



CRIMINALIZING POLICY OF SEXUAL HARASSMENT

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Article history:		Abstract:
Received:	June 4 th 2022	Harassment is a social, psychological, and legal issue that infringes on the right to privacy, the protection of one's body, and dignity, as well as putting one's psychological and social safety at risk. It is often misunderstood for its privacy as it represents one of the taboos that should not be addressed in Arab societies in particular. Previously, people were afraid to use that term, especially when it was connected with the word sexual. However, with the increase in this dangerous phenomenon at the present time, it has become necessary to delve into its merits. It cannot be ignored or pretend that it does not exist. Moreover, sexual harassment was not mentioned by the Iraqi legislator in the amended Penal Code, except for what was stated in Article (402), which referred to the criminalization of exposure to a female in the public place with words, actions or facial gestures in particular which cause the woman's modesty under harassment. This punishment for such an act is as light as air when compared to this dangerous act. Based on the foregoing, we decided to address this topic in our research in two sections preceded by an introduction: In the first section, we explain the definition of the crime of sexual harassment and its idiomatic statement. As for the second topic, we deal with the objective provisions of the crime of sexual harassment by defining its elements and the criminal penalty established for it in the Iraqi legislation.
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INTRODUCTION

First: Research importance

The significance of the current research arises from the nature and gravity of the problem it addresses, as it concerns the protection of human dignity and the provision of a decent existence free of exploitation. Any behavior that transgresses morals and ethics that the victim is exposed to in the professional environment often causes the individual to be away of the scope of the profession and makes him an unproductive person. In addition, it may cause psychological and physical effects. The person feels oppressed and as if humanity and dignity have been squandered, which leads to a loss of self-confidence as well as the growing hatred and a desire for vengeance. It has a negative impact on the family first, then the community as a whole.

Second: Research hypothesis

The study aims to address a variety of questions, the most important of which is the development of the research hypothesis in the question below: Was the Iraqi legislator successful in dealing with the crime of sexual harassment in Labor Law No. 37 of 2015? Was the Iraqi legislator successful in subjecting it to the jurisdiction of the Labor Court on although the penalty prescribed for this crime varies, especially when

considering it a crime against morals and public morals between it and the amended Penal Code No. (111) of 1969.

Third: Research problem

The study copes with a critical issue, since sexual harassment has a detrimental impact on a person's personality, psychological and physical safety, and efficiency in doing work in a professional setting, as well as his interaction with his family and social environment. This is what causes personal insecurity over the body and personal dignity. Despite the criminalization of the assault on human sexual freedom and dignity in various forms, this has not eliminated this widespread phenomenon at the present time. Also, this recent crime poses many problems, and its research raises many difficulties.

Fourth: Research Methodology

The methodology is mostly consistent with the modernity, seriousness and nature of the topic that is based on the use of the descriptive, and analytical approaches in terms of clarifying the nature of the crime of sexual harassment in the job environment. It also clarifies the objective provisions of the crime of sexual harassment in the professional environment by defining its elements and punishment. We have collected information on the subject and extracted



from all sources, and arranged it according to a scientific-philosophical framework.

Fifth: Research plan

Briefing about the study of the crime of sexual harassment in all its aspects required that we deal with it in two sections. Firstly, the sexual harassment whereas the second includes the subjective provisions for the sexual harassment. We will conclude our research with showing the most important conclusions we will reach and what we see as key suggestions.

Defining the crime of sexual harassment

In order to define the nature of the crime of sexual harassment, it is defined as inappropriate behavior that harasses a person, whether male or female, and is deemed an assault on his freedom and right to maintain dignity and body. Identifying the meaning of the crime of sexual harassment and then explaining the categories of sexual harassment through two conditions is required to clarify the notion of sexual harassment. In the first requirement, we discuss the definition of the crime of sexual harassment. The second requirement is the types of sexual harassment.

