

PROTECTING VICTIM IN CYBER PLASES FROM COMPUTER CRIMES IN IRANS LAW

Saeed Abbasi Nia¹, Mahmoud Ebrahimi²

¹ *Associate Professor of Faculty of Islamic Sciences, Islamic Azad University, Abadan, Iran.*

² *M.A of East Azarbaijan Science and Research Branch In criminal law & criminology.*

**Author for Correspondence*

ABSTRACT

Computer crimes or cyber crimes refers to any crime that involves a computer and network. High technology in the present era has created a lot of changes in the social, economic and cultural relationships of all developed societies. In this article we discuss prospective view of Iranian legislators, role and effect of Islamic Sharia in establishing law and punishment for computer crimes. Iran due to nature of Islamic government considers some laws related to crimes which is going to harm decency of society and ethic of each person. However, one of the key achievements of computer technology is changes in traditional regime of evidence claim. In this article three bases of computer that are against public decency and ethic are going to be discuss. Knowing these bases will help reader to understand mentally of Iranian legislator in general. Finally, when ever computer technology develops computer crimes will develop. Government should harmonize their law laws with needed of society, because computer crimes are different from non-computer and classic crim. The article show how Iranian lawmaker combine needed of society in freedom and protection for victims. It's also look in some sexual crimes and there punishment.

Keywords: *Cyber, Computer Crime, Punishment, Sharia*

INTRODUCTION

Today, using computer and internet directly and indirectly has changed to a main impartible principle of human life. Using computer and internet has developed so that it formed a world parallel to our physical world that is called virtual or cyber world. As in the real world there are lawbreakers people who endanger security, in the cyber world also there are such crimes and people. Even one can claims that in the cyber world such crimes are manifested more than other crimes for their specific nature. Therefore, to immunize this environment, various countries of the world and international society established security in virtual world and enacted some laws in this way. Iran, however, has approved some laws in this domain for the spread of using Internet in the country. One of the features that need to be cared in the cyber environment is ethic and decency, because of the specific environment in the internet there are more tendency toward doing such crimes. Every person in the cyber environment with respect to the difficulty of recognizing peoples in this environment can provide a good situation for abnormal people to commit anti-social acts. Preventing ethic and decency in different societies has a high value and has a specific station in ethical hierarchy of societies. Because of the dominant culture in Iran this subject has a great importance than the other societies. As most of the Iran's people are Muslim and maintaining decency both individually and socially is valuable this subject has been changed to an important issue. In Iran's country for the dominant culture this subject is more important than the other societies. Therefore, in addition to the religious culture of Iranians having Hijab and decency is of features and ethical characteristics of each person. In Iran's culture, endangering public decency result in offence and hurting the social common sense of society. Thus, supervising this subject by judicial authorities in cyber environment is as important as the real world issues and, therefore Islamic republic of Iran's legislation in the case of computer crimes has considered some laws related to this issue. The term decency (Efat in Persian language) means purity and purity of the heart and in fact it is a state for body and soul of mankind that is used to overcome flesh and instinct (Ragheb Esfihani, 1995, p 618). In law terminology

Review Article

the action that is against decency is defined as: “every action that is related to the sexual affairs and based on customs and public sense is shameful and it is considered as crime by law” (JafariLangrodi, 1999, p. 473). Actions that are called ravishment and decency offences are debated that are actions related to individuals, but crimes that are against decency and public ethics are representative and imaginative of actions that are against well behavior and public ethic (ibid, p.3). Actions that 351 VITAE A. Alizadeh Arand are called ravishment and decency offences are different from crimes that are against decency and public ethics, so that on can consider some crimes against decency and public ethics such as: unlawful sexual relationship with the other sex that is less than adultery, pretending commotion of illegal actions, corrupting public decency, purchasing sexual films and pictures and so on (Onsorifard, 2008, p. 18). Therefore, in this study we aimed at considering the actions that are against decency and are related to the computer and cyber environment. To this end we discuss some examples related to the computer crimes. In the case of computer crimes we can say every publication, distribution, purchasing sexual contents, invocation, persuasion, threat or fraud of people, simplicity for access to the mentioned affairs by computer media or telecommunication are crimes that are considered against ethics and public decency. This article aims at responding the issue that which criminal reactions has been done against public decency computer crimes by Islamic Republic of Iran’s legislation and how such crime is described?

