

Legal Protection of Children from Cyber Sexual Harassment; a Comparative Study in the light of Egyptian and Algerian Penal Laws

الحماية الجنائية للأطفال من جريمة التحرش الجنسي عبر الشبكة الدولية للمعلومات (الإنترنت)
دراسة مقارنة في ضوء قانون العقوبات المصري والجزائري

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Abstract

The study aimed at evaluating to what extent the legal protection for children from sexual harassment through the internet is according to Egyptian and Algerian Penal Laws. The study used the comparative methodology to reach the targets in question. To gather the required data, a review of literature was administered. The study came to the conclusions that the Egyptian Penal Law implicitly protects children from sexual harassment through wire and wireless telecommunications. However, this legal protection is not sufficient. The study also concluded that the Algerian Penal Law paid special attention to protecting children from sexual harassment in comparison with its Egyptian equivalent. Nevertheless, children are not sufficiently protected from sexual harassment that committed via the internet. The study recommended that the Egyptian legislator ought to impose a tougher punishment for the crime of sexual harassment that committed against children. It also recommended that the Algerian legislator ought to explicitly criminalises sexual harassment that is committed against children via the internet.

Keywords: Legal Protection, Children, Sexual Harassment, the Internet.

ملخص

استهدفت الدراسة الحالية بيان مدى اعتناء قانون العقوبات المصري والجزائري بالحماية الجنائية للأطفال من جريمة التحرش الجنسي عبر الشبكة الدولية للمعلومات (الإنترنت). وتمثلت أداة الدراسة في مسح الأدبيات المتعلقة بموضوع الدراسة. وأسفرت الدراسة عن العديد من النتائج أبرزها الآتي: أن قانون العقوبات المصري قد كفل -على نحو ضمني- حماية للطفل من جريمة التحرش الجنسي عبر الوسائل السلوكية واللاسلكية. ومع ذلك، فإن هذه الحماية ليست كافية لأنها لا تعطي الطفل حماية جنائية خاصة مقارنة بغيره- أن قانون العقوبات الجزائري قد أولى حماية خاصة للطفل من جريمة التحرش الجنسي مقارنة بنظيره المصري. ومع ذلك، فإن هذه الحماية ليست كافية أيضا لأنها لا تراعي خصوصية هذه الجريمة إذا ما تمت عبر الشبكة الدولية

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للمعلومات (الإنترنت). وأوصت الدراسة المشرع الجنائي المصري بضرورة تغليظ عقوبة جريمة التحرش الجنسي بالطفل. كما أوصت المشرع الجنائي الجزائري بضرورة النص الصريح على تجريم التحرش الجنسي بالطفل الذي يقع عبر وسائل الاتصال الحديثة بما فيها الشبكة الدولية للمعلومات (الإنترنت).
الكلمات المفتاحية: الحماية الجنائية، الأطفال، التحرش الجنسي، الإنترنت.

Introduction

Praise be to Allah and Peace and Blessings of Allah upon our Prophet Muhammad, his family, his companions and all who follow his guidance to the Day of Judgment .

(O, believers, be pious to Allah and care nothing but to die on Islam) ⁽¹⁾.

(O, people, be pious to Allah Who created all of you from a male and a female and who created the female from the male and created all humans from both of them. O, people, be pious to Allah Who you will stand before for Judgment and He will question you about what you have done with your relatives. Remember that Allah observes you all) ⁽²⁾.

(O, believers, fear Allah and say what is right in order that Allah mend your deeds and forgive your sins. Whosoever obeys Allah and His Messenger shall win a great victory) ⁽³⁾.

To proceed ⁽⁴⁾:

In spite of the importance of the internet nowadays, it has become a danger to children. A recent study has pointed out that there has been a noticeable increase in the level of sexual harassment of children through the internet at present ⁽⁵⁾. Another study has alluded that the amount of the cyber sexual content and activity targeting and harassing children has remarkably grown to a terrifying level ⁽⁶⁾ and the children ... are not legally protected ⁽⁷⁾. A third study has mentioned that " Many Arab countries have not made a law handling the cybercrime ⁽⁸⁾ whether it is committed via the computer or the internet and there is still a disagreement on whether it is better to amend the penal legislation to include the cybercrime ... or to make new laws concerning the cybercrime ⁽⁹⁾. A Fourth study calls for " passing new laws criminalizing the cybercrime" ⁽¹⁰⁾ and emphasizes " the necessity to legislate a new law penalizing cybercrimes committed to children" ⁽¹¹⁾. Consequently, a question has been raised concerning to what extent the Egyptian and Algerian Criminal Codes pay attention to the legal protection of children from sexual harassment using the internet ⁽¹⁵⁾. The current study tries to answer this raised question in the coming lines.

The Problem of the Study

The study problem is put in the following main question;

To what extent do the Egyptian and Algerian Penal Laws pay attention to the legal protection of children from cyber sexual harassment?

This main question can be divided into the following subcategories;

- 1- What is the conception of sexual harassment crime?
- 2- To what extent does the Egyptian Penal Law pay attention to the legal protection of children from cyber sexual harassment?
- 3- To what extent does the Algerian Penal Law pay attention to the legal protection of children from cyber sexual harassment?

The Objectives of the Study

Based on the pre-raised questions, the study objectives are as follows;

- 1- Investigating the conception of sexual harassment crime.

2- Investigating to what extent the Egyptian Penal Law pays attention to the legal protection of children from cyber sexual harassment.

3- Investigating to what extent the Algerian Penal Law pays attention to the legal protection of children from cyber sexual harassment.

The importance of the Study

The study importance is shown in two aspects;

First: Theoretically;

The study seeks to bridge the gap in this area to develop what previous studies have come to.

