

LEGAL STUDY OF CRIMINAL BEHAVIOR BASED ON PORNOGRAPHY ON LAW OF IRAN

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Abstract

This research with a descriptive and analytical method, investigated that whether all sexual crimes that is possible in the real world is also realizable in virtual and cyber world. The occurrence of some sexual crime with the rise of the Internet has been transferred from physical environment to virtual environment; however in some of them the computer and the Internet cannot be considered as a criminal offense, such as adultery, homosexuality, because the occurrence of such crimes requires physical presence. This article concludes that in terms of penal policy in Iran, just pornography is the cases which stipulated in the law that the article 640 of Islamic Penal Act article has expressed traditional pornography and in article 14 of computer crime law has defined pornography and its instances through computers and Also in paragraph (a) of article 15 of the Computer Crime Act, those who incite others to access pornographic content and etc, are punishable And in part of the same article(paragraph b) ,those who incite and encourage others to immoral and sexual crimes ,although is as a deputy, but being considered as an independent crime and are also punishable. In other cases of realizable sexual offences in cyberspace we face with legal Silence and when it is not spoken about Steward and not criminalized and the assignment of such crimes as regards the Steward has not been identified, the assignment of partners and their assistants is unclear

Keywords: Crime, Sexual crimes, Penal law of Iran, Pornography

1- Introduction

Crime is a violation of a norm or a social value that has always existed since the creation of man it has left great influence in the course of historical development With the recent

developments over the past few centuries, especially entering the electronic technologies to the realm of human life, the nature and circumstances of crime also has changed.

One of the most widespread crimes is sexual offenses. Although it seems that sexual offenses by the physical presence of the parties is no related with computer technology and internet. This is while that the influence of technology on personal life and full freedom of space on one hand and the formation of sites and the space in which the sexual issues are promoting is a great challenge for countries, especially Islamic countries. In the meantime, some states attempt to control its damage by enacting laws and determining punishment for pornography and sexuality in cyberspace.

However, due to the speed of changes and the span of technology realm, still from the perspective of law, there are weaknesses and shortcomings that it is very important to fix them. This article has tried to show from the perspective of law what Iranian policies are in dealing with pornography. In other words, from a legal perspective what Iran's position is in dealing with the criminalization and pornography?

2- Statement of problem

Crime literally means transgression and sin and in criminology, all anti-social behavior or stresses that society is undergoing their damages, whether their reason is psychological or social, are called crime [1] In the Penal Act states that any behavior whether acting or leaving an act that law has designated a punishment for it is a crime [2].

One of the most complex issues that threaten social security today is the high rate of crime and increasing social anomalies in it. By increasing the use of communication technology, it has found an special form. One of the most important crimes which, by social and communication developments technology- based have found new forms is sexual offences. sexual offences in general meaning includes normal or abnormal sexual relations such as adultery, homosexuality, sex lives, harrowing or affronting to others 'modesty and disgrace of others and even legitimate sexual act in the presence of others [3].

As Sexual crimes are committed in the physical world, it is also feasible in cyberspace., Computer, in addition to a variety of applications which has in human life, and despite the many services that can be done, it has been an instrumental in the hands of those who abuse, in fact computers have become the technology with two aspects and two applications, the use of positive and negative.

This means, as the Internet, as a virtual world. Enjoys almost all of the material world, there is also the possibility of the crime occurrence in this virtual space, , Thus, virtual worlds, bringing out people gradually from social living and especially calling the new generation into its world.

In general it can be stated that the majority of crimes have the ability to commit through computer .Some of these crimes will not need new legislation, because the nature of these crimes in Result of committing by a computer haven't changed and legislators aren't sensitive to the commit tool of these kinds of crimes, But some other of these crimes, such as sexual crimes, cannot be adaptable or punished by customary law.

The Quran, in a range of sexual crimes, especially for adultery has spoken:

فَاجْرًا لِدَارِهَا كَلْبَةً وَالْمَرْءَ امْرِيًّا مَرَّةً جَلْدًا وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِكُمْ أَنْتُمْ تَدُونَ بِرَأْفَتِكُمْ وَالْيَوْمَ
الْآخِرِ وَلَا يَشْهَدُ عَدَايَهُمَا طَائِفَةٌ مِّنْ الْمُؤْمِنِينَ «

The fornicatress and the fornicator-- scourge each one of them a hundred stripes, and in the matter of God's religion let no tenderness for them seize you if you believe in God and the Last Day; and let a party of the believer witness their chastisement. (24, 2).