COMPUTER CRIMES THAT ARE AGAINST PUBLIC DECENCY IN IRANS LAW

Public decency and ethics beside terms such as well behavior, general order and justice for their dynamic and relative nature can not be defined. This fact results in tendency of judges and jury to reach at a concept for public decency and ethic in the sense of society and citizens that society in the sense of government. Meanwhile it can changes to a challenge or threat to be interfered by government in defining more limitations or suppression of freedoms by using terms such as public decency and ethics. The subject of crimes that are against public decency and ethics is prestige, credibility, personal and family honor that is required to be regulated by majority of people in the society and, therefore custom and law calls them decency and sexual ethics. It is necessary to consider dignity and credibility of people than is in line with the logic and social understanding of mankind and, therefore every behavior that is against valuable social values is liable to punishment and is considered as crimes that are against public decency and ethics. Some sorts of crimes that are against public decency and ethics in Iran’s criminal law are liable to limitations and some others are liable to punishment.

The sorts of public decency and ethics crimes that are liable to limitation (crimes that their quality and quantity is not specified in law) are adultery of single man or women, adultery of married man or women, adultery to decency or duress, adultery with blood intimate individuals, adultery with mother in law, pederasty, prostitution, lesbianism, ...each of these cases are liable to specific punishments. For example, punishment of adultery of single man or women is 100 lashes or the punishment of adultery to decency and duress for the committee who rejects it is death sentence, or adultery with blood intimate individuals or adultery with mother in law is liable to execution. Those sorts of crimes that are against public decency and ethics are liable to punishment (punishments that their quality and quantity is not specified in law) such as committing these crimes in cyber or internet environment, perusing people to reprobation, unlawful interference in some devices that are against public decency and ethics and bothering people by calling them or using other telecommunication devices. After Islamic republic of Iran our legislation has used public decency and ethics several times. The relationship of public decency and ethics with cyber spaces can be studied in two ways. Sometimes the content in which hurt public decency and ethics in external environment is made in cyber space and then is distributed. Here cyber space Computer Crimes versus Public proper behavior in Legal System of Iran 352 is a floor for threat or damaging the face of public decency and ethics. For example, legislation in article 11, that is the law of right of computers software publishers approved in 79/10/4 states that: consultation is allowed to prevent issuing technical certificate for those software that according to the idea of Ministry of culture and Islamic guidance against Islamic ethics, public decency, and personality health of children and teenagers. Public decency and

Review Article

ethics can not be separated from culture and custom of people. In fact those part of norm breaking behaviors that invokes the sentiment of citizens against them are known as anti-norm behaviors in the society and is considered as action that is against public decency. Our legislation in chapter four of the laws of computer crimes referred to crimes that are against public decency and ethics. Computer data are symbols events, information, pictures or concepts that can be created, offered, established or processed in computer systems. The main description of computer data can be stated as follow that first, necessarily it is not guaranteed by stating a concept or understandable information or creating a line or point or character that means creation or offer, second, these data don't cost financial value and most of the computer data don't have economic value and are not exchangeable. If having immoral contents, they can be considered as crime. Crime related to the content is a new term that after approving at Budapest Cyber Environment Crimes Convention in September 2001 widely and officially entered the criminal laws of the world countries. In special terms crimes related to content are: crimes that are committed by illegal anti-decency and public ethic contents or physical and mental health of people. In this definition the mundane principle of crimes happens in cyber environment, but its consequences would be manifested in real environment, such as insult to another one by means of computer systems. Crimes related to content in general term consists of crimes that the content of data are devices to committee crime, like contents having virus or content data is the purpose of committing a crime, like destruction or faking computer contents or it is neither device to commit a crime nor purpose of doing it, but it changes to the illegal form and impacts on external environment. However, illegal contents are considered as crime by nature, with the condition that they become the subject of actions like production, storage, offer and so on, and existence of these contents on the screen shows their distribution and represents crimes related to the content (Aalipur,1390p.288-290). Therefore, criteria and characteristic of recognizing anti-decency and public ethics actions, is a relative issue that depends on ethics, beliefs, customs of majority of people in the society. Thus, in each society according to the provisions of Islam, customs and statute, public decency and ethics are byproducts of a set of thoughts, insights, customs and social and ethical customs that majority of the people in the society consider its preservation as necessary act for health and safety of family. Crimes related to immoral contents and cases that are against decency most of the time brings in mind crimes or sexual abuses that itself can be different based on time and place and among different populations, so that an action that is illegal in one country and is against public decency and ethics, it might be considered as valid and legal in another country. for example in some western societies the relationship between men and women is not an act against decency, while such a relationship in the Islamic countries specially Islamic republic of Iran is a crime against public decency and 353 **VITAE A.** Alizadeh Arand ethics and is liable to punishment. Chapter 4 of the law of computer crimes in two articles 14 and 15 discussed crimes that are against public decency and ethics. These are as follow: Article 14: if someone by means of a computer system or telecommunication or data carriers of illegal contents starts production, sending, distribution, or purchasing them and or with the intention of production, storage and preservation send or distribute them will be sentenced by imprisonment from 91 day to two years or cash payment punishment from 5 to 40 million rial or both of them.

