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Defamation, Slander and Contempt through New Media and Digital Platforms in Criminal Jordanian Legislation

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Abstract

Objectives: The study aimed to examine the extent to which Article 15 of the Cybercrime Law No. 17 of 2027 conflicts with the general provisions of the Penal Code, as well as to analyze its impact on the constitutionally and internationally guaranteed freedom of opinion and expression, particularly in light of the spread of digital platforms and modern media.

Methods: The study adopted a qualitative descriptive-analytical approach by reviewing relevant legal texts, analyzing their content, and comparing them with other legislations. Additionally, it utilized judicial precedents and scholarly opinions to provide a comprehensive perspective on the legal issues raised by the examined article, considering the developments in media and digital platforms. Furthermore, the study compared the constitutional regulation of freedom of opinion and expression in the Jordanian and Egyptian constitutions.

Results: The study concluded several key findings, most notably that the Jordanian Penal Code No. 16 of 1960 and its amendments addressed defamation, libel, and contempt as three separate offenses. In contrast, the Jordanian Cybercrime Law consolidated these offenses under Article 15, assigning them a single penalty and incorporating the offense of spreading false news.

Conclusion: The study recommended amending Article 15 of the Jordanian Cybercrime Law to distinguish between the three offenses and assign different penalties for each. It also suggested specifying a separate penalty for the offense of spreading false news, in alignment with the penal framework outlined in the Jordanian Penal Code.

Keywords*:* Defamation, slander, contempt, new media, Digital platforms.

الذم والقدح والتحقير عبر وسائل الإعلام الحديثة والمنصات الرقمية في التشريع الجزائي الأردني

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ملخّص

الأهداف: هدفت الدراسة إلى بيان مدى تعارض نص المادة 15 من قانون الجرائم الإلكترونية رقم 17 لسنة 2027 مع القواعد العامة الواردة في قانون العقوبات، فضلاً عن تحليل أثره على حرية الرأي والتعبير المكفولة دستورياً ودولياً، لا سيما في ظل انتشار المنصات الرقمية ووسائل الإعلام الحديثة.

المنهجية: اعتمدت الدراسة المنهج الوصفي – التحليلي النوعي، من خلال استعراض النصوص القانونية ذات الصلة، وتحليل مضمونها، ومقارنتها بالتشريعات الأخرى، بالإضافة إلى الاستفادة من الاجتهادات القضائية والآراء الفقهية، وذلك بهدف تقديم رؤية شاملة حول الإشكاليات القانونية التي يثيرها النص محل الدراسة، مع التطورات التي تشهدها وسائل الإعلام والمنصات الرقمية، مع مقارنة التنظيم الدستوري لحرية الرأي والتعبير في الدستورين الأردني والمصري.

النتائج: خلصت الدراسة إلى عدة نتائج أبرزها أن قانون العقوبات الأردني رقم 16 لسنة 1960 وتعديلاته تناول جرائم القذف والتشهير والإزدراء على حدة كثلاث جرائم منفصلة، في حين تناولها قانون الجرائم الإلكترونية الأردني مجتمعة في المادة 15، وأفرد لها عقوبة واحدة، وأضاف لها جريمة إشاعة الأخبار الكاذبة.

الخلاصة: أوصت الدراسة بتعديل نص المادة 15 من قانون الجرائم الإلكترونية الأردني، على أن تكون 3 جرائم مختلفة ويفرد لها عقوبات مختلفة، فضلاً عن تخصيص عقوبة محددة لجريمة إشاعة الأخبار الكاذبة، وبما يتناسب مع الخطة العقابية الواردة في قانون العقوبات الأردني.

الكلمات الدالة: الذم، القدح، التحقير، وسائل الإعلام الحديثة، المنصات الرقمية.

Introduction

The Jordanian Cybercrimes Law No. 17 of 2023, under Article 15, criminalizes defamation, slander, and contempt, adding "spreading false news" to this list, so the law has faced significant criticism, especially for consolidating these crimes under a single legal provision.

This is in addition to these crimes already being addressed under the Jordanian Penal Code No. 16 of 1960 and its amendments. Critics also point to the severe penalties prescribed by the new law, which are inconsistent with the penal policies of the Jordanian Penal Code.

Article 15 of the Cybercrimes Law stipulates: "The penalty shall be imprisonment for no less than three months or a fine of no less than (5,000) five thousand dinars and no more than (20,000) twenty thousand dinars, or both, for perpetrators of these acts," which is deemed excessive.

This provision has also raised concerns among journalists, media professionals, and digital influencers about restrictions on freedom of opinion and expression. In Jordan, more than 30 laws—both directly and indirectly—affect journalism and media. Among the most notable are the Penal Code No. 16 of 1960 and its amendments, which address defamation and slander through various media, including print publications and newspapers, and the Cybercrimes Law (Al-Raie, 2011).

This study thoroughly examines the provisions of the Press and Publications Law, including its latest amendments, the Cybercrimes Law, and other relevant legislation. It highlights the rights of journalists, media professionals, and digital activists to access, disseminate, and verify information before publication.

It also evaluates the intent required for prosecuting journalists under defamation and slander laws, particularly under Article 15 of the Cybercrimes Law No. 17 of 2023 when content is published through electronic means. The study further assesses the compatibility of these provisions with the constitutional guarantee of freedom of opinion and expression.

Moreover, the study discusses the conditions necessary for prosecuting journalists or content publishers accused of defamation and slander. These include ensuring the content is disseminated among people or a group, either through writings, drawings, caricatures, or publications distributed to the public. Additionally, it evaluates whether defamation or slander is permissible, such as when the content benefits public interest or is published by authorities like the government, Parliament, or within official documents.

Lastly, the study explores the legal definition of press freedom as a fundamental right guaranteed constitutionally and internationally. It examines whether legislative constraints hinder this freedom, thereby imposing self-censorship on journalists and obstructing their role in addressing societal issues for reform.