Second: Practically;

The study draws the attention of legislators to pay further attention to the legal protection of children from cyber sexual harassment. . .

The Methodology of the Study

The study has used the descriptive comparative methodology to reach the targets in question. To gather the required data, a review of literature has been administered.

The Scheme of the Study

The study has been planned as follows;

- An introduction.
- Chapter I.
- Chapter II.
- Chapter III.
- A conclusion.
- A bibliography.

The introduction has been given. So, the coming lines will tackle the other points in further detail.

Chapter I

The Conception of Sexual Harassment Crime

This chapter is going to investigate the linguistic and terminological conception of the crime of sexual harassment as follows;

I. The Conception of the Crime

First; The Linguistic Conception of the Crime:

In Arabic dictionaries, the crime means a fault and a sin. The verb is 'criminalize' which means to commit a sin. For example, Allah, exalted be He, says, "Do not allow your hatred for other people to turn you away from justice. This is a crime" ⁽¹⁴⁾. A crime here means a sin ⁽¹⁵⁾.

Second; The Terminological Conception of the Crime:

According to the legal literature, the crime is defined as: " a willing behavior that is unlawful and punishable" ⁽¹⁶⁾.

From what is mentioned above, it is obvious that the terminological definition agrees with the linguistic one on that both of them consider the crime a prohibited behavior. However, the linguistic conception of the crime is more comprehensive than the terminological one. According to the linguistic definition, the crime means any banned behavior whether the source of banning is religion, traditions, conventions or otherwise. But, according to the terminological conception, the crime means a behavior that is against the law.

II. The Conception of Sexual Harassment

First; The Linguistic Conception of Sexual Harassment:

In Arabic dictionaries, 'harassment' is a noun from the verb 'harass' which means 'to continue to annoy or upset someone over a period of time' ⁽¹⁷⁾. For example, the Hadith that says, "The Satan despairs to be worshipped in the Arabian Peninsula, but he does not despair to harass Muslims" ⁽¹⁸⁾. That is, to annoy and induce them to raise sedition and wage wars.

The word 'sexual' is derived from the word 'sex' which means a 'species' ⁽¹⁹⁾. Sex also means the lovemaking between a male and a female. 'Sexual' is an adjective derived from 'sex' ⁽²⁰⁾. Thus, according to the linguistic definition, 'sexual harassment' means the inducing of someone to make someone else respond to his/her sexual needs.

Second; The Terminological Conception of Sexual Harassment:

According to the legal literature, sexual harassment is " an action that happens through the abuse of power using orders, threats or coercion for sexual purposes" ⁽²¹⁾. This definition reflects the atmosphere at which sexual harassment usually happens. This prohibited sexual behavior usually happens under the circumstances of power imbalance between the perpetrator and the victim. The perpetrator has usually a power over his victim as it the case of the supervisors to his subordinates or the master to his servants. The perpetrator misuses his authority to coerce his victim to give in to satisfy his sexual needs.

In spite of the importance of the previous definition, it pays no consideration to other forms of sexual harassment that happen without misuse of power. There are a lot of sexual harassment accidents that happen in circumstances where there is a balance of power as it the case of the sexual harassment that happens among colleagues at work.

From what is mentioned above, sexual harassment can be defined as a law-breaking behavior that is meant to satisfy a sexual need for the perpetrator ⁽²²⁾ and " it is done in the form of tracking or chasing; verbally or non-verbally; using the telephone, the internet or any other means to send sexual messages to the victim" ⁽²³⁾. This means that this unacceptable behavior can be committed through looks, gestures, words, asking questions, verbal teasing, groping, stalking, voyeurism for sexual purposes ... and it can be done in public as well as private places. It also can be done using the telephone or via the internet ⁽²⁴⁾.

In order to consider a behavior as sexual harassment, there must be the following characteristics;

1- It must be for the purpose of sex.

2- It must be intentional.

3- It can neither be desirable, welcomed nor sought for by the victim ⁽²⁵⁾.

So far, it has been obvious that the crime of sexual harassment is a sexual crime ⁽²⁶⁾; in other words, sex is the motive for this crime. This crime can be committed using words, acts or gestures. The target of this crime can be a male or a female, a child or an adult. This crime is intended by the perpetrator and undesired by the victim. It can be committed anywhere; public or private, using any means; the telephone, the internet or otherwise ⁽²⁷⁾.

However, the current study is restricted to that type of sexual harassment that is targeting children using the internet ⁽²⁸⁾.

Chapter II

The Legal Protection of Children from Cyber Sexual Harassment in the Light of the Egyptian Penal Law

The Egyptian Penal Law criminalizes and punishes for sexual harassment as stated by rule 306 bis (A) and (B). Rule 306 (A) of the Criminal Code prescribes that: " Any person harasses another in a public or a private place using words, action gesture, wire or wireless telecommunications or any other means; electronic or non-electronic shall receive a penalty of imprisonment for a period not less than six months and a fine of no less than three thousand Egyptian pounds and no more than five thousand Egyptian pounds or only one of these two. If this person commits this offence through stalking, they shall receive an imprisonment for a period of no less than a year and a fine no less than five thousand Egyptian pounds and no more than ten thousand Egyptian pounds or only one of the two. In case of recurrence, the guilty shall receive a double penalty of imprisonment and fine".

Rule 306 bis (B) of the Criminal Code prescribes that: " If the offence above-mentioned in Rule 306 bis (A) is committed for sexual purposes, it considers to be sexual harassment and the guilty shall receive a penalty of imprisonment for a period of no less than a year and a fine of no less than ten thousand Egyptian pounds and no more than twenty thousand Egyptian pounds or only one of these two. If the guilty is one of those mentioned in Clause Two of Rule 267 of the Criminal Code ⁽²⁹⁾, has an authority over the victim, practices any kind of pressure on him or commits the crime with a partner or more, with at least one of them carries a weapon, they shall receive a penalty of imprisonment for a period of no less than two years and no more than five years and a fine of no less than twenty thousand Egyptian pounds and no more than fifty thousand Egyptian pounds" ⁽³⁰⁾.