The definition of the crime of sexual harassment

Sex is defined as amorous contact between a male and a female, but it may also refer to any act that elicits a sexual urge in the perpetrator. (Mustafa and et al. 2008). The concept of sex in Islamic law is self-desire which means touching a woman's body in violation of the law, which Allah Almighty preserved. The law granted this body protection and preservation from various types of aggression, starting with the gaze (sneaking eyes) to adultery, which Islam considers it a crime. (Al-Shuaiby, 2009). The Islamic law set a limit for it from the limits of Allah Almighty, as he considered it a crime.. It is a set of harassment and blackmail, all of which are religiously and morally unacceptable. Whoever commits sexual harassment is like a beast. This act cannot be committed by a sane person (Mustafa, 2013). It is worth noting that this crime is the offender's satiation of his instinct in an abnormal way that an ordinary natural person cannot follow when he satisfies the same instinct. This is due to abnormal psychological conditions that the offender was experiencing prior to or at the time of the crime. The definition of sexual harassment in the Iraqi Labor Law No. (37) of 2015 is "any physical or verbal behavior of a sexual nature, or any other behavior based on sex which harms the dignity of women and men and is undesirable, unreasonable and insulting to the one who receives it and leads to rejection or failure to submit to this behavior, expressly or implicitly, to make a decision that affects his job.

(Article 3, C.10) On the one hand, it is noted here that the Iraqi legislator has specified the forms of sexual harassment behavior, for example, but not limited to, because it included the phrase "(or any other behavior based on gender. On the other hand, the above definition was limited to sexual harassment that affects the dignity of women and men. Equally, it would have been more appropriate to include all natural persons, even those who have not yet reached the age of majority, by putting the phrase (violating human dignity), as it did not include harassment that occurs through modern electronic methods such as social networking sites, for example. As for jurisprudence, sexual harassment is defined as "a sexual behaviour that is rejected and not reciprocated between two parties, that is, it is not desirable) (Shalala, 2010). It is also defined as "the behavior of a person exploiting his authority and his profession by issuing orders to others, threatening, coercion, or even applying various pressure methods with the intent of forcing this person to respond to his personal sexual demands". It carries sexual connotations towards another person who is harmed by it and does not want it. (Saqeer, n.d.)

It also is a behavior with a sexual desire that is not desirable, does not request and does not receive a response, as it represents actions and behaviors that are rejected and not reciprocated. This harassment can also be physical, verbal, written, or graphic pornographic material. It covers different facts and is a form of violence that is translated in different forms (Kamil, 2001). Accordingly, the crime of sexual harassment in the professional environment constitutes aggressive behavior or behavior by the offender with the intent of attacking, whatever its form, the dignity or freedom of the victim and their freedom without their consent, which generates a dangerous negative feeling that seriously affects them and society as a whole. (Shalala, 2010)

From the foregoing, we can define the crime of sexual harassment as (a physical or verbal behavior or behavior of a sexual nature that is morally, customary, religious...or otherwise violates the dignity of the victim or her).

Types of sexual harassment

There are many different types of sexual harassment. It may be just a word, or a sign, or even touching the victim's body. Therefore, we will discuss the most important of these types as follows:

The first type: verbal harassment:

Verbal harassment represents phrases with sexual connotations in any form and by any means (Al-Issa, 2014). It also includes the release of



inappropriate words, such as some phrases or jokes that carry a sexual meaning, or comments, insinuations, or pornographic speech (Al-Shukari, 2020). It may be in the form of phrases that seem to carry the meaning of praise, courtship and admiration, but they are in the form of indecent expressions, which include phone calls and sending text or electronic messages through social media, which have sexual content, and through issuing sexual comments about the victim's body or on her, her clothes, or her appearance, indecent expressions, and voices and whispers of a sexual nature (Mizban, 2015). Verbal harassment is a form of violence, but it is specifically related to sex. (Karim, 1999)

The second type: non-verbal harassment:

This type of sexual harassment is when the harasser makes non-verbal cues or signals of a sexual nature through non-verbal gestures and movements. This type is represented by examining the body by the harasser, or eye winking and making expressions of a sexual nature, or movements of the hands, or any movements of a sexual nature, provided that the offender does not utter them. It is also represented by touching the body of the victim or on her (Al-Sayid, 2008).

The third type: physical harassment:

This type of harassment is the most serious of the other types of harassment, as it is the offender's intentional touching of the victim's body by means of violence or physical contact (Rasul, 2016). This is achieved through acts by the offender having sexual connotations. It may be through the offender's display of his body or organs, or referring to them for sexual purposes, or by forcing the victim to display his body (Jamil, 2013). This type of sexual harassment often occurs in crowded places, such as in markets, transportation, universities, or others.

