

THE ADEQUACY OF PENAL PROTECTION FOR CHILDREN AND PEOPLE WITH DISABILITIES FROM BEING USED IN ELECTRONIC PORNOGRAPHY: “A CRITICAL ANALYTICAL STUDY OF THE TEXT OF ARTICLE 9 OF THE JORDANIAN CYBERCRIME LAW”

Abdallah Majed Abdel-mutaleb Alakayleh, Ajloun National University

ABSTRACT

The study addressed the crime of using electronic pornography to influence children and people with disabilities in accordance with the text of Article 9 of the Jordanian Cybercrime Law. It also addressed the availability and lack of adequate criminal protection in accordance with the Penal Law. Moreover, the study focused on defining this crime in terms of its concept, nature, place, and the legal form needed for the crime to be realized as well as the stipulated penalties and their adequacy. Finally, the study focused on clarifying the most important legal gaps overlooked by the aforementioned text, especially with regard to the association of the material element with the purposes of influence, direction or incitement. This would narrow the scope of the application of the legal text, so that it leads to the escape of many criminals from punishment. The study concluded with a number of results and recommendations which aimed to recommend the Jordanian legislator to revise the aforementioned text in form and content in accordance with the law.

Keywords: Pornography, Cybercrime, Sexual Exploitation, Incitement, Influence, Jordanian Legislator

INTRODUCTION

At the present time, there is no doubt that the Internet has become an important source for education and to access to information and services. Rather, it is considered a rich and wide field, especially for young people. With the spread of Internet services in Jordan, the accompanying large spread of computers, phones and smart devices, and the diversity of available applications, all of which has contributed to an increase in the use of the Internet among children, in addition to the wide spread of connecting gaming devices to the Internet. There is no doubt that this spread has major positive impacts on children, represented in easy communication and access to educational content. However, the use of the Internet by children carries some fears and risks, perhaps the most important of which are addiction to the use of the Internet, sitting for long hours in front of the device, exposure to sexual, hateful, or violent materials that encourage dangerous or illegal acts, as well as addiction to watching pornographic images. This may lead to perpetrating heinous crimes. There are also the risks of physical harassment as a result of providing personal information or arranging face-to-face meetings with unknown persons, in addition to being harassed and blackmailed through hostile or professional messages, and lastly the risk of violating privacy and providing personal information to unknown people (Nabih, 2008).

The rapid changes and the ease of publishing content on the Internet from any party at any time without a unified legal law to which everyone is subject, in addition to the spread of Internet use among young people, technical developments and changing the nature of devices and tools that are used to access the Internet, all of these led to putting challenges for protection

children from the dangers of the Internet. Dealing with these challenges requires concerted efforts to reduce their damages (Fathy, 2012).

In any case, it has become certain that the most important risks of the Internet to children are those related to crimes of sexual exploitation, and in particular, crimes of using electronic pornography to influence children and disabled people. This crime has become one of the worst forms of media and communication crimes. It spread more in the 80s and 90s, and the situation has worsened in the 2000s with the spread of what is known as sex tourism as it is an encouraging practice for the exploitation of children and the disabled people in pornography and the promotion of this through informational means. The forms of children's sexual exploitation through the Internet have varied despite the local, regional, and international efforts attempting to limit the spread of this disease, which has become a great danger to children, mentally and psychologically handicapped, and humans. The electronic sexual exploitation of children and mentally or psychologically disabled persons is considered a religiously abhorrent and legally criminal act, which is strongly condemned by societies of different religions, customs and traditions. The Internet has become the largest means of aiding the intensification of the crime of sexual exploitation of children and the disabled people, within the framework of the close relationship between the sexual exploitation of these groups as a criminal phenomenon and the Internet as an effective means of communication in raising the level of this crime. In this field, studies confirmed that 62% of parents do not know that their children watch pornographic websites on the Internet, and the percentage of these parents is increasing in Arab countries as a result of the high rate of information illiteracy¹ (Al-Mana'sa, 2017).

We find many industrialized countries in the world allow adults to watch pornography based on their laws that guarantee freedom of opinion and expression. There is a high percentage of children exposed to pornography on an ongoing basis, as children start watching pornography at a very early age (11 years). (80%) of children aged (16 to 18) have been exposed to highly obscene pornography, and (90%) have viewed pornography *via* the Internet, often while doing their homework. Perhaps the matter that constitutes a risk on these people is the possibility of being sexually tempted by adults. We also find that some companies producing pornographic materials have exploited some cartoon characters to be a link to thousands of pornographic sites on the Internet² (Al-Nawaisah, 2017).

In the Jordanian legislation, the legislator has dealt with the crime of using electronic pornography to influence children and disabled people in the text of Article 9 of the Cybercrime Law. Despite our reservations about this article and its shortcomings in providing all the requirements of penal protection in addition to the weakness of the text, the legislator might have done well instead of leaving the matter to the general rules that remain unable, perhaps completely, to provide legal protection for these categories of people (Al-Lawzi, 2015).

Research Importance

The importance of the research lies in addressing this type of pornographic crimes known as the exploitation of electronic pornography to influence children and disabled people in accordance with the text of Article 9 of the Jordanian Cybercrime Law, and highlighting the legal position of the legislator regarding it. Its importance also lies in that fact that this type of crime has become dangerous not only at the local level, but also at the regional and global level. This is done through the exploitation of these groups of people in pornography and the large number of this type of crime around the world in light of the events of the Corona pandemic. It leads to the destruction of the future of these people and even the future of society as a whole by killing the meaning and spirit of childhood and the exploitation of those with no mental or psychological capabilities in committing crimes (Abaza, 2014).

