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Crimes of Electronic Defamation, Libel, and Slander under Jordanian Cybercrimes Law

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Abstract

This article aims to examine how the Jordanian Cybercrimes Law (No. 27 of 2015) addresses the crimes of electronic defamation, libel, and slander, to develop a better understanding of how these crimes can be combatted, as they are the most widespread cybercrimes committed in Jordan. This article uses a mixed-methods approach using descriptive and analytical methods. The descriptive method is used to outline the special nature of the crimes of electronic defamation, libel and slander, as well as related substantive and procedural rules. Meanwhile, the analytical method is used to determine how these crimes are considered in the existing literature, including both primary and secondary sources. This article has several results, the most important being that it is irrational to rely solely on the Jordanian Cybercrimes Law to address electronic defamation, libel, and slander; instead, other legislation should be followed as well, such as the substantive and procedural rules within the Jordanian Penal Code and the Jordanian Code of Criminal Procedures. This article is a piece of original research that paves the way for future research on the adoption of a comprehensive legal framework tackling cybercrimes in Jordan.

Keywords: Electronic defamation; Electronic libel; Electronic slander; The Jordanian Cybercrimes Law

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جرائم الذم والقدم والتحقيق الإلكترونية بموجب قانون الجرائم الإلكترونية الأردني

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ملخص

تهدف هذه الدراسة لمعرفة كيف عالج قانون الجرائم الإلكترونية الأردني (رقم 27 لسنة 2015) جرائم الذم والقدم والتحقيق الإلكترونية؛ من أجل فهم أفضل لكيفية مكافحتها؛ حيث إنها أكثر الجرائم الإلكترونية انتشاراً في الأردن. وقد استخدمت الدراسة منهجية مختلطة من المنهج الوصفي والتحليلي؛ حيث وظّف المنهج الوصفي لتحديد الطبيعة الخاصة لجرائم الذم والقدم والتحقيق الإلكترونية، والقواعد الموضوعية والإجرائية ذات الصلة، في حين اعتمد المنهج التحليلي لتحديد كيفية النظر في هذه الجرائم في الأدبيات الموجودة، بما في ذلك المصادر الأولية والثانوية. وخلصت الدراسة إلى عدد من النتائج؛ أهمها أنه من غير المنطقي الاعتماد فقط على قانون الجرائم الإلكترونية الأردني للتصدي للذم والقدم والتحقيق الإلكتروني، وعليه يجب اتباع تشريعات أخرى أيضاً، مثل القواعد الموضوعية والإجرائية في قانون العقوبات الأردني وقانون أصول المحاكمات الجزائية الأردني. وتعتبر هذه الدراسة بحثاً أصيلاً يمهد الطريق لأبحاث مستقبلية حول تبنى إطار قانوني شامل للتصدي للجرائم الإلكترونية في الأردن.

الكلمات المفتاحية: الذم الإلكتروني؛ القدم الإلكتروني؛ التحقيق الإلكتروني؛ قانون الجرائم الإلكترونية الأردني

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© 2023، الزعبي، الجهة المرخص لها: دار نشر جامعة قطر. تم نشر هذه المقالة البحثية وفقاً لشروط Creative Commons Attribution-NonCommercial 4.0 International (CC BY-NC 4.0). تسمح هذه الرخصة بالاستخدام غير التجاري، وينبغي نسبة العمل إلى صاحبه، مع بيان أي تعديلات عليه. كما تتيح حرية نسخ، وتوزيع، ونقل العمل بأي شكل من الأشكال، أو بأية وسيلة، ومزجه وتحويله والبناء عليه، طالما يُنسب العمل الأصلي إلى المؤلف.

Introduction

Cybercrime presents global challenges because of its ubiquitous nature.¹ The scale of cybercrime is increasing due to the growing number of users of the internet as the internet becomes more accessible. While using the internet, it is easier for offenders to hide their identities, in contrast to conventional settings, while identifying cybercrime's outcomes or tracing them electronically can be challenging for investigators due to the increase in distributed storage media.² One issue that needs to be dealt with regarding cybercrimes is thus the lack of reliable data regarding such crimes, which remains fragmented and insufficient.³

This article specifically addresses the crimes of electronic defamation, libel, and slander under the Jordanian Cybercrimes Law. The significance of this article is thus its contribution to existing knowledge based on filling gaps in various efforts to deal with cybercrimes with regard to their definitions and elements. This article will also contribute to existing knowledge by highlighting the special nature of these crimes and examining all applicable laws regarding substantive and procedural approaches to these crimes. This is particularly relevant in that the crimes of defamation, libel, and slander have been addressed across various legislations in Jordan.

