

Indecent Assault via Technology under Jordanian Criminal Act: A Comparative Study

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Received: 2/5/2025
Revised: 2/9/2025
Accepted: 8/12/2025
Published: 24/12/2025

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Citation: Al-Rai, A. F. (2025).
Indecent Assault via Technology
under Jordanian Criminal Act: A
Comparative Study. *Dirasat: Shari'a
and Law Sciences*, 53(3), 11598.
<https://doi.org/10.35516/Law.2025.11598>

Abstract

Objectives: The study highlights the legislative shortcomings in addressing the crime of electronic indecent assault within the Jordanian Cybercrime Act No. 17 of 2023. It also proposes legislative solutions, particularly since the law does not explicitly address this crime, which the Jordanian judiciary has adjudicated.

Methods: The study employed a qualitative descriptive-analytical approach, reviewing relevant legal provisions, analyzing their content, and comparing them with other legislations. Additionally, it drew upon judicial precedents and legal opinions to provide a comprehensive perspective on the legal challenges posed by the examined legal text.

Results: The study concluded that the Jordanian Cybercrime Act No. 17 of 2023 does not define the concept of electronic indecent assault, nor does it explicitly criminalize it. However, Jordanian courts have relied on the Penal Code to classify acts, such as viewing the victim's intimate parts, through electronic means, as a complete offense of indecent assault.

Conclusion: While the Jordanian Cybercrime Law No. 17 of 2023 covers crimes such as sexual exploitation and the dissemination of pornographic materials, it fails to specifically address electronic indecent assault, thereby creating a legal loophole in addressing this crime. The study, therefore, recommends several measures, including adding a provision criminalizing indecent assault through technological means to address this legislative gap.

Keywords: Indecent assault, technology, Jordanian criminal act.

هتك العرض عبر الوسائل التقنية في القانون الجنائي الأردني: دراسة مقارنة

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قسم القانون العام، كلية القانون، جامعة أبوظبي، الإمارات العربية المتحدة

ملخص

الأهداف: هدفت الدراسة إلى بيان القصور التشريعي في معالجة جريمة هتك العرض الإلكتروني في قانون الجرائم الإلكترونية الأردنية رقم 17 لسنة 2023، واقتراح حلول تشريعية لا سيما وأن القانون لا يعالج هذه الجريمة التي تصدى لها القضاء الأردني.

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.

النتائج: خلصت الدراسة إلى عدة نتائج أبرزها أن قانون الجرائم الإلكترونية الأردني رقم 17 لسنة 2023 لم يحدد مفهوم جريمة هتك العرض الإلكتروني، ولم ينص عليها على الرغم من أن المحاكم الأردنية استندت إلى قانون العقوبات في تكييف جرم النظر إلى عورة المجني عليه أو عليها بوسيلة إلكترونية بأنه يمثل جريمة هتك عرض متكاملة الأركان.

الخلاصة: أوصت الدراسة بمجموعة من التوصيات، منها: إضافة بند لتجريم هتك العرض من خلال الوسائل التقنية لمعالجة هذا القصور، ففي حين يُغطي قانون الجرائم الإلكترونية الأردني رقم 17 لسنة 2023 جرائم مثل: الاستغلال الجنسي، ونشر المواد الإباحية، إلا أنه يُغفل معالجة هتك العرض الإلكتروني تحديداً، مما يخلق فجوة في الإطار القانوني لهذه الجريمة.

الكلمات الدالة: هتك العرض، الوسائل التقنية، القانون الجنائي الأردني.



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Introduction:

The right to bodily inviolability is a fundamental human right safeguarded by constitutions, international agreements, and domestic laws, as well as by religious principles that prohibit any assault on the body or actions that bring shame to it. Protecting this right ensures individuals' safety and dignity within their communities.

With the rapid expansion of digital platforms, new risks have emerged, particularly the unauthorized viewing of another person's intimate areas. While some legal systems categorize this conduct as a privacy violation, others treat it as indecent assault. In Jordan, legislation does not explicitly regulate this issue, yet the judiciary has addressed it in multiple rulings, including a landmark decision by the High Criminal Court upheld by the Court of Cassation.

