

Cybercrime and islamic law: Revisiting the advantageous and hiatus horizon(s)

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Article History

Received on 27 December 2022

1st Revision on 9 February 2023

2nd Revision on 5 March 2023

3rd Revision on 9 March 2023

4th Revision on 25 March 2023

5th Revision on 7 April 2023

6th Revision on 15 May 2023

7th Revision on 4 June 2023

Accepted on 31 July 2023

Abstract

Purpose: The purpose is to understand how Islamic law has been a positive dark effect in the field of law and provided much relief to the Muslim Community but it still consists of a negative light side to it, which is nowadays carried out throughout the virtual world. Islam means submission to the will of God (one who acknowledges the unity), believing in Alaa the founder of Islam Law is Prophet Mohammad before him the condition of the pre-Islamic period is known as gross ignorance (towards women), it's almost a massacre. As Gandhi (2012), quoted Dr. Tahir Mahmood that "The story of the Shariat is indeed the pitiable story...unilaterally divorce their wives...Muslim Law in Indian mind... (Mahmood, as cited in Gandhi (2012)).

Research Methodology: This short article would apply gender theory and Muslim law with an empirical methodology to deal with the Islamic period and Cyber Crime focusing on the complex web of intricate designs that are regulating gender harshly.

Results: Therefore, the result will showcase the interrelated network of cyber criminology and Islamic Law provides the understanding of gender as the 'other' and restricts the fluidity of its existence.

Limitations: The limitation of this article is the absence of data, which also appears as the possibility of future research by scholars.

Contribution: This article will contribute to the domain of deciphering the reasons behind the heinous cyber crimes taking place based on Gendering the facets of political power flow.

Keywords: Gender, Muslim Law, Cybercrime, Security, Virtual culture

How to Cite: Roy, S. (2022). Cybercrime and islamic law: Revisiting the advantageous and hiatus horizon(s). *Annals of Justice and Humanity*, 1(2), 93-99.

1. Introduction

Cyber Crime is done through computers and along with other digital devices, it is formulated by individual, and these individual sums up together and forms a whole network of an organization. As it was stated by Bhuiyan (2021) Most Cyber Crimes commenced in America due to its vast developmental hierarchy and technology. Many people have been victims of such modernized techniques, hence, when we log in to any account which can be created on the website it is legal but when we log in to another person's account without them knowing is called hacking which is another form of cyber-crime. Especially for the condition of the woman they were treated as a slave, prostitutes, and several other synonyms during those time there were rules like a woman can have a sexual relationship with not exceeding ten people and the legitimate father of the child will be determined with whom the woman had major sex. The way technology and online platform provided people to connect with each other by sitting in a constant place, avail various facilities, performing job sitting at home, transfer money without even going to the bank, ATMs has also provided misfortune as a complementary object like getting hacked while doing money transaction, leaking of the important document without even you accessing them, forwarding of number, private images, video. While working hard to create comfort

and pleasure high-tech world people forgot about the side effect that could come hand in hand, this gap in which cyber criminals paved their way to control every single movement of human creatures.

2. Literature review

Moving on to Islamic Law, we see that it is not Islamic law is not created with one principal aspect but rather it is created by four different laws Koran, Hadiths(sunnah), Ijma (juridical consensus), Qiyas (analogical reasoning), the first three are the high authoritative laws and the qiyas are the deduction form of the other three. Islamic law is neither codified nor a constitution-based law it is the belief of the people and the words of God written down by the Prophet in the holy book of the Koran, the version implemented in the society is the interpreted version of the people, which typically occurs on any forms of law. In Islamic law or the culture, the major highlighted thing you would perceive is that the entire schooling and preaching structure is a “phallus’s construction; wherein, women are... a woman is just the student or minors guided by the adult (men), every single perspective starting from the Koran to ijma, sharia one thing is common thousands and hundred rule that are made benefits mostly the male in the Islam society be it marriage, divorce or freedom, some regulations or wordings are given just to minimize the suppression of the woman from the benefits provided to the male. The hilarious thing is the rules that are harmful and dangerous to society don’t get removed or revoked rather minimize their effect supporting laws are formed. The universe serves as evidence that how phallocentric the world has become and, how each basic lifestyle of people is judged based on gender, gender is a fluid subject but people have confined them within the limited boundaries of their imagination; studies have proved that how people who recognize themselves as queer not heterosexual is treated differently and how people has minimized their opportunities in the field of education, work life and in the standardized level of society, how the girl is still not allowed to work late night and boys are allowed to work.