This article thus aims to clarify the meaning of the terms defamation, libel, and slander and to examine the elements of these as cybercrimes by placing a special focus on the crimes of electronic defamation, libel, and slander. Additionally, this article aims to determine the special nature and substantive and procedural rules that govern the specific crimes of electronic defamation, libel, and slander.

This work also analyses how the crimes of electronic defamation, libel, and slander have been addressed under Jordanian legislation with a special focus on the Jordanian Cybercrimes Law. Initially, this article thus considers what constitutes cybercrimes under existing Jordanian legislation before examining various elements of cybercrimes, specifically the legal element, the material element, and the mental element. Subsequently, this article carefully analyses the crimes of electronic defamation, libel, and slander to present a set of findings and recommendations regarding cybercrime generally and the crimes of electronic defamation, libel, and slander more specifically.

1. Cybercrimes in Jordan

Understanding the crimes of electronic defamation, libel, and slander in their incarnation as cybercrimes under the Jordanian Cybercrimes Law requires a definition of what is considered a

1 Jonathan Clough, *Principles of Cybercrime* (Cambridge University Press 2015) 23.

2 Alisdair A. Gillespie, *Cybercrime: Key Issues and Debates* (Routledge 2015) 8.

3 Jonathan Clough, *Principles of Cybercrime* (Cambridge University Press 2015) 15-16.

cybercrime and which elements are needed to state that an offense is such a crime. This section thus discusses two related topics, the question of what in essence constitutes cybercrime, and the resulting three main elements of cybercrime.

1.1 Cybercrime under Jordanian Legislation

This sub-section seeks to identify what constitutes cybercrime. In general, there is no consensus regarding the definition of cybercrime apart from that they are committed using technology. This lack of consensus is reflected in the range of terminology used to describe these crimes. The expression “cybercrime” is the most commonly used in literature,⁴ however, and the United Nations adopted the expression “cybercrime” in the Council of Europe’s Convention on Cybercrime.⁵ Cybercrime may also, however, be referred to as “computer crime”, “crime by computer”, “computer-related crime”, “high technology crime”, “internet crime”, “digital crime”, “virtual crime”, or “IT crime”. The rationale behind using such expressions is that they all refer to crimes committed using technology.⁶

Jordan has a specific Cybercrimes Law,⁷ yet this Law does not explicitly define the expression “cybercrime”. This might be understood as a reluctance to define the expression “cybercrime” due to the fact that it would subject this crime to the legality principle “*nullum crimen, nulla poena sine lege*,”⁸ limiting the scope of such a crime. Consequently, it can be argued that cybercrime must be assumed to be similar to conventional crime, moving into this category only by virtue of being committed by means of modern technology.⁹

1.2 The Elements of Cybercrime

Under Jordanian legislation, there are three main elements of any crime; the legal element, the material element, and the mental element. These elements are thus also required to define a cybercrime. In this section, these elements are thus discussed with a special focus on the application of these elements to the crimes of electronic defamation, libel, and slander.

1.2.1 The Legal Element

This legal element could also be referred to as the principle of legality “*nullum crimen, nulla poena sine lege*.”¹⁰ The principle of legality requires the existence of written rules to establish the definitions of criminal offenses. Where no provision for punishing a case exists if it comes

4 Ibid., 9-10.

5 The Council of Europe’s Convention on Cybercrime, European Treaty Series - No. 185, Published 2001; Clough, Op. cit., 10.

6 Ibid., 9-10.

7 The Jordanian Cybercrimes Law (No. 27 of 2015) page 5631 of the Official Gazette (No. 5343) dated 1 June 2015.

8 The legality principle will be discussed in detail in the next sub-section.

9 Susan W. Brenner, *Cybercrime and the Law: Challenges, Issues, and Outcomes* (UPNE 2012) 6.

10 See Jerome Hall, *General Principles of Criminal Law* (The Lawbook Exchange, Ltd 2005) 27-69.

before a judge, the judge should not seek to establish a criminal offense.¹¹ Under the principle of legality, no one should be prosecuted for committing an act before the issuance of a provision criminalising such an act and, in addition, no one should be prosecuted for committing an act once any provision, which criminalises such an act, is cancelled. It is also not permissible to apply the same rules for acts that have not been criminalised as for acts that have been criminalised, even if they are otherwise similar with regard to motives, effectiveness, results, or various individual elements, as doing so would contradict the principle of legality. It is further not permissible to expand the principle of legality in the interpretation of provisions related to criminal matters.¹²

The legal element of the crimes of electronic defamation, libel, and slander is, however, represented in Article 11 of the Jordanian Cybercrimes Law, which establishes the criminal offenses of electronic defamation, libel, and slander and prescribes punishments for committing these crimes. The main components of the legal element are thus satisfied with regard to these crimes.