Jordanian courts have thus been pioneers in criminalizing electronic indecent assault, even when committed through digital devices such as computers, tablets, or smartphones, and regardless of the physical distance between the perpetrator and the victim. Nevertheless, a clear legislative framework is lacking, highlighting the need for explicit provisions within the Cybercrime Act.

The urgency of this research is underscored by the fact that many victims are minors. In Jordan, nearly 1,400 cases of sexual assault against children are reported annually, yet offences committed through digital means remain difficult to trace and quantify due to their hidden and uncontrollable nature.

Research Problem:

The study addresses the legislative gap in the Jordanian Cybercrime Act, which does not explicitly define the crime of indecent assault via technological means in a clear and specific manner. Likewise, the provisions of the Jordanian Penal Code No. 16 of 1960 and its subsequent amendments lack a precise formulation of the crime of indecent assault, thereby creating a legislative deficiency. Although the Jordanian judiciary has attempted to bridge this gap through judicial interpretations, the problem persists and continues to pose significant legal challenges.

Research Questions:**Main Research Question:**

To what extent are Jordanian legislations sufficient in criminalizing indecent assault via technological means, and how has the Jordanian judiciary addressed this type of crime compared to other legislations and judicial approaches?

Sub-questions:

- What is the penalty for violating the protection of the body and its private parts?
- What is the concept of the crime of indecent assault and its elements?
- What is the legislative deficiency regarding the crime of electronic indecent assault?
- What is the Jordanian judiciary's comparative position in this field?
- How does this crime differ from the crime of violating the sanctity of private life?

Significance of the Research:

This study is significant as it addresses the legislative deficiency concerning indecent assault committed through technological means, aiming to propose concrete legal amendments. Its importance lies in examining a relatively new form of cross-border crime, where perpetrators can exploit digital tools from abroad to target victims, highlighting the urgent need for clear legislative solutions and focused academic inquiry.

Research Objectives:

This study aims to explain the legislative deficiency in addressing the crime of indecent assault through technological means within Jordanian legislation, while also proposing concrete legislative solutions to existing legal texts. In addition, it seeks to explore and utilize comparative legal systems to provide valuable insights and potential models for reform.

Research Methodology:

This study employs an analytical approach to examine legislative texts on electronic assault, using systematic classification and a deductive method to clarify legal concepts. A comparative approach is also applied to contrast Jordanian Act with other relevant systems, with the ultimate goal of producing a comprehensive reference for researchers and specialists in this field.

Research Plan:

The study plan consists of two sections. The first section delves into the concept of electronic indecent assault, its elements, and the second section focuses on the legal and practical issues involved in applying laws concerning indecent assault by electronic means. This section includes discussions on judicial applications and the perspective of the Jordanian Grand Criminal and Cassation Courts. The study concludes with a set of recommendations and results.

Chapter 1: The Concept of The Crime of Electronic Indecent Assault

The Jordanian Penal Code previously did not pose any issues regarding indecent assault, as Article (296) outlines “Anyone who commits indecent assault, violence, or threat shall be punished with labour for a period not less than four years. The minimum penalty for indecent assault is seven years if the person attacked is not yet fifteen years old.” Article (297) also stipulates that “whoever violates the honour of a person who is unable to resist because of the forms of deception used towards him, shall be punished with temporary labour.” As for Article (298), it stipulates that “every person who violates the honour of a child - male or female - without violence or threat is under twelve years of age.” Article (299) stipulates that “every person described in Article 295 commits Whoever intends to expose a person, whether male or female, who has not yet reached the age of twelve years to fifteen years of age or impels him and directs him to commit this act, shall be punished with temporary labour.”