These instances reflect how phallocentrism has ingrained itself into our thoughts so deeply, that each constructed rule appears and is accepted as “normal”, which is perhaps just arbitrary in its discourse et powerful products. As taken from the website (IF, 2017) The private life of a living being is getting affected by this hyperactive society-created concept, nature is getting nurtured by the children by their dharmic children who have given a new definition of their birth and existence. The concept of gender has its effect in the field of crime like cybercrime because most of the individuals involved in this field are “men” than “women”, the first reason this thought process of thugging people is mostly men than females causes many a time during some cybercrime process which is done through face chats or etc. the female does not feel secure herself to mug other. In the cybercrime community, female hackers are not always welcome they just act as invisible support to the main branch of the hack, female voices and bodies are used as an object in this field to attract other people to step into the trap. As Alice Hutchings and Yi Ting Chua in their article “Cybercrime through an Interdisciplinary Lens” writes-

From all accounts it appears that cybercrime is predominantly conducted by males (Bachmann 2010; Chantler 1995; Jordan and Taylor 1998; Parker 1998; Schell and Dodge 2002; Taylor 1999; Turgeman-Goldschmidt 2005), with Chantler (1995) reporting that female hackers are perceived with either complete disdain or with high regard by the general hacker community. Taylor (1999) states that the gender ratio at hacking conferences is approximately one female to every hundred males, and that often females are only transiently involved in the hacker subculture. Hollinger’s (1993) study of college students found that 5.2 per cent of males and 1.8 per cent of females admitted to having accessed another’s computer account or files without permission” (Hutchings & Chua, 3).

3. Research methodology

The methodology is a process through which the analysis of the research is presented in a proper framework. An empirical research methodology has two basic domains-experiences and knowledge, and it follows these two lines to channel the research hypothesis it also follows theoretically the knowledge pattern that deals with the gender and Muslim law hiatus.

4. Results and Discussion

4.1. Cyber-Crime and Law

Unlike in English common law, the Shariah judge is not bound by any prior precedent, rule, or judgment. Murder, apostasy, declaring war on Allah and His prophets, theft, adultery, slander, false accusations of adultery or fornication, theft, and intoxicant use are considered offenses, which are the most serious crimes in Sharia law. They are seen as atrocities against Allah. Tazir crimes are actions that result in punishment because the offender disregarded the law and Allah's message. Tazir offenses are social crimes. Retaliation is a qesas offense. If you violate a Qesas, the victim is entitled to vengeance and retaliation. The first legal code, the "Code of Hammurabi," and the Law of Moses both contain the principle of retribution in the form of "an eye for an eye." Muslims add "But it is preferable to forgive" to this adage. There are still many retribution-based presumptions in modern common law. It was stated by Bird (2022) The retribution model, which the American judicial system has adopted, establishes preset consequences for every offense. Drug trafficking is subject to "mandated minimum penalties" under US federal law. There are laws in several areas that make it illegal to utilize private guns. Society and organizations are becoming increasingly concerned about computer security. Often it was stated by Correia (2021) However, there hasn't been enough focus on the connection between criminals' human behavior when conducting cybercrime and other pertinent concerns like education and social and religious behavior. However, understanding this link may help us deal with such grave hazards. The objective would be to comprehend the offender's conduct and come up with alternative strategies for bringing to the offender's attention additional advantages and penalties that are not necessarily connected to human-made criminal legislation. What stands crucial in this world of networking and technology is the complex networks created to understand the superficial cracks of criminology and criminals. One of the components stated by Deane (2021) The understanding of fake appearances is a serious matter that people need to be aware of. What more can be the important reason is the need for money and the exploiting sense of capitalization. The socio-economic structure of underdeveloped and developing countries calls for massive destruction of 'safe spaces', and therefore here the cyber-crimes are fuelled by laws and their typical capital policies.