Problem and Questions of Study:

The study problem lies in the conflict between the provisions of the Jordanian Penal Code No. 16 of 1960 and its amendments and the Jordanian Cybercrimes Law No. 17 of 2023 regarding the regulation of defamation, slander, and contempt. Why did the Cybercrimes Law reiterate these crimes with harsher penalties? This research problem raises a set of questions as follows:

1. What is the legal framework for freedom of opinion and expression in the Jordanian Constitution and the treaties ratified by the Kingdom?
2. What is the legal framework for defamation, libel, and insult offenses in the Jordanian Penal Code and the Cybercrime Law?
3. What are the legal issues and conflicts between the Cybercrime Law and the penal framework outlined in the Penal Code? How does this conflict affect freedom of opinion and expression?

Significance of Study:

The significance of the study stems from a detailed analysis of the crimes of defamation, slander, and disparagement that are currently spreading through digital platforms, social media sites, and new media outlets. These crimes are stipulated in Article 15 of the Jordanian Electronic Crimes Law No. 17 of 2023, thereby reiterating what was set forth in the now-

repealed Law No. 27 of 2015—which had listed all these crimes in its abolished Article 11.

This followed widespread controversy over that article, especially since the Penal Code provided for these crimes by treating each as an independent offense. However, Article 15 of the Electronic Crimes Law consolidates all these crimes and adds the dissemination of false news into a single provision, a legislative flaw that warrants study.

Study Objectives:

The study aims to demonstrate the extent to which Article 15 of the Cybercrime Law No. 17 of 2027 conflicts with the general provisions of the Penal Code, particularly since the mentioned article addresses an issue that is already punishable under the Penal Code. Moreover, the article combines three distinct crimes into a single provision and prescribes a unified penalty for all, which is considered a flaw in legal drafting.

Additionally, the study examines whether this provision constitutes a restriction on freedom of opinion and expression, as guaranteed by the Jordanian Constitution and the international treaties ratified by the Kingdom, which ensure Jordanians' right to express their opinions, as well as the freedom of the press, printing, and publishing.

Methodology:

The study adopted the descriptive-analytical approach by describing the legal texts under examination, reviewing their content, and comparing them with the general provisions of the Penal Code. This was followed by an analysis to identify any potential conflicts or legislative shortcomings. Additionally, the study assessed the impact of these provisions on constitutional rights and freedoms, particularly freedom of opinion and expression, with a comparison of the constitutional framework for freedom of opinion and expression in the Jordanian and Egyptian constitutions.

Furthermore, the study involved analyzing relevant legal texts, judicial precedents, and scholarly opinions, along with a comparative examination of Jordanian legislation and corresponding foreign laws. This approach aimed to provide a comprehensive perspective on the legal issues raised by the provision under study with the developments witnessed in media and digital platforms.

Section One: The Concept of Freedom of Opinion and Expression

Freedom of opinion and expression is undeniably one of the most fundamental rights underpinning the foundation of a modern democratic state. It is part of the broader spectrum of public freedoms that emerged as a weapon against absolute authority in governance. Consequently, this freedom is intrinsically linked to the system of governance in each state. A government that incorporates freedom of opinion and expression into its political framework can be described as democratic (Al-Zoubi, 2005).

There are numerous definitions of freedom of opinion and expression. Some view it as an individual’s freedom to express their thoughts and articulate their principles and beliefs in a manner deemed appropriate, within the limits of the law. Others interpret it as the right to freely share opinions and declare them in any suitable manner. This definition aligns with Islamic thought. Another perspective, drawn from Article 19 of the Universal Declaration of Human Rights (1948), defines freedom of opinion as the right of every individual to hold opinions without interference and to seek, receive, and impart information and ideas through any media and across borders (Hijazi, 2004).

Some legal scholars define freedom of opinion and expression as encompassing all that an individual knows and believes to be true, regardless of the means of acquiring such knowledge, whether through reporting, logical reasoning, or feelings. This definition includes information, news, and personal judgments about events and matters based on reason or emotion (Ramadan, 2004).

Upon examining these definitions, it becomes evident that they all converge on the concept of an individual’s freedom to express their thoughts and beliefs. However, the most precise definition, in our view, is the first one, as it confines this freedom within the boundaries of the law. This limitation ensures the continuity of the state and safeguards the rights of others from being compromised by unlawful expressions of opinion (Mebarkia, T., & Ghribi, F. Z. 2021).

Freedom of opinion and expression is an inherent human right. Every individual has the right to form their opinions and beliefs and to express them peacefully. The Jordanian Constitution affirms this right in Article 15/1, stating: "The State shall guarantee freedom of opinion, and every Jordanian shall freely express their opinion through speech, writing, visual arts, or other means of expression, provided it does not exceed the limits of the law".

This definition aligns with Article 47 of the Egyptian Constitution of 1971, which states: "Freedom of opinion is guaranteed. Every individual has the right to express their opinion and disseminate it through speech, writing, photography, or other means of expression, within the limits of the law." Both provisions tie freedom of opinion and expression to adherence to the law, thereby ensuring protection for the state against acts that disrupt public order and safeguarding individuals from potential violations arising from unlawful expressions of opinion.

The American Constitution also enshrines the right to freedom of opinion and expression. Its First Amendment, part of the Bill of Rights adopted on December 15, 1791, prohibits restrictions on speech, the press, or peaceful assembly. Political expression, a prominent form of opinion in the United States, often takes the form of peaceful demonstrations in various locations, including outside the White House or Congress, without infringing on freedom of speech or opinion (University of Minnesota Human Rights Library, 2022).

In contrast, the United Kingdom adopts a distinct approach. The UK consists of England, Northern Ireland, Wales, and Scotland, and its constitution is not a single document like those of Jordan, Egypt, or the United States. Instead, it is a compilation of written and unwritten sources, including UK and European Community legislation, European Court of Justice rulings, and academic writings. Unwritten sources encompass constitutional conventions and parliamentary practices. Through these sources, the UK guarantees freedom of expression, press freedom, and protection of individuals' privacy, all contributing to human rights protection (Fifth Periodic Reports of States Parties, 2007).