Research Problem

The problem of the research lies in that, despite the large number of legal research and literature on the topic of pornography crimes and electronic sexual exploitation of children, they rarely dealt with the crime of using electronic pornography to influence children and disabled people. Although the Jordanian legislator stipulated criminalization and punishment for this type of crime, but this text was and still raises confusion and ambiguity in many of its terms, as we will see later on, especially regarding to incitement to commit a crime. It is inconceivable that incitement by an adult should occur against persons less than the age of majority or persons with mental or psychological disabilities, which violates the general legal rules since incitement can only occur by an adult against another adult (Morsi, 2013).

Research Aims

The research aims to shed light on the crime of using electronic pornography to influence children and the disabled people, by clarifying the concept of crime, its legal elements, the stipulated penalties and the purpose for which the legislator stipulated criminalization and punishment for this crime, as well as stating the most important legal gaps that were overlooked by the crime of Article 9/b. The research also aims to call for the Jordanian legislator to reconsider the mentioned text in terms of re-drafting its legal terms and including others which the researcher believes to be important (Al-Dhahabi, n.d).

Research Questions

- 1) What is the concept of electronic pornography use?
- 2) What is the purpose for which the legislator punishes the acts of using electronic pornography?
- 3) Why did the legislator unify the stipulated penalty for the mentioned crime in all forms of criminal behavior?
- 4) Why did not the legislator specify severe penalties for some forms of criminal behavior for this crime despite its seriousness?
- 5) What are the legal elements that constitute the legal form for this crime?
- 6) Why did the legislator restrict penal protection only to psychological and mental disabilities?
- 7) Why did the legislator mention the criminal activities that constitute the material element of this crime?

Research Methodology

The study focused on stating legislative deficiencies. Accordingly, the study does not use other than the descriptive, analytical and critical approach, as the text of Article 9/B of the Jordanian Cybercrime Law is confusing and ambiguous. The study also aims, through the use of the mentioned scientific approaches, to clarify the most important legal gaps, which the legislator had to pay attention to at the moment of preparing and approving the text, as explained later (Al-Akaylya, 2010).

Research Terminology

Electronic Sexual Exploitation of Children: any depiction of any child by any means while he/she is engaged in real or simulated explicit sexual activities, or any depiction of sexual organs with the aim of satisfying sexual desire³ (Al-Shawabkeh, 2007).

Pornography: any material that visually depicts a child engaging in an explicit sexual behavior whether real or fake, or depicting a child's sexual organs for primarily sexual purposes⁴ (Al-Saeed, 2012).

Disabled Person: every person who suffers from a stable, total or partial deficiency in any of his senses or physical, psychological or mental abilities to the extent that limits the possibility of learning, rehabilitation or work so that he is unable to meet the requirements of his life under the same conditions as his intact peers⁵.

Juvenile: Any person under the age of eighteen⁶.

Research Plan

The First Topic: electronic pornography and its impact on children and disabled people in the Jordanian penal legislation

The First Section: penal protection from electronic pornography for children and the disabled people in the Penal Law.

The Second Section: the penal protection from the use of electronic pornography for children and the disabled people in the Cybercrime Law

The Second Topic: the purposes of using pornography to influence children and the disabled people and the study opinion

The First Section: The purposes of using electronic pornography to influence children and disabled people

The Second Section: The study opinion

The First Topic

Electronic Pornography and its Impact on Children and Disabled People in the Jordanian Penal Legislation

This topic will be divided into two sections; the first will address criminal acts arising from the use of electronic pornography with the aim of influencing children and the disabled people in accordance with the Jordanian Penal Law. As for the second section, it will examine the legal elements of this crime in accordance with the text of Article 9 of the Cybercrimes Law, as follows:

The First Section: penal protection from electronic pornography for children and the disabled people in the Penal Law

Honor and the protection of public morals and ethics are one of the important issues within society. The Jordanian legislator has sought through the Penal Law to criminalize all types of sexual crimes. Rather, he criminalized every act that would offend public modesty under the name of morals violation crimes. He also aggravated the penalty in most cases where the victim is a minor, and so that the legislator provided them protection from sexual crimes or those that would expose them to delinquency. Therefore, the legislator came with general texts regarding penal protection, whether for children or adults⁷. As we mentioned, the legislator focused on the category of children and minors; Article (319) stipulated that (a penalty of imprisonment not exceeding three months or a fine of not more than fifty dinars shall be imposed on:

- 1) Whoever sells or possesses, with the intention of selling or distributing, any harmful printed material, drawing or any photograph, form or anything else that corrupts morals, or whoever prints or re-prints such things or materials in any other way with the intention of selling or distributing them;
- 2) Whoever displays in a public place any obscene image, photograph, drawing or form or anything else that leads to corruption of morals or whoever distributed these things to be displayed in a public place;
- 3) Whoever runs or participates in managing a store that deals with selling, publishing or displaying obscene things, whether printed, drawn, photographed, or any other things that may lead to the corruption of morals. Moreover, whoever announced or broadcast by any means about a person engaged in selling these obscene materials and things or if whomever printed, displayed or distributed them.”

Article 320 also stipulated that: “Whoever does an indecent act or makes an indecent gesture in a public place or in a public community, or in such a way that whoever is in a public place can see him shall be punished with imprisonment for a term not exceeding six months, or a fine not exceeding fifty dinars” (Youssef, 2013).

Through the text of the two articles, we can say that the legislator was keen to prevent any materials that lead to deviation and corruption of morals. However, that possession of obscene materials is not punished unless the intention was to sell them. For example, whoever possesses materials of a sexual nature in his/her e-mail with no intention of selling it is not considered a perpetrator of the crime of breach of public morals and ethics. The crime arises if the offender intends to sell, trade or use it to harm others. In addition to criminalizing this act under the Penal Law, the Jordanian legislator criminalized sexual exploitation of children under different incriminating texts. He stipulated texts that criminalize child abuse in relation to crimes against morals and public ethics in its articles⁸.

