

THE LEGAL FRAMEWORK FOR THE CRIME OF SEXUAL HARASSMENT: AN APPLIED STUDY IN THE JORDANIAN JUDICIARY

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Abstract

Any country's duty to protect women and men begins with protecting the body from sexual assault, which has been criminalised by the Jordanian Penal Code through explicit provisions criminalising a number of crimes, such as rape when the victim is female only, molestation when the victim is male or female, or inappropriate flirtation in public or in private. The Jordanian Penal Code did not address verbal or gesture sexual harassment. Would traditional provisions criminalise the same or need explicit legal measures be made? In addition, what is the criterion for the existence or non-existence of sexual harassment, which has been spreading largely in the Jordanian community? Sexual harassment is mostly represented by sexual expressions that encroach on the dignity of the female or male, but the victim is mostly a female, half of the community, who suffers psychological and physical damage from this crime. We reached several results and recommendations that the Jordanian Penal Code does not specifically state about sexual harassment, but the laws of criminalization may be a reference. In actuality, sexual harassment is broader than the Jordanian Penal Code, including simple catcalls, inappropriate comments, and minor events that are judged by the person and their psychological impact. I urge adding article 306 et al. to the Jordanian Penal Code to specifically criminalise sexual harassment.

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Introduction

The majority of sexual harassment claims are made by women, despite the fact that several laws around the world specifically prohibit sexual harassment (Al-Billeh, 2022a).

Importance of the investigation: Sexual harassment is a significant legal issue because this crime is on the rise in the Jordanian community and many sexual harassment cases are not referred to the courts for a variety of reasons, including the lack of an explicit legal provision regarding the issue and the fear of the victim to file a formal complaint. As a result, and as law enforcement officers, it is our responsibility to prove the commission of this offence by searching for the justice sought by the Jordanian government and the Jordanian legislature.

The topic of the study is that the Jordanian Penal Code contains no provisions criminalising sexual harassment, despite the legal rule that "there is no crime or punishment unless based on a provision." In addition, according to the Jordanian Penal Code, the other crimes enumerated by the legislature in the Penal Code cannot serve as a premise for measurement, as measurement is not permitted in criminalization provisions but is permitted in permissibility provisions. In addition, there are no specific criteria for determining whether sexual harassment has occurred.

This research will provide suitable responses to these questions: What constitutes sexual harassment? Who endures the sexual harassment, the male or the female? What is the Jordanian Penal Code's stance on sexual harassment? What are the criteria for determining whether sexual harassment has occurred?

RESULTS AND DISCUSSIONS

1. The concept of the sexual harassment:

There are a number of judicial and international definitions for the concept of sexual harassment, which include the ones listed below (Al-Billeh, 2022b; Isa et al. 2022).

Bullying, coercion; to perform a physical act or make an inappropriate or unwelcome promise of monetary compensation in exchange for sexual services (Al-Billeh, 2022c; Al-Billeh, 2022d; Al-Khawajah et al. 2022; Almanasra et al. 2022a)

Further, it is any unwelcome sexual act such as physical contact (Al-Billeh, 2022e; Al-Billeh & Abu Issa, 2022a), sexual suggestions or comments concerning the colour, showing pornographic and sexual

demands whether by saying or acting, while this act may be humiliating and may result in health and safety issues (Al-Billeh, 2022f; Al-Billeh & Abu Issa, 2022b; Al-Billeh & Abu Issa, 2023), and it is a form of discrimination when the woman believes that her objection against such acts may cause her to suffer damages at work, such as the hiring, promotion, or creation of an aggressive work environment (Al-Billeh, 2022g; AL-Hammouri et al. 2023; Alkhseilat et al. 2022a; Alkhseilat et al. 2022b).

In fact, and in Europe, it is defined as the occurrence of any unwanted sexual acts, words, or physical behaviours that are intended to affect or encroach upon the dignity of a person (Alshible et al. 2023; Khater et al. 2022; Khashashneh et al. 2022; Almanasra et al. 2022b), especially when creating a frightening, aggressive, humiliating, or insulting environment (Al-Kilani, 1995; Al-Billeh. 2023; Alkhseilat et al. 2022c; Alkhseilat et al. 2022d; Almanasra et al. 2022c).

In Denmark, workplace harassment occurs when any act or statement would change the status of the sexual victim against her will, resulting in the victim feeling inferior or otherwise violating his/her dignity. In a society where the man and the woman are considered equal, any act that uses sex as a tool to alter the status quo is considered harassment. If the manager conveys the same sentiments in a written policy, the comments and jokes may constitute discrimination. The 21st of December, 2005, Act No. 1385.