The Grand Criminal Court examines this crime in accordance with Article 4 of the Grand Criminal Court Act No. 19 of 1986. Dignity is the characteristic that protects a person (Taher Al-Zawawi, 1983, 416). The term “violation” refers to the act of cutting or penetrating something (Al-Zawawi, 1983, 416), and the Jordanian Penal Code does not define this crime (Al-Bakhit, 2011, P 11). The Jordanian Court of Cassation defined it as “any lustful act committed by one person against another without his consent if it involves obscenity or an offence to casual modesty. There is no difference between the indecent touching occurring and the bodies being naked or covered by clothing” (Penal Cassation, 20/1967). The Egyptian Court of Cassation defined it as “an indecent act that extends to the victim’s body and private parts and offends his sense of modesty” (Egyptian Penal Cassation, 197/1970).

We believe that the Court of Cassation’s definition of indecent assault was incomplete and did not consider the advancements in technology that allow perpetrators to violate victims’ private parts. Therefore, we propose defining the crime of indecent assault as any act that offends a victim’s modesty by invoking their private parts, whether through technical or electronic means. It’s important to note that indecent assault is different from acts that are indecent in public, as it poses a greater risk to the victim. This crime has both physical and moral components, which we will explore in further detail (Awad, 1973, P 282).

1-The Material Element of The Crime of Electronic Indecent Assault

In cases of indecent assault, the perpetrator must have committed an act that violated the victim’s modesty and caused harm to their body (Aman, 1994, P 225). This was established by the Jordanian Court of Cassation (Cassation Penalty 1021/2004, Adalah Centre Publications, 09/27/2004) and similarly ruled by the Egyptian Court of Cassation. It is necessary to prove that the perpetrator physically touched the victim’s body to prosecute for this crime. It decided that “a girl who walks with an uncovered face among men does not think that kissing her on her cheeks violates her modesty and extends an area of her body that she and her counterparts consider to be private parts that they are keen to cover; kissing her is considered indecent and indecent.” It also decided that “it is considered an insult to public decency when a person tears a boy’s clothing from behind, exposing part of his body from the private parts that every person is keen to hide from people’s eyes, even if this act is not accompanied by any indecent touching” (Yahya Dahshan, 2023).

The crime of electronic indecent assault is committed using electronic means, which has changed the previous concept of casual modesty. With the widespread use of digital platforms and social networking sites, this modesty can now be violated through modern technological devices. It is important to note that the perpetrator and victim do not have to be in the same physical location for the offence to occur. In application of this, the Jordanian Court of Cassation decided that “the actions of the accused, such as installing a camera in the men’s bathroom in the workplace where he works with the complainant, and which the latter used to photograph her while she was using the toilet and exposing her private parts, constitute all the elements and elements of the felony of indecent assault, in violation of the provisions of Article (297) of the Penal Code” (Jordanian Criminal Cassation, 3882/2021).

For the crime of indecent assault to be committed, it is necessary that the perpetrator gains access to view the victim’s private parts without their consent (Al-Rai, 2022, P 71). This means that someone who did not allow this entry or if the victim is underage or unable to give legal consent must be involved. The physical aspect of this offence consists of three elements: an action, a result, and a causal connection between them, which will now be examined further.

A. The act constituting the crime of electronic indecent assault

The offence of indecent assault is committed when the perpetrator engages in an act or behaviour that violates the modesty of the victim. According to a decision by the Jordanian Court of Cassation, this violation is assessed based on its severity (Tawfiq, 2012, 304). In the case of electronic indecent assault, it occurs when someone unlawfully accesses an information system containing explicit images or videos depicting private parts of the victim and causing great distress to their sense of modesty and desire for privacy.

The issue of whether technical protection is required for criminal protection of the information system has raised questions. Some legislation argues that penal protection should be provided for the information system against illegal access, even if there is no technical safeguard in place (Atallah, 2005, P 107). On the other hand, some argue that technical protection is “necessary” (Al-Nawaisa, 2017, 206). Unauthorised entry may serve as a precursor to committing additional crimes (Kadir, 2009, PP 39-65).