The reason for criminalizing this act is that " some ill-mannered persons are getting used to tease women everywhere until it becomes a habit practiced for fun" ⁽³¹⁾. Since the current rules of the penal law do not apply to this act, Rule 306 bis (A) and (B) are made to criminalize and penalize this unacceptable behavior" ⁽³²⁾. That is, they are meant to punish for sexual acts that are not covered by other relevant rules such as the indecent exposure and indecent assault rules ⁽³³⁾.

This offence has three elements ⁽³⁴⁾:

First, the material element:

This elements occurs when a male or a female harasses another in a public or a private place

using words, action, wire or wireless telecommunications or any other means for sexual purposes⁽³⁵⁾.

Second, the place and the means of the crime:

This element occurs if the act of harassment is committed whatever the place is; public or private, trodden or not⁽³⁶⁾ and whatever the means is; real or virtual, electronic or not⁽³⁷⁾.

Third, the mental element:

This element occurs when the perpetrator intends to make sexual gestures or hints purposefully knowing that this act is indecent, obscene and pornographic. This element also occurs when the wrongdoer has the intention to make lewd hints or indecent gestures to attain sexual purposes.

From the two previous rules, it is clear that the punishment for the crime of sexual harassment ranges from imprisonment and fine penalties⁽³⁸⁾ as follows:

- Both penalties of imprisonment for a period of no less than six months and fine of no less than three thousand Egyptian pounds and no more than five thousand Egyptian pounds if the crime is committed for the first time⁽³⁹⁾.
- Only The penalty of imprisonment for a period of no less than six months if the crime is committed for the first time.
- Only The penalty of fine of no less than three thousand Egyptian pounds and no more than five thousand Egyptian pounds if the crime is committed for the first time.
- Both penalties of imprisonment for a period of no less than a year and fine of no less than five thousand Egyptian pounds and no more than ten thousand Egyptian pounds if the crime is committed through tracking and stalking of the victim.
- Only The penalty of imprisonment for a period of no less than a year if the crime is committed through tracking and stalking of the victim.
- Only The penalty of fine of no less than five thousand Egyptian pounds and no more than ten thousand Egyptian pounds if the crime is committed through tracking and stalking of the victim.
- Both penalties of imprisonment for a period of no less than two years and fine of no less than ten thousand Egyptian pounds and no more than twenty thousand Egyptian pounds in case of recurrence⁽⁴⁰⁾.
- Both penalties of imprisonment for a period of no less than a year and fine of no less than ten thousand Egyptian pounds and no more than twenty thousand Egyptian pounds if the crime is committed for sexual purposes.
- Only The penalty of imprisonment for a period of no less than a year if the crime is committed for sexual purposes.
- Only The penalty of fine of no less than ten thousand Egyptian pounds and no more than twenty thousand Egyptian pounds if the crime is committed for sexual purposes.

Both penalties of imprisonment for a period of no less than two years and no more than five years and fine of no less than twenty thousand Egyptian pounds and no more than fifty thousand Egyptian pounds if the guilty is one of those mentioned in Clause Two of Rule 267 of the Criminal Code, has an authority over the victim, practices any kind of pressure on him or commits the crime with a partner or more, with at least one of them carries a weapon⁽⁴¹⁾.

if guilty is one of those mentioned in Clause Two of Rule 267 of the Criminal Code, has an authority over the victim, practices any kind of pressure on him or commits the crime with a partner or more, with at least one of them carries a weapon

It is noticeable that the penalty grows stricter as long as the crime is accompanied by an aggravating factor. The penalties of imprisonment and fine turn tougher in the following four cases:

First, when the crime is committed through tracking and stalking of the victim.

Second, when the crime is re-committed.

Third, when the crime is committed for sexual purposes.

Fourth, when the guilty is one of those mentioned in Clause Two of Rule 267 of the Criminal Code, has an authority over the victim, practices any kind of pressure on him or commits the crime with a partner or more, with at least one of them carries a weapon.

It is noteworthy that when deciding the penalty of imprisonment for all cases, the legislator puts a minimum limit to this penalty but leaves it with no maximum to be limited in the light of the general principles⁽⁴²⁾.

In spite of this, the last case is an exception. Not only does he limit the minimum of the penalty, but he also limits the maximum and raise it from three to five years so as to make the penalty severer owing to the accompanying aggravating factor.

It is also noted that the legislator decides the fine as a penalty for this crime and puts a minimum and a maximum for this penalty in all cases of this crime.

In addition, the judge has discretionary power to pass both imprisonment and fine penalties on the guilty or to pass only one of these two in all of the cases except for the second and the last cases. In the second case, the legislator does not explicitly show if it is possible for the judge to pass both penalties on the guilty or to pass only one of these two. Nevertheless, if the legislator had intended to grant the judge discretionary power to pass both of the two penalties or only one of them, he would have explicitly stated it. But he did not. This means that he necessitates the judge to pass both of the two penalties. This inference is emphasized by the fact that the recommitting of the crime is an aggravating factor that entails a severer punishment. This severer punishment demands passing both penalties not only one. For this reason, the legislator demands the judge to pass both penalties on the part of the guilty in the last case.

