

Legal Protection of Personal Images in the Era of Modern Technology 'Comparative Study'

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Abstract

Technology creates serious problems as it facilitates obtaining a person's image without their knowledge, constituting a violation of their right to privacy. Hence, our research titled 'Legal Protection of Personal Images in the Era of Modern Technology' aims to demonstrate how the personal image is protected through the rules of Egyptian and Algerian civil law, assessing their sufficiency and effectiveness in addressing the damages resulting from infringements upon it. Our findings lead to several conclusions and recommendations, emphasizing that the right to one's image is inherent to human personality, necessitating effective protection by developing civil law rules to confront digital technologies, especially when using facial recognition technology through the use of electronic profiles without the knowledge of their owners.

Keywords: *Personal Image, Digital Technology, Civil Law, Legal Protection.*

INTRODUCTION

The personal image plays a vital role in our society, where technology holds a significant place, conveying various messages and symbols about its owner. In the midst of tremendous technological advancement, a person's image can be rapidly disseminated and produced through social media channels. Through these means, the personal image, in addition to being an inherent element of one's identity and a prominent feature of social existence, becomes content that enhances people's connection to social media. Any infringement upon it grants the image owner the right to stop the violation and claim compensation for the damages resulting from such infringement. The protection of the personal image often takes a dual form, based on the privacy/ownership duality that cannot be neatly categorized in a distinct legal concept, especially the distinctive features of the personal image.

Legal protection for the image is naturally required within the scope of tort liability because the image constitutes one of the key characteristics of a person, revealing their unique traits that distinguish them from their peers. Consequently, the right to protect one's image is a cornerstone in the development of one's personality, granting the individual the right to control the use of their image, including the right to refuse its publication.

The right to privacy can be interpreted as the right to determine the scope and boundaries of personal information that cannot be disclosed to governments or commercial and marketing campaigns. Publishing a person's image online without their permission constitutes a violation of the right to privacy, especially in the face of the traditional civil law's inability to provide personal protection in the digital age.

Research Importance

The significance of the research revolves around the potential exploitation of personal images for commercial purposes, yielding substantial profits for the exploiter or for the purpose of extortion without consideration for the resulting harm. Personal images convey the features and behaviors of their owners. Granting permission for photography does not imply consent for publication; any unauthorized use allows the affected individual to halt the infringement and seek compensation for the damages incurred. Digital technology has facilitated opportunities to obtain a citizen's image without their knowledge, leading to serious problems that cannot be adequately addressed by current legislation, especially in the case of facial recognition technology. Despite its importance in identifying criminals and determining individual identities during disasters in smart cities, there is, unfortunately, a lack of legislation in both Egyptian and Algerian law regulating the use of this technology.

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Research Problem

Given the technological advancements surrounding our society, particularly through smartphones utilized for social media and other purposes, the production and surreptitious capturing of individuals' images have become prevalent. The dissemination of these images, with or without the owners' consent, leads to various damages. This is particularly problematic due to the inadequacy of traditional civil law regulations to provide sufficient protection for those who fall victim to attacks on their images using digital technologies prevalent in society. This problem has raised a set of questions, including:

What is the concept of personal image?

What is the legal nature of the personal image?

What are the consequences of an attack on the personal image?

Research Methodology

To address the questions raised by the research problem, a comparative methodology was employed, juxtaposing Egyptian and Algerian laws. Additionally, insights from legal scholars were sought in this regard, and our opinions on certain matters were expressed.

Research Plan

Based on this methodology, the research was divided into two main sections:

The first section: The Concept of Personal Image and its Legal Nature.

The second section: The Consequences Arising from the Violation of the Right to Image

The Concept Of Personal Image And Its Legal Nature

The personal image is considered a mirror reflecting what an individual conceals within themselves and the experiences they have gone through. It represents the personal identity of its owner in the digital space, as it reflects their self-representation. Therefore, in this discussion, we will strive to elucidate the concept of the personal image and its legal nature through the following two aspects.

First: The Concept of the Personal Image

The personal image is considered a reflection of the material, physical, and moral aspects, as it mirrors the individual's feelings, sensations, and desires. It serves as a reflective mirror, often revealing what an individual hides within. Additionally, the events experienced by a person leave imprints on their face, making the image closely linked to a person's identity. Thus, its value emphasizes the necessity of its protection^[1].