In the report submitted by the Hashemite Kingdom of Jordan to the Committee of Child Rights, it was stated that “to refrain from publishing or exploiting the child’s images or using them for other than official or necessary purposes determined by the Case Study Committee and in a manner that does not conflict with the best interests of the child”.⁹ The legislator in the Penal Law and based on the amended law of 2010 criminalized a set of acts that fall within the sexual exploitation of children, including child prostitution and their use in pornography. He also criminalized kidnapping or deporting a minor who has not reached eighteen years of age, even with his consent, with the aim of removing him from the authority of the person who has the right of guardianship over him. The law also stressed on whether the minor was kidnapped or deported by deception or force (Youssef, 2013).

The Second Section

The Penal Protection from the Use of Electronic Pornography for Children and the Disabled People in the Cybercrime Law

First Part: The legal text and the legislator’s purpose from it.

We will explore this part in two divisions; the first division will clarify the legal text of Article 9/B of the Cybercrimes Law, then in the second division, we will explain the legislator’s goal and the purpose of the text as follows:

First: The Legal Text

Article (9/B) of the Cybercrimes Law stipulated that “Anyone who intentionally uses an information system or information network to create, prepare, save, display, print, publish or promote pornographic activities or acts for the purpose of influencing, directing or inciting a person under eighteen years of age, or a person with a psychological or mental disability to commit a crime shall be punished by imprisonment for a period of no less than two years and a fine of no less than 1,000 dinars and not more than 5,000 thousand dinars¹⁰.

Second: The Legislator’s Goal and Purpose from the Text

This text aims to protect two categories of people from the influence of pornographic content and exploitation to commit crimes, namely children who have not yet reached the age of eighteen and mentally and psychologically disabled persons, regardless of their age. Perhaps the concept of children under the age of eighteen is clear. As for the disabled person, it is every person who has a stable, complete or partial deficiency in any of his senses or physical, psychological or mental abilities to the extent that limits the possibility of education, rehabilitation or work so that he is unable to meet the requirements of his life under the same conditions as his intact peers¹¹ (Abdel-Aal, 2013).

It is noted in this regard that the legislator specified the means of committing this crime, which are the same means stipulated in Paragraph (A) of the same Article. These means are limited to two, which are the information system and the information network, through which

the criminal activities stipulated by the text occur. For example, creating, preparing, processing, preserving, displaying, printing, publishing or promoting pornographic activities and works. The legislator's purpose behind mentioning these works is a matter of precaution so that the offender may not go unpunished, although the offender, at the moment of committing this crime, may resort to committing more than one criminal behavior.

In any case, the preparation, preservation, processing, publishing or promotion of pornographic activities committed through information system technology according to the aforementioned text cannot constitute a punishable crime unless these acts aim to influence, direct or incite children who have not reached the age of eighteen or mentally or psychologically disabled persons. The legislator provided another protection that lies in the fact that the incitement or direction of the persons under protection is for any committed crime. This means that he did not specify a certain crime in itself, so the text was absolute¹².

Although we believe that it would have been more appropriate for the Jordanian legislator to provide criminal protection for this category from pornographic content, even if it was in an electronic way. He simultaneously left the issue of criminalizing direction and incitement to commit a crime to the general rules of the Penal Law.

Anyhow, the aforementioned text was weak in terms of wording and formulation. In addition, the researcher has reserves regarding the penal policy of the legislator, in addition to the weakness and poor wording of the text. Along with this, we do not find anything that prevents us from presenting the elements of this crime, as we note first that the legislator used the alternation method of criminal behavior for the material element of this crime by mentioning the criminal activities that are the subject of this crime. This means that the commission of this crime does not require the commission of all or some of these activities. Rather, it is sufficient for the perpetrator to resort to any of them in order to achieve the meaning of the criminal behavior.

Part Two: The Material Element of the Crime

As we said, the legislator resorted to mentioning the criminal activities that make up the material element of this crime, taking into account that the perpetrator's commission of any one of them is sufficient for the establishment of the legal form of the crime if the rest of the elements are realized. From the apparent meaning of Article 9/b of the Cybercrime Law, it becomes clear that these criminal activities that make up the criminal behavior are as follows:

First: Creation: It means the creation of electronic pornographic content, *i.e.*, the offender resorts to creating something that did not exist before. For example, filming pornographic videos of the victim, taking some photographs, recording audio clips, or making electronic writings about the victim, and so on.

Second: Preparation: as defined by some of the jurists, it is when the offender obtains pornographic content without having any interference in creating it.¹³ The question here is about the legislator's intention of the term "preparation". Does he mean the preparation of pornographic content to be used later? which legally represents the preparatory stage prior to the commission of the crime - the stage of initiation - or does he mean the ability to use the work or pornography by the tools specified in the mentioned text, which represents the stage of completion of the crime?

This question mainly aims to define the concept of "preparation" as a form of physical behavior and how it is related to the information network or the information system. The answer to this question can be found by referring back to the text of Article 9/B where the phrase "Whoever intentionally used...etc.." is mentioned¹⁴. Perhaps this phrase suggests, at first glance, that the legislator's intention of preparation refers to the ability of the work to be used, thus the material element of the crime here is at the stage of its completion. This means that there is an act that has occurred and is connected to the pornographic activity or work. This can be inferred

through the perpetrator's preparation of the pornographic act in order to achieve the crime, as it was indicated and addressed by the legislator based on what was stated in Paragraph "B".

Nevertheless, we believe, along with some jurists, in the need to expand of the scope of this text, with the aim of including the preparation. Perhaps the reason lies in the fact that preparation has multiple forms, some of which constitute independent acts that enter the stage of initiation and others constitute acts related to the act of the crime so that the latter is complete if the intent or action and effect are achieved. The best example of this is the offender's possession of pornographic material; in this case, the act is considered a crime and adapted as an attempt by the offender to commit the crime. Here, the legal effect includes both stags, which are preparation or working on usability. In other words, criminalization must include preparation for any pornographic activity or acts, as well as working on its usability in a way that is fit with the nature of using the information network or the information system as a means to commit a crime with the aim of affecting mentally or psychologically disabled persons or children who have not reached the age of eighteen¹⁵.