According to researchers, the nature of electronic assault is different from other crimes. The key factor is whether the victim intended to keep their private information hidden. For instance, if a girl makes her social media accounts public and allows anyone to follow her, sharing pictures of her private parts would not constitute electronic indecent assault. However, if a perpetrator hacks into the victim’s information system and views private pictures, they would have committed multiple criminal acts.

The act of viewing the victim’s private parts through an information system constitutes electronic indecent assault. The key factor is that this action violates the modesty of the victim, leading to a request from the perpetrator for them to remove their clothing for further indecent assault. This behaviour is equivalent to publicly displaying an act contrary to modesty, in violation of Article 306 of the Jordanian Penal Code as determined by the Jordanian Court of Cassation (Penal Cassation, 661/2004).

B. The criminal consequence of the act that constitutes the material element of the crime of electronic indecent assault

The criminal consequences involve the infringement upon the victim’s dignity and invasion of their privacy by viewing intimate parts. This issue falls under the jurisdiction of trial courts, which have the authority to determine whether these actions are a violation of one’s honour based on presented facts and evidence (Tawfiq, 2012, 304). Unlike formal criteria that restricts assessing the gravity of modesty violations solely based on specific body parts, in this context, there is an expanded concept regarding protecting individuals from such crimes against their bodies (Hosni, 1978, P 241). The criterion for identifying private body parts is based on societal norms and customs, regardless of an individual’s promiscuity or personal comfort with revealing such areas.

No reference was found in the rulings of the Grand Criminal Court or the Jordanian Court of Cassation regarding this matter. However, it is noteworthy that the Egyptian Court of Cassation has considered various interpretations associated with private parts and their respective meanings. Consequently, actions causing harm to an individual’s body in areas that are not deemed private can be considered as acts of indecent assault (Egyptian Penal Cassation, 272/1934, Collection of

Legal Rules, Part 2, p. 266, Cairo, 10/15/1934). Thus, if a person were to hold another's hand and place it on their genitals, this would be classified as an act of indecent assault rather than immorality (Cassion of March 17 Year 1958, Collection of Rulings of the Egyptian Court of Cassation, Part 9, Cairo, p. 4298). These actions are not considered acts of electronic indecent assault as they involve physical touch, which cannot be replicated through electronic means. Observing such actions through electronic devices does not constitute an act of indecent assault since it does not directly violate one's modesty.

In this context, the violation of electronic displays is not expected to occur through physical force like it does in the real world. Instead, it can be achieved through "threat." The term "force" pertains to physical coercion, while "threat" refers to moral coercion (Hosni, 1978, P 206). For the offence of electronic assault to occur, it is necessary for a "threat" to cause dissatisfaction on the part of the victim. For example, if the perpetrator threatens harm towards the victim and demands that they remove their clothes and send video clips via a social networking site. This action constitutes a cybercrime with parallels in traditional crimes against personal safety.

C. The causal relationship between the act and the criminal outcome

For an act to be considered indecent assault, it must have violated the victim's modesty and exposed their private parts (Mustafa, 1975, P 308). This applies even when the act was committed electronically. However, if the act did not violate the victim's modesty, such as when the perpetrator enters a private room and only sees ordinary pictures, it is not considered indecent assault but a violation of the victim's privacy. In such cases, the Jordanian Cybercrime Act regarding violating the sanctity of private life should be applied instead of the provisions related to indecent assault in the Penal Code.

Similarly, the use of the Internet to threaten a victim by exposing their private matters, and the victim's subsequent act of closing their account and refraining from responding to the perpetrator, is considered a threat of indecent assault, even though the result was not realized. This is because the perpetrator may have carried out all the actions necessary to achieve the criminal outcome, yet the result did not occur due to circumstances beyond their control. From the researcher's perspective, this constitutes one of the key challenges in addressing the offence of electronic indecent assault (Linda Zhong et al., 2009).

