

Punishment Analysis of Cyber Pornography in the Iranian Criminal Justice System

Saleh Ghaffari Cherati¹, Ismail Hadi Tabar² & Seyed Ebrahim Qodsi³

¹ PhD student in Criminal Law and Criminology, Department of Law, University of Mazandaran, Mazandaran, Iran

² Assistance Prof Criminal Law and Criminology, Department of Law, University of Mazandaran, Mazandaran, Iran

³ Associate Prof Criminal Law and Criminology, Department of Law, University of Mazandaran, Mazandaran, Iran

Correspondence: Ismail Hadi Tabar, Assistance Prof Criminal Law and Criminology, Department of Law, University of Mazandaran, Mazandaran, Iran. E-mail: e.haditabar@umz.ic.ir

Received: August 13, 2019

Accepted: September 14, 2019

Online Published: November 28, 2019

doi:10.5539/jpl.v12n4p107

URL: <https://doi.org/10.5539/jpl.v12n4p107>

Abstract

Today, pornographies are one of the fundamental challenges in cyberspace that have caused a serious threat to the security of that space. In the aftermath of this threat, the legislator has criminalized and punished pornography in cyberspace. Accordingly, it seems necessary to analyze the punishments the legislator has considered for this phenomenon. The responses the legislator makes to a variety of pornographers are according to the government-official model. Now, regarding the government's responses in the form of punishments such as imprisonment, flogging and execution, it is important to evaluate its punishment. The present paper analyzes the computer pornography punishment by analytic-descriptive method and emphasizing on the Iranian criminal justice system.

Keywords: cyber pornography, punishment, government responses, criminal law

1. Introduction

According to the religious and social criteria of the Iranian-Islamic society, the legislator has criminalized computer pornography, banned all of its instances and forms, and considered government responses to its perpetrators in the form of punishment (Eskandar Zadeh Shanjani, 2013, p. 89). In the aftermath of criminalization and punishment of computer pornography, these questions come to mind whether the legislator has followed a uniform approach to punishment in different laws. When a behavior is criminalized in criminal law, there will be also a subsequent punishment by the legislator. Now, is computer pornography punishment consistent with the principles and objectives of punishments? What are the responses adopted to computer pornography? The present paper is intended to answer these questions and if these questions are reasonably answered, many of the challenges and dilemmas of "computer pornography in the Iranian legal system" will be resolved. The structure of this paper is formulated in five general chapters. The first chapter analyzes the punishment of ordinary pornographers; the second, third, and fourth chapters respectively criticize and measure the punishment of professional and organized pornographers and the corrupt on the earth.

2. Chapter One: Punishment of Ordinary Pornographers

According to article 14 of the Cybercrime Law, the following punishments have been predicted for behaviors related to vulgar or pornographic content. The following cases are based on the subject of pornography crime that is criminalized based on the vulgar or pornographic contents, as well as how many people they are sent to or whether they are sent to less than ten or more than ten people:

The first case: for conditional blamable behaviors (production, storage and maintenance) and definitive blamable behaviors (propagation, distribution and trading) whose content is pornographic, the delinquent is condemned to from ninety-one days up to two years or a fine of five million Rials to forty million Rials or both punishments. In other words, in this case the delinquent of the pornography crime is sentenced to "level six punishment".

The second case: Whenever the pornographic content is sent to less than ten people, the delinquent is subject to paying one million Rials to five million Rials in cash. Based on Article 19 of the Islamic Penal Code, the punishment for this case is “level eight punishment”. In this case, there has been a reduction in the penalty since the number of recipients is limited and there is less corruption (Elahi Manesh & Sadreh Neshin, 2012, p. 158). It is noteworthy that sending the content to less than ten people involves only two propagation or distribution behaviors that are carried out with the sending behavior and no other pornographic behaviors are included in this case.

The third case: For behaviors with conditional and definitive blamable behaviors with vulgar contents, the delinquent is condemned to at least one of the penalties of imprisonment or the fine of article 14 of the Cybercrime Law. Then, concerning vulgar content, unlike pornographic content, the judge should only consider one punishment that is either imprisonment or cash punishment and they cannot foresee both imprisonment and cash punishment and this discriminatory approach of the legislator is justified and defensible.