Third: Preservation: It is the means used to secure the pornographic material and the possibility of referring back to it. Rather, it is the means which the offender resorts to in order to possess the pornographic content electronically, such as downloading the pornographic content from a website and keeping it in an electronic memory or CD.

Fourth: Presentation: It means making work or activity available by presenting it to an unspecified number of people, whether at their request or otherwise. In other words, any way in which pornographic content is made available for people to see. This element may be embodied by the offender displaying photos of the child in sexual positions through his social network sites so that all his friends can view them. The presentation is supposed to be made to unlimited number of people, often for the purpose of trading or selling.

Fifth: Printing: It means when the offender obtains the physical output of the electronic pornographic content. The question, in this regard, is what the legislator means by "printing"? is it the act of entering data or does he mean producing pornographic material, whether it was an activity or work, on a paper material or in any other form such as DVD or CD or the like? Perhaps the answer to this requires referring back to Paragraph "B", where it is found that the legislator's intention is to print the pornographic material in a paper form or something similar, because the criminalization in this case is related to the electronic output, not the input. Moreover, the data entry process is within the stage of preparation, not printing. Accordingly, the offender's conduct of any process that leads to the extract of pornographic material in a printed form constitutes a crime punishable by law according to Paragraph "B" above¹⁶.

Sixth: Publication: It means broadcasting or communicating pornographic material to as many categories under protection whom are specified in the legal text, as possible. In other words, it is broadcasting pornographic material using electronic means without specifying the recipients and the viewers. Publication is not limited to one digital or specific area. Instead, its use, scope and presence exceed more than one website or means in order to be able to be delivered to the largest possible number of people. Therefore, the element of publicity is achieved in the crime committed. The concept of publication may be close to the concept of presentation, but the distinguishing criterion between them practically is related to the number of views, the percentage of viewing, or the number of media on which the pornographic material or work is uploaded.

Seventh: Promotion¹⁷: it means putting up pornographic content, whether in general or in particular, but it does not stop at this point. Rather, it requires the promoter to strive to deliver it to the recipients and makes them want it. In a more clear way, promotion means to go beyond creating a pornographic content, and rather to spread, market and deliver it to the public in a way that may amount to trading. Therefore, the legislator has done well by stipulating this dangerous criminal act "promotion" due to the greater damage that it entails compared to previous criminal activities. Examples of promotion are the perpetrator's use of the information network or system by sending e-mails or messages on websites containing an electronic link for

pornographic material to be published and promoted in a manner that encourages others, whether receivers or users, to work on publishing, sending and circulating it, whether for a fee or for free¹⁸. Thus, the aim of all of this is to exploit this pornographic material for the purposes of influencing those who have not completed the age of eighteen or who have a mental or psychological disability, or to direct or incite them to commit a crime.

In any case, these acts must be pornographic acts and activities on persons who have not completed the age of eighteen, or persons with mental or psychological disabilities. It seems that the legislator has expanded the scope of criminal protection for the persons subject to the crime in Article 9/B. We wish if he did the same with Article 9/A so the latter would include the protection of people with mental or psychological disabilities, because this category is also worthy of being provided with penal protection from pornography and electronic sexual exploitation in all its forms and types.

If the legislator has applied the age criterion to determine the category of children to be protected so that it does not exceed the age of eighteen, then determining the age limit for mentally or psychologically disabled people depends on a medical standard, which is a temporal standard. Therefore, the legislator has done well by stipulating the protection of this category whether or not they have reached the age of eighteen, and therefore the text of Article 9 applies to them in all its paragraphs.

Reaching a specific goal by the offender through his criminal behavior is not the criterion for punishment by the law; his mere pursuit of any of the previous criminal activities is sufficient for punishment, even if he was unsuccessful.

With regard to the criminal outcome, the legislator does not require a specific result, considering this crime as one of the formal crimes, for which punishment is sufficient for the mere realization of the criminal behavior. The mere fact that the offender prepared the pornographic content, spread, saved it in an electronic memory, promoted it, or printed it is sufficient in itself to realize the crime and be punished for it. Based on the text of Article 9, it is not possible to envisage the attempt of this crime because it is considered a misdemeanor and the general rule states that the attempted misdemeanor is not punishable herewith unless there is a special provision. This is part of the fact that the legislator punishes for this crime with the same stipulated penalty whether the result was achieved or not.

As for the extent of the perception of attempting this crime, according to the general rule, this crime is a type of misdemeanor and falls within the jurisdiction of the Magistrate's Court. Therefore, a misdemeanor cannot be punished unless the legislator stipulates thereof and thus the legislator does not punish the attempt, considering it a formal crime which the legal form of the criminal behavior is sufficient for punishment. From our point of view, we say that if it is not possible to perceive the attempt of some elements of criminal behavior for this crime, as is the case in publication, promotion, or presentation, some of them can be perceived. If the offender is arrested before he performs the publishing process, the attempt is valid.

Second Section: the semantic element of the crime and the spontaneity determined for the crime.

The crime stated in Article 9/B is one of the intentional crimes. The legislator expressly required the intention when he stated in the mentioned article "whoever intentionally commits...etc.". Therefore, it is difficult rather impossible for the crime to occur by an unintended mistake. It is noted from the aforementioned text that the legislator has required the availability of two types of intent, namely the general criminal intent and the particular criminal intent, which will be explained as follows.