Note1- committing the mentioned actions about illegal contents causes punishment at least to one of the upper sentences. Contents and vulgar consequences are cases having scenes and obscene forms.

Note2- when illegal contents are sent to less than 10 people, the person who has committed this will be sentenced to one to 5 million rial cash sentence.

Note3- if criminal person change such actions to his carrier or do them organizationally and if he is not as corruptor on earth the he will be sentences at last to both punishment in this article

Note4- illegal contents are pictures, voices or real and unreal texts that represent complete nudity of man or woman or their genitals and their sexual intercourse.

Article 15: if someone using computer or telecommunication systems or data carriers commits the following crimes will be sentenced to the following sentences:A. Whenever access illegal contents, someone invoke, pursued or threat people or anyway fraud them or simplify the methods of reaching

Review Article

them or educating them, he/she will be imprisoned from 91 day to a year or cash punishment from 5 to 20 million rial or both of them. Committing these actions about vulgar contents causes cash punishment from 2 to 5 million rial. B. Whenever invoke, pursued or threat people to committing crimes that are against decency or using drugs or psychotic drugs or suicide and or sexual problems along with invasion actions or fraud them and simplifies the way of educating them, she or he will be imprisoned from 91 day to one year or cash punishment from 5 to 20 million rial or both of them. Note- the contents of this article and article 14 will not cover contents that is produced or prepared for each mental reason or for preservation, offer, distribution, purchasing and so on. One on the weak points of this article(14) is that no differential approach adopted in the view of intensive punishment in contrast with elders because the have been committed crime at the age of childhood (PorGahreman, Bay 2009, P359). Also against note Article 2 index protocol to children right convention about purchasing, sexual activity, child abuse, sexual activities by every device are not in the list of illegal contents and just referred to the sexual activity of human being (Zainali, 2009, p.311). But as the subject and cases of pornography hurt public decency and ethics, no specific result is necessary and the physical action suffices for committing crime. In criminal law for accomplishing each crime three bases are required; it means legal basis, material basis and moral basis. Bellow we discuss three bases of computer crimes that are against public decency that are documented in the law of computer crimes approved in 2003. Computer Crimes versus Public proper behavior in Legal System of Iran 354

THEREE BASES OF COMPUTER CRIMES THAT ARE AGAINST PUBLIC DECENCY AND ETHIES

- Legal principle of crime

One of the developing values in Islamic societies is preserving public decency and ethics in the different forms of information. Having public decency is preventing action against many crimes that is the result of chaos in the behaviors of people in the society. For example, one of the main factors of doing adultery , homosexuality, Lesbian ism and prostitution is maximizing instinct in criminals that will continue by consequence of establishing illegal and sexual contents. Therefore, the law aimed at approving punishment for computer crimes and allocated its chapter four to the crimes that are related to the content. Article 13 of this law states that: “if someone by means of computer systems or telecommunication establishes illegal contents such as sexual members of man and woman or produce and establish the sexual act of human being or animals and purchase them will be imprisoned from 91 day to 1 year or will be sentenced to paying cash punishment from 1 million rial to 10 million rial, or will be sentenced to both of them. This article can be an allocation to article 640 of Islamic criminal law; because in part one of this article that numbers the cases it has been stated that: “if someone using a writing or design, gravure, picture, photo, press, presentation, signs, films, video or each device that hurt public decency by purchasing or distributing them in public or preserve them for business or distribution”. This part also involves business and distribution of illegal contents in virtual internet space, because internet is one of the places that is the place of representation for people, because, public representation is a place that every one who wishes can see it. Part three is representing for the public without commercial aims. Therefore, sending picture, short films and ...by mobile is like telecommunication system and involves article 13 of the law of computer crimes and while being correct, it will be at public level liable to punishment by virtue of part 3 of article 640. The question is that what does mean by establishment that is documented in article 640 and 13? Is it consists of sending every picture or massage by means of computer or mobile? Answering to article 640, as distribution of everything that hurt public decency involves in this article, sending short massage by mobile while being widely and illegal can belong to this case. In order to preserve public decency and ethics and to prevent corruption in cyber space, legislation has appointed special laws. Of the most important of these laws article 13,14,and 15 of law of computrize crimes can be named. The legal element of this crime shows the importance of this subject before Islamic Republic Legislator in order not to let invasion to public decency and ethics in the cyber space. As the

Review Article

text of these two article have come in detail before, therefore we prevent repeating them and following the article we discuss material and moral bases of these crimes.