Some legal scholars have defined the image as "the form captured by a camera, embodying the material and moral personality of the individual, reflecting their feelings and emotions."^[2] Therefore, the image is a crucial aspect of personal humanity deserving respect, leading to the legislator's decision to protect the rights associated with a person's identity. The Egyptian Civil Law, for example, stipulates in Article 50^[3] that anyone subjected to an unlawful assault on rights related to their personality may demand the cessation of the assault along with compensation for any resulting harm. The Algerian Civil Law also echoes a similar principle^[4].

Examining these legal texts reveals that the legislators did not explicitly mention the right to the image. However, the term "rights related to personality" is broad enough to encompass the right to the image.

As a confirmation of this, the Egyptian legislator explicitly stated in Article 178 of Law No. 82 of 2002 concerning intellectual property rights that the "creator of a portrait or photograph shall enjoy the moral rights associated with their work." In contrast, there is no equivalent provision in Algerian legislation^[5]. This text explicitly acknowledges the right to the image, granting the individual the authority to object to the capture or publication of their image without consent^[6].

Despite the absence of a legislative definition of the right to the image in Egyptian and Algerian civil law texts, some legal scholars argue that it is the individual's objection to the production or publication of their image without their consent, whether in traditional or technological forms ^[7].

In this context, the right to the image is seen as the power of an individual to object to the capture, drawing, or sculpting of their image without explicit or implicit consent ^[8]. Others define it as the authority granted to an individual to object to the taking or publishing of their image, as captured through artistic means ^[9, 10].

The majority ^[11] of legal scholars agree that the right to the image includes the power of the individual to object to the capture of their image or its publication without explicit or implicit consent. This right is considered a form of personal protection. The right to the image grants its owner three authorities: the power to object to the production of the image, the power to object to its publication, and the power to object to its display even in a limited space ^[12].

The right to the image is also viewed as one of the rights of intellectual property, regulated by laws protecting intellectual property, including guarantees for creations and works ^[10].

These various definitions revolve around the prevention of photography from the outset. Some allow photography but prohibit publication without explicit or implicit consent from the image owner. Nevertheless, it is essential to recognize that humans are social by nature, and photography can occur as long as the person is present in a public space. Exceptions include photography in private places and through social networks, as this violates privacy.

The definition of the right to the image may involve the individual's objection to being photographed in a private space or during online conversations. Therefore, the right to the image can be defined as the authority that allows an individual to object to being photographed while in a private place or during online conversations, as well as preventing the publication of their image when captured in public places without explicit or implicit consent in all circumstances.

Legal scholars differ in defining the concept of a private place. Some define it as a closed space inaccessible to others without the owner's permission ^[13], while others define it as a place where the public is not allowed to enter, requiring legal protection for the person's privacy. ^[14]

In conclusion, the right to the image has two aspects: the first relates to the individual's private life, encompassing their bodily, emotional, and psychological aspects, and any interference with these elements grants the individual the right to object to the publication of their image. The second aspect involves the material aspect, protecting the image as an independent right apart from the right to privacy. Therefore, a person can object to the publication of their image even if it does not affect their private life. ^[15]

It is worth noting that the use of the right to the image is not subject to an agreement or contract. Therefore, consent must extend to the use of any element of personal identity. Anyone using another person's image available on the internet must ensure the person's consent and the content of the permission granted for publication. ^[16]

Second: The Legal Nature of the Right to Personal Image

The relationship between the right to the image and the right to privacy is closely intertwined, and an infringement on one often constitutes an infringement on the other. Practical reality confirms this, as violating the right to the image frequently involves a violation of the right to privacy. This implies that the protection of the right to the image is established to safeguard an individual's private life, considering that the image is one of the means used to violate it ^[17].

The right to the image has garnered significant attention in legal studies, especially concerning the legal nature that aligns with the essence of this right. Some have argued that the right to the image is a property right ^[18]. This perspective equates the right to the image with property rights, asserting that individuals own their bodies and, consequently, their images reflecting those bodies. However, this viewpoint has faced criticism for conflating the right to oneself with its location or content ^[19]. Moreover, the infringement on the right to privacy does not

constitute an infringement on the right to property. Additionally, acquiring property rights does not justify asserting that the right to privacy originated from a property right ^[20].