Furthermore, it is noticed that the Egyptian legislator guarantees a legal protection for children from cyber sexual harassment when prescribing that "Any person harasses another in a public or a private place using words, action gesture, wire or wireless telecommunications or any other means; electronic or non-electronic shall receive a penalty of imprisonment for a period not less than six months and a fine of no less than three thousand Egyptian pounds and no more than five thousand Egyptian pounds or only one of these two" and that " If the offence above-mentioned in Rule 306 bis (A) is committed for sexual purposes, it considers to be sexual harassment and the guilty shall receive a penalty of imprisonment for a period of no less than a year and a fine of no less than ten thousand Egyptian pounds and no more than twenty thousand Egyptian pounds or only one of these two". The statement saying 'any

person harasses another' implies that sexual harassment of children is also criminalized since the phrase 'any person' is a general word that includes not only adults but children as well. Too, the statement saying 'wire or wireless telecommunications' implies that cyber sexual harassment is also criminalized since the phrase 'wire or wireless telecommunications' is a general word that refers to every electronic means including the internet.

In spite of that, there is a nagging need to secure a special legal protection for children from cyber sexual harassment in agreement with what Rule Ten of the 2014 Egyptian Constitution and its 2019 amendments that emphasizes legal protection for children saying, " The State guarantees protecting ... children, fostering young people ... and providing them with good opportunities to develop and elaborate their skills and abilities".

Chapter III

The Legal Protection of Children from Cyber Sexual Harassment in the Light of the Algerian Penal Law

The Algerian Criminal Code has raised the issue of sexual harassment. Article 341 bis states that: "Any person misuses his job to order, threaten, coerce or exercise pressure on someone else to make him respond to his sexual demands is committing sexual harassment and shall receive a penalty of imprisonment for a period from one to three years and a fine from one hundred thousand Algerian dinars to three hundred thousand Algerian dinars.

Too, any person harasses another using sexual words, acts, gestures or hints is considered to be committing the same offence above- mentioned and shall receive the same penalty.

If the perpetrator is unmarried, the victim is a minor that does not turn sixteen, the victim is weak, ill, pregnant, physically or mentally handicapped, whether these factors are observed or not, or whether the perpetrator is aware of them or not, they shall receive a penalty of imprisonment for a period from two to five years and a fine from two hundred thousand Algerian dinars to five hundred thousand Algerian dinars.

In case of recurrence, the penalty shall be doubled" ⁽⁴³⁾.

The reason for criminalizing sexual harassment is to protect chastity and public modesty on the basis of being of human rights which cannot be violated according to the Algerian Constitution ⁽⁴⁴⁾. The Algerian legislator has decided this Article to face some forms of sexual impudence that are not included in the Articles that criminalize sexual molestation and public indecent exposure ⁽⁴⁵⁾.

This offence has three elements ⁽⁴⁶⁾:

First, the material element:

This element occurs when a male or a female in authority orders, threatens, coerces or exercises pressure on someone else to make him respond to his sexual demands ⁽⁴⁷⁾.

It is noted that the Algerian legislator, unlike his Egyptian counterpart, has concentrated on the elements of coercion, threatening and pressure exercised by those who are in power to make the victim respond to their sexual demands. This may be owing to the prevalence of this kind of sexual harassment in the Algerian society. Nevertheless, the Egyptian legislator has not ignored this type of sexual harassment. He deals with it as an aggravating factor saying, "

If the guilty ... has an authority over the victim, practices any kind of pressure on him ... they shall receive a penalty of imprisonment for a period of no less than two years and no more than five years and a fine of no less than twenty thousand Egyptian pounds and no more than fifty thousand Egyptian pounds"

Second, the place and the means of the crime:

The Algerian legislator has not referred to the place and the means of the crime as it is the case of his Egyptian equivalent. However, it can be understood that this element occurs if the act of harassment is committed whatever the place is; public or private, trodden or not and whatever the means is; real or virtual , electronic or not.

Third, the mental element:

This element occurs when the perpetrator has the intent to give orders, threatens, coerces or exercises pressure on someone else to make him respond to his sexual demands. It also occurs when the perpetrator intends to harass the victim using sexual gestures or hints purposefully knowing that this act is indecent, obscene and pornographic whatever the motive is.

From the two previous rules, it is clear that the punishment for the crime of sexual harassment ranges from imprisonment and fine penalties ⁽⁴⁸⁾ as follows:

- Both penalties of imprisonment for a period of no less than a year and fine of no less than one hundred thousand Algerian dinars and no more than three thousand Algerian dinars if the crime is committed for the first time.
- Both penalties of imprisonment for a period of no less than two years and fine of no less than two hundred thousand Algerian dinars and no more six hundred thousand Algerian dinars in case of recurrence.
- Both penalties of imprisonment for a period of no less than two years and no more than five years and fine of no less than two hundred thousand Algerian dinars and no more than five hundred thousand Algerian dinars If the perpetrator is unmarried, the victim is a minor that does not turn sixteen, the victim is weak, ill, pregnant, physically or mentally handicapped, whether these factors are observed or not, or whether the perpetrator is aware of them or not ⁽⁴⁹⁾ .
- Both penalties of imprisonment for a period of no less than four years and no more than ten years and fine of no less than four hundred thousand Algerian dinars and no more one million Algerian dinars in case of recurrence.

It is noticeable that the penalty grows stricter as long as the crime is accompanied by an aggravating factor. The penalties of imprisonment and fine turn tougher in the following two cases:

First, when the crime recurs.

Second, when the perpetrator is unmarried, the victim is a minor that does not turn sixteen, the victim is weak, ill, pregnant, physically or mentally handicapped, whether these factors are observed or not, or whether the perpetrator is aware of them or not.

It is also noted that the Algerian legislator, unlike the Egyptian equivalent, limits the

penalties of imprisonment and fine with a minimum and a maximum in all cases. This may be due to the Algerian legislators' intent to close the door before open interpretation that might twist the punishment away from what is intended for.