1.2.2 The Material Element

The material element refers to the requirement for an external action that has a physical nature. All crimes require the existence of a material element, which is represented by the physical actions that constitute aggression against any interests covered by criminal protection.¹³ This element includes three components. The first component is the *actus reus*. The prosecutor is thus required to show the existence of the *actus reus* in order to establish a criminal case against a person.¹⁴ The *actus reus* in crimes of electronic defamation, libel, and slander includes the sending, resending, or publishing of data or information. Moreover, the attribution in these crimes is limited to the use of one or more of the following means: the internet, a website, or any information system. It should be noted that all prohibited acts and means stipulated in Article 11 of the Jordanian Cybercrimes Law that represent *actus reus* are exclusively specific, while the *actus reus* in the case of crimes of electronic defamation, libel, and slander requires action, and are not imaginable based on refraining from acting.

The second component of the material element is the criminal result. The criminal result is the effect of a criminal behaviour, which has legal consequences.¹⁵ Consequently, the criminal

11 Kamel Al-Saeed, *Explanation of the General Provisions in the Penal Code: A Comparative Study* (5th edn., Dar Al-Thaqafa for Publishing & Distributing 2022) 56-59.

12 Osama A. Almanasah and Jalal M. Alzubi, *Crimes Relating to Information Electronic Systems and Technology: A Comparative Study* (3rd edn., Dar Al-Thaqafa for Publishing & Distributing 2017) 45.

13 Nitham T. Al-Majali, *Explanation of Criminal Law General Section: Analytical Study in General Theory for Crime and Penal Liability* (7th edn., Dar Al-Thaqafa for Publishing & Distributing 2020) 251.

14 Joycelyn M. Pollock, *Criminal Law* (Routledge 2015) 61.

15 Almanasah and Alzubi, Op. cit., 55.

result in the crimes of electronic defamation, libel, and slander is represented by the negative effect imposed upon the victim's honour or dignity or the exposure of the victim to hate and scorn.¹⁶

The third component of the material element is the causative relationship between the *actus reus* and the criminal result. The causative relationship has great importance in all crimes that require the component of criminal result, as this assigns the criminal result to the *actus reus*. The causative relationship thus contributes towards identifying the scope of criminal liability in cases where there is a causative connection between the criminal result and the *actus reus*.¹⁷ The causative relationship between the *actus reus* and the criminal result in crimes of electronic defamation, libel, and slander is achieved when the perpetrator sends, resends, or publishes data or information using the internet, a website, or any information system that negatively affects the victim's honour or dignity or exposes them to hate and scorn.

1.2.3 The Mental Element

The mental element is known as the *mens rea* or the criminal state of mind.¹⁸ The mental element has two components. The first component is knowledge, which here refers to the knowledge of the elements of the crime. Such knowledge is presumed, as ignorance of the law is not considered relevant.¹⁹ The Jordanian Penal Code affirms this by stating, "ignorance of the law shall not be an excuse for any person who commits a crime."²⁰ Knowledge as a component of crime thus involves the following factors: knowledge of those facts which are considered components of the crime; knowledge of the subject of the crime; and knowledge of the essence of the prohibited act or the failure to act and its danger.²¹

The second component of the mental element is criminal will, which refers to a psychological activity that aims to achieve a specific goal. Criminal will thus has two aspects. The first is the criminal will of the *actus reus*. To show criminal liability for an intended crime, the prosecutor is required to prove that the perpetrator's criminal will was directed towards committing a prohibited act that endangered a right protected by law. The criminal will of the *actus reus* assumes that the perpetrator knows about the gravity of their actions in terms of the right protected by law and nonetheless chooses to commit the prohibited act or refrains from acting in a way as required by law. The second aspect is the criminal will to achieve the criminal result,

16 Amman Magistrate Court, in its criminal capacity, Decisions (No. 12507/2020) dated 30 November 2021.

17 Al-Majali, Op. cit., 260.

18 Pollock, Op. cit., 61.

19 Almanasah and Alzubi, Op. cit., pp. 60-61.

20 The Jordanian Penal Code, as amended (No. 16 of 1960) page 374 of the Official Gazette (No. 1487) dated 11 May 1960, Art. 85.