2-The Moral Element of The Crime of Electronic Indecent Assault

Electronic assault is a deliberate crime that always involves criminal intent. The perpetrator is aware of the act they are committing and is aware that the victim is not consenting to it. This intention is based on both knowledge and will (Mustafa, 1975, P 308). If a perpetrator is unaware that their actions involve violating someone's modesty, or believes that what they are doing is legal, their criminal intent may be nullified. For example, if someone takes photographs of their spouse's private body parts without realising it is a violation of their privacy, or if they believe it is acceptable due to their invalid or corrupt marriage, their intent may not be criminal. However, it is important to note that this does not excuse any other crimes they may have committed, such as violating someone's private life.

In this regard, the Mafraq Magistrate Court ruled to "criminalise the act of a husband who took a picture of his wife while she was in the bathroom, which the judiciary considered a violation of the sanctity of her private life." The court has determined that the defendant is guilty of voyeurism. During Ramadan in 2017, the defendant peered through a hole in the bathroom to watch his wife. He also placed a camera inside the bathroom, which was later confiscated. A complaint was filed and the defendant admitted to the crime. The prosecution applied the relevant Act, and the defendant's actions met all the necessary elements of the crime of voyeurism as defined in Article 348 of the Penal Code (Madaar Al-Sa'a Jordanian News Website, 2022).

In medical practice, there are situations where it may be necessary to use electronic cameras or endoscopy to examine a patient's private areas in order to diagnose a medical condition. Such circumstances are deemed necessary and may involve the use of an intermediary. In some cases, it may also be necessary to touch private areas to save a patient's life. It is important to note that such actions do not constitute a crime of electronic indecent assault or any other legally recognised form of indecent assault.

Chapter 2: The Legal and Realistic Problems of Applying Legal Texts Regarding Committing the Crime of Indecent Assault Electronically

In the past, indecent assault was limited to physical contact and did not present the complexities we face today. With the advent of technology, these crimes can now occur in both the physical and electronic domains (Bandinter, 1971, P 2435).

Tragically, it is now possible to violate a victim's privacy and personal boundaries through electronic means.

The Jordanian Cybercrime Act has a notable issue - it lacks a specific legal provision that penalises the violation of electronic displays. While Cybercrime Act No. 17 of 2023 criminalises various acts, it does not explicitly mention the offence of assault on electronic displays. This is a legislative gap that needs to be addressed.

After analysing the legal documents, it is evident that:

1. Article 13 of the Act explicitly states that engaging in pornographic activities or works through the use of information networks, technology, systems or websites, whether it be sending, publishing, preparing, producing, preserving, processing, displaying, printing, buying, selling, transmitting, or promoting, is punishable by a minimum imprisonment of six months or a fine ranging from 3,000 to 6,000 dinars.
2. The crimes stipulated in Clause 1 of this paragraph shall be prosecuted based on the complaint of the victim who has completed eighteen years of age, and the public right to forgive the victim shall be dismissed.
3. If the purpose of the acts stipulated in Clause 1 of this paragraph is to direct or incite the commission of a crime or with the intention of sexual exploitation, then they shall be prosecuted without the need for a complaint, and the penalty shall be imprisonment for a period of no less than one year and a fine of no less than 6,000 dinars and no more than 15,000 dinars.
4. The acts stipulated in Clause 1 of Paragraph (A) of this Article shall be punished by imprisonment for a period of not less than one year or by a fine of not less than 6,000 dinars and not exceeding 30,000 dinars if this content is images, or Recordings, drawings, or other sexually stimulating sexual organs, or real, virtual, or simulated sexual acts of a juvenile under the age of eighteen, or if the content relates to a person with a mental illness or disability.
5. The acts stipulated in Clause 3 of Paragraph (A) of this Article shall be punished by imprisonment for a period of not less than two years and a fine of not less than 9,000 dinars and not exceeding 30,000 dinars if the content is pictures, recordings, drawings, or other sexually stimulating sexual acts, or real, virtual, or simulated sexual acts for a juvenile under the age of eighteen, or designed to entice him, or whose purpose is to direct or incite him to commit a crime, or with the intention of exploiting him, or if this content relates to a person suffering from a mental illness or disability.
6. Anyone who possesses within the information system or a data storage support images, recordings, drawings, or other sexually stimulating sexual organs shall be punished by imprisonment for a period of not less than six months or a fine of not less than 3,000 dinars and not exceeding 6,000 dinars, or real, virtual, or simulated sexual acts involving a juvenile under the age of eighteen, or if the content relates to a person suffering from a mental illness or mental disability."