While it is essential for freedom of opinion and expression to remain within the confines of the law, this does not imply imposing stifling restrictions that hinder free expression or obstruct the flow of information. The aim is to liberate individuals from fear, enabling them to express their opinions freely. Without this liberty, citizens risk becoming mere automatons, leading to the collapse of a state whose foundation lies in its populace, territory, and sovereignty, especially in the present time, where cybercrimes are on the rise with the expansion of digital platforms, social media, and new media outlets, and artificial intelligence (Alraie, A., & Alomran, N. 2024)

1- Freedom of Opinion and Expression in the Jordanian Constitution:

After discussing the general concept of freedom of opinion and expression, it is essential to address the meaning of this freedom under the provisions of the Jordanian Constitution. Article 15(1) of the Constitution states, “The State guarantees freedom of opinion, and every Jordanian shall freely express his opinion by speech, writing, photography, and other means of expression, provided that such freedom does not violate the law.” By examining the provisions of the Jordanian Constitution, it becomes evident that this freedom is tied to and constrained by adherence to the law, meaning that the Jordanian legislator intended to regulate this right through laws enacted by the legislative authority (Bakr, 2005).

Granting absolute freedom of opinion and expression without limiting it by law would lead to chaos and threaten the stability of the state. Allowing unrestricted expression could lead individuals to defame or insult others or engage in destructive activities under the guise of exercising their right to free expression. This, in turn, could create chaos that endangers the state’s existence. To prevent such outcomes, the law must serve as the defining line between responsible freedom of opinion and expression and the type of freedom that fosters chaos and disrupts public order.

Notably, the Jordanian constitutional provision confines the right to freedom of opinion and expression to Jordanians, meaning this right is guaranteed exclusively to Jordanian citizens. Unlike the Egyptian Constitution, it does not recognize the right of every individual, regardless of nationality, to freely express their opinion. In this regard, the Egyptian Constitution appears broader and more inclusive, as it extends this right to anyone residing in Egypt, regardless of citizenship.

Additionally, when comparing the two constitutional texts, the Jordanian legislator uses the conjunction "and" when listing the methods by which an individual may express their opinion, whereas the Egyptian legislator employs the disjunctive “or.” However, this does not indicate a difference in substance or impose an obligation under the Egyptian Constitution to express opinions in one manner over another. Thus, both constitutions allow individuals to express their opinions through one or multiple means, provided they adhere to the law.

Referring to rulings by Egypt’s Administrative Court, one must highlight the 1982 decision declaring “the invalidity of presidential decisions related to detaining certain citizens, revoking the licenses of opposition newspapers, and dissolving some associations.” The court established important principles, asserting that “all freedoms form an indivisible unity; any threat or violation of one individual’s freedom constitutes a threat to the freedoms of others. It grants any citizen the right to seek judicial intervention to remove such threats or violations, regardless of whether the affected individual initiates the complaint” (Egyptian Administrative Court Ruling, 1982).

Under Article 15(1) of the Jordanian Constitution and Article 47 of the Egyptian Constitution, the state is obligated to guarantee freedom of opinion and expression. This guarantee involves providing all necessary means and permissions for citizens to express their opinions and beliefs appropriately, if they adhere to the law.

These recognized rights are based on the principle of equality, a cornerstone of modern social life and a key feature of democratic constitutions. The Constitution subsequently outlines public freedoms, specifying their limits and guarantees, including those relating to individuals’ material and moral interests (Kashakish, 1987). Thus, the fundamental principle emphasized by the Jordanian Constitution is that freedom of opinion and the means of expressing it are guaranteed. The restrictions imposed in this area represent exceptions to the rule rather than the norm (Shalabi, 2000).

The Jordanian National Charter of 1991 reaffirms the provisions of the Jordanian Constitution, stating that “Freedom of thought, opinion, expression, and access to information is a right for citizens, as it is for the press and other national media and communication outlets. This freedom is guaranteed by the Constitution and cannot be diminished or violated” (Jordanian National Charter, 1991).

2- Freedom of Opinion and Expression at the International Level:

Freedom of opinion and expression is enshrined in numerous international, regional, and bilateral charters, covenants, agreements, declarations, decisions, and recommendations issued by organizations, UN agencies, and treaty bodies, as well as professional norms. However, the cornerstone of international affirmation of freedom of opinion and expression is Article 19 of the Universal Declaration of Human Rights (1948). This document emerged after the global advocacy for freedoms and human rights that followed the devastation of World War II.

Article 19 explicitly guarantees everyone the right to freedom of opinion and expression, which includes the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any medium and regardless of borders. A similar emphasis is found in Article 19 of the International Covenant on Civil and Political Rights (1966). Its first paragraph affirms "the right of everyone to hold opinions without interference," while the second elaborates on the right to freedom of expression, encompassing the right to seek, receive, and impart information and ideas of all kinds through any media of choice, regardless of frontiers (Saqaf, 2005).

While both articles convey the same essence, Article 19 of the 1966 Covenant provides greater precision by imposing limitations on this right. Paragraph three of the article stipulates that the exercise of the rights outlined in the second paragraph is accompanied by special duties and responsibilities, allowing for certain restrictions. However, these restrictions must meet specific conditions: they must be provided by law and deemed necessary.

The law-based nature of restrictions is vital; no restrictions can be imposed unless legislated. Moreover, these restrictions must serve a legitimate purpose, such as protecting the rights or reputations of others, ensuring national security, or preserving public order in a democratic society. Despite the notion of necessity, some argue that the law inherently cannot prescribe unnecessary limitations. The perception of what constitutes "necessity" may vary over time and across different contexts.

Several conventions and international instruments emphasize these principles. For example, the Human Rights Committee's General Comment No. 10 (1982) on Article 19 of the Covenant highlighted:

- The first paragraph protects the right to hold opinions without interference, which is absolute and not subject to exceptions.
- The second paragraph safeguards the right to freedom of expression, encompassing not just the dissemination but also the seeking and receiving of information and ideas through any medium.
- The conditions defining freedom of expression and the permissible restrictions determine the actual scope of this right.
- The third paragraph underscores that exercising the right entails specific duties and responsibilities, allowing for restrictions in the interest of others or the public at large.

The committee also clarified that any restrictions imposed must not endanger the essence of the right itself. They must be legally prescribed, target legitimate objectives such as those outlined in paragraphs (a) and (b) of the third paragraph, and be demonstrably necessary for achieving those objectives.