حُ إِلَّا زَانِجَةً أَوْ مُشْرِكَةً وَلَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرْمٌ ذَلِيلٌ إِلَى الْمُؤْمِنِينَ «

The fornicator shall marry none but a fornicatress or an idolatress, and the fornicatress-- none shall marry but a fornicator or an idolater; that is forbidden to the believers. (24, 3).

وَلَا تَقْرَبُوا الزَّوْجَ إِذْهُ كَانَ قَابِحَةً وَسَاءَ سَبِيلًا «

Do not approach adultery ,; surely it is something obscene, and evil way. (17, 32)

God almighty in another place also stressed:

لَا يَدْعُونَ مَعَ اللَّهِ إِلَٰهًا آخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْبَيِّنَاتِ وَمَنْ يَفْعَلْ ذَلِكَ يَلْقَ أَثَامًا «

Who call not upon another god with God, nor slay the soul which God has forbidden except by right, neither fornicates, for who does it shall meet the price of sin-- (25,68)

The Holy Quran says about the abomination of sodomy (gay sex):

إِنَّكُمْ لَأَنْثَرْتُمْ بِالرِّجَالِ مِمَّا حَبَّلَ اللَّهُ بِهِمْ إِنَّكُمْ قَوْمٌ مُسْرِفُونَ «

See, you approach men lustfully instead of women; no, you are a people that do exceed.' (7, 81)

أَيُّدِكُمْ لَأَنْتُمْ تَنْزِلُونَ الرِّجَالَ شَهْوَةً مَنْ دُونَ النِّسَاءِ بَلْ أَنْتُمْ قَوْمٌ تَجْهَلُونَ «

why do you approach men lustfully instead of woman? No, you are a people that are ignorant.' (27,55)

In the Islamic penal law, four types of crime about sex and incompatible with chastity include adultery, sodomy, lesbianism and prostitution are listed. In fact, adultery is defined as sexual intercourse between a man and a woman who is not parity between them and also isn't suspicion [2].

Adultery is the cause of penalty if the libertine or adulteress is as an adult, sane, free and also be aware of the ruling and the subject. In act of sodomy both subject and object are penalized, the sodomy penalty for subject if it is a coercive and harshness case, and having a marriage-bound conditions, is execution and otherwise is one hundred lashes . the sodomy penalty for object in any case (the presence or absence of marriage-bound) is execution [2].

The penalty of lesbianism is 100 lashes for each party. The prostitution penalty is seventy-five lashes for the man and for the second time is seventy-five lashes as penalty , and is banished for a year that the judge determines it's time and for a woman, it is only seventy-five lashes [2].

Generally, satisfy sexual desires outside the conventional limits accepted by the majority of society, has always been indecent and immoral and it is known as cause of injurious to family and environment health and social system , and its remedy is one of the problems of human societies [4].

This study examines whether all of these crimes is possible in the physical and real world or can be achieved in the virtual and cyber world too; Because The occurrence of each of these offenses either punishment or imprisonment, by emerging internet ,has been transferred from physical environment to the virtual environment but in some of them the computer and the Internet cannot be convicted as an intermediary of criminal such as adultery, homosexuality, because in the occurrence of such crimes, physical presence is a requirement [5].

Since the criminal policy notes the human trends and freedoms in private space, the theme becomes more apparent in the offenses related to the content.

A person ,in a virtually space which has no owner and is freedoms space , because of curiosity, ambition or a sense of extreme lust-seeking instinct and mischief, acts that are morally or legally guilty or faulty. Public returning to illegal sites, lewd images and lusty

content indicates that natural human instinct finds this content or sites, Coercive state or social control or fear of scandal in the eyes of society, is a major cause of human instincts deviation from the normal path in real space.. Accordingly, this study follows if the traditional and realizable sexual offenses in Cyberspace have been expected in law.

3- Research Methodology

The research is descriptive-analytical method (the library) by use of legal and non-legal books, archival sources, Internet resources, magazines, letters , legal sites and pluralization of different comments and opinions on this issue, in such a way that, according to these sources will analyze cases of sexual offences both in physical space and in cyberspace. The results of this research can provide a comprehensive view of sexual crime and more total vision of it and its ambiguity to the country scientific community.