21 Almanasah and Alzubi, Op. cit., p. 61.

and this part is required for the completion of the mental element.²²

The mental element in crimes of electronic defamation, libel, and slander is found in the existence of knowledge and criminal will. Specifically, the perpetrator should know the nature of their behaviour, that is, they should know that they are committing criminal behaviour by sending, resending, or publishing data or information. Additionally, the perpetrator should know that they are dealing with an electronic means, as well as knowing that the data or information sent includes something that can harm the victim. Additionally, the perpetrator must display criminal will, having not been forced to commit the criminal act.²³ Accordingly, the mental element in the crimes of electronic defamation, libel, and slander requires the availability of knowledge of all elements of the crime alongside criminal will.²⁴

It can be noted that in cybercrimes generally and for the crimes of electronic defamation, libel and slander, in particular, the psychological aspects as part of the mental element are critical. Consequently, certain issues must be examined under this element. The first issue is intent, which is defined as “the will to commit the crime as defined by law.”²⁵ In the crimes of electronic defamation, libel and slander, intent exists since the perpetrator has the will to commit these crimes deliberately. Additionally, the criminal liability of a person for committing these crimes requires that the crimes of electronic defamation, libel and slander are being committed both consciously and wilfully.²⁶

The second issue is the motive for commissioning a crime, which is defined as “the reason which makes the perpetrator commit the act, or the ultimate result the perpetrator intends to achieve. A motive is not an incriminating element except in instances stipulated by the law.”²⁷ In relation to this, it should be stressed that in the crimes of electronic defamation, libel and slander, the motive is not an incriminating element. In any crime, there must be an explicit stipulation to consider the motive an incriminating element and there is no Jordanian law stipulating this for the crimes of electronic defamation, libel and slander.

2. Understanding Crimes of Electronic Defamation, Libel, and Slander

The crimes of electronic defamation, libel, and slander are the most widespread cybercrimes reported in Jordan. Several factors have contributed to their rapid spread,²⁸ such as the ease

22 Ibid., 62-63.

23 Abdullah Al-Nawaysa, *Crimes of Information Technology: Explanation of the Substantive Provisions in the Cybercrimes Law* (1st edn., Darwael for Publishing & Distributing 2017) 352-355.

24 Amman Magistrate Court, Op. cit.

25 The Jordanian Penal Code, as amended (No. 16 of 1960) page 374 of the Official Gazette (No. 1487) dated 11 May 1960, Art. 63.

26 Ibid., Art. 74(1).

27 Ibid., Art. 67.

28 Mohammed Al-Khawaldeh, ‘The Special Nature of the Crimes Libel and Slander and Disgrace carried out through

with which these crimes are committed, the geographical distance between the perpetrators and their victims, and the difficulties of tracking the perpetrators of these crimes.

The Jordanian Cybercrimes Law addresses crimes of electronic defamation, libel, and slander in Article 11. However, a question remains as to whether this Law has a sufficiently comprehensive legal framework to achieve its aims.

To answer this question, it must be observed that Article 11 of the Jordanian Cybercrimes Law, which discusses the crimes of electronic defamation, libel, and slander, does not contain any definitions of defamation, libel, and slander more generally. The Jordanian Penal Code thus in effect defines these expressions, as it is the Jordanian Penal Code that governs all substantive rules regarding crimes unless stated otherwise.²⁹ The Jordanian Penal Code thus defines the expression “defamation” as “the imputation of a certain matter to a person – even if it was done with doubt – which might negatively affect his/her honour, dignity and expose him/her to the hate and scorn of society regardless of whether such a matter is punishable by law or not.”³⁰ Furthermore, it defines the expression “libel” as “assaulting the dignity and honour of another person or his/her reputation – even if it was done with doubt – without accusing him/her with a specific matter,”³¹ and the expression “slander” as “... every humiliation or cursing – besides defamation and insult – which is directed to the victim through the use of words or gestures or writings or drawings that are not made public, or through a phone call or a cable or harsh treatment.”³²

According to the Jordanian Penal Code, for defamation and libel to be punishable, they must be committed by a means of publicity as provided exclusively in Article 189, with such means being in person (face to face) defamation and libel; in absentia defamation and libel; written defamation and libel; and defamation and libel through publication.³³ Notably, this definition of means does not contain any explicit references to the use of means of modern technology or electronic means for the commission of crimes of defamation or libel. However, this could be challenged on the basis that, although Article 189 does not explicitly address the commission of defamation and libel crimes through the use of modern technological or electronic means, written defamation and libel, as well as defamation and libel through publication, can clearly be committed electronically using modern technology.

Social Access Sites’ (2020) IUG Journal of Sharia and Law Studies, Vol. 28, No. 2, 298.

29 The Jordanian Cassation Court, in its criminal capacity, Decision (No. 3346/2021) dated 15 November 2021; The Jordanian Cassation Court, in its criminal capacity, Decision (No. 1290/2021) dated 27 July 2021; The Jordanian Cassation Court, in its criminal capacity, Decision (No. 1381/2021) dated 27 July 2021.