Others argue that the right to the image is among the rights inherent to a person's personality, constituting non-financial rights associated with the elements composing human personality. The personal entity embodies two aspects: a natural one related to the organic, psychological, and mental aspects of the individual, and a legal one related to personal rights recognized by the law, such as the right to name, the right to the image, the right to honor and consideration, and the right to privacy. The right to privacy is distinguished by allowing the person to take necessary actions to stop or prevent intrusion, prohibiting others from investigating or spying on private matters and refraining from publishing related information ^[21]. Some define it as the right to seclusion, allowing individuals to remain unknown to the public, away from the scrutiny and opinions of others ^[22].

This diversity in perspectives on the nature of the right to the image is not a subject of contention but rather an expression of the evolution of the stages of the right to privacy, emphasizing its importance and the need for protection. Scientific and technological means have become a dangerous source threatening the right to an individual's image, justifying its inclusion among personal rights ^[23]. We believe that the right to the image is nothing more than one of the personal rights, as the image reflects its owner, and information derived from it may impact and defame the individual, as the image is an element of personality closely related to the person. Distinguishing between economic and ethical aspects of personality that extend to human dignity is impossible. The provisions of Article 50 of the Egyptian Civil Law and Article 47 of the Algerian Civil Law, previously mentioned, imply that the right to the personal image falls within the scope of these vague expressions.

Regardless, the Egyptian and Algerian legislators, as clarified earlier, explicitly affirmed in the text that the right to privacy is among the rights closely related to the personality, enjoying legal protection without restricting it to civil liability provisions ^[20]. This does not impose a limitation on press freedom because there is no public interest in knowing a person's private affairs. However, regarding aspects related to their work, accusations against them, or if the person was a public or political figure, this does not prevent the publication of their image to the public.

Here, a question arises: can the right to the image, as a right closely related to the personality, be transferred to heirs?

Opinions Diverge Within Legal Studies On This Matter

The first perspective ^[22] argues that the right to privacy ends with the death of its holder. Still, if the heirs suffer from the publication regarding the privacy of the deceased, they can file a lawsuit to protect the honor and reputation of the deceased. This idea emerged concerning the right to the image before the right to private life, based on recognizing the existence of the right to the image. The purpose of this right is not to capture one's image without their consent, and since death is the end of a person, capturing their image becomes impossible. Death is a material obstacle preventing the transfer of the right to capture the image because the right to the image protects the material element of the personality, and it expires with death.

The second perspective ^[24] holds that in the case of capturing a person's image before their death, two assumptions differentiate: firstly, if the person did not consent to the publication of their image, they can file a lawsuit against the publisher. However, if the person dies before the court ruling, the right to continue the lawsuit passes to the heirs on the same basis, which is the violation of the right to the image. Secondly, in case the person who infringed on their image dies before the lawsuit is filed, the right transfers to the heirs based on a personal right resulting from the moral damage they suffered due to the publication of their ancestor's image as an unlawful act. The compensation here is for the harm inflicted on them by publishing their ancestor's image, causing them distress, termed as rebound.

The Consequences Arising from the Violation of the Right to Image

Violating an individual's right to their image, whether through producing, publishing, or displaying it without consent and beyond the limits of permission, triggers the liability of the offender towards the subject of the image or their representative under the principles of tort liability. The law allows the victim of image infringement to take precautionary measures to halt or prevent the violation. In addition, they have the right to seek

compensation for the damages resulting from this infringement ^[25]. Compensation encompasses both moral and material damages ^[7]. This is elucidated through the following two requisites.

First: Halting the Assault on the Right to Personal Image

The legislator in Egypt, in Article 50 of the Civil Law, states that "Anyone who has suffered an unjust assault on any of the rights attached to their personality has the right to request the cessation of this assault, along with compensation for any damage caused." The Algerian legislator echoes a similar provision in Article 47 of the Civil Law.

It is evident from this that both the Egyptian and Algerian legislators have granted the offender, who infringes on one's image, the right to demand the cessation of the assault to prevent further harm. The cessation of the assault is typically achieved through expedited judicial proceedings. It is noteworthy that the law has not explicitly defined the concept of urgency, and some legal scholars describe it as a judicial separation involving swift procedures to prevent irreparable harm, provided it does not compromise the essence of the contested right. It is also applicable in resolving issues related to the execution of judgments and due obligations, as long as there is no attempt to reinterpret them ^[26].

In light of this, the Egyptian and Algerian legislators have, in some specific cases and for certain considerations, empowered the expedited judiciary to decide on particular matters according to urgent procedures. This departure from the usual legal framework is, however, constrained by two conditions: the urgency requirement and the preservation of the essence of the right ^[27].