In addition, the Algerian legislator, unlike the Egyptian equivalent, does not grant the judge discretionary power to decide whether both penalties or only one is suitable. This might be due to the Algerian legislator's desire to make the punishment severer and more deterrent.

Furthermore, it is evident that the Algerian legislation has paid more attention to protecting children from sexual harassment in comparison with its Egyptian counterpart. Not only does the Algerian legislator criminalize and penalize sexual harassment, but he also makes the punishment tougher and enforces the penalties of imprisonment and fine jointly not separately.

In spite of this fact, the Algerian legislation has not paid due attention to protecting children from cyber sexual harassment. It should have intensified criminalizing and penalizing this form of sexual harassment to immunize children in particular and the society in general from this rampant misbehavior.

Conclusion

The study came to two the following findings:

First; Although the Egyptian Penal Law implicitly guarantees protecting children from cyber sexual harassment, this protection is not sufficient since children need special legal attention that explicitly encoded because of their weakness and inexperience in comparison with adults.

Second; the Algerian Penal Law has paid special attention to protecting children from sexual harassment compared with its Egyptian equivalent. Nevertheless, this protection is not enough either since it does not pay due legal attention to shield children from sexual harassment committed through the internet.

In the light of these findings, The study recommends that the Egyptian legislator should impose tougher punishment for the crime of sexual harassment of children ⁽⁵⁰⁾. So, the study suggests amending Article 306 bis (B) to include the following clause;

"If the victim does not finish eighteen years old, the convicted shall receive a penalty of imprisonment for a period no less than three years and fine of no less than thirty thousand pounds".

The study also recommends that the Algerian legislator should explicitly criminalize and penalize cyber sexual harassment of children to put into consideration that this form of sexual harassment is as grave as other forms of this crime. So, the study suggests amending Article 341bis to include the following clause;

"Any person harasses another in a public or a private place using words, action gesture, wire or wireless telecommunications or any other means; electronic or non-electronic

shall be considered committing the same above-mentioned offence and shall receive the same penalty".

Notes

- 1) Surat Al-Imran (The Family of Imran) III, verse: 102.
 - 2) Surat An-Nisaa (The Women) IV, verse: 1.
 - 3) Surat Al-Ahzab (The Confederates) XXXIII, verse: 70.
 - 4) Al-Albany, **Sahih Al-Targheeb wa Tarheeb**, edit. 1, p.3.
 - 5) Sherifa bin Gaddafa and Soleiha Al-Qass, Cyber Crimes Committed against Women and Intervention Strategies; A Study Submitted to the National Conference titled: "**Prevention Strategies of Cyber Crime according to the Algerian Legislation**", Algeria, 29th March, 2017, p. 52.
 - 6) Yunus Arab, **Renewing Cyber Crime Prevention Legislations**, an Essay Published on 8/9/2016 at <http://www.mohamah.net>. Visited on 29/9/2019, at 11. 25 a. m.
 - 7) Farouq Kosanteni, **Implementing Penalties of Cyber Crime is Difficult in Algeria**, an Essay published on 24/1/2014 at <https://www.djazairress.com/essalam/32212>. Visited on 29/9/2019, at 11. 42 a. .m.
 - 8) The cybercrime is a criminal activity in which the computer and the internet play a vital role. It is a form of the electronic crime. The e-crime can be done using the computer, the internet, the telephone, the fax or any other electronic means. The e-crime including the cybercrime is called the new technology crime. Refer to; Ali Abd Al-Qader Al-Qahwaji, **The Legal Protection of the Computer Programs**, no edition, p. 2, Mohamed Ali Al-Irian, **Cyber Crimes**, no edition, pp. 43-45, Afifi Kamel Afifi, **The Computer Crimes, the Author's rights, Artistic Works and the Role of the Police and the Law, a Comparative Study**, no edition, p. 320, Ghannam Mohamed Ghannam, **The Role of Penal Law in Preventing Cyber Crimes**, no edition, p, 7, Khalid Mamdouh Ibrahiem, **e-Litigation**, no edition, p. 320, Ashraf Abd Al-Qader Qandil, **Criminal Evidencing for Cyber Crimes**, no edition, p. 94 and Rahiema Namdelli, **The Characteristics of the Cyber Crime in the Algerian and Comparative Laws, a Study Submitted for the Fourteenth International Conference Titled " Cyber Crimes"**, Tripoli, Libya, 24 – 25 March 2017, p. 98.
 - 9) Lindah Sharabsha, Regional and International Strategies to Prevent the Cyber Crime; **Studies and Researches Journal**, Algeria, vol. (1), issue no (1), 2008, p. 10.
 - 10) Amna Zoeity, **Preventing Cyber Crimes in the Light of Algerian Criminal Law; a Comparative Study**, University of Mestghanim, Algeria, vol. (4), issue no (7), June 2019, p. 236.
 - 11) Farouq Kosanteni, **Implementing Penalties of Cyber Crime is Difficult in Algeria**, an Essay published on 24/1/2014 at <https://www.djazairress.com/essalam/32212>. Visited on 29/9/2019, at 11. 42 a. .m.
 - 12) Children are defined as those age group who are under 18. This definition is adopted by most Arab Legislations such as the Iraqi, the Syrian, the Lebanese, the Jordanian, the Egyptian, the Libyan, the Tunisian and the Algerian Legislations. Refer to: Fawzeia Abd Al-Sattar, **the Legal Treatment of Children, a Comparative Study**, no edition, p. 39.
- The legal protection of children is those strategies the legislator decides to protect children's rights. There are two types of legal protection shown as follows;
- First;** the legal protection decided for the victim children. This protection is embodied in the legal rules that criminalize and penalize violations of children's rights.
- Second;** the legal protection for the guilty children. This protection is meant to put a special procedural and punitive system geared to children taking into consideration the differences between guilty children and guilty adults.