Furthermore, Article 13 of the UN Convention Against Corruption calls upon states to adopt measures within their capabilities to encourage active public participation in combating corruption, which includes respecting and protecting the freedom to seek, receive, publish, and disseminate information related to corruption. Similarly, Article 13 of the American Convention on Human Rights emphasizes the right to freedom of thought and expression without boundaries, whether orally, in writing, through print, or artistic forms, or by any means of choice.

Freedom of opinion and expression, as an integral part of international human rights law, has evolved through political and historical circumstances. Initially regarded as a domestic matter immune to external interference, the establishment of the League of Nations and later the United Nations reshaped this perception, particularly concerning fundamental human rights such as freedom of opinion and expression.

In practice, freedom of opinion and expression is a universal right, not limited to journalists or media professionals, although these groups are among those who benefit most due to the nature of their work. States are obliged to protect and empower all individuals within their jurisdiction to freely enjoy this right without discrimination. Any limitations must be lawful and necessary for safeguarding others' rights or protecting national security or public order within a democratic framework, as reflected in the constitutions of Jordan and Egypt.

For example, Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination condemns propaganda and organizations promoting racial superiority and justifying discrimination. It criminalizes incitement to violence or acts of violence against any race or ethnic group. States are required to take legislative and other measures to prosecute entities that promote or incite racial discrimination or violence.

Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women (1979) emphasizes the principle of equality between men and women, including their equal rights to freedom of opinion and expression.

UNESCO's 1978 Declaration on the Role of the Media in Promoting Peace and Understanding underscores that free and balanced dissemination of information is essential for fostering peace, combating racism, and advancing human rights. Media institutions are tasked with reflecting diverse perspectives to ensure effective contributions in this regard.

In addition to these general principles, specific guarantees must be provided to ensure journalists and media institutions can fulfill their roles in society, not only in disseminating information but also in contributing to societal development at national and international levels. International instruments have outlined several principles that serve as benchmarks for media freedom, including the non - derivability of fundamental rights even in states of emergency and compliance with the necessity and legality of restrictions imposed.

The discussion of the authority of the press or the role of media always necessitates addressing the standards by which such authority can be exercised or the required role fulfilled. International instruments have outlined several principles that serve as genuine benchmarks to ensure freedom of the press, including:

A. The Principle of Non-Derogation from Fundamental Rights:

Under this principle, it is prohibited to restrict fundamental civil and political rights, even in states of emergency or

exceptional circumstances where the enjoyment of human rights may be restricted, provided the situation meets the conditions of necessity and legal stipulation. Accordingly, the rights that may not be restricted, as stated in the International Covenant on Civil and Political Rights and other international instruments, include:

a. The prohibition of retroactive application of criminal laws.

b. The right to freedom of thought, conscience, and religious belief.

c. The right to litigation and access to the judiciary.

d. The right to guarantee a fair trial.

B. Supporting Principles That Provide Specific Guarantees for Journalists

These include the prohibition of pretrial detention in publication-related crimes, the prohibition of administrative cancellation of newspapers, and the right of journalists to self-regulate their profession.

C. Principles Supporting Freedom of Opinion and Expression

These are guiding principles that provide a set of guarantees related to the right to communication, the rights, and duties of journalists, enabling them to work freely in serving the mission of the media. These include the right to access comprehensive and documented information, the free exchange of information and opinions, encouraging press syndicates among journalists, and avoiding conflicts of interest.

Following this clarification of the principles supporting freedom of opinion and expression, it is evident that the agreements imposing restrictions on freedom of opinion and expression align with the view that media activity—being a form of freedom of opinion and expression—should be restricted to safeguard the interests of different states.

This perspective emerged alongside another view advocating unrestricted freedom for all media platforms. Proponents of this view argue that the existence of multiple newspapers or radio stations creates a diversity of ideas. They justify their stance by claiming that people are not ignorant or naïve enough to believe everything they hear, read, or see broadcasted (Jaafar, 1993).

Nevertheless, we find that restricting and regulating freedom of opinion and expression with legal constraints prevents "chaos" and acts as a precautionary measure against potential threats to the state's integrity or individual freedoms. However, countries differ in how they adhere to international human rights law. Some adopt the principle of monism, treating international agreements as part of their national law (Mohamed, 1999), while others apply dualism, considering international law as a source of domestic law. A third category views international law as a reference for interpreting national law.

In Jordan, the legal system considers international agreements superior to national law but subordinate to the constitution. Thus, Article 19 of the Universal Declaration of Human Rights takes precedence in national court applications, a position also adopted by Egyptian legislators.

The Jordanian Court of Cassation ruled in one of its judgments: *"It is a settled judicial principle that the applicable local laws are binding unless a treaty, or international agreement contains provisions contrary to these laws. This rule is not influenced by whether domestic law or international law precedes the other"* (Jordanian Court of Cassation Decision, 1991).

3- Forms of Freedom of Opinion and Expression:

A person can express their opinion through various methods, styles, or forms, provided that their expression does not violate the law. This principle, as mentioned earlier, is reflected in the Jordanian Constitution, specifically in Article 15/1, which states:

"The State guarantees freedom of opinion, and every person has the right to express their opinion by speech, writing, photography, or other means of expression, provided that it does not exceed the limits of the law."

Undoubtedly, free expression of opinion fosters development and supports democracy. It is a right for society in all its currents and classes. Therefore, this article obligates the State to guarantee this freedom, allowing individuals to express

their opinions through all legitimate means (Abdul-Majeed, 1998).

Similarly, the Egyptian Constitution in Article 47, as previously mentioned, conveys the same principle. This article states:

"Freedom of opinion is guaranteed. Every person has the right to express and publish their opinion verbally, in writing, through photography, or by other means of expression, within the limits of the law. Self-criticism and constructive criticism are guarantees for maintaining national integrity."

We believe that the flexibility in Article 47 of the Egyptian Constitution does not imply that a person must adhere to a single form of expressing their opinion. This aligns with the Jordanian legislator's approach, which does not specify such flexibility in Paragraph 1 of Article 15. Instead, it broadly permits every Jordanian the right to express their opinion through writing, photography, and other forms of expression.