Regarding France, it is defined as harassing an individual to obtain sexual services. As a result, the Jordanian legislator did not define sexual harassment in the Jordanian Legal Code because the term sexual harassment was not already mentioned (Abdullatif, 2009; Alkhseilat et al. 2022e; Alkhseilat et al. 2022f; Abu Issa, et al. 2019). However, sexual harassment may be defined as the use of offensive language or suggestions that violate the dignity of a female or male, or are otherwise contrary to the customs and traditions of the Jordanian community (Al-Bahr, 1998; Al-Amoush, 2000; Al-Billeh. 2020a). Consequently, the criterion is that of the average person (i.e., these expressions are evaluated based on whether they are addressed to another female or male, and the court of subject has the discretion to evaluate these expressions).

2. The studies and researches conducted in Jordan concerning the sexual harassment:

Several studies and researches in Jordan emphasise the increasing phenomenon of sexual harassment in the Jordanian community, indicating that they are not isolated cases but are increasing continuously (Al-Billeh. 2020b; Abu Issa & Al Shibli, 2022). This increase is attributed to a number of factors, including the difficult economic situation endured by the Jordanian State in the past and in

the present, when the economic situation deteriorated as a result of the spread of the Corona virus (Al-Dirawi, 2005; Alshible, 2020).

Accordingly, there have been specialised studies concerning sexual harassment in Jordan, including a study conducted at workplaces by a research team from Hashemite University for the programme on supporting initiatives of opportunities equality sponsored by the Canadian International Development Agency, which revealed that 14% of the working females in Jordan experience verbal sexual harassment at their workplace and 0.7% of them experience physical sexual harassment (Ahmed, 2003).

Moreover, according to a report issued by the Society of the Jordanian Women Solidarity Institute (Tadamon), 42% of working women in Jordan have been subjected to sexual harassment, either verbal or gestural, and half of these women have experienced it. In addition, one of the major reasons for women's non-entry and withdrawal from the labour market is the violation of their working safety zone (Al-Jokhdar, 2008).

In addition, a study conducted in four Jordanian governorates revealed that 53% of Jordanian women have been victims of sexual harassment, with verbal harassment coming in first, followed by harassment by looking and gestures, then harassment by physical contact, and finally harassment by using multiple means of contact (Abo El-Rous, 2005; Al-Ahmed, 2008).

In addition, another study on sexual harassment confirmed that 75.9% of women experienced one or more of the harassment acts and behaviours, and that the majority of those who committed harassment at home were other relatives (11%), while it was 52.9% of male strangers at public places, 29.1% of male colleagues at work and study locations, and 43.9% of male strangers in the electronic space.

In fact, and in addition to the previous studies on sexual harassment, a number of interviews with women who experienced sexual harassment were conducted, the identities of which are provided for presentation purposes only:

A- "Najwa" who works as a teacher affirms that she is subjected to verbal harassment, especially from taxi drivers who play inappropriate, low-class music, after which the driver begins his immoral behaviour by staring through the rearview mirror and muttering inappropriate language.

B- "Sawsan," an employee, states that she endures verbal harassment from some of her coworkers when she is forced to request a transfer from the section in question, but she does not submit a formal complaint out of fear of retaliation.

C- "Sajeda" confirms that she endured sexual verbal harassment, whereas "Rana" terminated her employment at one of the companies

following repeated verbal harassment by some of the customers, especially when she felt that the manager of the company asked her to accept the inappropriate actions of the customers, which prompted her to quit.

Consequently, civil community institutions and organisations that defend the rights of women and children in particular shall work to adopt a clear strategy with specific goals and means to combat sexual harassment, in addition to increasing awareness and educational programmes on sexual harassment through the media, which is the fourth authority in the state in addition to having a significant impact on the community. In addition, efforts should be made to facilitate the access of females who experience sexual harassment to specialised centres that provide supportive services such as hearing, guidance, and legal assistance, with the assistance of local, regional, and international organisations concerned with women's rights.

In addition, it has been demonstrated that sexual harassment is increasing in Jordan, with the most prevalent form being verbal sexual harassment in the form of lewd sexual comments, sexual inquiries, lewd jokes, and dating demands. Further. There is non-verbal sexual harassment through gestural glances or physical implication, while the criteria for sexual harassment, especially the verbal one, are foreign criteria; therefore, would the Jordanian Penal Code encompass this offence? This is what we will seek for subsequently (Emar, & Abu Issa, 2021).

3. The position of the Jordanian Penal Code against the sexual Harassment.

The phenomenon of sexual harassment is not new to the community, but its scope was limited until the introduction of electronic sexual harassment, which the Jordanian legislature should have addressed in order to protect women in particular from the physical and psychological harm that may be sustained b.