Article 14 of the Act states: "A- Anyone who uses the information network, information technology, information system, or creates an electronic website to facilitate, promote, incite, assist, or incite prostitution and immorality, seduce another person, or violate immoral acts shall be punished with imprisonment for a period of not less than six months and a fine of not less than 9,000 dinars and not exceeding 15,000 dinars."

"Anyone who uses the information network, information technology, or information system or creates an electronic website for the purposes stipulated in Paragraph (A) of this Article to exploit someone who has not completed eighteen years of age or who suffers from a mental illness or mental disability in prostitution shall be punished with temporary labour and a fine not exceeding 10 years, not less than 15,000 dinars and not more than 45,000 dinars."

Contrarily, it is apparent that the mentioned texts did not address the offence of electronic indecent assault perpetrated by publicly displaying private parts in a way that violates the victim's sense of modesty. Although Article 14/C could potentially be applicable to individuals under 18 years old, it fails to explicitly stipulate electronic indecent assault as a distinct crime. This concept was further demonstrated in judicial decisions, wherein both the Court of Cassation and High Criminal Court applied provisions from the Penal Code to prosecute cases involving electronic assault. Specifically, these courts referred to Article 15 of the repealed Electronic Crimes Act which acknowledged this offence, "Anyone who commits any crime punishable under any legislation in force: using the information network or any information system or website, or participating in, interfering with, or inciting to commit it, shall be punished by the penalty stipulated in that legislation." This

passage is quoted from Section 26 of the current Cybercrime Legislation No. 17 of 2023. The implementation of this legal provision has given rise to several challenges, which we will discuss in two subsequent sections addressing the application of Penal Code provisions to cases involving electronic indecent assault, as well as relevant judicial practices. We will then present a series of findings and recommendations based on our analysis.

1- Applying the Penal Code to the Crime of Electronic Assault

The Jordanian Court of Cassation, as well as the High Criminal Court, have encountered several legal challenges when addressing sexual crimes committed through electronic means. One of these challenges is defining and specifying what constitutes electronic means, as previously mentioned.

there is a contention that in cases like this, the courts are influenced by the indictment decision made by the Public Prosecution without sufficiently examining the specific incident. However, it should be noted that researchers have differing opinions on this matter and do not necessarily agree with this viewpoint (Al-Mahasneh, 2013, P 85).

The assertion that the court's decision was influenced by the indictment issued by the Public Prosecution is inaccurate. While some cases were initially brought before the Court of First Instance for violating privacy, it determined that these cases fell outside its jurisdiction. Consequently, they were referred to the High Criminal Court as instances of indecent assault, which is in violation of relevant provisions within both Penal Code articles and Article 15 of the repealed Cybercrime Act. This interpretation has been upheld by esteemed Jordanian Court of Cassation. However, a comprehensive examination must be conducted to address two main issues: elongation on one hand and application of facts to photographs on another – each tackled in separate sections (AlOmran, Al-Rai, & Alhendi, 2024).

2- The Problem of Prolongation

The act of prolongating the victim's private parts poses a significant challenge when adapting criminal acts to electronic means. Differentiating between an indecent assault and an indecent act is crucial, as determined by the Jordanian Court of Cassation (Penal Cassation, 661/2004).

In a court case, it is up to the judge to decide if an action constitutes an invasion of a victim's private parts based on the evidence presented. The Court of Cassation has ruled that physical evidence is not necessary for an intrusion to occur (Penal Cassation, 5/1980, Collection of Principles, Part 2, p. 1428). This ruling is relevant to cases of indecent assault through electronic means, where the victim's privacy is violated without physical contact. The Jordanian judiciary has taken a progressive stance on this issue.