The phrase "and other means of expression" does not grant individuals the freedom to express their opinions in any manner they deem appropriate. The legislator restricts this right by ensuring it does not exceed legal boundaries, thereby safeguarding the state's structure and the rights of its citizens. Individuals may freely express their opinions in multiple forms, as outlined in both the Jordanian and Egyptian Constitutions, including:

A. Writing:

This entails individuals writing their opinions on specific issues and publishing them through available means, provided they do not violate legal boundaries, such as incitement to unrest, sedition, or undermining national integrity. The Egyptian Constitution explicitly stipulates this, while the Jordanian legislator leaves such restrictions to laws issued by the legislative authority.

B. Speech:

This allows individuals to express their opinions verbally, whether in public or private spaces, as long as this does not breach the law, such as through unlawful assembly or incitement to riots. Individuals are permitted to criticize the public interest and to disseminate such criticism verbally.

C. Photography:

This refers to the right of individuals to photograph publications or significant issues and to distribute them. However, this is also conditional on adhering to legal limits and not violating the law.

The forms of freedom of opinion and expression cited in the Jordanian and Egyptian Constitutions are not exhaustive but illustrative. Therefore, individuals are permitted to express their opinions in ways they deem suitable, provided they do not exceed the limits of the law. It can be said that today's means of journalism and media are either traditional, such as newspapers, magazines, radio, and television, or digital, such as artificial intelligence systems, websites, and social media platforms, and all forms of freedom of opinion and expression today are now disseminated through digital platforms, modern media, and social media networks (Alhasan, T. K., Awaisheh, S. M., & Awaisheh, S. M. (2024), particularly the continuous advancement in digital technology has imposed numerous challenges on various aspects of human life, with approximately 5.44 billion people worldwide using the internet. (Al-Kasassbeh, F. and others. 2024)

Section two: The Legal Regulation of Electronic Defamation, Slander, and Insult Crimes:

Crime is a historical phenomenon closely tied to human existence, evolving alongside humanity through every phase of civilization. With the advent of the seventh decade of the 20th century, a new pattern of crime emerged, cybercrimes or digital offenses. Consequently, information systems and electronic devices, once considered safe havens, have simultaneously become environments fraught with risks due to their misuse in committing crimes, particularly in the virtual world (Saqf Al-Hait, 2011). This development has impacted defamation and slander crimes, commonly referred to as "defamation" in some legislations.

Before delving into the details of defamation and slander crimes, it is necessary to emphasize that cybercrimes differ from traditional crimes because they rely on digital technology and computer systems. Legislators have imposed strict penalties on acts constituting cybercrimes due to their significant negative impacts on individuals and societies. This has

necessitated establishing suitable legal frameworks to combat and limit their spread, emphasizing the importance of developing legislation that aligns with the unique digital nature and challenges of such crimes. Hence, some offenses originally defined under the Penal Code, which serves as the general framework, have been criminalized under the Cybercrime Law (Alraie. A. F. 2024).

1- Electronic Defamation and Slander Crimes:

Returning to electronic defamation and slander crimes, some legislations use the term "defamation," derived from the Arabic root shahr (to reveal or expose), which implies making someone widely known, often with negative connotations (Louis, 2005).

In technical terms, defamation refers to "attributing specific material to the victim that leads to their disdain and contempt by others." But does defamation constitute a punishable offense under Jordanian law, or is there confusion between defamation and other crimes such as slander and insult in Jordanian legislation? This issue will be explored below.

The Jordanian Penal Code does not mention defamation as an independent crime. Instead, it addresses crimes of slander and insult against individuals. Article 188 defines slander and insult as follows:

Slander: Attributing specific material to a person—whether in the form of doubt or inquiry—that could harm their honor, reputation, or expose them to public disdain or contempt, regardless of whether the material constitutes a punishable offense.

Insult: An attack on another's dignity, honor, or reputation—whether in the form of doubt or inquiry—without attributing specific material.

If the victim's name is not explicitly mentioned or if the accusations are ambiguous but accompanied by evidence that leaves no doubt about the victim's identity or the nature of the accusations, the perpetrator shall be treated as if the victim's name was explicitly mentioned and as if the slander or insult was explicit.

However, the Jordanian Cybercrime Law No. 17 of 2023 introduces the term "defamation" in two instances in paragraphs (a) and (b) of Article 20, stating:

Paragraph (a): "Whoever uses an information network, information technology, an information system, a website, or a social media platform to publish a recording, image, or video of something a person seeks to keep private, with the intent of defaming, harming, or obtaining any benefit from it—even if the material was obtained lawfully—shall be punished, upon complaint, by imprisonment for no less than three months and a fine ranging from 20,000 to 40,000 Jordanian dinars."

Paragraph (b): "Whoever uses an information network, information technology, an information system, a website, or a social media platform to manipulate, edit, or alter recordings, images, scenes, or videos of something a person seeks to keep private, with the intent of defaming, harming, or obtaining any benefit from it, shall be punished by imprisonment for no less than two years and a fine ranging from 25,000 to 50,000 Jordanian dinars."

These provisions pertain to privacy violations rather than slander or insult crimes, unlike comparative criminal legislations that use the term defamation, as previously noted. It appears that the Jordanian legislator intended "defamation" to mean harm or abuse. Therefore, it is recommended to clarify its meaning in Article 2 of the Cybercrime Law. Additionally, Article 15 of the Cybercrime Law addresses defamation, slander, insult, and even the dissemination of false news, stating:

Paragraph (a): "Whoever deliberately sends, retransmits, or publishes data or information through an information network, technology, information system, website, or social media platform containing false news targeting national security or social stability, or involving slander, insult, or defamation against any person, shall be punished by imprisonment for no less than three months or a fine ranging from 5,000 to 20,000 Jordanian dinars, or both."

Paragraph (b): "The Public Prosecution shall pursue the crimes mentioned in Paragraph (a) of this Article without requiring a complaint or personal claim if they target any state authority, official bodies, or public administrations."

Defamation and slander crimes are among the most prevalent internet crimes. The misuse of technology contributes to this prevalence for several reasons, most notably:

- The internet provides various platforms, such as social media, blogs, and websites, that anyone can use to

disseminate potentially harmful or damaging information.

