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The crime of exploiting children in prostitution via internet (legal study)

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ABSTRACT

The crime of exploiting children in prostitution is considered as one of the most dangerous sexual crimes since it forms a material and moral violence at the same time. So, the promotion for the pornographic data for gratifying the sexual instincts for the others, or for getting trade profits becomes a familiar thing in the internet where the child can be offended including showing photos and pornographic movies having photos for minor female children or photos and movies for the processes of the sexual torture and the sexual organs and the rape processes or the sexual processes exerted against the minor children. Because of the expansion of this crime owing to the bad use of the technological development, it is needed to put a limit for this by activating the national and international laws and putting it in an executive position especially it has not received enough interest. So, it must have the interest it deserves in a form that obligates the all, individuals and governments, and imposing suitable penalties against the ones who violate the rights of the child. The Iraqi project must go along with the technological develops by putting a special law for this purpose. Next we will analyze the pillars of the crime of exploitation of children in prostitution and study the penalty related to the crime of exploitation of children in prostitution, especially in Iraq.

KEYWORDS: exploiting children in prostitution, crime, internet, laws, Irak.

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El delito de explotación de niños en la prostitución a través de internet (estudio jurídico)

RESUMEN

El delito de explotación de niños en la prostitución se considera uno de los delitos sexuales más peligrosos, ya que al mismo tiempo constituye una violencia material y moral. Por lo tanto, la promoción de los datos pornográficos para gratificar los instintos sexuales de los demás o para obtener ganancias comerciales se convierte en algo común en Internet, donde el niño puede ofenderse, como mostrar fotos y películas pornográficas que tienen imágenes para menores o fotos y películas para los procesos de tortura sexual y los órganos sexuales y los procesos de violación o los procesos sexuales ejercidos contra los niños. Debido a la expansión de este crimen y al mal uso del desarrollo tecnológico, es necesario poner un límite a esto activando las leyes nacionales e internacionales y colocándolo en un puesto relevante, especialmente porque no ha recibido suficiente interés. Por lo tanto, debe tener el interés que merece en una forma que obligue a todos, individuos y gobiernos, e imponga sanciones adecuadas contra aquellos que violen los derechos del niño. El proyecto iraquí debe ir junto con los desarrollos tecnológicos al poner una ley especial para este propósito. A continuación, analizaremos los pilares del delito de explotación de niños en la prostitución y estudiaremos la pena relacionada con el delito de explotación de niños en la prostitución, especialmente en Iraq.

PALABRAS CLAVE: explotación de niños en prostitución, delincuencia, internet, leyes, Irak.

Introduction

The use of children less than eighteen years old to gratify the sexual instinct for the others is not a new thing. Under the fast changes that our societies live today either from the part of the social or economic or technological aspects, developments parallel to the criminal danger which waits for the victim happened. In this field, the thing that makes attention is the sexual crimes which are still committed against children in the world till they can be classified into a victim and threatened.

Not only does the exploiting of the children in prostitution form a serious danger against the children and their luxury and their future, but against the future of the world as a whole also. And the victim will turn into an attacker other than the hatred which arises that they carry across the generations. The degeneration of the valuable system in any society is one of the biggest losses, and this may lead to a moral gap where the local values lose their control. So, it is clear that there is a need for more work if the world actually wants to protect the rights of the whole children.

One of the most successful aspects to activate the work concerning the protection of the rights of the child is to activate the laws on the national and international levels and putting it in an executed position especially it has not received enough interest. Therefore, it must have the interest it deserves in a form that obligates the all, individuals and governments, without forgetting the criminal side with imposing it against every one violating any right of the rights of the child which became a widespread phenomenon, which forms a serious danger in the world today especially after the total ratification for the agreement of the child rights to be more secure and peaceful for the children.

1. Importance of the Study

The subject of what the childhood today faces in the world in general and in Iraqi specifically in terms of being exploited in prostitution that trespasses a limit that cannot be forgiven is considered as a very important subject since the solution of this phenomenon presents a very great service for the humanity as it deals with a very serious problem having a wide world interest.

2. Difficulties of the Study

In this study, we have faced some difficulties and the leading difficulty is that there is no special law in Iraq which incriminates this action which forced us to go back to the public principles and the national agreements regarding the subject, and the problem of obscuring the information related to the subject in Iraq because of the wars and the terrorist actions in addition to the corruption spreading in all the joints of the state. This led to the difficulty of getting the wanted statistics. Also the lack of

the judicial applications and the modernity of the subject have created some difficulty.