30 The Jordanian Penal Code, Art. 188(1).

31 Ibid., Art. 188(2).

32 Ibid., Art. 190.

33 Ibid., Art. 189.

Dependence solely on the Jordanian Cybercrimes Law without reference to the substantive rules in the Jordanian Penal Code concerning the crimes of electronic defamation, libel, and slander is thus incorrect and illogical for several reasons: the first is that it could be understood that Article (11) of the Jordanian Cybercrimes Law has never sought to change the legal framework for the underlying crimes of defamation, libel, and slander except in terms of the specific aspects of toughening the punishments for committing these crimes and describing how these crimes are committed. Additionally, Article (11) of the Jordanian Cybercrimes Law does not contradict, whether directly or indirectly, any of the provisions of the Jordanian Penal Code related to the requirement of crimes of defamation, libel, and slander concerning the underlying complaint, the claiming of personal right, and or the dropping of a case. The aim of the issuance of the Jordanian Cybercrimes Law was not to create an alternative legislative system, but rather to allow existing instruments to keep pace with technological developments based on the commission of crimes using modern technology, and to address the shortcomings of various legislative actions in addressing conventional crimes committed by means of modern technology.³⁴

2.1 The Special Nature of the Crimes of Electronic Defamation, Libel, and Slander

The crimes of electronic defamation, libel, and slander have a special nature³⁵ in two regards: the punishments for committing these crimes and how the crimes are committed. The Jordanian judiciary has indicated that the Jordanian legislator considered the crimes of electronic defamation, libel, and slander to be special offenses, thus increasing the penalties for them in comparison with the penalties for the basic crimes of defamation, libel, and slander as prescribed in the Jordanian Penal Code.³⁶ Under the Jordanian Cybercrimes Law, the punishments for committing crimes of electronic defamation, libel, and slander are imprisonment from three months up to three years and a fine of 100 to 2,000 Jordanian Dinars.³⁷ It is notable that the Jordanian Cybercrimes Law has the same punishments for all three crimes, defamation, libel, and slander, and that these punishments obligatorily include both imprisonment and a fine. In contrast, the punishments for committing the crimes of defamation, libel, and slander solely under the jurisdiction of the Jordanian Penal Code are varied according to the crime committed. For instance, the punishment for committing the crime of defamation is imprisonment from two months up to one year; a fine is not applicable

34 Mohamad Almajali, 'The Problem of Electronic Defamation, Libel and Slander's Crimes and the General Rules in the Penal Code' <<https://mohamadalmajali.com/?p=203>> accessed 18 March 2022.

35 The Amman Court of First Instance in its Appellate capacity, Decisions (No. 2586/2018) dated 23 May 2018.

36 The Jordanian Cassation Court, in its criminal capacity, Decision (No. 1290/2021) dated 27 July 2021; The Jordanian Cassation Court, in its criminal capacity, Decision (No. 1381/2021) dated 27 July 2021.

37 The Jordanian Cybercrimes Law, Art 11; The upper limit of the punishment of such crimes is determined according to the general rules derived from the Jordanian Penal Code.

for committing such a crime.³⁸ Similarly, the punishments for committing the crimes of libel or slander are imprisonment from one week up to three months or a fine of 5 to 25 Jordanian Dinars.³⁹ Only one punishment, whether imprisonment or a fine, is thus imposed in case of a crime of libel or slander under the Jordanian Penal Code, in contrast with a case of electronic libel or slander under the Jordanian Cybercrimes Law, wherein both punishments, the imprisonment and the fine, will be imposed.

Further, it is noteworthy that, generally, the Jordanian legislator does not pay particular attention to how crimes of defamation, libel, and slander are committed. However, the Jordanian legislator does pay particular attention to the crimes of defamation, libel, and slander when they are committed by electronic means. Consequently, when these crimes are committed by electronic means, the applicable law is the Jordanian Cybercrimes Law rather than the Jordanian Penal Code, and the Law Interpretation Bureau has issued a decision that confirms the Jordanian Cybercrimes Law is a special law that reorganises certain provisions related to the crimes of defamation and libel. Article 11 of the Jordanian Cybercrimes Law thus applies to all crimes of defamation and libel when these are committed via electronic websites and social media in the context of Article 57/2 of the Jordanian Penal Code, which stipulates that “if the act has a general and a specific description, then the court has to take into consideration the specific description.”⁴⁰

2.2 Procedural Rules Concerning Crimes of Electronic Defamation, Libel, and Slander

In this sub-section, several procedural rules concerning the crimes of electronic defamation, libel, and slander are discussed.

