CRIMINAL PROTECTION OF CHILDREN FROM CYBERSTALKING CRIMES ANALYTICAL FUNDAMENTAL STUDY OF THE SAUDI'S SYSTEM OF PROTECTION AGAINST SEXUAL HARASSMENT CRIMES

Dr. Islam Mahrous Ali Naggi
Assistant Professor of public Criminal Law, Department of Public law Collage of Law, Princess Nourah bint Abdulrahman University, Riyadh, Saudi Arabia
E-mail: imnaggi@pnu.edu.sa; imnaggi@gmail.com

ABSTRACT:

The cyber-harassment of children is among the most serious crimes that increase recently due to Covid-19's precautionary measures that led to children's increased use of the new technologies and Internet. Nowadays, children spend most of their time using the electronic devices without any parental control. Thus, the child became at higher risk for this form of crimes which are far more numerous than they were even a decade back. This crime is considered one of the silent and invisible crimes. The purpose of discussing this issue in a research is due to the fact that there are many legal problems, regarding this type of crimes in terms of identification, its elements, the procedures for offering proof of such crimes, the newness of the Saudi's system that criminalizes these actions, and the scarcity of legal researches in this regard. The research had discussed the definition of cyber- harassment of children, execution of the crime, its elements, the procedures for offering proof of such crimes, and its prescribed penalty.

Keywords: Criminal Protection, Harassment, Sexual, Electronic, Victim, Harasser.

Introduction:

The likelihood of the victim's exposure to sexual harassment is no longer linked to the face-to-face interview between the harasser and the victim. Due to the spread of electronic communication and the increased technological development, the harasser becomes able to reach the victim anywhere and at any time. Many children, who using social media networks and electronic devices connected to the internet, suffer from the frequent receipt of inappropriate e-mails that may contain sexual sentences or insults or sexual scenes or pictures or intimidation. These violations also include using the victims' pictures without their consent or without their knowledge, sharing them on sites of a sexual nature or together with inappropriate sentences. The likelihood of children's exposure to harassment has increased due to the spread of the culture of publishing pictures and personal information on the one hand, the psychological and emotional void, as well as the absence of the parental control on the other hand. These factors encouraged children to spend long hours on the Internet, which may lead to Internet addiction.

Methodology:

The Analytical Methodology: The researcher used this methodology to analyze the legal texts and provisions to come up with the methods of the crime execution of the, its elements, its elements, the procedures for offering proof of such crimes, and its prescribed penalty.

Literature Review:

Harassment Crime Definition:

The Saudi legalizer, in the first article of Anti-Harassment Law, defines the crime of harassment as "any utterance, act or gesture of a sexual nature made by a person that impinges on another person's body, honor or modesty by any means, including modern technologies"

Thus, this definition clarified the criminalized acts that considered harassment, which are mentioned below:

Forms of child sexual abuse:

First Form: Verbal Harassment: through sentences or words with sexual connotations or sound of sexual nature or inquire – directly or indirectly- about the sexual experiences of the other party (Aldialmi- 2004).

One of the most notable forms of Verbal Harassment is the flirting that the harasser directs to the child to persuade him or turn him on (Aldialmi- 2004). Also, the Verbal Harassment includes hazing and comments that use sexual words (Al-Shoeibi 2009).

The Verbal Harassment may also be through disproportionate words of praise for sexual purpose. This praise may be considered Verbal Harassment if it was together with sexual gazes aiming at sexual arousal (Al-Khaiari 2014). The harassment may also be through ejaculation as the harasser may ejaculate to achieve the child's erotization. Finally, The Verbal Harassment may also be through indecent sentences, aiming at the temptation of the victim child (Ghah Alrasool: 2016). The method used may differ from one case to another according to the child's nature and circumstances.

Accordingly, if the harasser talks to the child by sexual sentences or asks him any questions of sexual nature, this shall be considered as Verbal Harassment.