4.2. Theoretical Discussions

Many a time we react to situations in a way that you cannot list in straight categories like male or female behavior they are just the action as a response to any circumstances but people won't stop judging them, people one way or the other will point it out as they don't try to realize that gender is "choice of performance", which is "connected to one's performance and not essence" and it was said by famous theorist Butler (2002). As shown by a simple Wikipedia definition, the phrase "cyber-crime" is not specified in any legislation or rulebook as such; the term "cyber" is slang for everything relating to computers, information, technology, and virtual reality. This language must be addressed in order to describe the illegal properly. Cybercrimes, or any other crime involving computers or other technology, are therefore crimes. The reason to draw in the definition of both Gender and Cyber-crime focuses on the idea of their inter-relation with each other. We cannot overlook gender as a political concept of controlling and regulating bodies. What often goes missing and opulent is the nature of such crimes and their biased justice. The horizon of such crimes is always module based on the piping of power over identities that have been conventionally defined within the or at the margins of a social sphere, particularly in the Indian social sphere. The hypothetical illusion of equality created and practiced through discourse, policies, laws, and culture as a whole is just an apparent fallacy of a failed and crammed social structure.

As it was stated by Ramdat (2021) Religion is a diplomatic field of discourse that has created an adverse impact on the human community whilst in the zone of crime. If we provide a deep introspection on the field of cybercrime we can see a few things we are in common we all know about hacking people's data, private photos, videos, and personal information. Focusing on a single thread of identity politics, and locating our views on Muslim-Gender-Cyber crime, this 'triadic' pattern often leads our thought process to two basic questions- what Muslim religion and law have to do with Cyber-crime, and what roles does gender play in both these areas? The History of Feminism has drawn three prominent waves which further included many fragmented definitions and political standpoint(s), like when initially the black women protested saying that their journey can be partially or nowhere similar to the journey or

the struggles of 'white-women'; hence, the world was presented with Black-Feminism. Feminism assisted in diagnosing the pathologies of culture which if described as a complex social apparatus dices the norms and regulations and is a stratified concept with hues that light up the disillusionment and dissent. Often stated by Sharrow (2021) Multiculturalism indeed has appreciated the difference in cultures but has also made avenues accessible to analyze it from queer perspectives. Over the first, second and third waves of Feminism, a few crucial comprehensions of 'deconstruction and post-structuralism' enhanced the understanding of 'identity and politics' in simultaneity. As the plurality of Feminism was now utilized based on required privileges, and the advantage of a particular group of people resulted in overlooking the disadvantageous position of the remaining. It, therefore, becomes immensely necessary to adopt the lens of gender theory while studying and visualizing both literary and socio-political frameworks of any culture and important to apply the same in everyday life and not just limit to the educational sphere, because then only we can sensitize people that gender is performance rather than essentialisation, and how within the mainstream literature application of Gender studies assists in understanding the 're-presentation' of the marginalized identities, where presentation just remains an illusion. Politically, Gender is molded as a device to regulate and control bodies/identities, to conveniently maintain the "nude-makeup" like the social structure of our society. As Maghaireh (2009) in his article "Shariah Law and cyber-sectarian conflict: how can Islamic Criminal Law respond to cybercrime?" writes-

In a manner similar to the Western world, the Islamic world has embraced cyberspace⁵ and opened up websites. There are hundreds, if not thousands, of Islamic websites floating in cyberspace. This is despite the fact that some Muslim clerics issued a Fatwa, (a religious verdict), prohibiting Muslim Internet users from using chat rooms. Conversely, cyberspace has become a common place for Muslims to interact, socialize, and, most importantly, propagate their own beliefs. It is not uncommon to find Islamic websites designed and optimized specifically to defend Islam from its enemies. For example, the website www.d-sunnah.net was established to defend Ahl al-Sunnah (the nation of Sunnah). Similarly, dozens of websites, such as islamtoday.net and many more were established to defend the Prophet of Islam, Mohammed, against European newspapers' publication of cartoons lampooning the Prophet" (Maghaireh, 338).