3. Problem of Study

This crime forms an actual threat for all the communities. In addition to that, it embodies one of the styles of the pre-meditated crime. It exceeded the abilities of the of the governments and the international and local organizations since there is no special law that is concerned with the conflict of the informational crimes. Having looked at this picture of children situations in the world today, which represents a clear contrast with what the free world today alleges that it insures for individuals their rights they have not had before, there must be a study about the breaches that prevent them from tenderizing their rights insured by the international laws in general and their states in specific. Also there is no clear definition by the Iraqi legislator for the crimes of the sexual exploiting for children in prostitution via internet.

4. Plan of the Study

We will make a plan of the study consisting of two requests. In the first request we will talk about the pillars of the crime of exploiting children in prostitution while the second request is allocated for the penalty regarding the crime of exploiting children in prostitution. Then we will finish our study with what we reach to concerning some conclusions and recommendations to restrict the exploiting of children in prostitution so that our children can tenderize with a life full of peace and safe in which their rights can be granted totally, and this is what the states of the world including Iraq promised.

5. The first request

5.1. Pillars of Exploiting Children in Prostitution Via Internet

This crime happens when its pillars are done, they are physical and moral pillars in addition to two pillars which are the victim and the criminal, so we can study this through the following types:

5.1.1. The First Type: The Physical Pillar (The Act of Exploiting)

This element happens when the child is used or functioned or showing him for prostitution or for producing pornographic acts or performing pornographic shows. These acts take a picture of showing or assurance or management or producing a child for exploiting him in prostitution. Also producing or distributing or publishing or importing or exporting or showing or selling or getting pornographic articles concerned with the child (The Optional Protocol Annexed with the Agreement of the Child Right Concerning the Sale and Exploiting Children in Prostitution and in Pornographic Articles – the Decision of the Public Association for the United Nations No. 263 / 54 on 18 / 2 / 2002).

The immoral act is not conditioned to happen actually so the use by itself is existing since the purpose of it is to force the user to do obscenity, or function him in works related to the obscenity because the result owing to the use is not of the crime, the crime happens whether there is a result for the act or not (A'abdeen & Qamhawi, 1985; Nael, 2001).

The exploiting use (functioning) for the child in the field of prostitution means that the prostitution in all its aspects is considered as a source of living that the criminal depends on.

The income of prostitution is what is paid in exchange for an act exerted by the child in prostitution and it is paid either to the child, the victim or to the one who exploits him who gets all or some of it whether this income is money or things or other profits (Nael, 2001).

These acts can take other pictures even they are not mentioned in the agreements. They form pictures of these acts, like incitement for abomination and fornication or presenting physical and moral assistances for the child to enable him to exert prostitution in any way or by facilitating prostitution for the child. This is incriminated by the Iraqi Law of Penalty through the version of article 399 and the other legislations (The Amended Iraqi Law of Penalty No. III for 1969), by subserving the obstacles in front of the criminal, client, broker, the producer of pornographic

articles, etc. The purpose of this is to enable the victim to exert prostitution even if the result does not come true or by inducing the child to the way of prostitution by deceiving him so that he can do obscenity that the victim run away from his family or his usual residence and going to a place where prostitution is exerted, or by making the child in a place where prostitution is exerted, i.e. catching the victim whether by deception or obligation or fraud or cheating to do the act of prostitution and restricting his freedom for preventing him from leaving the place whether this restriction is physical or moral. This all is to use the victim in the act of prostitution even it is not actually done or by accompanying the child outside the countries for work in prostitution or inciting him to leave the countries for this purpose or helping him outside his countries for this purpose (Watt et al., 1989). Regarding the production of pornographic articles, the criminal himself or another one else can commit this act in any way whether it is audio or visual, any means of communication in which the child through it is called to exert or encourage the pornographic activities for the thing that is in return whether it was real or fake (The Agreement of Repression of Trafficking in Human Beings and Exploiting Prostitution for 1949), Thus, many of the international agreements incriminated the starting, the contribution and the conspiracy or the agreement or the incitement for this crime (The Optional Protocol Annexed with the Agreement of the Child Right Concerning the Sale and Exploiting Children in Prostitution and in Pornographic Articles – the Decision of the Public Association for the United Nations No. 263 / 54 on 18 / 2 / 2002).