The Second Form: Harassment using gestures and signs: This includes harassing people directly through some gestures, signs, or movements of sexual nature. This also includes the harasser's non-verbal cues which reflected his intentions towards the victim like the close looking at the body of the victim, smiles, or making movements and gestures of sexual nature, (Roqaia Alkhaiari-2014) like moving the head to show admiration of the seen part of the victim or to indicate the intention of such look, or facial gestures like a wink of the eye (Alshoeibi 2009). These movements and gestures may also include wheezing or sexual movements using hands like the harasser's use of his fingers, making certain signs, or touching the lips (Ghah Alrasool: 2016). This form of harassment may also include sending sexual movies, pictures, or presenting posters of sexual nature to the victim for erotization or sending messages through mobile, or other electronic devices, containing seductive sentences (Taha- 2006).

The Third Form: Physical Harassment: Deliberate other's harm through violence or physical contact (Taha- 2006). This may happen by making an act of sexual nature or carry sexual connotations whether explicit or written. This act may be through the harasser's body or the victim's body or through other means (Ghah Alrasool: 2016).

The Physical Harassment has many forms such the deliberate physical contact from the harasser as when he tracks the victim to catch parts of his \her body like touching the breast of the victim, hugging, or kissing, or putting his hand on the victim's reproductive organs, or undressing the victim or approaching the victim to touch his \her body, especially the sensitive areas of the body (Gomaa- 2014). This form is inconceivable in the virtual reality and on the internet.

Indecent Exposure: IT IS A NASTY FORM OF HARRASSMENT, AS WHEN THE HARRASER TRY TO SEDUCE THE VICTIM THROUGH deliberate Indecent Exposure of his sexual organs in sight of the child or uncovering or pointing out to his sexual organs in front of the child or coercion of the child to get naked and uncover his\her sexual organs and this also may happen either with caresses or foreplay (Bhnam- 1982).

The Means, used in Cyber-harassment Crimes:

Due to the significant development in technological fields, the crime of Cyber-harassment comes in many forms, including: harassment through e-mails or SMS or social media and other means that we shall discuss below:

1. Harassment through e-mails:

The likelihood of the victim's exposure to sexual harassment is no longer linked to the face-to-face interview between the harasser and the victim. Due to the spread of electronic communication and the increased technological development, the harasser becomes able to reach the victim anywhere and at any time. Many children, who using social media networks and electronic devices connected to the internet, suffer from the frequent receipt of inappropriate e-mails that may contain sexual sentences or insults or sexual scenes or pictures or intimidation.

The phenomenon of harassment through e-mails started simultaneously with the greater use of the Internet. Tis form of harassment took place in chat rooms, forums, and social media sites (Facebook, Twitter, Whatsapp) (Dawwod-2012).

2. Cyber-bullying:

With the growing shift in the electronic Media, the number of complaints of Cyber-bullying has increased. This happens when the harasser attempts to intimidate and harass the victim to blackmail him.

3. Social Media Networks

In 2006, Pew Internet & American Life site surveyed about the reasons for the widespread harassment on social networks- like Facebook and My Space- in which the users can put some of their personal data and electronically contacting other users as this may, opening a window of opportunity to some of the human wolves to watch and haunt their victims (Orabi- 2017).

The study of Pew Internet & American Life site found that most of the cyber-bullying and cyber- harassment took place in chat rooms and through instant messages, whereas the social networks were accounted for only 9% of the cyber- bullying and 4 % of the cyber – harassment (Amer-2020).

4. **The Blogs:** in which the child writes his thoughts, opinions, and personal data.

The visitor of these blogs can read the posts and comment on it through a message that may lead to electronic conversation. The blogs may increase the risk of child's exposure to harassment as the child -in these posts- reveals his personality secrets, his way of thinking, his favorites, and many of his data and personal pictures (Alshawabka- 2011).

The Elements of the Crime of Cyber-harassment in the Saudi Legislation

First: the Assumed Element: The crime execution through internet or computing devices.

The assumed element in the Crime of Cyber-harassment is the use of one or more means of electronic nature in implementing this crime, such as (Computers, internet, mobile). This crime is executed only with the knowledge of the harasser through (E-mails, chat rooms, social networks, etc…..) and is considered one of the most serious crimes that took place online and this make the execution of this crime easier and grant it the international nature as it may be executed in more than one State, simultaneously.