4- Research Findings

4-1- Legal Review

4-2- Legal Element

In the case of statutory elements of the offense, we review the actions of international organizations and then explain the internal law of penal policy in this case. In the case of pornography in a virtual environment before the adoption of a Convention on cyber crime, there was no regulation environment, but with the adoption of the Convention in 2001, article 9 of the code of crimes was allocated to child pornography. However, in the case of adult pornography there is no international document:

Article 9: 1- each of the members should lay down the rules and regulations in such a way that according to its internal law criminalize any following intentional and illegal actions:

(A) Production of child pornography with intent to disseminate through a computer system;

(B) Providing or squaring away child pornography through a computer system;

(C) Spreading or publishing pornography of children through a computer system;

(D) Provision of child pornography through a computer system for oneself or another;

(E) Having child pornography on a computer system or computer data storage media.

To achieve the objectives set in section the term "child pornography" includes pornographic material that visually and through the following ways is displayed:

(A) A child who apparently are committing a sexual act

B) A person who appears as a child and apparently are committing a sexual act;

(C) The actual images which show a minor committing a sexual act apparently.

3 To achieve the objectives of paragraph 2 the word child includes all persons under the eighteen years. However, before the United Nations Convention on the rights of the child in General (and not in the cyber environment) in article 34, the child pornography has been considered as the following:

Any illegal sexual activity, the exploitation of children in pornographic drawings and contents.

As well as the International Labor Organization Convention 182 was adopted in 1999, under the title of the worst forms of work, in which has been mandated against the following cases:

Use or lured or involving child into prostitution, production of pornography or pornographic performances. As well as The Interpol (International Criminal Police Organization) as an international executive for many years in combating computer crime acts, it has expressed the storage of child pornography in its list [6].

First, in the Iranian domestic law, there is no a term called pornography, but there are laws that say pornography is illegal in Iran. (Without being limited to cyber space, of course).

Including in article 3 of the law punished people who have unauthorized activities in audio-visual, Similarly, Article 640 of the Penal Code, has dealt the criminalization of the production and distribution of pornographic images and movie and only if it is done for commercial objectives and distribution or broadcast them somehow by another person, is considered a crime Referred to in Article 639 of the Penal Code (part imprisonment) can also be used in some cases to ban pornography Accordance with paragraph (b) of this Article, if provides corruption or encourages people to corruption and prostitution.

In addition, the second and third instances Kids Act (passed in 2002), implicitly protect children against pornographic content pornography and 14 and 15 Computer Crime Law also is dedicated to pornography Subsequently, in penal policy in the face of it, we are going to define pornography.

4-3-Material Element

As it was stated material elements of the offense mainly are investigated by noting the articles 14 and 15 Penal code cyber crimes, but if necessary, other materials also will be discussed. Pornographic material element of the offense consists of the following components:

4-4- Criminal behavior

Criminal behavior in this crime, according to article fourteen the Act is production, distribution and transaction and... pornographic content through the computer system.

A) Production means making and creating obscene content via the computer system, whether real or as unreal as it is. Real, as far as shooting sexual intercourse through a webcam to capture and unreal, like a painting or assembly of real images in the virtual environment, this shows sexual intercourse.

(B) Distribution means publication lewd content. Sometimes these acts are carried out in cyber space (which is stated in Article 14) and frequently the lewd content on the site is online, or it may be sent to individuals mails [6]. Sometimes the act is done in real environment and the software and CD. Publication here often means of distribution

C) Transaction means that pornographic content in cyber space transact, including selling, renting and etc. Note that Article14 of the Act, the transaction must be performed in the virtual environment, and supplying in order a transaction is not subject to this section. It may also be transacted on a national or international and transnational level that often it is in transnational level [6]

4-5- The subject of crime

The subject is pornographic and lewd content of crime. Obscene content according to the context article 14 law of computer crime is limited to the following:

Male and female sexual organs show, showing sexual intercourse or a sexual act of humans or humans with animal that include audio and video content.

Means of crime

An offense under Article 14 is computer and cyber crimes that will be committed through computer, and in addition, in addition computer, CDs and computer software also can be used as a means of committing a crime subject Pornography [5].

4-6- Result in criminal

Given that pornography offenses, including crimes that offend decency and public morality does not need a particular result occurred. And the mere physical act is sufficient in crime realization. In other words the crime is considered to be absolute [5].