The crime of sexual exclusion, if it is committed through a wide spread or systematic attack or against the civilians, is considered as a crime against humanity according the version of the article (7-first /d) of the Law of the International Criminal Court if its conditions came true (The Amended Iraqi law of conflicting prostitution no8 for 1988).

It is also regarded as a crime of war if it happened through the sequence of international or not international dispute concerned with it, and the criminal knows

that dispute and this is what the article (8-second /b) of the Law of the International Criminal Court refers to if its conditions came true ⁰ (Al-Shwani, 2011).

5.1.2. The Second Type: The Moral Pillar

This crime is considered as one of the intentional crimes. Here, it is conditioned that the criminal, when committing it, has the public criminal intention (the knowledge and the vicious will). But if the reverse is proved, the criminal is not considered a doer. For example, if it is proved that his ignorance was because of a fault he fell in because of exclusive circumstances out of his will , this must be proved (Jaddou & Al-Doori, 1972).

In addition to public intention, there must be a private intention which is embodied in the intention of the sexual activities, and gratification the sexual desire as it is stated in the articles (2 -b,c) of the protocol annexed with the agreement of the child rights and (3) of the agreement No. (182).

So, the sexual activities which are all the acts that have sexual excitement even it has not reached to the rank of the complete sexual connection is regarded the aim that the criminal intends to get it. So, for this crime to be done, the criminal must have it.

As far as the gratification of the sexual desire is concerned, it is another aim that the criminal intends to get through this crime done by him or another else or specific or not specific group of people. Regarding the depraved people, they are the persons who have a sexual desire for children who are at the age of adultery even though they work to incite this desire, they are the persons who have a clear and specific vision concerning the sexual preference for children (James, 2000; O'Grady, 1996).

5.1.3. The Third Type: The Victim

The victim must be at the age less than 18 years old , and he/she must be exposed to the sexual violence or another sexual crime inside the house by one of the

individuals of his family or relatives or friends or outside the house by the teacher or any person close to him or strange for him (Murphy, 1999).

It is not supposed for the child, the subject of the crime, to be real, so he may be fake, and this appears clearly in the pornography art. So, through the developed technology (photo shop), the criminals can create a pornographic art whose subject is a child, but this child is fake and not real and of the imagination of the criminal, but in spite of that, it is incriminated since the disadvantage caused by the pornographic articles about children trespasses the direct exploiting for them in producing these articles other than these articles have large abilities in the encouragement of the sexual exploiting for children. The criminal may use the compulsion (physically or morally) or any form of the compulsion or kidnapping or fraud or deception or exploiting authority or exploiting the weakness state of the victim. These conditions in their nature are against satisfaction and the will is covered with a clear defect. Whether the victim or the one who takes his place is satisfied or not, only the criminal will be punished as it is referred in the version (3/A-B) of the protocol annexed with the agreement of the united nations for conflicting the premeditated crime via patriotism that is concerned with preventing and repressing and punishing trading with persons especially women and children. This is what is referred to by the version of the two articles (1-2) of the agreement of the prohibition of trading with persons and exploiting prostitution for the others also.

5.1.4. The Fourth Type: The Thing That Is In Return

This crime is committed as in return, and the thing that is in return may be physical or moral. Who receives the thing that is in return may be the criminal or the victim child and may be another person, but it must be considered as achieved even if it was in exchange for a personal pleasure. We find that the definition of exploiting the child in prostitutio, emitting in the article (2) of the protocol annexed with the agreement of the child rights which provides that " using the child for sexual activities in exchange for a reward or any other form of the recompense forms" (BoonPala, 1996). It is noticed that this definition has a fault represented by specifying the form of the thing that is in return (like the reward or anything else of the recompense

forms), so the sentence is preferred to be " in exchange for any type of the physical or immoral types of the thing that is in return or any other service from any type of the criminal or the victim child or the others.

This crime shows a profiting trade for the producers, the mediators and distributors. It can also be distributed on a very wide spread range and without return between the ones who are sexually fond of children and the other exploiters. When the pillars we have mentioned come true, the crime comes true, and the ones who commit it deserve the suitable punishment that is provided through the law.

6. The Second Request

6.1. The Penalty of the Crime of Exploiting Children in Prostitution Via Internet

The constitutions in all over the world with clear versions prohibited the crimes committed against the child. This is an evidence for the risk of these crimes especially concerning sex. Here we refer to the Iraqi resident constitution for (2005) regarding the prohibition of the compulsory work as the article (37) dealt with in its third paragraph which provides that the compulsory work and slavery and trading slaves are prohibited and trading women and children and trading sex are also prohibited.