If we look into the matter and consider people like terrorists who use cyberspace to brainwash their own people and create fear in the mind of others, then we can see how they regulate their sleeper cells sitting in their country just by using the cyber world and technology, but tracing them becomes a huge problem for the country because of the dark side like onion, random software, etc. The merge of Islamic minds in such a field has brought a huge network of thought processes that on one hand Shariah law which pre-dominantly tries to suppress cybercrime and contains all the punishments that a person must get if he commits such violence.

4.3. Socio-virtual Space

Social, as the term goes is a critical domain of manipulation of cultures and their hegemonic power regimes. The virtual on the other hand is another social which plays the flux of absence and presence with the identity and body policies. The sociological theory of social control has significant potential to predict and explain crime and how people define and respond to deviant behavior. Madarie, Ruiter, Steenbeek, and Kleemans also use a criminal events perspective to examine how credentials for stolen accounts were offered in their manuscript "Stolen Account Credentials: An Empirical Comparison of Online Diffusion on Different Platforms". Online discussion forums, an online marketplace and a paste website are a few typical examples and spaces of such crimes. In their analysis of data collected from web scraping, they found that there were differences between the three online platforms in terms of the type of account information available, the average price requested, the rules governing transactions, and the post-transaction services provided. The manuscript should make the reader think about the importance of understanding the criminal event (i.e. knowing the answers, who, what, when, where and how) before attempting a deeper theoretical understanding of the online-be able to develop behaviors (i.e. p. Eg answering the why question). The terms "computer crime" and "cybercrime" are interpenetrating; their entities are intertwined and therefore difficult to disentangle. The intertwining of cybercrime and cybercrime further challenges the simplistic interpretation of cyberspace and

physical space as two distinct entities with easily defined boundaries. Regarding “cybercrime”, more than 30 species have been identified in the existing literature since the connection to cyberspace crime was first constructed in cyberpunk stories (Muro, 2008). It will examine how cybercrime is treated within existing legal systems, provide a definition of cybercrime and determine the scope of the term. It then examines the different meanings of the term “virtual” and defines the term to explain what the new legal phenomenon of virtual cybercrime entails. Finally, it examines how virtual cybercrime is dealt with within existing legal systems, provides a definition of the term virtual cybercrime and determines its scope.

As stated by Wijaya (2021) that it is a necessary condition for a virtual cybercrime to have an extra-virtual consequence (a consequence outside of the virtual environment) in order for it to qualify as a crime under applicable law. And that this is a sufficient condition even if the consequence is such that it can criminally legitimize an encroachment on the freedom of citizens on the basis of one of Feinberg’s restrictive principles of freedom, the principle of harm, legal paternalism, or legal morality. In the third section, I will examine when the extra-virtual consequence(s) of virtual cybercrime is such that (one of) the above principles limiting freedom can be invoked. This is the third step. Ultimately, I conclude that virtual cybercrime should be included in the realm of criminal justice when it results in extra virtual harm to others, insult, self-harm, or other wrong. A few instances of cyber-crime which should be notified as a part of an overall arch include-

1. The first incident which took place in New York City was a theft, where two million dollars were vanquished from a bank (1973)
2. For people to know, the concept of spamming is also a cyber-crime, which was initially notified in 1978
3. The first viruses were inserted in 1982 in computers of the well-known brand Apple
4. First, cyber-crime credibility goes to Ian Murphy (Captain Zap) for the fans he entered the biggest telephone network AT&T, and changes the talking hours, so that people can talk more at low rates.
5. UK lost 1.7 billion due to cyber-crime