4-7- Iran's Criminal policy in deal with pornography

In Iranian penal policy in dealing with pornography ,there is no Pornography term, but by law drafting and approval of computer crimes act ,in article 14 has brought the examples of Pornography without definition Regarding this point is necessary that before the ratification of computer crimes code, pornography in other discrete items, including " the Act to punish persons who do audio-visual illegal activities which was approved in 24/11/1993" has been attended by legislators and Islamic Punishment Law has attended to criminalization , production and distribution of pornographic images and films. Relevant rules of law to punish those who do audio-visual illegal activities (24/11/1993 and revised 2007). In the third article of that law is expressed:

Factors of production, distribution and proliferation; unauthorized audio-visual works holders ranging from the permission from Ministry of culture and Islamic guidance or without a license, regarding the content of the work, in addition to revocation of license staff as one of the penalties shall be sentenced:

(A) the main factors of production, and distribution of main pornographic audio-visual works ,for the first time will be sentenced to one to three years imprisonment and confiscation of the relevant equipment and a fine of one hundred million riyals will be sentenced and while repetition, they will be sentenced to two to five years imprisonment and confiscation of the relevant equipment and a fine of two hundred million riyals and in any case if the above-mentioned agents or following persons known examples of Corruptor on earth will be sentenced to a punishment

1. Producers of pornographic works with rape and reluctantly
2. Producers of pornographic material for sexual abuse of others
3. The main factors in the production of pornographic

Note 5: audio-visual works ((obscene)) according to their content is mostly showing naked male and female genital organs or sexual intercourse or sexual display.

B) producers, distributors and reproducer of tapes and diskettes and CDs and vulgar displays for the first time will be sentenced three months to one year imprisonment and fined two million Rials and for the second will be sentenced one to three years imprisonment and ten million Rials a year to afford to three years imprisonment and fined five or thirty three million Rials and if repeated they will be sentenced three to ten years imprisonment or ten million to fifty million Rials and confiscation of the relevant equipment.

Note 1: audio-visual works ((vulgar)) refers to the works with pornographic images and scenes, and promote opposed the Islamic ethos. .

Note 2: owners of cassettes and CDs and pornographic diskettes and vulgar subject to this Act will be sentenced five hundred thousand Rial to five million Rial and confiscation of the relevant equipment

Note 3: The use of minors for conservation, supply, sale and reproduction of unauthorized cassettes and compact disc subject to this Act, the maximum punishment will be operated for agent.

As can be seen, Article 3 of the Penal Code reform who have unauthorized activities will also include computer pornography as including computer software [6].

On the other hand the aforementioned law has established items for people who abuse obscene and vulgar works prepared by others:

Article 4- anyone who abuse with the vulgar and obscene works prepared of someone else, and threatened him/her threatened to expose and release them, and in this way he committed adultery with him/her, will be sentenced the penalty for rape but if the committed act are subject to punishment it will be applied and if the committed act is subject to imprisonment the maximum penalty will be applied [6].

As note 1 article 3 States: the main factors in the production of audio-visual works are producer (Investor), Director, cameraman and actors in the main roles of the film. On the other hand in article 10 of this law has tried to criminalize the reproduction and publication of vulgar and obscene works in the field of electronic media, by defining the examples of reproduction and publication. As article 10 States:

"The publication of obscene and vulgar works through electronic communications and computer sites or other similar device or technique is samples of reproduction and publication and agent will be sentenced to the penalty prescribed in this Act."

5- Discussion and conclusions

One of the most important issues and problems in cyber crime being observed children and adolescents in international networks (Internet). In recent years, In recent years a significant amount of pornography is dedicated to Child pornography and also researchers in their paper and the laws of most countries have the most attention to child pornography.

According to the experts's comment, is expected until 2005, about 7/7 million children ((online)) use the Internet. However, cyber criminals abuse the situation and simplicity of children and try to deviate them through chat rooms and e-mail and finally abuse them in the form of pornography and disclose their pornographic pictures on porn sites [7].

In fact, with the provision of public use of the Internet, those who already had a moral and sexual deviation with children in the community and real space have found the ability to carry out their purpose in a virtual environment with other hunters and their colleagues for sexual pedophilia of children and pornography [7].

Pedophile literally means to love a child, and does not imply sexual activity. But in practice it is an activity which in it an adult prefer children before puberty for the sexual excitement that There are at greatest risk of this type of abuse .On the other hand, with regard to this matter, which children use of Internet has increased, this is an opportunity for cyber criminals, to abuse them through chat rooms, try to deviate them through chat rooms and e-mail and finally abuse them in the form of pornography and disclose their pornographic pictures on porn sites [7].