- Such information can reach a wide audience rapidly and at minimal financial cost, making the internet a fertile ground for committing these crimes.
- The anonymity afforded to perpetrators can encourage such behavior, coupled with limited oversight of digital content and significant legal and technical challenges in monitoring and tracking online material.
- Strict enforcement of existing laws is essential to curbing these crimes. It is worth noting that defamation laws are stringently applied even in countries leading in freedom of expression, such as the United States, as well as in Europe and Australia (Kostadinov, 2014). However, a distinction must be made between public interest criticism and defamation or slander crimes (El-Garhy, A. A. T. 2019).
- Both electronic slander and defamation crimes consist of material and moral elements, which will be explored in two sections. Furthermore, exceptions to slander and defamation under the Jordanian Penal Code will be detailed in a third section.

A. The Physical Element of Electronic Defamation and Insult Crimes:

The Jordanian Penal Code defines defamation as "attributing a specific matter to a person—even in the form of doubt or inquiry—that could harm their honor and dignity or expose them to the hatred and contempt of others, whether or not the matter constitutes a punishable crime." This definition implies that the physical element of defamation involves the perpetrator attributing a specific or identifiable matter to the victim, making them susceptible to disdain, contempt, and harm to their dignity, honor, and reputation.

Electronic defamation, therefore, is realized through the act of attribution and associating it with the victim via electronic means (Al-Saeed, 2002). This may involve fabricating these allegations or disseminating them after hearing them from others (Shams, 1947). This principle is clear from Article 15(a) of the Jordanian Cybercrime Law No. 17 of 2023, which states:

"Anyone who intentionally sends, resends, or publishes data or information via an information network, technology, information system, website, or social media platforms that include false news targeting national security, societal peace, defamation, insult, or slander shall be punished."

It is not necessary to explicitly name the victim; any indication that identifies the victim suffices. This is explicitly stated in the Jordanian Penal Code, which serves as the general law.

The Zarqa Court of First Instance, in its appellate capacity, ruled:

"After reviewing the case file and the prosecution's evidence, this court finds that, according to the complainant's testimony, '[The defendant] conducted a live broadcast on Facebook, cursed us, and made posts on his Facebook page.' Upon reviewing the expert report that analyzed the recordings, we did not find any evidence indicating that the complainant was the intended subject of the broadcast; the complainant's name or title was not explicitly mentioned, nor were there any indications that the complainant was the intended party. Thus, the accused must be declared not responsible for the allegations." (Qararak, 2024).

Thus, the physical element is fulfilled by the act of sending, resending, or publishing any material, whether:

Data: Raw facts and figures that lack context and meaning without processing. These could include numbers, letters, symbols, or qualitative values (Laudon, 2019).

Information: Processed or interpreted data that acquires meaning and can guide decision-making. Data becomes information when organized to reveal relationships and meanings (Stair, 2020).

Defamation can also target legal entities. Article 15(b) of the law states:

"The crimes mentioned in paragraph (a) of this article shall be prosecuted by the Public Prosecution without the need for a complaint or personal right claim if they target a state authority, official body, or public administration."

Thus, three conditions must be met for the physical element of electronic defamation:

Attribution: Associating disparaging statements with the victim.

Specific Content: The attributed material must be explicit and identifiable.

Use of Electronic Means: The attribution must occur via electronic tools, such as computers, websites, information systems, or artificial intelligence systems. These tools are examples and not exhaustive, especially given rapid technological advancements.

If the defamation targets a legal entity representing a state authority, official body, or public administration, the perpetrator can be prosecuted without the need for a complaint or personal claim. This reflects the Jordanian legislator's stringent stance to deter false accusations and defamatory statements against official entities.

As for insult, it involves attributing "unspecified" material. The same considerations for the physical element in defamation apply to insult, avoiding redundancy.

The Jordanian Court of Cassation ruled that, by applying the legal elements to the established actions of the defendant, and as it was proven to the court that the defendant had directed offensive statements in the presence of several people, an examination of these statements led the court to conclude that these remarks constitute all the elements and components of the offense of defamation, in violation of Article (359) and by reference to Articles (188) and (189) of the same law. As stated, the material element was established, consisting of directing statements that infringe upon the honor, dignity, and reputation of others without attributing a fact, along with the presence of the element of publicity, thereby classifying it as defamation rather than libel or insult.

Since the defendant knowingly committed these acts, with free will directed toward their execution, this necessitates her conviction. Furthermore, the evidence presented establishes a link between the defendant and the offense attributed to her, which requires her conviction.

It is noteworthy that the phrase "Hasbi Allah wa Ni'ma Al-Wakeel" (Allah is sufficient for me, and He is the best disposer of affairs) does not constitute a crime. Rather, it is an invocation of divine trust and falls within the category of remembrance and supplication. It cannot, under any circumstances, be considered defamation against the person to whom it was addressed or in whose presence it was stated (Qarark, 2023).

B. The Mental Element of Electronic Defamation Crimes:

To establish this crime, the perpetrator's intent must be directed toward committing the criminal act. This includes awareness of the nature of the act and its potential to tarnish the victim's reputation, harm them, and expose them to hatred and contempt. The intent is evident from Article 15(a) of the Jordanian Cybercrime Law No. 17 of 2023, which states:

"Anyone who intentionally sends, resends, or publishes data or information via an information network, technology, information system, website, or social media platforms that include false news targeting national security, societal peace, defamation, insult, or slander shall be punished".

Criminal intent comprises two elements: knowledge and will. The perpetrator must be aware of the meaning of their statements and their potential to harm the victim's honor, dignity, or reputation. This applies whether the victim is a natural or legal person.

This awareness must be actual, not presumed. The perpetrator must genuinely understand the nature of their statements and their harmful implications. Their intent must be directed toward expressing or publishing these statements to achieve the intended outcome—disparaging the victim, regardless of whether harm occurs.

Thus, the mental element is one of the fundamental components of a crime, encompassing the perpetrator's state of mind at the time of committing the criminal act. It consists of criminal intent (mens rea) and negligence (unintentional fault). Criminal intent is a part of the mental element and refers to the conscious will to commit the prohibited act with awareness of its illegality. It is divided into general intent, which involves the will to commit the act and its consequences and Specific intent, which entails the will to achieve a particular outcome, such as forgery for personal gain. Thus, every criminal intent falls within the mental element, but not every mental element requires criminal intent. Criminal liability can still arise based on unintentional faults, such as negligence or recklessness (Turner, J. W. C.2009).