2.2.1 The Competent Court

The competent court for trying crimes of electronic defamation, libel, and slander is the Magistrate’s Court, in its criminal capacity. This is because crimes of electronic defamation, libel, and slander are considered misdemeanours, and the Magistrate’s Court under the Jordanian Law of Magistrate Courts is the competent court for all misdemeanours for which this Law does not specify another court.⁴¹ Certain formalities must be met to try crimes of defamation, libel, and slander, including that the victim of any of these crimes should lodge a personal claim.⁴² If no personal claim is lodged, no procedure can be taken by the court regarding any

38 The Jordanian Penal Code, Art. 358.

39 Ibid., Art. 359.

40 The Law Interpretation Bureau, Decision (No. 8/2015), the Official Gazette (No. 5367) dated 16 November 2015.

41 The Law of Magistrate Courts (No. 23 of 2017) page 4608 of the Official Gazette (No. 5474) dated 1 August 2017, Art 3.

42 The Jordanian Penal Code, Art. 364; The Jordanian Cassation Court, in its criminal capacity, Decision (No. 1190/2022)

lawsuit of defamation, libel, and slander.⁴³

The victim of any of these crimes also has the right to request, in their personal claim, compensation for incurred damages. In this case, the competent court will estimate the incurred damages based on the nature of the crime, the impact of the crime on the victim, and the latter's social status.⁴⁴

The basis for compensation in personal claims is tort liability, which comprises three pillars, the first of which is the harmful act, or a deviation in a person's behaviour. The second pillar is damage, which is a breach of the material and moral interest of the injured party, while the third is the causal relationship between the harmful act and the damage, such that the damage is caused by the harmful act.⁴⁵ Moreover, in a personal rights lawsuit related to a common rights lawsuit, the harmful act must constitute a crime punishable by law.⁴⁶ Consequently, the civil aspect goes hand-in-hand with the penal aspect.⁴⁷

It is worth noting that most of the legislations have called deviating from the rules of jurisdiction by permitting the filing of a civil lawsuit in line with a common rights lawsuit before the criminal judiciary. This is because the criminal judiciary is considered effective in terms of investigation and trial. This exceptional jurisdiction of the criminal judiciary does not obscure the original jurisdiction of the civil judiciary. Therefore, the aggrieved party has the option to resort to either of the two jurisdictions.⁴⁸ In this respect, Article 6 of the Jordanian Code of Criminal Procedures states, "the personal rights lawsuit might be instituted following the common rights lawsuit before the judicial authority where this lawsuit is instituted, and it might be instituted separately before the civil judiciary. In this case, looking into this lawsuit shall be suspended until the issuance of a final judgment regarding the common rights lawsuit."⁴⁹

Furthermore, if the victim who lodges a personal claim pardons the perpetrator, any common right lawsuit and imposed punishments that are not finalised will be halted.⁵⁰ Additionally, if crimes of electronic defamation, libel, and slander are committed abroad and their perpetrator

dated 7 April 2022; The Jordanian Cassation Court, in its criminal capacity, Decision (No. 65/2022) dated 29 March 2022; The Jordanian Cassation Court, in its criminal capacity, Decision (No. 3478/2021) dated 24 November 2021.

43 Ibid., Art. 364; The Jordanian Code of Criminal Procedures, as amended (No. 9 of 1961) page 311 of the Official Gazette (No. 1539) dated 16 March 1961, Art. 3(1)(A); The Jordanian Cassation Court, in its criminal capacity, Decision (No. 1290/2021) dated 27 July 2021; The Jordanian Cassation Court, in its criminal capacity, Decision (No. 1381/2021) dated 27 July 2021; The Jordanian Cassation Court, in its criminal capacity, Decision (No. 2478/2021) dated 5 October 2021.

44 The Jordanian Penal Code, Art. 365.

45 The Jordanian Cassation Court, in its criminal capacity, Decision (No. 1573/2021) dated 8 July 2021.

46 The Jordanian Cassation Court, in its criminal capacity, Decision (No. 1618/2020) dated 24 August 2020.

47 The Jordanian Cassation Court, in its criminal capacity, Decision (No. 4171/2021) dated 21 February 2022.

48 The Jordanian Cassation Court, in its civil capacity, Decision (No. 5189/2018) dated 5 March 2019.

49 The Jordanian Code of Criminal Procedures, Art. 6(1).

50 Ibid., Art. 52(1).

has neither a known place of residence in Jordan nor been arrested in Jordan, a common right lawsuit will be held against the perpetrator before the judicial authorities in the capital.⁵¹

2.2.2 The Application of Mitigating and Aggravating Circumstances to the Crimes of Electronic Defamation, Libel, and Slander

A further question, which needs to be asked, is whether mitigating circumstances should apply to crimes of electronic defamation, libel, and slander. The nature of mitigating circumstances is certainly relevant in determining the power of the judge. In this regard, when the law explicitly requires the application of mitigating circumstances, the judge has no choice but to follow the law and any punishment should be mitigated. However, when the judge's discretion is key to applying or not applying mitigating circumstances, the judge must decide whether to mitigate the punishment or not. Therefore, if any judge decides to mitigate a punishment, such a decision must be fully reasoned. A judge's decision in applying mitigating circumstances is thus necessarily determined on a case-by-case basis.⁵² Consequently, the Jordanian Cybercrimes Law does not explicitly require the application of mitigating circumstances to crimes of electronic defamation, libel, and slander: applying these circumstances is subject to the judge's discretion, and if the judge decides to apply them, this decision must be fully reasoned.

