

CRIMINAL LIABILITY RESULTED FROM THE SEXUAL HARASSMENT CRIME ACCORDING TO THE JORDANIAN PENAL CODE

Abdullah Ahmed Al-Khseilat, Applied Science Private University
Moayad Hosni Al-Khawaldah, Philadelphia University

ABSTRACT

The protection of the female or male is the duty of any country in the world which matter starts by protecting the body against sexual assault which has been criminalized by the legislator in the Jordanian Penal Code through explicit provisions providing for criminalizing a number of crimes, e.g. the crime of rape when the victim is a female only or the crime of molestation when the victim is being (a male or female) or of inappropriate flirtation in a public place or inappropriate flirtation in a private place. In fact, and as for the verbal or gestural sexual harassment, then the same was not approached by the Jordanian Penal Code. Yet, would the traditional provisions be sufficient to criminalize the same or that explicit legal provisions should be laid down? In addition, what is the criterion for the existence or non-existence of the sexual harassment for which this crime that has been spreading largely in the Jordanian community should be faced since the sexual harassment is mostly represented by the sexual expressions that encroach on the dignity of the female or the male but the victim is mostly a female who stands to be half of the community while this crime causes her to sustain a psychological and physical damage. Actually, we arrived at a number of conclusions and recommendations, the conclusions that have not been provided for the legislator in the Jordanian Penal Code concerning the crime of the sexual harassment explicitly while the provisions of criminalization may not stand to be a reference. In fact, the crime of the sexual harassment is broader than the legal provisions set in the Jordanian Penal Code, e.g. simple catcalls, inappropriate comments and minor incidents in which the criteria is the person him/herself and the psychological impact of the same in him/her. As for the recommendations, then I hope that the Jordanian legislator shall explicitly provide for the crime of sexual harassment in the Jordanian Penal Code while the proposed wording shall be as follows by adding article 306 et. "the sexual harassment A- Every person who harms others at a public or a private place through sexual or pornographic gestures or suggestions, and whether by overtone, statement or act directly or indirectly by using the technological means shall be punished by sentencing jail for a term that shall not be less than six months and not more than one year or by the payment of a fine that shall not be less than five hundred Dinars and not more than one thousand Dinars.

B- The penalty of sentencing to jail for a term of not less than one year and not more than three years or the payment of a fine that shall not be less than one thousand Dinars and not more

than three thousand Dinars shall be imposed if the crime shall be repeated within one year as from the issuance of a convection ruling in the first crime.

Keywords: Crime, Sexual Harassment, Penal Code.

INTRODUCTION

The sexual harassment is usually the result of behaviors committed by men for whom several of the laws around the world do expressly provide for penalties against the sexual harassment but, meanwhile, they stress that each of men and women may be sex offenders or victims of harassment but yet, most of claims are made by women.

Significance of the research: The sexual harassment is a significant legal subject since this crime is increasing at the Jordanian community and many of the sexual harassment cases are not referred to courts for which there are several reasons which include mainly having no explicit legal provision concerning the same other than the fears of the female to proceed with filing a complaint to that effect. Hence, and as lawmen, it is our duty to demonstrate this crime by searching in the same to achieve the justice sought by the Jordanian State and the Jordanian legislator (Ahamd, 1999).

The theme of the research: The sexual harassment has no legal provisions criminalizing it in the Jordanian Penal Code while the legal rule states that "there is no crime or punishment except based on a provision". Further, and according to the Jordanian Penal Code, the other crimes provided for by the legislator in the Penal Code may not stand to be a basis for measurement since measurement is not allowed in the provisions of criminalization but measurement may be done in permissibility provisions. Further, there are no specific criteria for considering a sexual harassment satisfied or not (Casorla, 1995).

This research will find appropriate answer for this question: What is sexual harassment? Is the sexual harassment sustained by the male or the female? The position of the Jordanian Penal Code against the sexual harassment? What are the criteria to consider the sexual harassment satisfied or not? (Jamal, 2011).