For example, the perpetrator may attribute defamatory or insulting statements to a victim known within their city, family, or tribe, with no actual harm caused because the community recognizes the falsity of the statements. Nevertheless, the perpetrator is punished for the act of defamation or insult, as the crime lies in the act itself, not the resulting harm.

We note that this article suffers from a legislative drafting flaw: combining defamation, insult, and slander crimes into a single legal provision with a unified penalty contrasts with the approach of the Penal Code, which serves as the general law. The considerations for the mental element of defamation similarly apply to insult, avoiding redundancy.

C. Exceptions to the Use of Defamation and Insulting Expressions:

The use of defamation, insult, or derogatory language is prohibited, whether it is sent, re-sent, or published through the information network, information technology, information systems, websites, or social media platforms, in accordance with Article 15 of the Jordanian Cybercrimes Law No. 17 of 2023. However, there are certain exceptions for publishing defamation and insults, which are explicitly outlined in the Jordanian Penal Code, the general law, and must be clarified here to explain the intended meaning:

1- Defamation and insults are permissible if they are accurate and serve the public interest. This stems from the concept of "criticism for the public good," which must meet a set of conditions and criteria, namely that the incident is factual, presented in appropriate language, and socially beneficial.

2- Defamation or insult is allowed if the subject matter was previously published by the government, the National Assembly, or in an official document or report, according to the provisions of Article 198/2 of the Jordanian Penal Code.

3- Defamation or insult can occur if the subject pertains to the conduct of a person under military, police, or gendarmerie discipline and involves behavior in relation to that discipline, with the publication coming from someone in a superior position.

4- If the subject of defamation or insult arises during judicial proceedings or in a court record, and the publication was made by the judicial authority, a lawyer, or a witness in the case, if publication is not prohibited by the court or that the trial is not confidential to avoid hindering the investigation process.

In a ruling by the Court of First Instance, the writer was acquitted of publishing defamatory material on the grounds that it was a public matter serving the public interest. The court's decision stated: "If the investigation or the journalistic article addresses a public issue, such as administrative and financial violations in a major government department, this issue, represented by witness statements and submitted documents, was covered by other newspapers. These violations had been questioned by some members of Parliament, and the relevant minister had been asked about them. The 'Al-Rai' newspaper published the inquiry, and 'Al-Dustour' newspaper discussed the restructuring of the institution four times within ten months. Since the investigation and the article did not target the complainant personally, but in their official capacity as 'Assistant for Financial and Administrative Affairs,' the defendant’s action does not constitute a crime" (Judgment of the Amman Criminal Court, 2002).

5- Defamation or insult is allowed if it involves a correct statement broadcast in the National Assembly.

6- If the defamation or insult is a correct copy, image, or summary of previously published material and its publication is exempt from penalty.

Thus, if publication involves defamation or insult in these cases, they are exceptions to the criminalization of defamatory language under the Jordanian Penal Code. It is also important to note that the Jordanian Constitution guarantees the right to criticize for all Jordanian citizens, which the state is obliged to uphold, whether expressed through speech, imagery, writing, or other means, provided it complies with the law.

2- The Crime of Electronic Insult:

Insult, as defined in Article 190 of the "Penal Code," refers to "any insult or cursing—other than defamation and slander—that is directed at the victim face-to-face through words, gestures, writing, or drawing that are not made public, or through telegrams, phone calls, or harsh treatment."

Thus, electronic insult refers to directing insulting words to the victim via writing, imagery, audio recordings, drawings, or other means through electronic devices, which is considered insulting. Today, with the rapid technological advancements, the increase in digital platforms, websites, social media, and AI systems, committing insult crimes is no longer "conceived" in just traditional ways; rather, these crimes are now increasingly committed through information systems.

Consequently, the crime of insult only occurs when the victim is directly confronted. This means that electronic insult happens through direct communication with the victim, directing insulting language via electronic means, information systems, or data. There is no punishment for attempting insult—like defamation and slander—since it is a misdemeanor, and the law does not punish attempts for misdemeanors unless there is a specific provision by the legislator. The crime of electronic insult has both a material and a mental element, which will be discussed in the following two sections.

A. The Material Element of Electronic Defamation:

The material element of the crime of defamation through electronic means lies in the act of the offender directing insulting or defamatory remarks directly to the victim; that is, they do not publish, broadcast, or circulate the remarks publicly but rather send them via an electronic means to the victim.

To establish the material element of this crime, there must be an act of sending, and the recipient must be a natural or legal person. Communication should occur through an electronic means, information system, social media platform, digital platform, or artificial intelligence system. These crimes have increased significantly due to the widespread use of the internet; in countries like Jordan, the UAE, the United States, the UK, and France, the internet is used extensively (Hamad, 2020).

Identifying the victim in defamation—just as with defamation and slander crimes—is a prerequisite for penalizing the offender. Therefore, if someone sends defamatory remarks to a "nonexistent" account or an account not owned by a specific person, the crime cannot be established. Similarly, if the message is sent to an unregistered phone number, defamation does not occur. Likewise, defamation or slander does not take place if remarks that do not defame or slander a specific person are published. It is important to note that if the court can identify or infer the victim from the context of the statements used by the offender without ambiguity or difficulty, the crime is considered to have occurred, even if the victim's name is not explicitly mentioned in the material act of the crime.

B. The Mental Element of Electronic Defamation:

The mental element in the crime of electronic defamation is the presence of criminal intent; that is, the perpetrator must have the intention to commit the act of defamation. The act of sending defamatory remarks must be with the intent to harm the victim's honor and dignity, regardless of whether harm occurs. The focus is on the act itself, not the resulting harm, as we previously discussed. The offender must be aware and conscious that the act they have committed is a criminal one.

The act must also stem from the offender's free and deliberate will. The crime does not occur if the offender is coerced into sending the defamation through threats, or if the message is sent by mistake or carelessness. However, in these two cases, the burden of proof lies with the offender, and proving these defenses can be challenging.