As the Jordanian Cybercrimes Law does not explicitly address the issue of applying aggravating circumstances to these crimes, it might be thought that it is not possible to apply them, as application of the aggravating circumstances requires an explicit stipulation in law. However, this could be challenged on the basis that the repetition of committing crimes of electronic defamation, libel, and slander will result in a doubling of the punishments imposed for committing such crimes. This can be inferred from Article 16 of the Jordanian Cybercrimes Law, which states, "the punishment stipulated in this Law shall be doubled in the event that any of the stipulated crimes are repeated."⁵³ Accordingly, toughening the punishments in such situations could be interpreted as an aggravating circumstance.

2.2.3 Attempting to Commit Crimes of Electronic Defamation, Libel, and Slander

The Jordanian Cybercrimes Law does not contain any provision regarding attempts to commit the crimes of electronic defamation, libel, and slander, or whether such attempts are considered criminal behaviour and, as a result, subject to criminal responsibility and thus to specific punishments. Due to this absence of addressing the issue of attempting to commit these crimes, two observations emerge: crimes of electronic defamation, libel, and slander are always

51 The Jordanian Code of Criminal Procedures, Art. 5(3).

52 Muath Al-Zoubi, 'Trafficked Refugees: The Jordanian Efforts to Address this Issue', Arab Law Quarterly (2020) 36 (1-2) [doi: 10.1163/15730255-bja10016] 192, 209.

53 The Jordanian Cybercrimes Law, Art. 16.

considered misdemeanours, and the general rule regarding the punishment for attempting to commit such crimes is explicitly stipulated in the Jordanian Penal Code: “an attempt to commit a misdemeanour is not punishable unless in the instances explicitly stipulated by the law.”⁵⁴ Consequently, as the Jordanian Cybercrimes Law does not stipulate the attempt to commit the crimes of electronic defamation, libel, and slander, such an attempt is not punishable. In addition, it can be argued that an attempt to commit crimes of electronic defamation, libel, and slander is unimaginable: these crimes are either committed completely or are not committed at all.

2.2.4 Detention

The next question is whether the commission of crimes of electronic defamation, libel, and slander is subject to detention, and this is answered by the knowledge that the commission of misdemeanours is subject to detention where the punishment for such misdemeanours is imprisonment for a period exceeding two years.⁵⁵ It is noteworthy that the punishment for the crimes of defamation, libel, and slander is imprisonment for a period exceeding two years only where they are considered crimes under the jurisdiction of the Jordanian Cybercrimes Law.⁵⁶ In this case, the public prosecutor may issue a warrant of detention against the defendant for any crimes of electronic defamation, libel, and slander for a period not exceeding seven days. This period might be renewed by the public prosecutor if this is in the interests of the investigation. However, such an extension period shall not exceed one month, and the defendant shall be released after this period has passed.⁵⁷ In contrast, when crimes of defamation, libel, and slander are considered crimes under the Jordanian Penal Code, these are not subject to detention, as the relevant punishments are less than two years of imprisonment.⁵⁸

2.2.5 Confiscation Concerning the Commission of Crimes of Electronic Defamation, Libel, And Slander

The Jordanian Cybercrimes Law addresses the possibility of imposing a complimentary sentence represented by confiscation. In this regard, Article 13 of Jordanian Cybercrimes Law provides the competent court with discretionary power to order the confiscation of any tools, devices, materials, and means used in the commission of any of the stipulated crimes in the Law.⁵⁹ Consequently, it is possible for the competent court where crimes of electronic defamation, libel, and slander are under trial to order the confiscation of devices used in commission of any

54 The Jordanian Penal Code, Art. 71(1).

55 The Jordanian Code of Criminal Procedures, Art. 114(2).

56 The Jordanian Cybercrimes Law, Art. 11.

57 The Jordanian Code of Criminal Procedures, Art. 114(2).

58 The Jordanian Penal Code, Arts. 358-359.

59 The Jordanian Cybercrimes Law, Art. 13(c).

of the crimes of electronic defamation, libel, and slander.