Substantive provisions of the crime of sexual harassment

We shall address the objective provisions of the crime of sexual harassment in Iraqi legislation in terms of establishing its parts and penalties, taking into account the importance of this crime, which can be considered the start of many crimes against morals and public morals. In light of the foregoing, we will show that in two demands, and explain the pillars of harassment in the first requirement while the second requirement will discuss the penalties of harassment.

Elements of the crime of sexual harassment

Every crime has general characteristics that define it as an illegal conduct, no matter how serious it is. Two general pillars represent these: the material pillar and the moral pillar. It's worth mentioning that,

in addition to the broad features that distinguish one crime from another, certain crimes have a distinctive corner or consequence. It is not necessary for this crime of sexual harassment to include a special or inferred element in order for it to be committed. This is what distinguishes it from other forms of sexual harassment crimes that may be identified in the professional field that may require the presence of an attribute in the offender and the victim, etc... Therefore, we will be content with the General Staff research in the subject of our research due to the lack of an attribute or the like. We will explain it as follows:

The physical pillar of sexual harassment

The material element of the crime represents what is included in its legal structure of tangible material elements that can be perceived by the senses (Abd-Elmoneim, 2003). It is achieved through the offender's assault on the interest or right protected by law. If it is absent, then there is no crime or punishment. (The Iraqi legislator defined the material element in Article (28) of the Iraqi Penal Code as (criminal behavior by committing an act criminalized by law or refraining from an act ordered by law). It is also known that the material element constitutes legally defined criminal behaviour. This behavior is either in the form of committing an act and is called positive behavior that appears in the outside world (Tharwatt, n.d.), or refraining from the act and is represented by negative behavior, which is refraining from doing something required by law (Muhamad, n.d.).

The criminal behavior in the crime of sexual harassment is positive behaviour. Negative behavior cannot be imagined in them, because, as we have shown, the perpetrator's refraining from harassment is an obligation under the law, and this is not true. The Iraqi legislator has defined the general frameworks for criminal behavior in the crime of sexual harassment, which is to be verbal or physical of a sexual nature, or any other behavior based on sex provided that it harms human dignity and is undesirable, unreasonable and humiliating behavior, and which results in the victims' rejection of it expressly or implicitly (Article (402) of the Iraqi Penal Code states regarding criminal behavior that "Whoever requests things that are contrary to morals from another male or female. b-Whoever exposes a female in a public place with words, actions or gestures in a manner that offends her modesty." Paragraph (3) of Article (10) of the Iraqi Labor Law.). Thus, the Iraqi legislator confused the criminal behavior with the crime of sexual harassment and crimes against morals and public morals, because the behavior of a sexual nature is considered a crime



against morals and public morals. This is in reference to Article (396) of the Iraqi Penal Code, which states that "A person who assaults by force, threat, deception, or any other form of dissatisfaction shall be punished with imprisonment for a period not exceeding seven years or imprisonment. in that). Article (397) of the same law stipulates that "Whoever assaults, without force, threat, or deception, the honor of a person, male or female, who has not reached the age of eighteen, shall be punished by imprisonment." On the one hand, and on the other hand, the attempted crime of rape can be adapted as a crime of sexual harassment, which entails escaping the aggravating penalty for the crime of attempted rape, and being subject to the punishment of the crime of sexual harassment.

The moral element of the crime of sexual harassment

Sexual harassment is a premeditated act that is unlikely to have occurred by accident. It necessitates the presence of criminal purpose; otherwise, the crime cannot be carried out. The intent of the behavior is what determines whether it is harassment or not. (Salama, 1999) The analysis of the visible manifestations that express their verification of the offender's characteristics infers the sexual harasser's goal. In order for a person to be asked about a crime, the moral element must be present (Bahnam, 2001). This element of the legal statement of the crime takes two forms, the first of which is intentional or what is called criminal intent, and the second is the form of unintentional error. The moral element plays an important role in giving the legal description of the crime of sexual harassment; to distinguish it from other crimes. This crime cannot be committed by an unintentional mistake, no matter what the expected outcome may be.