The Saudi legalizer, in the first article of Anti-Cyber Crime Law, defines the Information System as " A set of programs and devices designed to manage and process data, including computers", defined the Information Network as" An interconnection of more than one computer or information system to obtain and exchange data, e. g. Local Area Network (LAN), Wide Area Network (WAN), and the World Wide Web (Internet)", and also defines the Computer Programs as " a set of commands and data which contain instructions or applications when run on computers or computer networks and perform required functions".

Accordingly, the harasser's use of the internet for harassment of children- through E-mails, chat rooms, social media, electronic games, or blogs- reflects the assumed element of this crime.

The Material Element of the Crime of Cyber-harassment of Children

In the Saudi law, the offense of harassment is complete when the victim is being abused by the harasser. The Material Element is consisted of the following:

1. The act of Abuse: Abuse can be defined as the offender's attempt to harm the victim and may be the form of a physical act that would involve the offender himself in the victim's path to set him up. These attempts may include sending flirting messages to the child or requesting an appointment, or intimidating him to obey the harasser's orders. Abuse can include all indications of harassment either by interfering with the child's life or tracing him through messages or electronic games or by involve the offender himself in the victim's path to set him up, as well as by intimidating the child to force him to implement the wishes of the victim (Darwish; 2008) .
The Saudi legalizer stressed that all the forms of this crime are included in the prohibition resolution. The first article of Anti-Harassment Law stipulates the sentence "by any means, including modern technologies" This means that the Saudi legalizer criminalized all the acts of abuse in all states whether in public or private, in physical or virtual reality through modern technologies such as the internet in order to protect the victim's feelings and decency from any offender.
2. The victim must be a child: In the Saudi law, the offense of harassment is complete when the victim is child. The first article of Child Protection Law defines stated that the child is "Any person under 18 years of age". Also the ninth article of the law stated that "A child may not be sexually exploited nor exposed to any form of sexual exploitation, nor shall he be subject to trafficking for purposes of criminal activities or beggary". The executive regulation of this article, in paragraph 9-1, stated that "The Relevant Authorities shall protect the Child from all forms of Sexual Exploitation, and from coercing or engaging in any unlawful sexual activity, or from using or exploitation in prostitution or other unlawful sexual practices. Exposing the Child to prostitution, whether for or without compensation, directly or indirectly, shall be recognized as Sexual Exploitation of the Child, male or female" (Almahalawi: 2020).
3. It is clear that the law wants to protect the child from any behavior of sexual nature that may harm the child, whether material or moral.

The Criminal Result of the Crime of Cyber-harassment of Children

The criminal result is represented in the effect that the criminal behavior has. We can say that the result in the Crime of Cyber-harassment of Children is the effect, caused by any behavior compromise the child's body or decency through any means, whether traditional or electronic. This effect may be sensory or psychological.

In this crime, the criminal result is difficult to be proven and this may be due to the special nature of this crime and its consequences as this result may not be achieved immediately - it may be delayed for a short or long time- and also it may be achieved where the act takes place or in another place.

The Element of Causation in the Crime of Cyber-harassment of Children

The causation is the link between the criminal activity and its consequences. Thus, the causation is available in this crime if the child suffers from any psychological, social, behavioral problems due to the Crime of Cyber-harassment. Many jurists, however, think that Cyber-harassment of Children is one of the simple crimes as the crime shall be considered complete if the criminal activity occurred even once and it does not require habituation or repetition.

Attempting to Commit the Crime of Cyber-harassment of Children

The second paragraph of the seventh article of the Anti-Harassment Law addressed the attempt to commit the crime of Cyber-harassment of children, stating that" Any person who attempts to commit a crime of harassment shall be subject to a punishment not exceeding half the maximum prescribed penalty".

Thus, it is clear that the Saudi Legalizer considers this crime as one of the personal harm offences, in which harm to the legally-protected interests of the child, is supposed to taken place, without distinction between the material or moral harm. Accordingly, the Saudi Legalizer prescribes deterrent penalties in attempting to commit a crime of harassment, not exceeding half the maximum prescribed penalty (Alshaer: 2018).

The moral element of the crime

Third: The moral element of the crime of cyber-harassment of children.