The fourth case: Whenever the vulgar content is sent to less than ten persons, the perpetrator shall be punished according to Paragraph 2 of article 14 of Cybercrime Law. Although this Paragraph only refers to pornographic content, the general rule predicted in Paragraph 1 of Article 14 about the determination of punishment is also applied here (minimum punishment) (Alipour, 2016, p. 6).

As observed in the above quadrant cases, penalties of ordinary pornographers are determined based on what the contents are about and how many people they are sent to. In the most severe case, ordinary pornographers are sentenced to level six punishment and the other case is level eighth punishment that can be delayed, suspended or subjected to semi-liberty system and other correctional institutions based on the general penal law.

3. Chapter Two: Punishment of Professional Pornographers

According to the agreed and disagreed concepts with Paragraph 3 of article 14 of the Cybercrime Law, three types of pornographers can be distinguished from each other, including professional pornographers, organized pornographers and pornographers corrupt on earth. In this part, professional pornographers and in the other two parts the organized and corrupt on the earth pornographers will be respectively described.

According to paragraph 3 of article 14 of the abovementioned law, if the perpetrators have considered the aforementioned acts in this article (Article 14 and six acts) as their profession, if they are not recognized as corrupts on earth, they shall be condemned to a maximum of both punishments established in this article. In other words, provided that they are not subjected to corruption on earth, professional pornographers are sentenced to two years’ imprisonment and forty million Rials in cash, which are the maximum punishments for both penalties. This regulation has two major objections and criticisms. First, what is the standard for a profession and what is the professional basis for pornography? Whether in the general penal code or in the specific penal code, the profession has not been explicitly defined, and the legislator seems to have left the recognition of the standard to the judicial authorities whose evil consequence is the personal and biased opinion of judges that lead to violating defendants’ rights. Secondly, does this increase in punishment include vulgar content, too? Since in paragraph 3 of article 14, it was expressed that the acts referred to in this article are referred to as merely pornographic content in the article itself. In addition, in accordance with Paragraph 1 of Article 14, only one punishment is considered for vulgar content; while in Paragraph 3 of Article 14, the legislator refers that “the perpetrator shall be sentenced to a maximum of both punishments”. In Paragraph 3 of article 14, the legislator seems to solely want to intensify the punishment of professional pornographers who produce, distribute, publish, trade, store and maintain pornographic content, which is in contrast with the principle of professionalism that it is intended to punish the professional more whether for vulgar or pornographic content. This deficiencies and shortcomings of the legislator in writing the legal texts that is not unprecedented in Iranian criminal law is not interpretable, and given the ambiguity of the regulation, it should be strictly interpreted and the rights of the accused should be respected as much as possible. Therefore, paragraph 3 of article 14 only covers pornographic content. Although some jurists believe that it is reasonable to say that since paragraph 1 of article 14 has predicted just one of the two penalties at the top of article 14 for vulgar content, there should be determined a maximum of one penalty for professional pornographers in proportion to Paragraph 3 of Article 14 regarding vulgar behavior (Ebrahimi, 2013, p. 97).

4. Chapter Three: Punishment of Organized Pornographers

According to the type of punishment, the third type of pornography pornographers are the organized pornographers. paragraph 3 of article 14 of the abovementioned law provides that if the perpetrator commits the pornographic acts in an organized manner, he shall be sentenced to a maximum of both penalties. That is, the maximum punishment of imprisonment for two years and a fine of one year. The same objection to professional

pornography applies here, with the exception that the legislator in Islamic Penal Code Article 130 and its Notes provides a standard and basis for the organized concept, and therefore, the organization is legally determined and the emergence of personal opinions is prevented (Mohammad Nasl, 2013, p. 156). Accordingly, if a pornographer finds the truth in the head of an organized group, he will face the legislator's discriminatory criminal policy. The main question here is how legislators pay attention to the typology of pornographic criminals and how they consider punishments according to whether the pornographers are ordinary, professional, organized, or corrupt on the earth while not considering a typology of victims that are the most important part of pornography division in Cybercrime Law? In other words, what is the reason for the lack of support for the victim standard? As seen in international (transnational and regional) documents, all documents are focused on child pornography (Negahi, 2012, p. 97); so why this important topic is not covered in Cybercrime Law? In Paragraph 1 of Article 13 of proposed Cybercrime Law, it was referred to child pornography; as established in the Note: "If the contents of this Article are made available to persons under the age of 18, or published or presented to them, the perpetrators shall be sentenced to a maximum of one or both punishments". Now it is not clear to the author why this Paragraph has been omitted in the final enactment of the Cybercrime Law, and what the rationale behind it was. Since first, pornography is not a crime in most legal systems of the world and secondly if any, only child pornography is a crime; i.e., if the legislator has considered this phenomenon criminal, it must have paid more attention to child pornography that is not true as it was said.