For further detail, refer to: Shereif Mohamed Kamil, **The Criminal Protection of Children**, edit. 1, pp. 6-9.

13) 'Internet' is an abbreviation for 'Interconnections Network'. It is a group of computers that are connected to each other through the cell phones, visual fibers or satellites. It is used to exchange data and information all over the world. Unfortunately, the internet is also used to commit crimes. The crimes that are committed using the internet are called the internet crimes. These crimes may be targeting the persons' honor, their possessions or the network itself. For further detail, refer to: Abd Al-Fattah Baiomi Hijazi, **Cyber Crimes in the Arab Legislations: a Comparative Study with Application on the System of Preventing Cyber Crimes in Saudi Arabia**, edit. 1, pp. 10-11, Rashid Mohamed Al-Morri, **Cyber Crimes in the Light of Modern Criminal Thought, a Comparative Study**, no edition, p. 290, Baha'a Al-Morri, **Explaining Cyber Crimes**, no edition, p. 10 and Shaimaa Abd Al-Ghani At-Allah, **Th Criminal Protection of e-Transactions**, no edition, pp. 16-17.

14) Surat Al-Ma'ida (The Table), verse 8.

15) Ibn Manzoor, **Lisan Al-Arab**, edit. 3, vol. 2, p. 258.

16) Ali Abd Al-Qader Al-Qahwaji and Fotouh Abd Allah A-Shazelli, **Explaining the Penal Law, the Second Volume: the General Theory, the Liability and the Criminal Penalty**, no edition, p. 39.

17) Ibn Manzoor, **Lisan Al-Arab**, edit. 3, vol.3, p. 123.

18) Narrated by Muslim. Refer to: Muslim, **Sahih Muslim**, no edition, Book of description of the Judgment Day, Paradise and Hell, Chapter of the Satan's harassment of people, Hadith no (2812), p. 1018.

19) Ibn Manzoor, **Lisan Al-Arab**, edit. 3, vol.2, p. 383 and Al-Faiomi, **Al-Misbah Al-Munir**, no edition, vol. 1, p. 121.

20) **Al-Mo'jam Al-Wasiet**, edit. 4, p. 140.

21) A-Said Atieq, **The Crime of Sexual Harassment, a Comparative Study**, no edition, p. 155.

22) Muhammad Gabr A-Said Abdu Allah Gameel, **The Crime and the Penalty of Sexual Harassment in the light of Islamic Shari'a and the Secular Law, a Comparative Study**, edit. 1, pp. 42-44.

23) **The Egyptian Penal Code**, Article 169 bis, issued by the decree no 11, 2011.

24) Mahmoud Fathi Abdu, **Factors Causing Sexual Harassment and the Role of Social Work to Prevent it, a Field Study Applied on Faiyoum University Fourth Year Students**, no edition, p. 25.

25) Hisham Abd Al-Hamied Farag, **Sexual Harassment and the Crimes of Honor**, edit. 1, p. 19.

26) The sexual crime is that committed for the purpose of satisfying sexual needs. It is divided into two subcategories;

Category I: Honor Offences;

This category includes all crimes that outrage the modesty of the victim such as rape, adultery, sexual molestation and lechery seduction. Sexual harassment is considered to be one of this category since it aims at fulfilling sexual needs as it is the case of the crimes of this category.

Category II: Public Modesty Immoral Offences:

This category includes all the crimes that outrage the modesty of the victim and the public as well such as the indecent exposure, public lechery seduction, prostitution and procuring.

Refer to: Mahmoud Najuib Hosni, **The Right of Protecting Honor in the Islamic Shari'a and the Egyptian Criminal Code**, edit. 2, p. 29, Mohamed Ahmed Abdeen and Mohamed Hamid Qamjawi, **Public Immoral Offences**, no edition, pp. 188-189, Fotouh Abdul Allah A-Shazelli, **Offences of Attacking on Persons and Property**, no edition, p. 185, Hassan Hassan Mansour, **Offences of Attacking on Good Morals**, no edition, p. 11, Mohamed Zaki Abu-Amer, **The Egyptian Penal Law, the Private Code**, edit. 2, p. 744, Mohamed Niyazi Hatata, **Crimes of Prostitution, a Comparative Study**, edit. 2, p. 120, Moawad Abd A-Tawwab, **The Inclusive Encyclopedia of Immoral and Honor Offences**, no edition, p. 5, Mohamed A-Taher Abd Al-Aziz, **Honor Offences in the Light of**

the Islamic Shari'a and the Secular Law, a Comparative Study, no edition, p. 80 and Nesreen Abd Al-Hamied Nabeeh, **the Sexual Criminality**, no edition, p. 15.

