercrime Law No. (27) of 2015. In fact, the new law is considered a harsher version of the law passed in 2015 in terms of the illogical and unrealistic penalties it stipulates, as there is no balance between the penalties and violations stipulated.

Additionally, the 2023 Cybercrime Law criminalises any information on the Internet that considers fake news, hate speech, weakens national unity, or promotes immorality among the authorities. In 2023, Freedom House, a US-based pro-democracy initiative, categorised Jordan as a not free State (Freedom House, 2023). In other words, the new law effectively shut down freedom of opinion on the Internet. As mentioned previously, the wording of the new cybercrime law is vague. Its articles can be interpreted and applied in most cases, and authorities can easily reach criminals, determine their criminal responsibility, and refer them to the judiciary. However, the Jordanian Government defended the law, saying that privacy was threatened and online extortion causes social tensions in Jordan and reiterated that a tougher version of the 2015 Cybercrime Law was needed (Alshwabkeh, 2023).

Moreover, the 2023 Cybercrime Law used concepts not defined in the law itself or in the Penal Code. For example, these terms include ‘contempt of religions’ and ‘incitement to hatred’, the use of which may lead to confusion between this concept and political criticism of officials, suggesting a return to the established global principles that defined the pillars of hate crimes. The term ‘fake news’ does not have a precise meaning, and it applies to any journalistic material that may contain inaccurate information, which leads to self-censorship of publishing news and reliance on institutions’ data without following up on it in fear of punishment. The term ‘character assassination’ is a political, non-legal term that is not defined by law itself. Furthermore, it is inconceivable to determine the elements of character assassination and whether they are related to public or private figure, indicating the law’s excessive protection of officials against criticism.

The 2023 Cybercrime Law consists of 41 articles, and Articles 15, 16, and 17 are considered the most controversial and strange among activists and observers because they relate to sending, re-sending, or publishing data or information that contains false news, defamation, slander, or contempt. Article 15 punishes anyone who publishes false news, defamation, or slander against any person, is punishable by imprisonment for at least three months, a fine that begins with (5,000) JOD and ends with (20,000) JOD, or both punishments.

This study has several international implications. 'Jordan's level of freedom of expression fluctuates between allowing limited criticism of public authorities and directly or indirectly restricting entities and individuals' (Euro-Med Monitor, 2023). Moreover, the Euro-Med Monitor policy emphasises the Jordanian authorities' restrictions on Internet freedom of expression, as individuals face significant challenges when sharing their opinions via cyberspace, particularly because the Cybercrime Law lacks clarity and is arbitrarily used to suppress activists and journalists. Authorities also limit Internet services and prohibit certain social networking services, such as live broadcasting during protests and other important events (Euro-Med Monitor, 2023).

The international community criticised the Jordanian authorities for proposing a draft of the Cybercrime Law. Liz Throssell, spokesperson for the UN High Commissioner for Human Rights, urged 'the Jordanian authorities to reconsider this legislation with a view to ensuring compliance with international human rights laws, including the International Covenant on Civil and Political Right, is in force for Jordan' (OHCHR, 2023).

The most contentious legal provisions within the 2023 Jordanian Cybercrime Law are written in ambiguous language and lack clear meaning. Owing to this uncertainty, individuals may inadvertently breach the law. This contradicts what the Human Rights Committee has stipulated concerning the national law that regulates the right to freedom of opinion and expression. The Committee requires that national laws 'must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly' (UNHRC, 2011). In addition, that laws 'must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not' (UNHRC, 2011).

The Jordanian Cybercrime Law calls into question the legality of its terminology through the definition of cybercrime to include actions that are not classified. This goes beyond the terms used by existing model laws and international legal instruments. The law treats offences, such as defamation, which should be recognised as such in accordance with international human rights principles, as crimes that only give rise to civil responsibility in nations with a strong record of freedom of opinion. Such provisions are broad, granting governments broad jurisdiction to punish anyone who disseminates anything deemed incompatible with the State's social or political standards. This contradicts the principles of necessity and proportionality, set out by the Human Rights Committee (UNHRC, 2011).

Conclusion

Freedom of opinion is one of the basic pillars of international human rights laws and the basis of the democratic system in any State. It is considered an important element for expressing oneself in various fields. This is evident from the stipulations of the main human rights instruments. Because freedom of opinion is associated with the most important goals of the United Nations, including the maintenance of international peace and security, this reflects the universality and importance of this freedom. Protection of the right to freedom of opinion should be upheld by States, even if it is restricted by controls and restrictions, with the aim of enjoying it while preserving national order, morals, and public order.

This study discusses the legal aspects concerning the protection of the right to freedom of opinion, considering the 2023 Cybercrime Law in Jordan. It proposes a theoretical framework as a foundation for the protection of freedom of opinion as a human right and its relationship with legalising cybercrime. Further, the study discusses the criminalisation of cyber activities and how an opinion can constitute a crime in the context of Jordan's legal system, both theoretically and practically. Finally, it shows the impact of criminalising cybercrime on human rights protection without considering the right to freedom of opinion and how this can trigger a State's responsibility because of its violation of its relevant international obligations.

Recommendations

- Respect international obligations related to the protection of freedom of opinion, including those stated in the ICCPR, and ensure that the Jordanian Cybercrime Law does not compromise fundamental rights, including the freedom of opinion, right to information, and right to privacy.
- Redraft the Jordanian Cybercrime Law using clear and explicit language and define its terms within a limited and distinct scope.
- Review the harsh punishments that violate the principles of legality and proportionality of criminal offences and penalties and have a huge effect on rights and freedom. Legislative authorities should review these provisions and reduce punishments for committing crimes, in accordance with the rule of proportionality.

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