It is worth noting that criminal intent consists of two components: knowledge and will. (The Iraqi legislator defined criminal intent in paragraph (1) of Article (33) of the Penal Code as "directing the offender his will to commit the act constituting the crime with the aim of the criminal result that occurred or any other criminal result."). Science is a psychological state in the offender's mind, the essence of which is awareness of the reality of the facts from which the material pillar is formed, with the offender's representation or expectation of the criminal outcome, and whose events the criminal act would have as an effect (Abu-Amer, 1986). In order for the criminal intent to be realized in the crime of harassment, the offender must be aware at the time of the crime of the material of the criminal act constituting the crime of

sexual harassment and the elements necessary to achieve it. That is, to know that the words, gestures, or movements he made are of a sexual nature. Then it is to know that what was made by the offender is a form of harassment, whether verbal or non-verbal. The offender must also have wanted to do this behavior.

Punishment for the crime of sexual harassment

In this requirement, we will discuss the penalty for this crime through two sections. In the first, we deal with the simple punishment for the crime of harassment in the professional environment, while in the second section it will be for its severe punishment.

Minor punishment for sexual harassment

In the Labor Law, the Iraqi legislator punished the crime of sexual harassment by imprisonment not exceeding (6) months and a fine not exceeding one million dinars, or by one of these two penalties. (Article (402) of the Iraqi Penal Code stipulates that (1) a penalty of imprisonment not exceeding three months and a fine of not more than thirty dinars, or one of these two penalties. b- Whoever exposes a female in a public place with words, actions or gestures in a manner that offends her modesty. 2- The penalty shall be imprisonment for a period not exceeding six months and a fine not exceeding 100 dinars, if the offender re-commits to committing another crime of the same type of crime for which he was sentenced within one year from the date of the previous judgment). Looking at the punishment for this crime, it is clear that it is a misdemeanor. (Paragraph (2) of Article (11) of the Iraqi Labor Law. The fine is defined in (91) of the Iraqi Penal Code as "the obligation of the convict to pay to the public treasury the amount specified in the judgment. In assessing the fine, the court takes into account the financial and social status of the convict and what he benefited from the crime, or was expected to benefit from it, the circumstances of the crime and the condition of the victim). It entails assigning the convict to perform the legally prescribed duties in the penal facilities.

The legislator has set the amount of the fine to be imposed on the offender at an amount not exceeding one million dinars. Based on the text of Article (26) of the amended Iraqi Penal Code, which defines a misdemeanor as ((a crime is punishable by one of the following two penalties: 1- severe or simple imprisonment for more than three months to five years. 2- a fine)). If he does not pay it to her, the court may order his imprisonment, provided that the period of imprisonment does not exceed (3) months,



because the maximum sentence for a crime is six months. (Article (93) of the Iraqi Penal Code.)

From the foregoing, it is clear that the Iraqi legislator was unsuccessful in determining the penalty for the crime of sexual harassment in the professional environment, because the criminal behavior of the offender applies to a description of another crime that the legislator has criminalized in the Penal Code with a more severe penalty. However, the Labor Code as a private law restricted the general text stipulated in the Penal Code. Therefore, it would have been more appropriate for the Iraqi legislator to preface the text of (Second) of Article (10) of the Labor Code with the phrase "without prejudice to any severer penalty in the Penal Code or any other law."

Severe penalty for sexual harassment

The crime may be accompanied by certain circumstances that aggravate its punishment. This tightening may change or maintain the legal description of the crime. These are called crime aggravating circumstances which are divided into two parts, ad hoc circumstances to a specific crime or a few crimes under one title, and general circumstances whose scope extends to include all or the majority of crimes (Al-Hadithi, 2010). The Iraqi legislator did not specify special circumstances in the crime of sexual harassment in the professional environment, so it is subject to the general aggravating circumstances stipulated by the Iraqi legislator in the Penal Code contained in Article (135). The Iraqi legislator did not specify ad hoc circumstances in the crime of sexual harassment in the professional environment. Therefore, it is subject to the general aggravating circumstances stipulated by the Iraqi legislator in the Penal Code contained in Article (135). (Article (8) of the Iraqi Labor Law stipulates that (First: This law prohibits any violation or transgression of the principle of equal opportunities and equal treatment, for whatever reason. In particular, discrimination between workers, whether direct or indirect, in all matters related to vocational training, employment, or the terms or conditions of work).