5. Chapter Four: Punishment of Pornographers Corrupt on Earth

One of the punishments provided in both article 3 of the Law on audiovisual affairs and article 14 of the Cybercrime Law is the punishment of a corruption on earth. Hence, in addition to the penalties mentioned above, pornography is subject to the punishment of corruption on earth, which is "execution". The legislator considers some cases in the Law on Audiovisual Affairs subject to penalties for corruption on earth, as follows:

The first case: Based on paragraph 3 of article 3 of the abovementioned Law, if the aforementioned factors (the main factors of the major reproduction and distribution of audiovisual works) and the following persons (referring to the following three categories of pornographic works with reluctance, the pornographic works sexual abuse of others and the main contributors to the production of pornographic works (known as corruption on earth) are recognized as the instances of corruption on earth, they will be condemned to its punishment. Hence, based on paragraph a of article 3, these persons are part of pornographers who are corrupt on earth and are sentenced to the punishment of corruption on earth.

The second case: Based on paragraph 6 of article 3, if the production, distribution, reproduction or possession of pornographic material is not of corruption on earth, the perpetrator shall not be punishable by corruption on earth. It is understood from the opposite sense of this regulation that the abovementioned behaviors may be considered as instances of corruption on earth. The considerable point is having pornographic works that, based on the opposite concept of regulation, can be from the instances of corruption on earth.

The third case: Based on paragraph 3 of article 3, other production, reproduction and distribution contributors of the subject of Paragraph A are sentenced to flogging, fining, and deprivation of social rights, in case that they are not instances of corruption on earth. The term "if he is not a corruptive on earth" has the opposite concept that he is known as a corruptive on earth is being known as a corruptive on earth (Rahmanian, 2009, p. 167). It is noteworthy that as provided in Paragraph 3 of Article 3, the other contributors refer to the non-major factors that they may also be subject to the punishment of corruption on earth.

The fourth case: Based on paragraph B of article 3 of the abovementioned Law, the suppliers and distributors of vulgar works shall be punished by the penalties provided in paragraph B if they are not from the instances of corruption on earth. As observed, the legislator in Law on Audiovisual Affairs considers the corruption on earth punishment even for the vulgar works and it is possible that the distributors of the vulgar works be sentenced to "execution" in accordance with the opposite concept of paragraph B of article 3.

The fifth case: According to article 8 of the Law on Audiovisual Affairs, if the pornographic works are in the competence of government employees and they distribute them intentionally or for financial use and if this is not corrupt on earth, they will be condemned to imprisonment and deprivation of social rights and flogging. Also in this case, the legislator considers the punishment for corruption on earth for government employees, and in general, the punishment for corruption on earth is imposed on pornographers in five different places in the Law on Audiovisual Affairs.

In the Cybercrime Law enacted in 2009, only one regulation points to corruptor on earth, and that case is computer pornography (Babakhani and Qasemi, 2016, p. 57). In computer espionage, crimes against national security carried out through computer systems, etc., the legislator does not point to corruption on earth while

they seem to be far more important than pornography and this position of legislator on pornography and its sensitivity is ponderable (Bay & Pour Qahermani, 2009, p. 80). According to paragraph 3 of article 3 of Cybercrimes Law, if the perpetrator has considered the acts included in this article as his profession or in an organized manner or has committed, he shall be condemned to the maximum of both punishments, in case that he is not recognized to be a corrupt on earth.” Thus, if the he commits the acts mentioned in article 14 of the Cybercrime Law in a pornographic manner, he may be convicted of corruption on earth and sentenced to execution. The above regulation has some deficiencies; first, the punishment of a corruptor on earth is a probable punishment, depending on the opinion of the judge (Elsan, 2016, p. 101), and with this type of legislation, the judges’ hand is open in applying their personal opinions and the rights of individuals is impaired. Secondly, the concept of corruption on earth has no specific legal definition, and again, depends on the opinion of judges and the unity of judicial opinion approach disappears and thereby intensifies rules in courts. Thirdly, given that propagation in the cyberspace is considered widespread in any case and it is possible to copy and send thousands of copies to thousands of people at a time, this legal objection has not explicitly stated the paragraph and used general terms. The last objection is that there seems to be no proportion between the crime of “pornography” and the punishment that is “execution”, as the death penalty has been abolished in many countries all over the world for many years.