The mere violation of these rights constitutes an assault on an individual's personal identity, justifying the intervention of the judiciary to provide protection for the victim. Halting the assault, as defined by both the Egyptian and Algerian legislations, means allowing the victim to seek judicial measures to stop the ongoing infringement on personal rights ^[28].

However, a question arises here: If an image is captured using facial recognition technology employed by government entities for identifying criminals and is misused, who bears the responsibility?

Neither the Egyptian nor the Algerian legal texts provide legislative regulations on this matter. Consequently, the use of facial recognition technology raises concerns, as it constitutes an assault on the right to an image, which is considered an inherent right attached to personal identity. Therefore, the use of an electronic profile for an individual without their consent is impermissible. Employing facial recognition technology through images published on social networks or in public exhibitions poses a threat to privacy. In light of this, it is imperative for both Egyptian and Algerian legislators to enhance the provisions of civil law to address the risks posed by this technology. The use of facial recognition technology poses a threat to an individual's privacy, as it can be exploited to create fake videos with the intention of tarnishing one's reputation and credibility.

Second: Compensation for Assault on the Right to Personal Image

The concept of compensation has not received much attention in Islamic jurisprudence. Instead, discussions have focused on explaining its nature and how to assess compensation. Compensation is essentially the consequence of responsibility, meaning that if an unlawful act occurs, the responsible party is obliged to compensate for the resulting damages ^[29].

For the liability of the assailant to be established, three elements must be present: fault, harm, and a causal relationship between them. Fault is automatically established when the assailant captures or reproduces an image without consent, and the victim is not required to prove fault. The assumption is that the fault lies with the assailant, whether or not there was good intent ^[30].

The harm resulting from this fault can be either material or moral. Material harm disrupts the financial interests of the victim, while moral harm affects non-financial interests such as feelings, emotions, dignity, or honor ^[31].

Material harm can occur when a person contracts with an advertising company to use their image for commercial purposes, and the company exploits it for political advertising without consent. In such cases, compensation may include both the loss of opportunities and the gains that were missed ^[24].

The Egyptian Civil Law Article 221/1 states, "If compensation is not determined in the contract or by law, the judge shall assess it. Compensation includes the losses suffered by the creditor and the profits missed by them. This is on the condition that it is a natural consequence of non-compliance or delayed compliance with the obligation. Damage is considered natural if the creditor could not avoid it with reasonable effort." The Algerian legislator reiterated this meaning in Article 182 of the Civil Law ^[32].

Material harm may occur when a person captures an image with permission and the offender publishes it without consent on social media platforms. This act can cause material damage, especially if the person is not a public figure, raising suspicions that can negatively impact their social standing. This is precisely what happened in case number 119 of the year 12. The plaintiff captured an image of the defendant, published it on social media as part of a video titled "Not Searching at the Airport." This affected the defendant's social standing, as he was a former military officer and experienced civilian pilot, resulting in material harm. In this case, the defendant was dismissed from his job, banned from flying for life, and deprived of his sole source of income ^[33].

The plaintiff's act of publishing the defendant's image without permission explicitly violates Article 178 of the Egyptian Law No. 82 of 2002 concerning intellectual property rights. The article warns against capturing and publishing images of a person without their consent unless the image pertains to public incidents, official or public figures, or individuals with local or international fame. Such images can be published if the competent public authorities authorize it for the public interest, provided it does not compromise the person's honor or reputation.

It is evident from the text of Article 178 that obtaining permission to capture an image does not imply permission to publish or share it on social media. The right to an image is absolute, and one must obtain consent for its publication, whether explicit or implicit.

The matter did not stop at material damages alone; the plaintiff caused the victim significant moral harm, manifested in defaming his reputation. This was done by conducting a systematic campaign to mislead the public, falsely claiming that the victim did not permit the capturing of the image, with the intention of harming his reputation among friends and within various artistic, social, and all layers of Egyptian and Arab society ^[34].

The right to compensation extends to heirs regarding material damages, whether claimed by the inheritor or not, considering its relevance to the inheritance. However, moral damages do not transfer to heirs unless claimed by the deceased before death or an agreement is reached between the deceased and the wrongdoer for compensation for the harm caused. This is affirmed by Article 222 of the Egyptian Civil Code, stating that compensation includes moral damage and does not transfer to others unless specified by agreement or claimed by the affected party before the judiciary, limited to spouses and relatives up to the second degree. In Algeria, the legislator, in Article 182 of the Civil Code, stipulates that compensation covers moral damage affecting freedom, honor, or reputation. A comparison between Egyptian and Algerian laws reveals agreement on compensating moral damage, but the Egyptian legislator specifies eligible relatives, unlike the Algerian legislator.