2.2.6 Special Rules Regarding the Punishments for Crimes of Electronic Defamation, Libel, and Slander

Under the Jordanian Cybercrimes Law, participants, interferers in, or inciters of the crimes of electronic defamation, libel, and slander are subject to same punishments as the perpetrators of those crimes.⁶⁰ This is a break with the general rules regarding the punishment of interferers in and inciters of crimes under the Jordanian Penal Code;⁶¹ as those rules, the punishments for interferers with and inciters of crimes are lighter than those for perpetrators.

Conclusion

Cybercrime is similar to any other crime in essence that it contains outlawed conduct threatening social order. However, it differs from other crimes in the way in which it is committed.⁶² To better understand cybercrimes, it is thus useful to look at certain cybercrimes, not as new criminal behaviours but rather as existing criminal behaviours committed using new means.⁶³ This article sought to address the emergence of crimes of electronic defamation, libel, and slander as cybercrimes under the Jordanian Cybercrimes Law by shedding light on several important issues regarding cybercrime across two sections. In the first section, two main issues were examined, based on the question of what constitutes a crime and the meaning of the related expression “cybercrime”, which is the most widely accepted expression used to refer to crimes committed by means of modern technology. Furthermore, this section has also examined definitions of the various expressions used in the Jordanian Cybercrimes Law, as it is important to understand what these expressions mean, and the three essential elements of cybercrimes were thus discussed in this context.

The second section focused on the crimes of electronic defamation, libel, and slander by highlighting the factors that have contributed to the rapid spread of these crimes and by raising the question of whether the Jordanian Cybercrimes Law has a sufficiently comprehensive legal framework to address these crimes. Additionally, in this section, the special nature of the crimes of electronic defamation, libel, and slander was analysed, and the procedural rules concerning the crimes of electronic defamation, libel, and slander were assessed.

This article has thus facilitated the development of the following findings:

- The Jordanian Cybercrimes Law does not explicitly define the expression “cybercrime”: however, several expressions that are relevant to cybercrime have been defined under

60 Ibid., Art. 14.

61 The Jordanian Penal Code, Art. 81.

62 Susan W. Brenner, *Cybercrime and the Law: Challenges, Issues, and Outcomes* (UPNE 2012) 6.

63 Gillespie, Op. cit., 4.

this Law.

- Cybercrime requires the availability of a legal element, a material element, and a mental element.
- The Jordanian Cybercrimes Law addresses the crimes of electronic defamation, libel, and slander, which are the most widespread cybercrimes in Jordan.
- The expressions “defamation”, “libel”, and “slander” are not defined under the Jordanian Cybercrimes Law, which also does not address the various elements of these crimes. This makes it imperative to use the definitions stated under the Jordanian Penal Code for these expressions, as well as to apply the general rules stated in the Jordanian Penal Code regarding the elements of the crimes of electronic defamation, libel, and slander.
- The Jordanian Cybercrimes Law thus does not have a sufficiently comprehensive legal framework to deal with the crimes of electronic defamation, libel, and slander, as this Law has only one article concerning these crimes. Fortunately, the Jordanian Cybercrimes Law refers to general rules provided in the Jordanian Penal Code and the Jordanian Code of Criminal Procedures to deal with these crimes.
- The crimes of electronic defamation, libel, and slander nevertheless have a special nature that can be illustrated by both the punishments prescribed for committing those particular crimes and the ways the crimes are committed.
- This article thus concludes that the Jordanian Cybercrimes Law has taken a tough approach to deal with the crimes of electronic defamation, libel, and slander based on tightening the punishments for committing these crimes and subjecting the commission of these crimes to both detention and confiscation.

Based on these findings, this article recommends the following:

- It is recommended to raise public awareness regarding the danger of committing cybercrimes generally and the crimes of electronic defamation, libel, and slander specifically, to emphasise how committing these crimes will incur criminal responsibility, and as a result, attract severe punishment.
- It is recommended for statistics and reports regarding the scale of commission of the crimes of electronic defamation, libel, and slander be published to clarify how widespread these crimes are. This could gain support for legal solutions to be adopted to address such spread.
- It is recommended that the Jordanian Cybercrimes Law be amended to include an explicit provision regarding lodging a personal claim in the crimes of electronic defamation, libel, and slander rather than referring this matter to the Jordanian Penal Code.
- It is recommended that a comprehensive legal framework regarding the crimes of

electronic defamation, libel, and slander be adopted to take into consideration the special nature of these crimes rather than referring their organisation to the general principles stated in other laws such as the Jordanian Penal Code and the Jordanian Code of Criminal Procedures.

- It is recommended that sharper clarification be provided as to when the Jordanian Cybercrimes Law should be applied to the crimes of electronic defamation, libel, and slander and when other laws such as the Jordanian Penal Code or the Jordanian Code of Criminal Procedures will apply to similar crimes.

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