- MATERIAL BASIS OF CRIME

Basically, material element of crime accomplished in the form of action or leaving action and or action are the result of leaving action. It seems that in computer crimes the material element is only applicable in the form of action. Based on articles 14 and 15 of this law, material element is the same criminal behavior that criminal person does, that in this crimes are establishment, purchasing, distribution, production or storage of illegal contents by computer systems or telecommunication. As specified, the subject of these crimes is illegal 355 **VITAE A.** Alizadeh Arand cases, sexual and cases that are against decency. The means of committing such crimes are computer and different external hards and software that can be means of doing crime. These are absolute crimes and are not conditioned by a specific result of an event. In other words, the result has no impact in doing such a crime and action is enough to do such a crime. One reason is that the result of this crime may accomplishes in the future and there would be no trace of the result while doing crime or even it may not show its impact after committing crime. It is necessary to state than each person can commit such crime and there has been no specific feature for criminal person.

- Moral basis of crime In relation to the mental element of crime several subjects should be stated. It is knowledge of punishment of one of these subjects that is imaginable in all kinds of crimes and the accused person should verify against it. Knowledge of crime subject in relation to moral or mental aspect of crime, in this case criminal person should know that the action he committed is crime and knowledge of subject is required. General ill will is of other cases that should exist about mental element. General ill will is in fact intention to reach the result and according to the clear ill will crime will be divided in absolute and bound. Motivation of crime is intention or internal sensation of criminal person that move the person toward doing crime. Generally motivation has no role in doing crime and only it may be influential in specific situations about the rate of punishment. Therefore, about computer crimes that are against public decency and ethics we can say that these crimes are intentional and absolute and there is no need for specific ill will and intention of criminal person suffices in doing criminal activity. Following we refer to crimes that occur in cyber space against public decency and ethics.

COMMISSION CRIMES IN CYBER SPACE

Though some crimes against public decency and ethics with the advent of internet have transferred from real space to virtual space, but we can not call all of them computer crimes. Because based on legal principle of crimes and punishments, actions that are crimes should be set as crime before . In the case of computer crimes, the criminal does his actions by means of computer and develops and simplifies his actions. Of the cases that are considered as crime in Iran's legislation about crimes that are against public decency are prostitution and pornography. Many other crimes like purchasing sexual pictures, insult and establishment of computer lies, inviting people to do criminal activities that are against ethics in virtual space and ...and are of subsets of these two crimes (ghodsi, solaimani, 2010. P. 129). Below we discuss details related to these two main crimes.

- Prostitution

As Islamic criminal law is written based on jurisprudence, in definition of crimes it follows the idea of jurists. Therefore, in article 135 gh,m,a it states that: "prostitution is gathering two persons or more for adultery or pederasty". It seems that lawmakers adopted this definition and have discussed and interpreted it to some extent. According to the definition in Computer Crimes versus Public proper behavior in Legal System of Iran 356 the book Lam'eDamshghi'e and it discussion came from ghiadat that means "ghiadatis gathering two active of a sexual action like adultery, pederasty, lesbianism and mediate between them" (Aameli2008,v 9. P84). It is necessary that in Islam this action is prohibited because it is

Review Article

assistance in crime and sin. In traditional definition prostitution consists of two or more people, but by means of internet and computer we can influence on many people by accessing to illegal pictures and data and then to reach the final purpose. In the case of computer rules we can say that because people are unknown in the internet space they can easily follow their purposes. Also laws of computer crimes did not use the term prostitution in a specific term. Article 14 states that “if someone by means of a computer system or telecommunication or data carriers of illegal contents starts production, sending, distribution, or purchasing them and or with the intention of production, storage and preservation send or distribute them will be sentenced by imprisonment from 91 day to two years or cash payment punishment from 5 to 40 million rial or both of them. Note 3 of this article states that: “if criminal person change such actions to his carrier or do them organizationally and if he is not as corruptor on earth the he will besentences at last to both punishment in this article”. As it is clear, legislation has not used prostitution, but based on understanding of this article we can consider Ghiadat as crimes that this article refers to. The most important point in this article is that there is no relationship between crime and its punishment, because the punishment for traditional prostitution in Islamic Punishment Law is much more than the thing that has come in computer crime laws approved in 2009. While these action in relation with computer crimes have less impacts, because using internet and computer a greater number of people will be influenced. This subject entails that legislation have a specific attention to computer crimes, and another point about this law is that, this doesn't involves illegal relationships, but we can infer that legislation has decided that analyze this crime with regard to Islamic criminal law and do not separate it based on means of doing it.