RESULTS AND DISCUSSIONS

The Concept of the Sexual Harassment

There are several definitions for the concept of the sexual harassment whether being jurisprudential or international definitions which include as follows:

Bullying, coercion; to practice a physical act or otherwise an inappropriate or unwelcome promise to give rewards against sexual services (Khalid, 2006).

Further, it is any unwelcome sexual act like physical contact, sexual suggestions or comments concerned with the color, showing pornographic and sexual demands whether by saying or act while this act may be humiliating and may result in health and security issues while it stands to be a type of discrimination when the woman believes that her objection against such

acts may cause her to sustain damages at work including the hiring, promotion or creating an aggressive work atmosphere.

In fact, and in Europe, it is defined as being the occurrence of any form of the undesired acts or sayings or otherwise the physical behaviors that are of a sexual nature aiming at affecting or encroaching the dignity of a person, particularly when creating a scary, aggressive, humiliating or insulting environment (Mahmoud, 1988).

In Denmark, it is when any act or saying would change the status of the sexual victim against her wish resulting in the feeling of the victim as being inferior or otherwise encroaching his/her dignity in which the man and the woman stand to be equal for which any act seeking to change this balance in the status using the sex as a tool stands to be a harassment at the workplace. In fact, the comments and jokes stand to be discrimination if the manager expresses the same in a written policy. Law No. 1385 of December 21st, 2005 (Medhat, 2000).

As for France, then it is defined as harassing any person in order to obtain sexual services. Hence, the Jordanian legislator did not define the sexual harassment in the Jordanian Legal Code since the term of the sexual harassment was not already mentioned but it may be said that the sexual harassment is abusing by expressions or suggestions that encroach the dignity of the female or the male or otherwise being against the customs and traditions adopted by the Jordanian community. Hence, the criteria are that of the usual person (i.e. those expressions are measured if being addressed to another female or another male and of course there shall be a discretion power for the court of subject to appreciate those expressions).

The Studies and Researches Conducted in Jordan Concerning the Sexual Harassment

There are several studies and researches in Jordan that stress on the increasing phenomenon of the sexual harassment in the Jordanian community denoting that they are not individual cases but they are increasing continuously which increase is attributed to several factors which include the difficult economic situation sustained by the Jordanian State in past and in present when the economic situation turned to be worse with the spreading of the Corona pandemic which contributed in increasing the rate of unemployment, poverty and the lack of the religious and cultural awareness in addition to revealing clothing and the increasing use of the electronic media in the social communication which all contributed largely in the large increase in the said phenomenon (Mohammad, 2005).

Accordingly, there have been specialized studies concerning the sexual harassment in Jordan of which a study was conducted at the workplaces by a research team from the Hashemite University to the benefit of the program on supporting the initiatives of opportunities equality sponsored by the Canadian International Development Agency which showed that 14% of the working females in Jordan sustain the verbal sexual harassment at their workplace while 0.7% of them sustain the physical sexual harassment and 8% of the female workers sustain a verbal violence against 2.3% sustain a psychological scarring and threats by the boss.

Further, there is an official report issued by the Society of the Jordanian Women Solidarity Institute (Tadamon) denoting that half of the working females in Jordan sustained gestural or verbal harassment and that the percentage of spread of the sexual harassment at the workplaces

amount to 42%. Further, that of the significant reasons for the non-entry of women to the work market and their withdrawal from the same is attributed to breaching the area of safety within which they are working.

Furthermore, there is another study which was conducted in four of the Jordanian governorates which revealed having 53% of the Jordanian females who sustained sexual harassment in which the verbal harassment came to be at the first place followed by harassing by looking and gestures then harassing by physical contact and using the several means of contacting.

In addition, another study on the sexual harassment confirmed that 75.9% of the women sustained one or more of the harassment acts and behaviors and that most of the persons who committed harassment at home are the other relatives at the rate of 11% while it amounted to 52.9% at public places by male strangers while it amounted to 29.1% by male colleagues at the work and study places to reach 43.9% by male strangers in the electronic space.