According to previous legal opinions, sexual assault can occur through violence, coercion, or threats, or when a person is unable to resist due to physical or psychological incapacity. It can also occur with consent, but this type of assault is not punishable unless it happens to a male or a female who is under the age of fifteen. If the victim is between the ages of fifteen and eighteen and the perpetrator is described in Article 296 of the Jordanian Penal Code, which includes anyone who uses violence or threatens to expose someone punished with labour for at least four years, the minimum penalty is seven years (Al-Rai, AlOmran, & Al Ansari, 2025).

According to the researchers, prolongation can happen through technical advancements without the victim's awareness. For example, planting a camera in a private area to observe the victim's intimate body parts. This was previously ruled by the High Criminal Court and upheld by the Court of Cassation, as we previously mentioned.

A. The problem of images

The legal system and courts acknowledge a person's right to their own image and prohibit any form of attack, transfer, or capture of a photo that relates to their personal life without their consent. Exploitation of such images is also deemed inadmissible (Al-Khasawneh, 2015, P 171).

There are two types of images: still images and animated ones. Still images are often referred to as "deaf images" as they lack movement and sound. On the other hand, animated images are live broadcasts that combine both sound and movement, making it seem like the owner is right before the viewer's eyes.

In any situation where someone takes photos of another person's private parts without their consent, they have not only violated that person's privacy but have also broken the law. According to Article 348 bis of the Penal Code, punishment will

be given accordingly. This law applies to anyone who violates someone else's privacy by eavesdropping, watching, or using any type of recording device, such as a camera or binoculars. The penalty for repeat offenders will be doubled.

According to the researchers, images related to electronic indecent assault and involving assault on private parts should be treated as a special case. It is not considered a crime if the owner of the photos or videos featuring their private parts shares them publicly. However, they may be prosecuted for violating public modesty.

Indecent assault is not considered a crime between spouses, even if a man views his wife's body through a video or photo. The violation of privacy is only a crime when committed by someone other than the spouse. The Mafrag Magistrate Court moved to "criminalise the act of a husband who took a picture of his wife while she was in the bathroom, which the judiciary considered a violation of the sanctity of her private life, which is what we mentioned previously."

The Jordanian judiciary decided that "peeping through videotaping at the victim's private parts is a prolongation of her private parts, and therefore this is considered an indecent assault." The violation of private life has resulted in another crime falling under the jurisdiction of the High Criminal Court. The Court of Cassation made this clear in a recent decision, "the actions committed by the accused include installing a camera in the men's bathroom in the workplace where he works with the complainant, which the latter uses to spy and film the complainant while she was using the toilet, filming her (pictures and videos), and exposing her private parts... and therefore the actions of the accused constitute, in legal application, all the elements of the felony of indecent assault, in violation of the provisions of Article (297) of the Penal Code... in addition to the misdemeanour of violating the sanctity of private life" (Jordanian Criminal Cassation, 3882/2021, Amman, Jordan).

In jurisprudence, there exists a contentious debate surrounding the possible separation of the right to image from the right to privacy. On one side of the argument, certain individuals propose that each person must have the right to their own photographs, even when in public spaces (Al-Ahwani, 1978, P 76). Meanwhile, others assert that the right to image is intrinsically linked to the right to privacy, and therefore, taking photographs can be construed as an invasion of one's private affairs, a fundamental component of the right to privacy. Notably, both perspectives have been subject to criticism and further discussion.

The researchers posit that if the offender gains access to explicit images or videos containing the intimate body parts of the victim, this constitutes a violation of personal privacy and an additional offence akin to indecent assault. However, viewing such content unintentionally, without any criminal intent behind it, does not carry the same weight as actively penetrating or distributing said materials (Al-Rai & AlOmran, 2024).