First: The General Criminal Intent

As known, it consists of two parts: knowledge and will. As for knowledge, this crime requires that the offender be aware that what he is doing constitutes a crime punishable by law, and he must also know that the electronic pornographic content relates to people who have not

completed eighteen years of age, or persons with mental or psychological disabilities. If this was not known, then the crime in question does not exist. If the offender believes that the pornographic images he prepared, spread, or promoted are related to adult persons or healthy people who have nothing to do with mental or psychological illness, lack of knowledge here results in him not being questioned about the crime. Instead, he will be asked about another crime.

As for the will: it represents the second element of the general criminal intent. It means that the offender, at the moment of his commission of the criminal act, wanted it, so that he is aware of the legal effect and the concept of the violation. The offender is excluded from penal accountability if he can prove he was inflicted by others in committing the criminal act of pornography.

Second: Particular Criminal Intent

For the completeness of the legal form of the crime, the legislator does not simply require the availability of general criminal intent only, but rather the particular criminal intent must be available until the meaning of criminalization and punishment is achieved. This intent is represented in the purposes mentioned by the legislator in the text of Article 9/B, which are three: "Influence, direction or incitement to commit the crime". This means that the offender cannot be punished unless he engages in any of the types of criminal behavior associated with one of these purposes. If its purpose is other than what is mentioned in the text, the crime would lose one of its elements, and thus the offender escapes from the criminalization and punishment according to the mentioned text. Regardless, we believe that this is an unjustified restriction on the mentioned text which will be dealt with later.

Third: The Criminal Penalty for the Crime

According to the text of Article 9/B, the legislator punished this crime with imprisonment for a period of no less than two years and a fine of no less than 1,000 dinars and not more than 5,000 thousand dinars.

It is noticeable from this text that the crime is considered a type of misdemeanor, which falls within the jurisdiction of the criminal court, as indicated by the legislator's statement "imprisonment for a period of not less than two years ... etc."¹⁹. The legislator did not give the court the discretionary power to choose between the two penalties, so combining them is obligatory rather than permissible. In addition to that, it did not specify the upper limit of the prison sentence. Therefore, it is necessary to refer to the general rules in this regard that make the maximum punishment for misdemeanors for a period of three years, because what exceeds this limit falls under the description of felony.

The Second Topic

The Purposes of using Pornography to Influence Children and the Disabled People and the Study Opinion

In Article 9 of the Cybercrime Law, the Jordanian legislator requires that the perpetrator's practice of any of the criminal activities that make up the material element is done to influence, direct or incite the commission of crimes by children below the age of eighteen or persons with disabilities. Thus, in this topic, we will discuss these purposes (the first section), followed up by a statement of our personal opinion (the second section), as follows:

The First Section: The purposes of using electronic pornography to influence children and disabled people

This section is made of two parts; the first summarizes the basic idea of these purposes that the legislator provided for in order for the crime to be complete. Then, in the second part, these purposes are explained separately, as follows:

Part One: The purposes of committing the crime stated in Article 9 of the Cybercrime Law

Although the purposes mentioned by the text, which are influence, direction and incitement to commit a crime differ from each other in terms of meaning, but they all agree that they have a moral effect on persons of criminal capacity, whether they had the capacity or their capacity was deficient, on the grounds that they are young or of the category of persons with mental or psychological disabilities. Accordingly, the legislator has specified the purposes of using the information system or the information network in pornographic activities in three main ways, which in turn may lead to the commission of the crime, which are:

- 1) Influencing persons who have not completed eighteen years of age or persons with mental or psychological disabilities or;
- 2) Directing this category or;
- 3) Inciting them to commit the crime.

Part Two: the concept of the necessary purposes for the commission of the crime stated in Article 9

First: Influence: it means that the sent pornographic content has achieved a certain result in the person to whom it was sent and moved his desire to commit the crime by receiving this material through one of his senses, or accepting, receiving, watching, reading, or seeing similar images to an extent that is possible to be marketed by the recipient. In other words, it means influencing the person to whom the incitement is directed that leads to persuading him through words or actions, whether it is a mere statement or accompanied by temptation with a gift or a threat, or by influencing the person to whom the incitement is directed through the power of the instigator over him, whether accompanied by an action or not²⁰.

Second: Direction: it is directing a person to reach the purpose that the incitement sought, meaning introducing him to the way to reach the commission of what the law forbids so that the combination of these two elements is enough to produce its effect in the person to whom it is directed. An example of this is when a person that is in need of money complains to another person, so the latter suggests he can get the money if he seeks to work in panderism and exploiting the prostitution of others. This statement by the person receiving the complaint is not an incitement but it is a bad advice. However, if he directed him to the way through which he could work in panderism, as well as the names, places and clients, then he made clear to the complainant how he could violate the law so that the way ahead is easy and smooth. Regardless if the complainant decided to go that way or not, he has achieved the second component of the material element for the crime of incitement to debauchery²¹. In conclusion, direction is only guidelines on pornographic content that are given to persons under protection who lack partial or full capacity in order to commit the crime.

Third: Incitement: As it is known, it means urging or attempting to urge the persons subject to protection, through pornographic content, to commit the crime, in a way that leads to this category's exploitation of pornography as an inciting tool, or rather as a means to achieve the criminal outcome. Incitement to vice and debauchery would affect whoever is directed to and persuades him to commit this act, as he find himself cornered, so he submits to the will of his instigation and follows him²². Normally, incitement is done through moving the feelings of the person and urging him to do the acts of vice and debauchery which starts by an-email. Through the latter, pornographic or obscene material, writing or symbols are transmitted to a specific person, a number of people, or organized groups. Incitement is also done by placing websites on the Internet that promote and provide people with information about the places of prostitution, as well as pictures or sexual films of women who will engage in prostitution, with the aim of inciting others to engage in prostitution and immorality²³.

The study raises the following question: if the crime did occur due to incitement, can the instigator be accounted for incitement independently in addition to the crime which occurred as a result of incitement?