The moral element of the crime is the criminal intent (mens rea), and this intent is reflected in the offender's knowledge of the reality of the material behavior that he is doing and its legal elements. After this recognition, and after knowing that his actions are wrong and are subject to consequences, yet he deliberately proceeds with their intended actions anyway. Thus, the electronic harasser must know that his intended actions would lead to harming the child in his body, his honor, or his decency, and the violation of his private sanctity, and deliberately proceeds with their intended actions anyway (Ghannam, 2008).

By extrapolating the articles of the law, we find that the Saudi legalizer did not require a special intent to commit such crime. It is based on the availability of the general intent that consists of knowledge and will.

Hence, in the absence of one of the two elements of criminal intent (knowledge or will, the offender shall not be responsible for the crime (Sulaiman; 2018). The availability of the knowledge and will, as previously stated, shall be sufficient to hold the offender accountable for this crime.

The offender's purpose of harassment shall not be considered, and therefore the motive for harassment shall also not be considered. The motive may be the love of mockery or irony of the victim, or to take revenge on one of the parents or relatives, or to satisfy the offender's sexual passion. Regardless of this motive, the offender shall be accounted for the crime of sexual harassment (Abu Khattwa, 2000).

Probative of the crime of cyber-harassment of children:

The crime of cyber-harassment of children **is one of the most difficult crimes** to be proved. This is due to the fact that the child is unaware of the reality of the behavior of the offender, or ware of this behavior but his fear prevented him from telling his parents. Even if the parents know, the crime shall be also difficult to be proved as it is committed in closed chat rooms or through video calls. (Bahr: 1999).

It is also considered one of the clean crimes. It is difficult to be discovered with nothing to be found whether signs of violence or blood, but only figure and data that may be changed or erased from the memories of computers and this crime also have no external material impact (Bahr, 1999). Some of the greatest obstacles encountered with proofing this crime are outlined hereunder:

1. The crime may occur in several countries and governed by several laws and rules. This it shall be difficult to proceed with court hearings and sue the offender.
2. The offender's ability to electronically store the data that may be invisible.
3. The evidence may be washed away in a short time.
4. The stored data may be encrypted easily.

It is worth noting that the Kingdom of Saudi Arabia has explicitly take into account the authority of digital evidence in proofing this crime, in accordance with Resolution No. 34, dated on 24/04/1439 AH, issued by the Supreme Court regarding reinforcing the authenticity of digital evidence before the investigation and judicial authorities. Thus, all means of evidence are available for the judge to be convinced.

Penalty for cyber-harassment of children:

The second paragraph of the Sixth article of the Anti-Harassment Law stipulates that "The crime of harassment shall be punishable by imprisonment for a period not exceeding five years and a fine not exceeding 300,000 SR, or by either penalty"

This means that the maximum penalty for this crime is imprisonment, the minimum of which is twenty-four hours, the maximum is five years, in addition to a fine, not exceeding 300,000 riyals. Accordingly, the judge shall be obligated, when deciding on harassment cases, to apply the main penalty (imprisonment and a fine). The complementary penalty in this crime is the confiscation of the computers and devices, used in the crime. The accessory penalty shall be removal from office, if the offender is a public servant for missing good behaviour, and the accessory penalty may also include deprivation of some rights and benefits.

Conclusion:

1. The crime of cyber- harassment of children is one of the most important unspeakable crimes that have spread recently as a result of covid-19 pandemic and the children's long use of children electronic devices.
2. The Saudi legalizer addressed this type of crime in Anti cyber-crime law, as well as the anti-harassment law.
3. The difficulty of proving this type of crime is the reason behind the impunity of many offenders.
4. There are many forms of cyber- harassment of children. This may include physical, signs of sexual nature, or words, aiming at turning the victim child on.
5. We recommend spreading awareness among children , regarding the dangers of dealing with unsafe websites on the Internet.
6. We recommend the introduction of a curriculum, entitled Ethics of Internet Use within the general education curricula aimed at spreading awareness of ways to of deal with different situations on the Internet.
7. We recommend activating the role of civil society, especially NGOs, to play its role in protecting children from committing these wrong practices and behaviours.
8. We recommend that the laws shall state explicitly that the defamation penalty shall be a complementary penalty in such crime in addition to the original penalty, in an attempt to achieve deterrence in this type of crimes.

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