Thus, we conclude that defamation, whether expressed verbally or in writing, directed at a natural or legal person, can damage their honor and dignity. For the mental element to exist, two components must be present: knowledge and intent. Knowledge refers to the offender's understanding of the words and phrases they use, and intent refers to their will to utter them.

Regarding criminal intent, comparative jurisprudence holds that "once the court establishes the actions or words were insulting, it does not need to explicitly prove the offender's intent to insult or harm if the words used inherently convey the intent to insult." Therefore, the crime is considered to have been committed regardless of the motive behind the statements (Egyptian Court of Cassation, 2015). Consequently, if the words used by the defendant (the appellant) are unmistakably insulting, they provide conclusive evidence that the defendant intended to utter those words with knowledge of their content and impact on the complainant’s honor, and that their will was directed toward this action, which warrants conviction and punishment.

This crime may be accompanied— as stipulated in the Jordanian Electronic Crimes Law, in conjunction with Article 75/A of the Jordanian Telecommunications Law—by provisions on insult, which state: "Anyone who uses any communication means to send threatening, insulting, or obscene messages, or spread fabricated news intended to cause panic, shall be punished with imprisonment for no less than one month and no more than one year, or a fine no less than 300 dinars and no more than 2000 dinars, or both."

Therefore, if the defendant sends an insulting message to the complainant via a closed WhatsApp message, including

threats such as "(…) You're a man, come and meet me, I'll play with your stomach with bullets because of your mistake towards me," the material element of the crime of insult and threat through communication means is established, and the mental element is also satisfied due to the defendant's intent to insult the victim and incite fear in them through the threat (Appeal Court Ruling, 2018).

We believe that Article 15 of the Electronic Crimes Law is inadequate as it treats defamation, slander, and insult under one provision, even though these are three distinct crimes. These crimes vary in severity: slander is less severe than defamation, and insult is different from both. It is unreasonable for these three crimes to be treated equally in terms of penalties, as it does not align with the punitive policy of the Penal Code, as we have repeatedly pointed out.

3 - Conflict Between the Provisions of the Penal Code and the Cybercrime Law Regarding Defamation, Insult, and Electronic Contempt Offenses:

The legal provisions found in the Penal Code contradict those in Article 15 of the Cybercrime Law concerning defamation, insult, and electronic contempt offenses. This article is one of the most controversial among journalists, media professionals, online writers, and social media activists. It has also been heavily criticized by civil society organizations working in the field of media and press freedoms, as well as activists in this field, considering it as a restriction on the freedom of speech and expression that thrives in the expansive electronic space.

In fact, although this article represents a new development concerning the inclusion of the Cybercrime Law's provisions, which came as a legislative advancement in line with technological development in digital platforms and social media, it is still considered an inadequate provision in many aspects, which I will explain from my perspective:

1- This provision is inadequate because the Penal Code, as the general law, includes these crimes in Articles 188, 189, and 190, which address defamation, insult, and contempt. These offenses can be committed through any means of expressing opinion as stipulated by the Jordanian Constitution, and the law does not limit them to a specific method, as is clear from the legal provisions in this area.

2- Article 188/3 of the Penal Code defines written defamation and insult that occurs through writing, publishing, and broadcasting among the people. Additionally, defamation, insult, and contempt can also occur in any type of publication according to Article 189/4/b, which includes printed materials. It is well known that the Press and Publications Law defines publications and includes electronic publications, which encompass digital platforms.

3- The provision of Article 15 of the Jordanian Cybercrime Law is inadequate because it addresses defamation, insult, and contempt in a single provision, even though these are three distinct offenses. The use of the term "or" (or alternative wording) does not prevent them from being grouped in one provision. Even if one argues that grouping is due to the penalties, the offenses differ: insult is less severe than defamation, and contempt differs from both. It is unreasonable to equate the penalties for defamation, insult, and contempt.

4- Legislative progress in the technical field, especially regarding such crimes, could be achieved by amending the Penal Code's provisions to align with the technological developments, rather than enacting a legislative provision that could create legal issues related to its application with other legal provisions. Although the advantage of this provision in the Cybercrime Law is that it does not require the victim to have the status of a personal claimant, which legal scholars in Jordanian criminal law view as increasing the negative effects on freedom of speech and its constitutional protection. This expansion of the concept of restricting freedom allows for prosecution without the victim's personal claim.

In any case, despite the legal criticisms directed at this provision, it represents a "legislative addition" that can be addressed within the provisions of the Penal Code or amended in a way that better aligns with the Penal Code's structure, dividing crimes and penalties and minimizing any adverse effects on freedom of speech, press freedoms, and digital platforms.

This is especially relevant when we consider that 75% of the content in the Arab world comes from Jordan (skynewsarabia Website, 2012), And to this day, despite limited resources, it still holds the top rank in the Arab world in content creation on the internet (independentarabia Website, 2022).

Conclusion:

This study employed a scientific methodology that combines the descriptive approach with the qualitative analytical method, leading to several results and recommendations. It found that the Jordanian Penal Code No. 16 of 1960 and its amendments classify defamation, slander, and contempt as separate crimes while criminalizing the dissemination of false news under distinct provisions. In contrast, the Jordanian Cybercrimes Law consolidates these offenses under a single provision, Article 15. Additionally, the Penal Code prescribes different penalties for each crime, whereas the Cybercrimes Law imposes a uniform and stricter penalty, which does not align with the penal policy outlined in the Penal Code. Moreover, the Cybercrimes Law is not limited to digital activists but also applies to journalists and media professionals registered with the Jordanian Press Association.

Considering these findings, the study recommends amending Article 15 of the Jordanian Cybercrimes Law to align with the penal approach adopted in the Penal Code. It further suggests modifying this article to specify distinct penalties for defamation, slander, and contempt while assigning a specific penalty for the crime of spreading false news. Additionally, the study recommends that the provisions of the Cybercrimes Law apply only to individuals who are not members of the Jordanian Press Association. Instead, journalists should be subject exclusively to the Press and Publications Law and the Jordanian Press Association Law to prevent any undue restrictions on freedom of speech and expression.

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