In fact, and in addition to the previous studies on the sexual harassment, a number of factual interviews were conducted with women who sustained sexual harassment including as follows noting that the names are made for presentation only:

1. Najwa who works as a teacher confirms that she sustains verbal harassment particularly from some of the taxi drivers who play inappropriate, low-class songs after which the driver starts his immoral manner by staring through the mirror and muttering inappropriate language.
2. Sawsan who is an employee states that she sustains verbal harassment also from some of the work colleagues when she is forced to demand moving from the said section while she would not file a complaint fearing releasing mutters and otherwise.
3. Sajeda confirms that she sustained the sexual verbal harassment while Rana terminated her work at one of the companies after repeating harassing her verbally by some of the customers, particularly when she felt that the manager of the company asks to accept the inappropriate acts of the customers for which she decided to quit.

Accordingly, the civil community institutions and organizations that defend the rights of women and children in particular shall work to adopt a clear strategy that is of a specific goals and means to fight against the sexual harassment in addition to increasing the awareness and educational programs on the sexual harassment through the media being the fourth authority in the state other than having a large impact on the community. Further, work should be done to facilitate the reaching of the females who sustain sexual harassment to specialized centers to offer supporting services like hearing, guidance and legal assistance which matter may be conducted by the support of the local, regional and international organizations that are concerned with women rights.

In addition, it is shown is aforementioned that the sexual harassment is increasing in Jordan while the sexual harassment mostly spread is the verbal sexual harassment through degenerate sexual comments, asking sexual questions, indecent jokes and insisting on dating. Further. There is a non-verbal sexual harassment made through gestural looks or physical implications while the criteria of the sexual harassment, particularly the verbal one are abroad criteria and hence, would the Jordanian Penal Code absorb this crime? This is what we will search thereafter.

The Position of the Jordanian Penal Code against the Sexual Harassment

The phenomenon of the sexual harassment is an old one for the community but was at its narrow scope after which it expanded and sustained a continuous increasing, particularly with having not been restricted to the traditional sexual harassment but having introduced the electronic sexual harassment for which the Jordanian legislator should have approached the said crime to protect the female in particular from the physical and psychological damage that may be sustained by her.

As a start, the Jordanian legislator did not provide for the crime of the sexual harassment in the Jordanian Penal Code No. 16 of 1960 amended by the Law No. 27 of 2017 but it provided for the sexual assault against the female or male by criminalizing the rape and molestation in articles 292 – 301 of the previous law and the inappropriate flirtation at a private place in article 305 of the previous law as well as the inappropriate flirtation at a public case in article 320 of the previous law which all said provisions approached the physical assault but did not approach the sexual harassment by saying or writing. In fact, and in article 306 of the previous law, the legislator stated that "every person who commits an inappropriate act or addressed any immoral statements or conducted immoral acts inappropriately by saying, act, movement or gesture whether explicitly or implicitly shall be punished by sentencing to jail for a term that shall not be less than six months whenever the assault shall occur to:

1. A person who is less than eighteen years old
2. A person whether being male or female who attained eighteen years old but based on no consent.

By reading article 306 of the previous law, we question whether the said article applies to the concept of the sexual harassment? It may be said that having the previous article is a positive matter but the concept of the sexual harassment is a broader one and that some of the terms that are considered of the sexual harassment are not subject to the said article, e.g. the simple catcalls, the insulting comments, the minor incidents and hearing inappropriate songs or simple suggestions. Further, measurement may not be conducted in the Jordanian Penal Code concerning the provisions of criminalization between (the crime of the sexual harassment that was not provided for by the Jordanian legislator and the previous article). In addition, the previous article did not state at the electronic sexual harassment, particularly the Jordanian Electronic Crimes Law No. 27 of 2015, article 15 which provides that

"Each person who commits any crime punishable pursuant to any applicable legislation by using the Internet, any information system or website or otherwise contributed, instigated or interfered with committing the same shall be punished by the punishment provided for in that legislation".

In fact, and as the Electronic Crimes Law did not provide for the electronic sexual harassment crime, then the reference shall be made to the Jordanian Penal Code which did not provide for the said crime resulting in the criminal's escaping the punishment.