The crime was committed with a vile motive is one of the most prominent of these circumstances, which can aggravate the penalty for the crime of sexual harassment, is the circumstance that. The motive is described as despicable based on the goal that the offender aims to achieve, knowing that the most prominent form of the despicable motive is the act of committing the act in preparation for the commission of another crime. Accordingly, it is considered a vile motive if the harassment is done in the professional environment for the purpose of

keeping the victim away from his work, because there is another person, such as being a female who has applied for work. Thus, the employer has committed the crime in preparation for the commission of another crime, which is discrimination between workers because of sex. This is a violation of the most important constitutional principles.

When the victim's lack of understanding or ability to resist is exploited, it is considered an aggravating circumstance. Recidivism is also an aggravating factor in the case of sexual harassment in the workplace, as it reveals the offender's proclivity for repeat offenses. (Al-Hadithi, 2010). The offender shall be a recidivist (The Iraqi legislator specified the conditions for considering the offender to be recidivist by issuing a final judgment against the offender that includes an original penalty for a felony or misdemeanor, provided that it is issued by an Iraqi court. In (Second) of Article (139) of the Penal Code stipulates that (he is considered a recidivist. Second: a person who has been finally convicted and proven to have committed, and before the expiry of the prescribed period for his legal rehabilitation, any felony or misdemeanor similar to the first misdemeanor. The crimes stated in one clause of each of the following clauses shall be considered identical for the purpose of applying the provisions of this Paragraph... 3- Crimes related to public morals and good morals). If a previous ruling was issued against him for a crime against morals and public morals, such as rape, sodomy, indecent assault, public indecency, or others...

After we have clarified the aggravating circumstances that aggravate the penalty for the crime of sexual harassment in the professional environment, it is to determine the amount of its penalty if the crime is associated with an aggravating circumstance. The legislator specified for her a penalty of imprisonment not exceeding six months and a fine of not more than one million dinars, or one of these two penalties. The judge may rule for more than the maximum limit represented by (six months), provided that this limit is not exceeded, that is, that it does not exceed one year of imprisonment (Article (136) of the Iraqi Penal Code).

CONCLUSION

After finishing the research entitled "the criminal policy of sexual harassment in Iraqi legislation", we must mention the most important results we have reached, and what we see as appropriate suggestions, as follows:



FIRST: RESULTS

- 1- It should be emphasized that the types of criminal behavior for the offense of sexual harassment were not specified by example, but rather by example, as the Iraqi lawmaker used the phrase (...or any other behavior based on sex, provided that it affects the dignity of women...).
- 2- Sexual harassment is a type of positive conduct crime in which the perpetrator can be either a male or a woman, but the victim is almost always a woman. It's unthinkable to engage in negative behavior. It's also a premeditated crime with a high level of general criminal intent.
- 3- The Iraqi legislator's punitive strategy failed to determine the appropriate level of punishment for the crime of sexual harassment. When compared to the penalty established in the modified Iraqi Penal Code No. (111) of 1969 for the crime of rape or other crimes against morals and public morality, this is the case.

SECOND: SUGGESTIONS

- 1- We call on the Iraqi legislator to reformulate the text of Article (Third) of Article (10) of the Labor Law to be in the following form: Sexual harassment in accordance with the provisions of this law represents a physical or verbal behavior of a sexual nature, or any other behavior based on sex, and affecting the dignity of Humans are insulting to those who receive it. expressly or tacitly rejected).
- 2- We suggest to the Iraqi legislator to amend text (Second) of Article (11) of the Labor Law by adding the phrase (without prejudice to any more severe penalty in another law). The wording becomes as follows: (Whoever violates the provisions of the articles contained in this chapter related to child labor, discrimination, forced labor and sexual harassment according to each case, without prejudice to any severer penalty, shall be punished by imprisonment for a period not exceeding six months and a fine not exceeding one million dinars, or by one of these two penalties. in another law).
- 3- It would be desirable if the Iraqi legislator added a text criminalizing sexual harassment within the texts for crimes against morals and public morals stipulated in the Iraqi Penal Code.

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