27) Sexual harassment is different from relevant sexual offences such as sexual molestation, indecent exposure, outraging females' modesty and prostitution. Sexual molestation is committed through acts and usually targets the private parts of the victim. Indecent exposure is also committed through acts, but it does not target the private parts of the victim in particular, it may target the private parts of the guilty himself. Outraging females' modesty can be committed for sexual as well as non-sexual needs. Prostitution is usually committed for money. Whereas sexual harassment is committed using words, acts or any other means for sexual purposes. Refer to: Mahmoud Najuib Hosni, **The Right of Protecting Honor in the Islamic Shari'a and the Egyptian Criminal Code**, edit. 2, p. 42, Mahmoud Najuib Hosni, **Explaining the Egyptian Penal Law, the Private Code**, edit. 2, p. 545, Ahmed Fathi Sorour, **Al-Wasiet in the Penal Law, the Private Law**, edit. 3, p. 655, Mohamed Zaki Abu-Amer, **The Egyptian Penal Law, the Private Code**, edit. 2, p. 744, Mohamed Niyazi Hatata, **Crimes of Prostitution, a Comparative Study**, edit. 2, p. 120, p. 122, Mohamed Ahmed Abdeen and Mohamed Hamid Qamjawi, **Public Immoral Offences**, no edition, pp. 187-189, Abu-Bakr Abd Al-Latif Azmi, **Principles of Criminal Evidencing of Sexual Offences**, no edition, p.202, p. 204 and p. 206, A-Said Atieq, **The Crime of Sexual Harassment, a Comparative Study**, no edition, pp. 166-167, , Mohamed A-Taher Abd Al-Aziz, **Honor Offences in the Light of the Islamic Shari'a and the Secular Law, a Comparative Study**, no edition, pp. 80-81 and Akmal Yusuf, **Criminal Protection of Children from Sexual Abuse**, no edition, p. 156-165.

28) Cyber Crimes are those offences that are punished by law and they are committed using the computer or the internet. Refer to: Ahmed Sa'ad Mohamed Al-Husseini, **Procedural Dimensions of Cyber Crimes**, no edition, p. 27.

29) That is, the guilty is "a first degree relative to the victim, one of his guardians, one of those in charge of him or a servant for him or for one of the pre-mentioned". Article 267 of the Egyptian Criminal Code Prescribes that: " Any person rapes a woman shall receive capital punishment or life term if the victim is under 18 years old or if the guilty is "a first degree relative to the victim, one of his guardians, one of those in charge of him or a servant for him or for one of the pre-mentioned or there are multiple sexual partners of the crime".

30) Refer to: the amendments of Article 306 bis (A) of the Egyptian Criminal Code issued by law no (58) in 1937 and its 2016 amendments (Articles related to sexual harassment), **The Official Gazette**, September 2016.

31) Mohamed Zaki Abu-Amer, **The Egyptian Penal Law, the Private Code**, edit. 2, pp. 740-741.

32) Mohamed Zaki Abu-Amer, **The Egyptian Penal Law, the Private Code**, edit. 2, pp. 740-741.

33) The legislator passes a penalty for the acts that assault the private parts in the text of Article 268 of the Egyptian Criminal Code which says, " Any person molests or attempts to molest another using force or threat shall receive the penalty of hard labor from three to seven years. If the victim is under sixteen years old or the guilty is one of those pre-mentioned in Clause Two of Article 267, it is permissible to impose the maximum period of the penalty of forced labor. If the two aggravating factors come together, the guilty shall receive life hard labor". It is obvious that this Article is meant to punish those acts assaulting the private parts of the victim. Refer to: Hisham Abd Al-Hamid Farag, **Sexual Harassment and Honor Crimes**, edit. 1, p. 504.

34) Hilal Abdu Allah Ahmed, **The Criminal Protection of Morals from Sexual Deviation in the Light of Philosophy of General Ethics, Philosophy of Islamic Ethics and Philosophy of Legal Criminalization, a Comparative Study**, no edition, p. 288, Said Al-Baghaal, **Immoral Crimes in the Light of Legal Jurisprudence and the Judiciary**, no edition, p. 275 and Abd Al-Hakam Foda, **The Comprehensive Criminal Encyclopedia for the Commentary on the Penal Code**, edit. 1, vol. 3, p. 596.

- 35) Mohamed Zaki Abu-Amer, **The Egyptian Penal Law, the Private Code**, edit. 2, pp. 741-742, Hilal Abdu Allah Ahmed, **The Criminal Protection of Morals from Sexual Deviation in the Light of Philosophy of General Ethics, Philosophy of Islamic Ethics and Philosophy of Legal Criminalization, a Comparative Study**, no edition, p. 287, Abd Al-Hakam Foda, **The Comprehensive Criminal Encyclopedia for the Commentary on the Penal Code**, edit. 1, vol. 3, p. 596 and Said Al-Baghaal, **Immoral Crimes in the Light of Legal Jurisprudence and the Judiciary**, no edition, pp. 272-273.
- 36) Said Al-Baghaal, **Immoral Crimes in the Light of Legal Jurisprudence and the Judiciary**, no edition, pp. 274.
- 37) Said Al-Baghaal, **Immoral Crimes in the Light of Legal Jurisprudence and the Judiciary**, no edition, pp. 274 and Hilal Abdu Allah Ahmed, **The Criminal Protection of Morals from Sexual Deviation in the Light of Philosophy of General Ethics, Philosophy of Islamic Ethics and Philosophy of Legal Criminalization, a Comparative Study**, no edition, p. 287.
- 38) The penalty of sexual harassment is imprisonment and fine. So, it is considered an offence. Article Eleven of the Egyptian Criminal Code prescribes that: "Offences are the crimes in which the guilty is punished by imprisonment and fine". This is in comparison with felony which is defined by Article Ten of the same code as: "Capital offences punishable by death, life hard labor, term hard labor and imprisonment". Refer to: Law 169 issued on 4/11/1981 and published in the **official Gazette**, issue no 44 bis.
- 39) According to Article 34 of the Criminal Procedures Code, It is permissible for law enforcement officer to arrest the guilty, take him to the nearest police station and prepare a record of the offence if caught in flagrant delicto in an offence punishable by imprisonment for a period more than three months. If the guilty refuses to go with him, the law enforcement officer is to write down his personal data, leave him go and prepare a record of the offence as soon as he reaches the nearest police station. Refer to: Ibrahiem Hamid Tantawi, **Honor and Public Modesty Crimes**, edit. 1, p. 268.
- 40) The guilty is considered recurring when;
First, he commits another offence of the same type whatever the means is.
Second, the other offence is committed in the year following the final sentence of the first offence.
The sentence becomes final when there is no chance to appeal through objection or cassation.
The judge has discretionary power to take into consideration the past, the social and educational status of the guilty, the morality of the victim and her relationship to the guilty when deciding the appropriate penalty for recurring. Refer to: Moawad Abd A-Tawwab, **The Inclusive Encyclopedia of Immoral and Honor Offences**, no edition, p. 271 and Ibrahiem Hamid Tantawi, **Honor and Public Modesty Crimes**, edit. 1, p. 269.
- 41) It is noteworthy that if the guilty of sexual harassment has been convicted of committing another crime, the judge has to impose the penalty of the more serious crime enacting Article 32 of the Criminal Code. Refer to: Mohamed Zaki Abu-Amer, **The Egyptian Penal Law, the Private Code**, edit. 2, pp. 742.
- 42) The general principles dictate that the maximum period of the penalty of imprisonment is three years to be discriminated from the penalty of jailing. Article 18 of the Egyptian Penal Code prescribes that: "It is not permissible for the penalty of imprisonment to be less than twenty four hours or to be more than three years unless there are exceptions by law". Rule 16 of the same Code states that: "It is not permissible for the penalty of jailing to be less than three years or to be more than fifteen years unless there are exceptions by law".
- 43) **The Algerian Penal Code**, Article 341 bis, amended by Law no. 2015-19 dated 30/12/2015.
- 44) Article 38 of the 1996 Algerian Constitution and its 2016 amendments prescribes that: "The main freedoms and human rights are protected". Article 40 of the same Constitution states that: "The State secures the inviolability of human beings". Article 41 of the same Constitution prescribes that: "Any offence committed against rights, freedoms or the physical and the mental sanity of humans is