- Pornography

This crime is one of the crimes that intensively hurt public decency and ethics. Pornography means something that is offered to motivated sexual desires. Pictures like sexual organism of men and women, sex of man with woman and lesbians and ... their criminal actions can be representation, offer, production, business, and sexual and illegal contents. With spread of internet the traditional form of this crime has changed and internet caused increasing and development of this crime (Bay, 2009, p. 358). Article 14 of the law of computer crimes directly without using terms of pornography states that: “if someone by means of a computer system or telecommunication or data carriers of illegal contents starts production, sending, distribution, or purchasing them and or with the intention of production, storage and preservation send or distribute them will be sentenced by imprisonment from 91 day to two years or cash payment punishment from 5 to 40 million rial or both of them. In this case we can refer to article 640of the law of Islamic Punishment that states: “the following people will be sentenced to imprisonment from 3 months to one year and cash punishment from 1 million and 5 hundred thousand rial to six million rial or 74 lashes or will be sentences to one or two punishment of the stated punishments: 357 **VITAE A.** Alizadeh Arand

1- If someone using a writing or design, gravure, picture, photo, press, presentation, signs, films, video or each device that hurt public decency by purchasing or distributing them in public or preserve them for business or distribution.

2- As it is clear these two article consider a unique subject and this is when article 640 of the law of Islamic punishment is totally general and do not refer to the devices of committing crime; but punishment that has come in this article is different from article 14 of the law of computer crimes and reason of this matter is not clear. Therefore, the crime of computer pornography can have damaging impacts on people in the society.

CONCLUSION

With development of technology and information, certainly some people by learning the related science are going to misuse this technology, so that these people use possibilities that provide technological development for the people in the society to make use of them based on their will and create problems for

Review Article

users of technology and causes doubt in correct using of these possibilities so that the attention of governors, lawmakers and experts in technology has been devoted to it. Whenever computer technology develops, computer crimes will develop. But laws in which might be able to answer these crimes is not sufficient and governments should harmonize their laws with crimes, because computer crimes are different from non-computer and classic crimes. One of the computer crimes that need confrontation by lawmaker are crimes that are against public decency and ethics that is considered by Islamic republic legislator. Article 14 of the law of computer crimes approved in 2009 and also some parts of Islamic Punishment Law approved in 1996 has identified these crimes. But the main article that covers computer crimes that are against public decency and ethics in Iran's legal system is article 14 of the law of computer crimes. But in this law and article 14, we faced some ambiguous cases. For example, in identifying cases of sexual pictures the judge may faces problem. On one hand in the case of criminal affairs we are facing limited interpretation of laws and, on the other hand we have no definition of sexual pictures. Generally in a common classification we can say: when we are facing pictures and complete sexual contents we call it obscene and when we are facing sexual pictures showing something other than sex we call it vulgar. But totally the existence of this article can be as confrontation way against prostitution and pornography, though is contains some deficient.

REFERENCES

- Amir Hamzeh Zainali**, Criminal support of children against pornography- from global interactions to national criminal and official answers.
- Bay, Hosain Ali, and Por Ghahreman, Babak. (2009)**, Jurisdictional and legal analysis of computer crimes, first publication, Qom, college of science and Islamic culture.
- Eonsori-FardAbas (2006)**, hurting public decency in Iran's Law, Tehran, Majd Publications.
- Ghods, Zahra, Mojtahed Solaimani, Abolhasan. (2010)**, computer crimes that are against decency and ethics in family especially the crime of prostitution and pornography, two science and developmental periodical, jurisprudence and law of family, fifteenth year, fall and winter, No. 53.
- Hasan, Aalipor. (2011)**, Information technology criminal law, first publication, Tehran, Khorsandi.
- Hor Aameli, Mohamad ben Hasan (Gh....)** Shiite devices for educating religious problems, Tehran Islamic school. Computer Crimes versus Public proper behavior in Legal System of Iran 358
- Jafari Langrodi, Mohamad Jafar (1999)**, law terminology, seventh publication, Tehran, Gange Danesh.
- Ragheb Isfahani, Abolghasem Hossinibn Mohammad ibn Fazl. (1995)**. *Almofradat fi gharib Alquran*, translated by Khusravi Hossaini, Saied Gholamreza, second publications, Tehran, Mortazavi Publications.
- The law of information and communication technology (set of articles). (2009)**, first publication, Tehran, Publications of Official newspapers of the country.