Perhaps the answer to this question requires us, by virtue of necessity, to refer to the general rules of criminal accountability and criminal association. Based on the text of Article 80 of the Penal Law, incitement is punishable by itself, whether the crime subject of the incitement occurred or not. This means that in the case the crime in question occurred, the instigator is accountable for both crimes²⁴. In addition, based on the text of Article 9/B, the legislator requires that the offense of incitement be committed if the offender used certain means.

The Second Section: The Study Opinion

Part one: The legislator's determination of the purposes leads to the narrowing of the text and the inadequacy of penal protection.

First: The legislator's determination of the purposes leads to narrowing the text:

The researcher considers that the legislator was not successful in defining the purposes of committing the crime represented by influence, direction or incitement since it would narrow the application of the text. In this regard, the study states a very important question which is why the legislator required that preservation, preparation, publication and promotion acts be associated with the purposes of influence, direction or incitement? Does this mean that the offender will escape from punishment in the event that he prepares pornographic content, saves it in an electronic memory, or promotes it for purposes other than influencing, directing or inciting? as if the legislator stipulated for the punishment for this crime if the particular criminal intent of influence, direction or incitement is available. This is considered an unjustified restriction of non-punishment for the crime, and thus makes the offender escape from punishment.

From our point of view, the answer to that lies in that the legislator has missed the point in terms of his requirement that the criminal act be associated with one of these three purposes for a simple reason, which is that the offender may engage in any of the elements of criminal behavior in accordance with the principle of criminal legality which states that "there is no crime or punishment except by a text" thus the offender escapes from the rule of criminal accountability. Therefore, we believe that the penal legislator should punish the offender for any of the mentioned types of criminal behavior in itself, even if it is not associated with any of the purposes specified in the text. The legislator could resort to stricter punishment in the event that the criminal behavior is associated with any of the aforementioned purposes. Regardless, we believe in punishing the initiation of any type of criminal behavior, whether the criminal result is achieved or not. In any case, we hope that the legislator will take this recommendation in a manner consistent with the law.

Second: Inadequate protection for persons with disabilities based on the two types of disability.

We saw that the Jordanian legislator, according to the aforementioned text, has limited the penal protection of this category to two types of disability, namely psychological and mental disabilities. From our point of view, this matter narrows the legal text by not including all types of disabilities that may be the subject of committing this crime and other crimes, such as physical disability and disability in any of senses such as visual, hearing etc.. Therefore, the legislator has taken out of the text cases that may constitute a disability other than what was mentioned, which means that the text does not apply except to the two types of disability. This appears to be a deficiency which we hope the legislator would address to provide penal protection for all types of disabilities while leaving the matter to the court of jurisdiction where the court can employ experts and specialists.

Part two: the lack of deterrence for the activity of promoting pornographic works and re-drafting of Article 9 /B

First: The lack of deterrence of the activity of promoting pornographic works:

The researcher wishes if heavier penalties were provided for, especially if this promotion was aiming to trade due to the great damage incurred. The offender is of a great criminal danger represented in producing pornographic work, not for a specific person or persons, but rather by displaying pornographic content to the public as a whole. Promotion as an act goes beyond publishing pornographic material or just keeping it or preparing it; it encourages its use and even trading with it. This requires the legislator to take a position from this dangerous criminal activity where he provides a severe penalty for it that differs from the previous prescribed penalties.

Second: Re-drafting the text of Article 9/B of the Cybercrime Law.

In this regard, we believe that the text of Article 9/B should be re-drafted as follows (punishable by imprisonment for a period of no less than two years and a fine of no less than 1,000 dinars and not more than 5,000 thousand dinars whoever intentionally uses an information system, the information network, or any other means of information technology to create, prepare, save, display, print, publish or promote pornographic activities or acts in violation of public order and public morals for those under eighteen years of age or persons with disabilities, and the penalty is doubled in the case of promotion). Here, we have re-aligned the vocabulary of the text smoothly, leading to a sequence of ideas, and then we have included all the electronic means by which this crime can be committed, in addition to doubling the penalty in the event that the offender practices the promotion activity of pornographic works due to the resulting damage and great risks. Furthermore, we have opened the path for the court's discretion in determining the type of disability that would be provided with penal protection for persons with disabilities, not limiting it to two types only as stated in the text. The court of jurisdiction issue can seek the help of experts and specialists in this regard case by case.

Part three: The purpose of incitement in the text violates the general rules

We hope that the legislator would leave incitement to the general rules. Our justification for this is that based on Article 9/B, the legislator did not specify the type of crime that the offender wants to incite, influence or direct to commit. This might be considered a legislative deficiency; the legislator should have specified the type of crime to be within ethical, in fact pornographic crimes instead of leaving the text unspecified. As far as we know that incitement does not occur in this way unless the person who is subject to the incitement is among the people who meet the conditions of penal responsibility, that is, those who have the two capacities of perception, namely "discrimination" or "freedom of choice". Thus, the concept of incitement, as stated by the legislator in the text of Article 9/B, is not in accordance with the law, as the group to be incited is among those who do not meet the description of incitement; people who have not completed the age of eighteen (incomplete capacity), as well as people who suffer from mental or psychological disabilities (lacks full legal capacity). In both cases, the concept of incitement is not at all compatible with these persons, since the use of pornographic content to incite these categories of persons who are not criminally responsible makes the instigator a mediator or rather a moral offender. This is on the basis that he exploited the incompetent person to commit the crime. Therefore, we recommend the legislator to pay attention and address this issue by leaving the issue of incitement to the general rules because incitement simply does not occur except for sane adult people.