The 2013 legislator and the Islamic Penal Code have also indirectly considered the death penalty for “pornographers” in some cases. Based on Article 286 of the Islamic Penal Code, “anyone who commits widespread corruption centers or contributes to their establishment in such a way as to cause widespread prostitution or corruption is considered to be a corruptor on earth and shall be condemned to death”. Therefore, if a pornographer widely propagates vulgar and obscene material on the Internet, in such a way that it can spread prostitution, this pornographer is a corrupt on earth and must be punished to death.

6. Chapter Five: Punishment Analysis of Computer Pornography

As observed in the previous lines on the issue of computer pornography, legislators have imposed severe punishments for pornography offense. It can be claimed that there is an overwhelming majority of penal code punishments for pornography offense. Cyberspace pornography penalties include imprisonment, flogging, cash penalties, deprivation of social rights, confiscation of all equipment related to the crime as punishment and, in some cases, execution. Now, despite the criminalization of pornography and its subsequent punishment and imposition of such penalties, including life sentence, life restriction, physical and financial punishments, what is the legislator’s objective? Is there a balance between crime and punishment? Are not these punishments severe for a behavior that is essentially a deviation? Are these government and official responses called punishment efficient in terms of criminology and criminal policy?

The Penal Code is the translation of basic and young collective values. The type of punishment (penalty or punishment response) regulated in criminal law indicates the ideas and measures the governing body and criminal policymakers have chosen to deal with defendants and criminals. One of the most critical criticisms of the penal system, in particular before the classical era, was about the disproportion between crime and punishment in criminalization, which was seen in the ideas of Plato, Kant and Joseph de Maistre. In addition to the type of punishment, the degree of punishment is also important since negligence of the possible minimums, i.e., the mismatch between the crime and the intensity of punishment that empowers the powerful community and the involvement of lower class and depriving them of their rights. Hence, considering severe penalties for light crimes contradicts the criminalization philosophy. In the case of pornography and penalties discussed in the preceding chapters, it can be said that both in the type of punishment and in the amount of punishment, a kind of heterogeneity is observed given the degree of harm, the type of fault of perpetrate, the motivation to commit, and the deviating nature of these acts. For instance, in the Law of Audiovisual Affairs, mere possession of pornographic material is punishable or, in many cases, the punishment is imprisonment, while in principle, imprisonment is for dangerous and very serious criminal offenses, and imprisoning a pornographer is heterogeneity. Finally, in the type of pornography punishment by physical punishments and fines and life restriction or execution, as well as imprisonment and cash penalties, a kind of disproportionate is observed. It seems that appropriate response to pornographic behaviors is in the field of criminal law, security and educational measures, and rehabilitation of such deviations to the normal state that unfortunately the responses are criminal.

Another criticism in general in the Iranian criminal justice system, and in particular in pornography, is the use of harsh penalties (Bastani, 2011, p. 134); for instance, the legislator’s role in the use of violence through punishments as well as in the intensification of social violence is a type of honor, belief and political killings (Habib Zadeh et al., 2004, p. 9) and these penalties violate the legal military face. This is prominent in

pornography and the various laws passed through it. Both in the Law on Audiovisual Affairs and in the Cybercrime Law and Islamic Penal Code, the enforcement of harsh penalties of flogging and execution express the violence of the penal system. It seems that Iranian criminal law on pornography follow this rule that the more severe punishment, the better prevention of a crime.

The legislator seems to enhance strict criminal laws and regulations and overlook the nature and importance of criminalization and the extent of its harm with considering the social benefits of penalties (public and private prevention). In other words, the perpetrator has been used as a means to achieve a goal that is contrary to the principle of inherent human dignity (Pour Baferani, 2008, p. 102). The history of criminal law developments and field and empirical studies in criminology and penology indicates that with intensifying punishments, crime prevention policies have been doomed to failure, especially in the form of corporal punishment and deprivation of freedom, and the use of intimidating means of punishment will not do anything to prevent crime regardless of the basics and criteria of criminalization (Rahimi Nejad and Habib Zadeh, 2008, p. 120).