Hence, we hope that the Jordanian legislator, and to avoid the legal argumentation and to fill the said legal gap, to explicitly provide for the crime of the sexual harassment in the

Jordanian Penal Code while the proposed wording shall be as follows by adding article 306 et. the sexual harassment A- Every person who harms others at a public or a private place through sexual or pornographic gestures or suggestions, and whether by overtone, statement or act directly or indirectly by using the technological means shall be punished by sentencing jail for a term that shall not be less than six months and not more than one year or by the payment of a fine that shall not be less than five hundred Dinars and not more than one thousand Dinars.

B- The penalty of sentencing to jail for a term of not less than one year and not more than three years or the payment of a fine that shall not be less than one thousand Dinars and not more than three thousand Dinars shall be imposed if the crime shall be repeated within one year as from the issuance of a convection ruling in the first crime.

CONCLUSION

The sexual harassment occurs at all places and times and is sustained by the male and female but its psychological pains and impacts last for long. In fact, it may not probably be erased from the memory of the female being mostly the victim when she sustained an insult and blackmailing from the sex offender who seeks to find pleasure for himself even if instantaneous.

FINDINGS

1. The legislator did not provide in the Jordanian Penal Code for the sexual harassment crime explicitly while measurement may not be done in the provisions of criminalization and that the crime of the sexual harassment is broader than the legal provisions set in the Jordanian Penal Code, e.g. simple catcalls, inappropriate comments and minor incidents in which the criteria is the person him/herself and the psychological impact of the same in him/her.
2. The sexual harassment is sustained by the female and the male but this crime mostly occur to the female which harassment has no specific place or time to occur and that the sexual harassment is not restricted to the traditional form but may be an electronic harassment.

RECOMMENDATIONS

1. We hope that the Jordanian legislator to explicitly provide for the crime of the sexual harassment in the Jordanian Penal Code while the proposed wording shall be as follows by adding article 306 et. the sexual harassment A- Every person who harms others at a public or a private place through sexual or pornographic gestures or suggestions, and whether by overtone, statement or act directly or indirectly by using the technological means shall be punished by sentencing jail for a term that shall not be less than six months and not more than one year or by the payment of a fine that shall not be less than five hundred Dinars and not more than one thousand Dinars.
2. The penalty of sentencing to jail for a term of not less than one year and not more than three years or the payment of a fine that shall not be less than one thousand Dinars and not more than three thousand Dinars shall be imposed if the crime shall be repeated within one year as from the issuance of a convection ruling in the first crime.
3. We hope that the civil community institutions and organizations that defend the rights of women and children in particular shall work to adopt a clear strategy that is of a specific goals and means to fight against the sexual harassment.

4. We hope to increase the awareness and educational programs on the sexual harassment through the media being the fourth authority in the state other than having a large impact on the community.
5. We hope to work to facilitate the reaching of the females who sustain sexual harassment to specialized centers to offer supporting services like hearing, guidance and legal assistance which matter may be conducted by the support of the local, regional and international organizations that are concerned with women rights.

REFERENCES

- Ahamd, K. (1999). *Rules and principles of criminal procedures in the Egyptian law*. Cairo: Dar Al Nahda Al-Arabiya.
- Casorla, F. (1995). *The speed of the criminal trial in French law, R.I.D.*
- Jamal, A. (2011). *Criminal order and the field of application*. Al Halabi Law Publications, Mansoura: Dar Al Fkr Al Qanone.
- Khalid, S. (2006). *Criminal order, analyzing comparative study*. PhD thesis, University of Cairo.
- Mahmoud, H. (1988). *Explaining the law of criminal procedures*. Cairo: Dar Al Nahda Al-Arabiya.
- Medhat, R. (2000). *Brief procedures to terminate the criminal case in light of the amendment of the criminal procedures law- Comparative study*. Cairo: Dar Al Nahda Al-Arabiya.
- Mohammad, A. (2005). *Criminal order in the criminal procedures law- its nature and relevant regulations- Comparative Study*. Cairo: Dar Al Nahda Al-Arabiya.