Let us suppose, for the sake of argument, that what was stated in the text is correct - despite the fact that it is not. Incitement as a purpose is not consistent with the other elements of criminal behavior mentioned in the text of Article 9/B, because the general rules punish incitement as an independent crime even if the intended crime is not realized. In addition to that, the incitement must find acceptance by the instigating person, and this acceptance must be made by a person who enjoys the elements of criminal capacity. In application to the subject of the research, the incitement is against persons who are below the age of eighteen years or persons with disabilities, and these people, as we said, are not included in the legal classification for penal accountability. Assuming that this is true, if the incitement was accepted by these people, the legislator recognizes that the acceptance or non-acceptance of these groups is not counted.

Thus, the crime has occurred inevitably. All of this is inconsistent with the law. It actually narrows the criminalization and punishment of this text so that the criminal escapes from justice in a legal way. Furthermore, the legislator has specified certain means by which the crime of incitement is committed as stated in Article 80 of the Penal Law²⁵, which is not mentioned in the text of Article 9/B. So, why does the legislator require that the criminal's purpose should be incitement when engaging in any type of criminal behavior held by the previous text, and what is his purpose from that? Perhaps the answer has been mentioned in advance, and therefore we recommend the legislator to reconsider the aforementioned text in form and content in accordance with the law.

The legislator also penalized incitement as soon as the offender tries to compel the person to commit the crime. This means that the attempt is not conceivable here because the crime and the attempt to commit it are punished with the same punishment prescribed for the complete crime.

CONCLUSION

Results

- 1) Despite the weakness and poor wording of the text of Article 9/B of the aforementioned law, it provided penal protection for two categories of persons from the influence of pornographic content and their exploitation in order to commit crimes, namely children who have not reached the age of eighteen years, and mentally and psychologically disabled persons whatever their age.
- 2) The penal legislator did not require the result of a specific crime, considering this crime as one of the formal crimes for which it is sufficient to punish the mere realization of the criminal behavior. The mere fact that the offender prepares the pornographic material, publishes it, saves it in an electronic memory, promotes it or just prints it is sufficient in itself to achieve the crime and punishment.
- 3) The legislator does not punish attempting this crime because it is a type of misdemeanour that requires a special provision.
- 4) The legislator does not only require the existence of the general criminal intent, but rather the presence of the particular criminal intent is necessary in order to achieve the meaning of criminalization and punishment. This intent is represented in the purposes mentioned by the legislator in the text of Article 9/B, which are three "influencing, directing or inciting the commission of the crime."
- 5) For the category of people with disabilities, the legislator limited the scope of protection only to those who have a mental or psychological disability.

RECOMMENDATIONS

- 1) We recommend the Jordanian legislator to re-draft the text of Article 9 of the Cybercrime Law to be as follows (punishable by imprisonment for a period of no less than two years and a fine of no less than 1000 dinars and not more than 5000 thousand dinars, whoever intentionally uses an information system, the information network, or any other means of information technology to create, prepare, save, display, print, publish or promote pornographic activities or acts in violation of public order and public morals on a person who has not completed eighteen years of age or a disabled person, and the penalty is doubled in the event of promotion.)
- 2) We recommend the Jordanian legislator to suffice with the realization of the material element of this crime as soon as the offender initiates any of the mentioned types of criminal behavior in itself even if it is not accompanied by any of the purposes set by the text.
- 3) We recommend the Jordanian legislator to aggravate the punishment in the event that the criminal behavior is associated with any of the aforementioned purposes, which are influence, direction and incitement, even though the researcher does not agree with all of these purposes. At the same time, we recommend to leave the punishment to the general rules.
- 4) We recommend the Jordanian legislator to provide criminal protection for these groups from being exposed to pornography, even if it was electronically.
- 5) We recommend the Jordanian legislator to provide for the punishment for the mere attempt of this crime, as it can be conceived in some elements of criminal behavior. For example, the stage of preparation,

preservation and printing by. If the offender was caught before the stage of promotion, the attempt is achieved.

- 6) We recommend the Jordanian legislator to expand the scope of penal protection for the category of disabled people by not limiting it to mental or psychological disabilities, but rather to include all types of disabilities, and to leave the matter entirely to the court in question, with the help of experts and specialists in that.