4.4. Gendered cyber-crimes

As it was stated by Maktabi (2017) Law, particularly Muslim Law here fails to update the velocity of security needed. Looking at the domain of social networking women are threatened over Facebook, Twitter, Instagram, and that is more importantly faced by Muslim women than others in general. The rate of such harassment has hiked up since 2005. Considering the concept of ‘Gender’ as performative and a spectrum, both Islamic Law and Cyber-crime restrict this fluidity, only to the binarized heteronormative zone- woman and man. Hence, my focus restricts to women, as other marginalized communities like LGBTQIA+, and minor castes do not even have a recognizable existence within these two political zones. Carrying our focus on Cyber-crime and Gender, we see how most of it was stated by Peters (2018) “Black Hats” are men, not women because such exposure and thought processes are not built up in women moreover some of the sections of cyber requires the most exposure for which women fear to perform but most of the times but they are pressurized as because the power which dominates in such section which is of the male. One of the frequent points stated by Murib (2022) The cybercrime community that doesn’t appreciate females in this field forgets that these women are politically turned and constructed as sources of their trap. The female position in this field has become neither dignified nor supportive, thus the majority of victims of cybercrime are female in comparison to males. A few prominent instances are- stalking female actors and actresses, disrespectful comments on their posts, editing their faces with various nude photos and posting them on social media, spreading false rumors, etc. Surprisingly women are only the victim of cybercrime but no such case where you can find the culprit being a woman, which is a clear example that in cybercrime women has no space to participate; they only exist as prey and a victim to the phallus-power. Some of the prominent gender-bias examples in cyber-crime in India-

1. **Phishing** refers to a process in which a scammer extracts personal information. These scammers trick people by acting as the executive of the bank or the company and will give you offers. Mostly women are the victims of these cases of internet shopping.

2. **Cyberstalking:** ‘Stalkers are strengthened by the anonymity the internet offers. He may be on the other side of the earth, or a next-door neighbor, or a near relative!’. This happens mostly when the victims enter the chats rooms or the billboards rooms created by the criminal
3. **Child pornography:** Child sexually abusive material (CSAM) refers to material containing sexual images in any form, of a child who is abused or sexually exploited. Section 67 (B) of the IT Act states that “it is punishable for publishing or transmitting of material depicting children in the sexually explicit act, etc. in electronic form. Offend girl children are victims of this.
4. **Sexting,** a type of “self-generated sexually explicit material” (UNODC, 2015; Interagency Working Group, 2016, p. 44), includes “consensual image taking and sharing, as well as consensual taking and non-consensual sharing of images (and sometimes even non-consensual taking and non-consensual sharing)” (Salter, Crofts and Lee, 2013, p. 302). Most adolescence is the victims of such crimes when they share their private photos and videos with their friends and other people.

5. Conclusion

By giving legal aid in education and basic cultural freedom to each person we can curb the problem based on the circumstances by actually looking into the main criminals by putting an anti-virus to this thought process. As it was stated by Tereškinas, Vaičiūnienė, and Jarutienė (2022) The psychological state must be undermined so that we can finally understand why such a state of mind is generated within the community nowadays. The present scenario of the religiopolitical mess has been a warning signal in the sphere of gender apartheid within the spectrum of Islamic Law and Cybercrime. As it was stated by Thornton (2020) The issue of criminal violence has been channel and piped through the lens of gender discrimination, more particularly, when the assistance of Islamic Law further helps us to venture into this legally politicized forum. All the consequential products functioning within this hiatus horizon(s) are somewhere connected enough to reflect a chain of oppression through laws that are partial to bodies for our binarized society. Therefore, the interrelated network of cyber criminology and Islamic Law provides the understanding of gender as the ‘other’ and restricts the fluidity of its existence.

5.1. Limitation

The limitation of this article is the absence of data, which also appears as the possibility of future research by scholars.

Acknowledgment

I forward my immense thankfulness to my professor who inspired me and gave me the idea of writing this paper from scratch. I am also grateful to my family for helping and supporting me to complete this work on time. Their kind support and assistance along with my efforts culminated in the successful completion of this short paper. I received no financial assistance to complete this paper, or even in the process of doing so.

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