punishable by law". From these texts, it is obvious that the Algerian Constitution prevents any kind of violation to human rights and freedoms. Refer to: Amina Bo Sha'ra and Seham Mosawi, **The Legal Framework of Cyber Crimes, a Comparative Study**, no edition, p. 66.

45) Mohamed Zaki Abu-Amer, **The Egyptian Penal Law, the Private Code**, edit. 2, pp. 740-741.

46) Hilal Abdu Allah Ahmed, **The Criminal Protection of Morals from Sexual Deviation in the Light of Philosophy of General Ethics, Philosophy of Islamic Ethics and Philosophy of Legal Criminalization, a Comparative Study**, no edition, p. 288, Said Al-Baghaal, **Immoral Crimes in the Light of Legal Jurisprudence and the Judiciary**, no edition, p. 275 and Abd Al-Hakam Foda, **The Comprehensive Criminal Encyclopedia for the Commentary on the Penal Code**, edit. 1, vol. 3, p. 596.

47) Mohamed Zaki Abu-Amer, **The Egyptian Penal Law, the Private Code**, edit. 2, pp. 740-741, Hilal Abdu Allah Ahmed, **The Criminal Protection of Morals from Sexual Deviation in the Light of Philosophy of General Ethics, Philosophy of Islamic Ethics and Philosophy of Legal Criminalization, a Comparative Study**, no edition, p. 287, Said Al-Baghaal, **Immoral Crimes in the Light of Legal Jurisprudence and the Judiciary**, no edition, pp. 272-273 and Abd Al-Hakam Foda, **The Comprehensive Criminal Encyclopedia for the Commentary on the Penal Code**, edit. 1, vol. 3, p. 596.

48) The penalty of sexual harassment decided by the Algerian legislator is imprisonment and fine. That why it is regarded as an offence. The Fifth Article of the Algerian Criminal Code dictates that: " The main penalties decided for offences are: 1) Imprisonment ...; 2) Fine ...". This is in comparison with felonies. The same Article of the same Code prescribes that: " The main penalties decided for felonies are: 1) Death ...; 2) Life Imprisonment ...; 3) Term Imprisonment". Refer to: The Algerian Penal Code, the Fifth Article, amended by Law no. 82-4 dated 13 February 1982, **The Official Gazette**, issue no. 7 p. 317.

49) It is noteworthy that if the guilty of sexual harassment has been convicted of committing another crime, the judge has to impose the penalty of the more serious crime enacting Article 34 of the Algerian Criminal Code which states that: " If there are more than one custodial sanction because of multiple trials, only the severest sanction has to be sentenced".

50) It should not be understood that only the penal prevention is enough to effectively stop sexual harassment. There should also be procedural rules to preempt this crime such as monitoring telecommunications, tracking and scanning emails. In addition, further consideration ought to be given technical protection as well as legal protection. The rule is that computer programs producing companies is responsible for securing the data, the information as well as the persons' rights and freedoms on the internet. If they fail to do so, the judiciary has to intervene to prevent this crime. Furthermore, it is necessary to raise children's awareness of how to keep the privacy of their personal data and how to safely deal with the different materials shown on the internet. The effective prevention also needs a special cyber police department to be available so as to watch and track the suspected and arrest the guilty as soon as they surf the internet. A special cyber law courts with qualified staff are required as well. Refer to: Gameel Abd Al-Baqi A-Saghier, **The Procedural Dimensions of Cyber Crimes**, no edition, p. 11, Gamal Brahiemi, Preventing Cyber Crimes in the Light of Algerian Legislation, **the Critical Journal, Algeria**, vol. 2, issue no 2, p. 138-154, Ibrahiem Ramadan Ibrahiem Ataya, **The Cyber Crime and Prevention Strategies in the Light of Islamic Shari'a and the International Laws**, no edition, p. 396-397 and Umar Shehani, The Modern Crimes and its Strategies of Investigation", **The Critical Journal of Law and Political Sciences**, Algeria, vol. 1, issue no. 1, p. 312-315.