It is important to consider that there are concerns among legal experts regarding the precise definition of electronic assault as a criminal offence. These concerns relate to the specific elements and implications of expanding the scope of criminalisation, as well as court decisions, particularly those issued by the High Criminal Court.

Due to advancements in social media technology, the Grand Criminal Court has embraced new and innovative elements. This was further supported by the Court of Cassation, which stated that long-distance communication can now be carried out through electronic means such as phone or video calls (Decision No. 1020/2020, Amman Criminal Court of Cassation, dated 7/21/2020). These developments were previously unknown to the criminal judiciary and are supported by the researchers.

B. Applying the Penal Code to the Crime of Electronic Assault

Due to the lack of a specific Act in the Jordanian Cybercrime Act that criminalises electronic assault, the Jordanian courts have been forced to resort to the Penal Code when dealing with such cases. This is because the Penal Code allows for the application of any relevant legislation, including the Cybercrime Act, and the same penalties prescribed therein. This has become necessary in instances where the perpetrator commits a criminal act that falls under the Cybercrime Act.

The Penal Code is crucial in safeguarding individuals against sexual assault. It serves to protect two fundamental interests - modesty and public morals, as well as the privacy of a person and the protection of their body. As a result, courts have ruled in multiple instances that the Penal Code should apply to actions that involve the victim's private parts being exposed or viewed through technical or electronic means. Although some legal experts oppose this interpretation, as previously mentioned.

Indecent assault is classified as a serious offence, whereby an individual employs physical force or coercion against a female in order to carry out the crime. Article 296 of the Jordanian Penal Code outlines this provision, specifying that those who engage in such behaviour will be subject to harsh labour for no less than four years. Notably, if the victim is under fifteen years old, the minimum punishment increases to seven years.

Article 297 of the Jordanian Penal Code No. 16 of 1960 and its amendments stipulates that “anyone who violates the honour of a person who is unable to resist due to physical incapacity or psychological deficiency or because of the forms of deception used against him or forced him to commit it shall be punished with temporary labour.” Article 298 stipulates that “anyone who assaults, without violence or threat, the honour of a child - male or female - who has completed fifteen years of age but has not completed eighteen years of age or induces him to commit an act of indecent assault, shall be punished with temporary labour for a period not exceeding ten years.” Article 299 punishes “anyone who violates the honour of a child - male or female - who has not yet completed twelve years of age or causes him to commit an act of indecent assault, with or without violence or threat, shall be punished with temporary labour for a period of not less than eight years.”

The punishment for the crime mentioned in this study varies depending on the specific act committed. The researchers suggest that even threats made through electronic means can be considered punishable. For instance, if someone threatens to expose a victim in exchange for violating their privacy by viewing their private parts through electronic means, this constitutes a type of cybercrime that should be regulated by Act.

Conclusion:

This study has highlighted a clear legislative gap in Jordanian Act regarding the crime of electronic indecent assault, as the Cybercrime Act does not contain an explicit provision that criminalizes or clearly defines this act.

This omission has compelled Jordanian courts to rely on the traditional Penal Code to address such crimes and ensure effective deterrence. The analysis has shown that judicial application has, to some extent, managed to bridge this gap, but it remains a temporary solution that does not absolve the legislator of the responsibility to intervene directly through legislation.

Recommendations:

Based on the above findings, the study recommends that the Jordanian legislator introduce a clear and explicit amendment to the Cybercrime Act that includes a specific definition of electronic indecent assault, to prevent confusion with acts contrary to public modesty. It further recommends that the judiciary continue to rely on its current jurisprudence as a transitional mechanism until comprehensive legislative reform is enacted, while also emphasizing the importance of drawing on comparative legal experiences to enrich the doctrinal and legislative debate.

It should be noted that, despite the practical results and recommendations reached, this study did not examine all dimensions of the phenomenon in detail.

This leaves room for future research to focus on a broader comparative perspective or to analyze the social and judicial impact of criminalization, thereby contributing to the development of national criminal policy and reinforcing its position within the international legal framework.

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