The Jordanian Penal Code No. 16 of 1960, as amended by the Law No. 27 of 2017, did not include a provision for sexual harassment, but it did include provisions for sexual assault against a female or male by criminalising rape and molestation in articles 292 – 301 of the previous law and inappropriate flirtation in a private place in article 305 of the previous law as well as inappropriate flirtation in a public case in article 306. In fact, in article 306 of the previous law, the legislator stated that "anyone who commits an inappropriate act or addresses any immoral statements or conducts immoral acts inappropriately by saying, acting, moving, or gesturing whether explicitly or implicitly shall be punished by imprisonment for a term that shall not be less than six months whenever the assault occurs to: 1- a person younger than eighteen years old; 2- a person older than eighteen years old; or 3- a person

older than eighteen years old 2- a person, whether male or female, who has reached the age of 18 without consent.

Reading Article 306 of the preceding law raises the question of whether it applies to the concept of sexual harassment. It could be argued that having the previous article is a good thing, but the concept of sexual harassment is much broader, and some of the terms that are considered sexual harassment are not covered by the aforementioned article, such as simple catcalls, insulting remarks, minor incidents, hearing inappropriate songs, or simple suggestions. In addition, measurement is prohibited in the Jordanian Penal Code with regard to the provisions of criminalization between (the offence of sexual harassment not provided for by the Jordanian legislature and the preceding article). In addition, the preceding article did not mention electronic sexual harassment, particularly the Jordanian Electronic Crimes Law No. 27 of 2015, article 15 which states that "Every person who commits any crime punishable under any applicable law by using the Internet, any information system, or website, or who otherwise contributed, instigated, or interfered with committing the same, shall be punished according to the punishment prescribed by that law". In actuality, and because the Electronic Crimes Law did not provide for the offence of electronic sexual harassment, reference shall be made to the Jordanian Penal Code, which did not provide for the aforementioned offence, resulting in the offender averting punishment.

In order to avoid legal disputes and fill the aforementioned legal void, we expect that the Jordanian legislature will explicitly define the crime of sexual harassment in the Jordanian Penal Code, with the proposed wording being as follows: "the sexual harassment." A- Whoever harms others in a public or private place through sexual or pornographic gestures or suggestions, and whether by overtone, statement, or act directly or indirectly by using technological means, shall be punished by a jail sentence of not less than six months and not more than one year, or by the payment of a fine of not less than five hundred Dinars and not more than one thousand Dinars.

B- The penalty of imprisonment for a term of not less than one year and not more than three years or the payment of a fine of not less than one thousand dinars and not more than three thousand dinars shall be imposed if the offence is repeated within one year of the issuance of a conviction ruling for the initial offence.

Conclusion

Sexual harassment occurs at all times and locations, is endured by both men and women and has long-lasting psychological effects. In actuality, it is unlikely to be erased from the memory of the female

victim who endured an insult and blackmail at the hands of a sex offender who desires instantaneous pleasure for himself.

The Jordanian Penal Code does not explicitly define sexual harassment as a crime, measurement is not possible in the provisions of criminalization, and the crime of sexual harassment is broader than the legal provisions set forth in the Jordanian Penal Code, including simple catcalls, inappropriate comments, and minor incidents in which the criterion is the person and the psychological impact of the same on the person.

Both males and females are victims of sexual harassment, but females are victimised more frequently. The harassment can occur at any time or place and is not limited to the traditional form; it can also take the form of electronic harassment.

The recommendations are as follows: 1. We recommend that the Jordanian legislature expressly define sexual harassment as a crime in the Jordanian Penal Code, with the proposed wording being as follows: adding article 306 et. "sexual harassment" A- Whoever harms others in a public or private place through sexual or pornographic gestures or suggestions, and whether by overtone, statement, or act directly or indirectly by using technological means, shall be punished by a jail sentence of not less than six months and not more than one year, or by the payment of a fine of not less than five hundred Dinars and not more than one thousand Dinars.

The penalty of imprisonment for a term of not less than one year and not more than three years or the payment of a fine of not less than one thousand dinars and not more than three thousand dinars shall be imposed if the offence is repeated within one year of the issuance of a conviction ruling for the initial offence."

We trust that the institutions and organisations of the civil community that defend the rights of women and children in particular will adopt a clear strategy with specific goals and means to combat sexual harassment.

We aim to increase sexual harassment awareness and educational programmes through the media, the fourth authority in the state after the government and the community.

We hope to facilitate the access of female victims of sexual harassment to specialised centres that provide supportive services such as hearing, guidance, and legal assistance, with the assistance of local, regional, and international organisations concerned with women's rights.

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