According to this, the legislator enacted the laws related to this so as to accord with the constitution and we mention here some of the laws that incriminated the crime of sexual exploiting against children, and as follows:

The Amended Iraqi Law of Penalty No. (111) for (1969) referred to with a clear version about the sexual exploiting for children, so the article (393) of Iraqi Law of Penalty provided that (everyone who incited a male or female who has not reached complete eighteen years old for fornication or for taking the abomination as a craft or facilitated it for them is punished by prison). If the criminal is included in the paragraph (B) of the article (393) or intended the profit from his work or took a wage for it, he will be prisoned a period of time not more than ten years (The Amended Iraqi Law of Penalty No. 111 for 1969).

The version of article (403) of the Iraqi Law of Penalty referred to that the person who made or imported or exported or issued or got or transferred a book or publications or other books or paintings or pictures or films or symbols or other things if they were immoral for exploiting or distribution is punished with prison a period of time not more than two years and with a forfeit not more than one million and one thousand dinars or with one of these two punishments. The same punishment is applied on everyone who advertised for something of that showing it on the visions of the people or sold it or hired it or showed it for sale or hire even without publicity, and everyone who distributed or delivered for distribution in any means. It is considered as an extreme circumstance if he committed the crime with intention for spoiling the morality (Law of Amending for Feits No.6 for 2008).

Although the legislator put punishments on the acts which are regarded as a crime of exploiting the child, the punishment, according to our opinion, is not deterrent. So, we claim our legislator to take his interest about that and to intensify the punishment on the criminals, since this crime expanded in a stupendous way especially after the wars and disasters that some of the states live such as Iraq for instance.

In addition to that and to deter this crime, the legislator issued a special law called the Law of Prostitution Conflict No. (8) for (1988) in which the article (3) provided that the following persons are punished with prison a period of time not more seven years: (1) . Every broker or the one who contributed him or helped him in brokerage. (2) . Every exploiter or manager for a public shop or any other shop where the audience are allowed to enter having the use of persons exerting prostitution to exploit them for excitement for his shop. (3) . The one who owns or rent a house or rooms or a hotel where the others are allowed to exert prostitution in it or facilitated for that. (The Arabic Agreement for Conflicting the Crime of Information Technology and it is ratified with a law No. 31 for 2013).

The article (5) of it also provided²⁻ that everyone who retained a male or female for prostitution or sodomy in some shop through deception or compulsory and power and threatening and the age of the victim was less than eighteen years old is

punished with prison a period not more than fifteen years old. 3 - The court must issue a verdict with a just compensation. For the victim, regarding the procedures aspects", the version (6) of it referred to "that everyone having a direct or indirect relation with these acts or he alleged for a civil right arising from it can be considered as a party in the case caused by the brokerage acts".

Also the article (7) of it , regarding the civil compensation in addition to the criminal penalty imposed on the criminals in the crime of sexual exploiting for children provided that "1 - The paragraph (1) of the article (130) of the Amended Civil Law for (1951) concerning every claim in a civil right arising from the act of brokerage or prostitution. (2). The offices of execution is prevented from executing the scripts assigned on them by a prostitution to a broker including the scriptsif they are edited for the broker order or his partner and any person connived with him, and this is not prevented from reviewing the courts concerning that script. For the article (8) of it, it provided that (the rules of contracts and contribution and the multitude of the crimes and the criminal agreement and others of the public bases provided in the penalty law regarding the acts that enlist punishment according to this law".

Because of the risk of this crime, the article (9) of it provided that " the rules of delivering the criminals concerning the crimes go on according to the primary agreements contracted with Iraq if the criminal is of the ones that the law is applied on them these agreements , and when they are not found, the rules of the Iraqi law itself are applied"

The ministries intended also ordered their offices and the directorates following it to take the suitable to prevent this crime. So, the Ministry of Interior – the Public Directorate of Nationality made the generalization in its book issued in (10 / June / 2009) with the number (3299) to the necessity of checking passports especially the passengers with their minor sons , and to insure from the safety of their legal situation and linking the relation with their relatives so that the children cannot be exploited by the exploiters, and entering all the data concerning the children who they have not reached the age of adultery and the passengers with their masters. The Ministry of Interior also created the system of societal police to help the citizen to

get all the services and to contribute to the societal activities. The solution of the family problems is regarded as one of its mission, the departments of the family protection also are opened in Baghdad in (2009) and they were followed by opening (14) departments in the provinces except Kurdistan territory in (2010). These departments work to solve the family problems amiably without going to the judiciary and to present consultation and the legal assistance for the chided individuals of the family. The employment personnel of the investigators and the officials of the feminine personnel, two lines of helping the child are created.