ENDNOTES

- 1) Dr. Nisreen Abdel Hamid Nabih, *the cybercrime and cybercriminal*, Mansha Al-Maraed, Egypt, 2008, p. 269.
- 2) Dr. Mohamed Fathy, *Inspecting the Internet to Control Crimes of Assault on Public Morals*, first edition, The National Center for Legal Publications, Egypt, 2012, p. 171 and beyond.
- 3) Ahmed Ali Saeed Al-Ghamdi, *Criminal Protection for Adolescents from Sexual Influences*, Comparative Fundamental Study, Master Thesis, College of Criminal Justice, Naif Arab University for Security Sciences, Riyadh, Saudi Arabia, 2015, p. 27.
- 4) This concept is defined by the Council of Europe Convention for the Protection of the Child from Sexual Exploitation and Abuse, which was approved in 2007 during the 28th Conference of European Ministers of Justice in Spain; it was referred to by Dr. Najat Mualla Majid, *ibid*, p. 13.
- 5) Article 2 of the Rights of Persons with Disabilities Law No. 31 of 2007.
- 6) Article 2 of the Jordanian Juvenile Law No. 32 of 2014.
- 7) Dr. Abdallah Majed Abdelmuttalib Al-Akaylya, *the legal competencies of the judicial police officers in the ordinary and exceptional level*, comparative study, Dar Al-Thaqafar for Publishing and Distribution, Amman, 2010, p. 324.
- 8) Refer to the Jordanian Penal Law No. 16 of 1960, according to its latest amendments.
- 9) The consolidated report of Jordan combining the fourth and fifth reports on the implementation of the Convention on the Rights of the Child and the response to the concluding observations of the Committee on 16/8/2012, which came under the title, *Child Victims of Exploitation*, Legislative Measures, pg. 13.
- 10) Article 9/B of Jordanian Penal Law, *ibid*.
- 11) See: Article Two of Disabled People Rights Law no. 31 of 2007.
- 12) Dr. Ahmed Al-Mana'sa et al., *Crimes of Electronic Information Systems Technology*, A Comparative Study, Third Edition, Al-Thaqafa for Publishing and Distribution, Amman, 2017, p. 273.
- 13) Dr. Abdelilah Muhammad Al-Nawaisah, *ibid.*, p. 314.
- 14) See Article 9 of the Jordanian Cybercrime Law No. 27 of 2015 and its amendments.
- 15) Dr. Ahad Al-Lawzi et al., *Cyber-pornography crime as regulated by the Jordanian Information Systems Crimes Law*, Journal of Sharia and Law Sciences, Vol. 42, No. 3, 2015, p. 839 and beyond.
- 16) Counselor Alaa Fikri Abaza, *Information Technology Crimes*, An Analytical Study of Federal Decree-Law No. 5 of 2012, Publications of the Abu Dhabi Judicial Department, 2014, p. 136.
- 17) The promotion of pornographic data for the purpose of satisfying sexual instincts or achieving commercial gains has become a familiar matter on the Internet. Pornographic pictures and films of young children and underage girls have spread, including pictures and films of sexual operations, rape, or sexual operations performed on minor children, especially those whose ages range from four to six years old. In 1995, the British police discovered the first network that performs lewd shows for children and distributes them. The members of the network collected a large group of lewd images of children estimated at about 150 discs, in addition to the addresses of some people who are passionate about children. Not only this, but the matter went beyond that to exploiting the child to hold sexual conversations through dialogue rooms, including what was known in the United States of America as the porn line of communication that was done by phone before moving to the Internet. This was done by using a group of underage girls to be the other end of the conversation. The danger lies in the excitement, and sexual desires involved in exchanging sexual conversations, and the incitement to prostitution. See: Dr. Rashad Khalil, *Crimes of Sexual Exploitation of Children via the Internet*, Diyala University, College of Law, research published in Al-Fath magazine, No. 27, 2006, accessed on 20/05/2020 at the following link: www.iasj.net/iasj?Func=Fulltext
- 18) The image of a minor in sexual acts is a conceivable matter through the Internet. Organized crime gangs and others exploit this image to promote sex tourism through the Internet, which contains a lot of sexual images that are transmitted every year through this network. Global statistics states that one out of every five children puts their information and personal photos on the Internet, which makes them vulnerable to sexual offenders. See: Dr. Edward Ghaly Al-Dhahabi, *Sexual crimes*, third edition, 2006, Dar Gharib, p. 256, Sayed Hassan al-Baghal, *crimes against morality*, Jurists and the Judiciary, second edition, 1973, p. 203.
- 19) See Article 9/B of the aforementioned Cybercrimes Law.

- 20) Dr. Alaa El-Din Zaki Morsi, the special section of the penal law- crimes of assault on honor, second book, first edition, 2013, p. 30.
- 21) Dr. Alaa El-Din Zaki Morsi, *ibid.*, page 30.
- 22) Dr. Edward Ghali Al-Dhahabi, *ibid.* p. 256.
- 23) Dr. Ibrahim Eid Nayel, *ibid.*, p. 4.
- 24) See: Article 80 of the Jordanian Penal Law No. 16 of 1961 according to its latest amendment.
- 25) Article 80 of Jordanian Penal Law stipulates that “whoever incites another person to commit a crime by giving him money, offering a gift, or influencing him through threat, trick, giving money, or misuse of his position”.

REFERENCES

- Al-Mana'sa, A. (2017). *Crimes of electronic information systems technology: A comparative study, (3rd Edition)*. Al-Thaqafa for publishing and distribution, Amman.
- Al-Nawaisah, A. (2017). *Information technology crimes, (1st edition)*. Dar Wael for publication and distribution, Amman.
- Al-Lawzi, A. (2015). Cyber-pornography crime as regulated by the Jordanian information systems crimes law. *Journal of Sharia and Law Sciences*, 42, 3.
- Al-Dhahabi, E. (n.d.).
- Al-Akaylya, A. (2010). *The legal competencies of the judicial police officers in the ordinary and exceptional level, comparative study*. Dar Al-Thaqafar for Publishing and Distribution, Amman.
- Al-Shawabkeh, M. (2007). *Computer and internet, information crime, (1st edition)*. Dar Al-Thaqafa for publication and distribution, Amman.
- Al-Saeed, A. (2012). *Criminal protection of children against sexual exploitation*. PhD Thesis, Faculty of Law, Mansoura University.
- Abdel-Aal, A.I. (2013). Crimes of sexual exploitation of children via the internet and methods of combating it in criminal legislation and Islamic Jurisprudence. Faculty of Law, Al-Azhar University.
- Fathy, M. (2012). *Inspecting the internet to control crimes of assault on public morals, (First edition)*. The National Center for Legal Publications, Egypt.
- Fikri, A.C. (2014). *Information technology crimes: An analytical study of Federal Decree-Law No. 5 of 2012*. Publications of the Abu Dhabi Judicial Department.
- Nayel, I. (2001). *Criminal protection of child presentation from sexual abuse, A Comparative Study between the French and Egyptian Penal Code, (1st edition)*.
- Nabih, H.N. (2008). The cybercrime and cybercriminal. Mansha Al-Maraed, Egypt.
- The consolidated report of Jordan combining the fourth and fifth reports on the implementation of the Convention on the Rights of the Child and the response to the concluding observations of the Committee on 16/8/2012
- Youssef, Y. (2013). The crime of child exploitation and protection in international law and Islamic Law. National Center for Legal Publications, Egypt.
- Zaki, M.A. (2013). *The special section of the penal law- crimes of assault on honor, second book, (1st edition)*.