Recently the international police (Interpol) by operation which is called (over) are trying to identify and arrest the gangs who build obscene sites that have child sexual abuse. According to provided statistics, every fifth child, a child in America has had a direct encounter with Sexual subjects in Internet. On the other hand On the other hand 77% of cybercrime victims are under 14 years, And 22 percent of victims were 10 to 13 years old.. In any case, the issue of

child abuse and pornography which is classified as crimes against the content is very important issues in cybercrimes that More serious encounters ought to be done to deal with it [7].

According to the 19 and 34 substances and rights of the child Treaty, children in sexual abuse and pornography are present more as a victim of the offense than a guilty or a misdemeanor. These illegal acts, as a variety of dangerous behaviors are defined that children are exposed to physical and psychological and social damage. In this term, Adults who provide such services shall be subject to severe criminal penalties [8].

In today's society the process of committing sexual offences between individuals, especially the young and adolescents has been growing that it would increase the use of communication technologies and by social changes, it has taken new forms and in a variety of cyberspace capabilities are realized. Factors such as easy access, anonymity, low cost, increase and the diversity of social networks and etc. caused the increasing spread and transmission of such crimes to virtual space.

Iran's policy in the face of vulgar sexual content in cyberspace is filtering in such cases. Of course, filtering can't protect users' privacy and will not eliminate corruption in cyberspace, because the main users of the Internet audience consists of young people, and basically this class accept less restrictions and they will be more willing to what will be barred .

As we know, through the wall to access limitations and restrictions contained in cyberspace takes only a few seconds, On the one hand the content is filtering with the effort and cost, on the other hand, only by a button which is also free, the restriction is removed.

The only thing that remains is the fade of filtering technical power to users and it causes becoming more inclusive services such as chat. More important and noteworthy is that cybercrime law hasn't authorized The committee entitled "Protection of Privacy" and description of the responsibilities and powers of the Committee is limited to items pertaining to the law and on the other hand, On the other hand, any user is concerned about their privacy can be removed easily mobile services such as chat or from the beginning not being a member of it Accordingly, those who are members of these services, the Committee or the like do not need to maintain their privacy, the protection which would fail by a filter-proof.

In terms of penal policy in Iran just pornography is from the cases which is stipulated in the law that article 640 of the Penal Code states traditional pornography, and article 14 of the Computer Crime Act defines pornography and its instances through a computer..

Also, in paragraph (a) of article 15 law of computer crime, those who incite others to access pornographic content are punishable And paragraph (b) of this part, those who provoke and encourage chastity or sexual misconduct should also be punished.

As can be seen in the Penal Code for the crime of pornography addition in addition to steward and crime partners, unequivocally (under Article 14 of the Computer Crimes Act), deputy of the offense in accordance with paragraph(a) and paragraph (b) of Article 15 of the Computer Crime Act is considered punishable and it is only crime that can be achieved in the context of sexual offenses and has been criminalized in cyberspace, And for the three main elements (Steward and Partner and deputy) clearly has been stipulated punishment But about the rest of sexual offenses which can be achieved in cyberspace ,we face with legal Silence and when it is not spoken about Steward and not criminalized and the assignment of such crimes as regards the Steward has not been identified, the assignment of partners and their assistants is unclear.

References

- [1]Norbeha R.(2004). General criminal rights, 10th printing, Dadafarin publication ,573 pages
- [2]Kamalan Mehd.(2013).the Islamic penal law, Second Edition, publishing fitted, 336 pages

- [3]Bodaghi F, Ahmadi M.(2002); the legal shortcomings and deviations, women's Institute of strategic studies, no. 17, pp. 177-203 can be accessed on the website www.noormags.com
- [4]Validi m. (1995) the general criminal law, vol. IV, second printing, publishing.
- [5]Bay and Ghahremanipoor.2009. examined the legal jurisprudence of cyber crimes, first edition, Research Institute of Islamic Culture
- [6]hojjati Ashrafi Gh.(2008).full set of laws of regulation, treasure of knowledge library, 10th printing.
- [7]Bastani B. 2007, Computer Crime and Delinquency Internet is a manifestation of the new, second edition, Behnami published
- [8]Abachi M.(2009). criminal rights of children in the United Nations documents, second printing, publication of Majd