Another important issue in cybercrime analysis is to investigate responses to pornography whether these government responses are considered appropriate by the legislator or not. Government responses such as imprisonment, flogging, execution, etc. to pornography are a form of adverse responses leading the criminal justice system to inefficiency. In a criminal system with prominent government responses that the importance of civil society is paramount, and the government is obliged to maintaining human rights and fundamental freedoms of humans, such responses are not welcomed by the people constituting the society. The government response to such acts (pornography) causes the civil society to show its dissatisfaction from within to social attitudes and behaviors that sometimes results in to the failure of the criminal justice system. Thus, in addition to revising pornography criminalization and acting in accordance with international documents, the principles of criminalization and criminal policy, the legislator also requires a change in criminalization so that avoids violent penalties and gets towards restorative, leniency and educative institutions to achieve the desired result.

7. Conclusion

In the aftermath of computer pornography, harsh punishments have been selected for audiovisual pornographic behaviors, so that the legislator has considered imprisonment, flogging, and in some cases executions for behaviors that are essentially non-social behaviors (deviation). The legislator has considered harsh penalties for a variety of pornographers, including ordinary, professional, organized, and corrupt on earth pornographers, with strong official and government responses to the phenomenon indicating the legislator's lack of tolerance and leniency in the criminalization. Imprisonment, flogging and execution penalties for a behavior that is essentially a diversion lead to the authorization of the criminal justice system, the securitization of criminal policy, and elimination and abandonment of community responses whose evil consequence is labeling individuals that can be considered as a deviator more than a criminal. It seems that in addition to changing its attitude of criminalization, the legislator has to change its approach to punishment by eliminating explicit government-official responses and replacing societal-informal responses in order to achieve the main goal of reforming people. Finally, criminal policymakers are recommended to show more tolerance and leniency to criminalization of computer pornography by modifying their current approach to punishment, and in addition to the inappropriate functioning of government response, allow the civil society to take step against this phenomenon.

Acknowledgements

This article is a part of a PhD dissertation in Criminal Law and Criminology which was approved by the Medical Ethics Committee of University of Mazandaran, Mazandaran, I.R. Iran. We hereby acknowledge University of Mazandaran.

Conflict of Interest

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

References

- Alipour, H. (2016). *Information Technology Criminal Law*. Tehran: Khorsandi Publications.
- Babakhani, M., & Qasemi, H. (2016). Pornography from the Perspective of International Documents and Iranian Law. *Journal of New Researches on Humanities*, (14).
- Bastani, B. (2011). *Computer and Internet (Cyber) Crime, the New Sight of Delinquency*. Tehran: Behnami Publications.

- Bay, H. A., & Qahrermani, P. (2009). *Jurisprudential Legal Review of Cybercrime*. Qom: Research Center for Islamic Science and Culture Publications.
- Ebrahimi, M. (2013). *Pornography: Culture and Criminology*. Tehran: Farhameh Publications.
- Elahi Manesh, M. R., & Sadreh Neshin, A. (2012). *Body of Statutes (with Marginal Interpretation) of Cybercrime Law*. Tehran: Majd Publications.
- Elsan, M. (2016). *Laws of Cyberspace*. Tehran: Shahre Danesh (City of Knowledge) Publications.
- Eskandar Zadeh Shanjani, A. (2010). *Judicial Issues of Pornography in Cyberspace*. Tehran: Rahe Novin (Modern Way) Publications.
- Habib Zadeh, M. J., Najafi Abrand Abadi, A. H., & Taheri, M. A. (2004). Violence and Criminal Justice System, *Journal of Social and Humanities Sciences, University of Shiraz*, (41).
- Mohammad Nasl, Q. R. (2013). *Exclusive Penal Law for Cybercrime in Iran*. Tehran: Mizan Publications.
- Negahi, M. (2012). Dealing with Child Pornography: A Comparative Study of International Documents and Iranian Criminal Laws. *Journal of Criminal Law Research*, (2).
- Pour Baferani, H. (2008). The Musts and Must Not-s of P in Iranian Criminal Law. *Journal of Majlis and Strategy*, (75).
- Rahimi Nejad, I., & Habib Zadeh, M. J. (2008). Inappropriate Punishments: Punishments Contrary to Human Dignity. *Journal of Private Law*, (2).
- Rahmanian, H. (2009). Legislative Criminal Policy of Iran and France on Pornography, MSc Thesis in Criminal Law and Criminology, Tehran: Imam Sadiq University.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).