On the territorial level, Iraq joined to the Arab Agreement for Conflicting the Crimes of Information Technology and it ratified on it through the law No. (31) for (2013) (Iraqi with the issue 4292 in 30/9/2013).

Concerning the national level, Iraq affirms its commitments in the international treaties, agreements and accords. So, it ratified without reticence on the optional protocol annexed with the agreement of the child rights concerned with the sale of children and exploiting them in the pornographic articles. Iraq joined to it according to the law No. (23) for (2007) published in the official newspaper on (19 / January/ 2009).

Iraq also joined to the Agreement of the United Nations for the Pre-meditated Crime Via Patriotism and the two protocols annexed with the Agreement of the Child Rights on (8 / October / 2007). One of the two protocols deals with the trade by humans (protocol of the prevention and punishment of the trade by humans especially women and children for 2000). Iraq implemented the commitments reported in the protocol mentioned.

As for the national legislations and the laws that prohibit the trade by humans, it worked to intrude the implications of the national agreements concerned in its national legislations that impose strict penalties against the ones whom commit a crime of transference or kidnap or sale or trade by children through its legislating a law of trading persons No. (28) for (2012).

Conclusions

After finishing our study in the subject of the crime exploiting children in prostitution, we have reached to some of the conclusions and recommendations which we will mention some of them and on the following aspects:

1. There is no general definition concerning the crime of exploiting children in prostitution on the national and international level.
2. There is a lack for numerating acts and pictures which are considered of the crimes of exploiting children against children by the national legislations in spite of determining some of them by national agreements or protocols annexed with the child rights or the crimes through patriotism or the agreements of the national organization of labor which considered it as one of the most dangerous crimes that violate the physical and moral rights of the child.
3. There is a mixture between the moral crimes and the crimes of sexual exploiting against children.
4. It is observed that there is increase in in committing this crime especially after the technologic al development and the expansion of the number of the users of the internet. So, it became a good atmosphere for the ones that commit this crime to be in increase, especially in the states that witnessed wars, desertion and migration like Iraq for instance.
5. There are no accurate statistics for the numbers of the victims of the crime of exploiting children in prostitution because of the social or economic or legal punishments. There is weakness in the legal awareness for the community especially in the growing states regarding informing about the crime and treating the victims psychologically.
6. The crime of exploiting children in prostitution comes after other crime of violence against the child by criminals inside the house or school or the place of work or any other place.

Recommendations

1. We suggest that the national project must enroll the versions of the agreements concerned with the crime of exploiting children in prostitution through special laws to convoy the social and economic and technological developments and blocking the defects found in their legislations so as to be more deterrence to restrict these crimes.
2. The work for increasing the regional, moral and educational awareness and defining the rights of the child and the duties of educators, conflicting the temptations in society and legalizing the volunteer work and following it in addition to finding the means of the health entertainment.
3. Putting systems and legislations that control the manner of treatment with children in schools and putting good solutions for running away of children from schools. In addition, the intention to conflict the phenomenon of the children labor by the state and society.
4. Activating the role of the governmental and non-governmental organizations and the colleges of law through educational and legal courses to develop the men of security and the judicial systems regarding the child rights in a way that accord with the happening developments especially what is concerned with the internet, by investigating and arriving to the users of the pornographic sites and the providers of service in which the children are exploited sexually and how the informing about these crimes.
5. The executive authority must prevent and block the pornographic sites found in the internet.
6. Activating the role of the media through awakening the people and enlightening them by the means and risks of the crime of exploiting children in prostitution.
7. Incrimination of exploiting children in prostitution according the law of conflicting the informational crimes which is intended to be legislated in Iraq.
8. The corporation among the states conflicting these crimes through the legislative, administrative and technical managements. also the commitment in exchanging the

information concerned with it, and the application of the principle of reciprocal assistance between the judicial system and the police.

9. Compensating the victim child a suitable physical and moral compensation that fits the size of the damages he / she gets because of the sexual violence committed.

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