It is essential to note that civil liability is established only when its three elements are present: fault, damage, and causation. We have previously explained the connection between fault and damage, with causation referring to the idea that the responsible party's fault led to the occurrence of harm to the victim. Therefore, if a person commits a fault and no harm results, their liability is not established. However, complications may arise when multiple individuals commit faults causing a single harm. For instance, if a person allows another to photograph him in a workplace where photography is prohibited and the latter proceeds to publish the image, resulting in the person's dismissal, here, the fault of the victim and the photographer contributes to the harm, but the fault of the publisher is the primary cause leading to the employee's dismissal. Considering all possible causes, whether incidental or essential, leading to harm, known as the theory of concurrence of causes, is contrary to logic and justice. This theory faced severe criticism from jurisprudence and the legal system, leading to the emergence of the theory of efficient causation. According to this theory, the effective cause is the one that, according to

ordinary events, leads to harm. In the previous example, the fault of the publisher is the direct cause of the harm, resulting in the employee's dismissal. This theory has been adopted by jurisprudence and the legal system^[35].

Compensation for harm is conditional upon the harm occurring, whether immediately or with confirmed future occurrence. Compensation for potential harm is only awarded if an opportunity is missed. The harm must be direct, affecting the person claiming compensation^[36].

Compensation can take the form of either in-kind or monetary restitution. In-kind compensation aims to restore the situation to its pre-damaged state, which can be challenging or even impossible, as in the case of unauthorized image publication. Therefore, the judiciary typically resorts to monetary compensation, a sum awarded by the judge to the victim instead of in-kind compensation. This amount can be a lump sum, paid in installments, or as a monthly income for life or a specific period. In the latter two cases, the judge may request insurance. The judge has discretionary power in choosing the compensation method, guided by the victim's requests and the circumstances of the case without scrutiny by the Court of Cassation^[37]. The effectiveness of determining compensation is as of the date of the judgment, regardless of whether the harm has intensified or diminished^[38].

In assessing compensation, the judge considers the personal circumstances of the victim, not the responsible party. If multiple individuals are responsible for the harmful act, the judge can distribute responsibility equally if possible, determining each person's contribution to the fault. This occurs when one person's fault is severe and the other's is minor; otherwise, all may be jointly held liable for the compensation amount. It is noteworthy that the power of the court in extracting the fault triggering liability is absolute when it is acceptable and derived from elements leading to it from the facts of the case^[39]. However, the classification of an act as a fault or not is subject to scrutiny by the Court of Cassation^[40].

In conclusion, monetary compensation alone is insufficient. The judgment should be published in an electronic newspaper, including the name and place of residence of the convicted person. Compensation should be increased in cases of repeated harmful actions to deter such acts in society, constituting an assault on rights inherent to personal identity, including the right to one's image. In the event of difficulty identifying the perpetrator, states must intervene as reserve guarantors to compensate the affected party, as they are primarily responsible for protecting individuals from acts that constitute an assault on rights inherent to personal identity, including the right to one's image.

CONCLUSION

After we finished the research as mentioned above with a set of results, recommendations and a list of references as follows:

RESULTS

The right to one's image consists of two elements: the right and the image. The image is considered a reflection of the individual's material and moral entity, expressing their feelings and emotions. The right is the individual's right to object to the drawing, production, or sculpting of a likeness of them without their permission and consent. Permission is required in writing to specify its dimensions and scope. The place where photographing a person is prohibited is considered their private space, where no one can enter without their permission.

Legal scholars differ on the legal nature of the right to one's image. This difference is not a dispute as much as it is an invitation to legislate to protect the right to one's image. We believe that it is one of the rights inherent in the individual, as the image can reveal information that affects the person and their family.

In the case of proven assault, the assailed person has the right to claim compensation for the damage caused. The right to compensation for moral damage transfers to the heirs according to conditions specified by the law. Additionally, the person has the right to request a halt to the assault until a verdict is issued if the conditions specified by the law are met, including urgency and not compromising the essence of the right.

RECOMMENDATIONS

The Egyptian and Algerian legislatures should explicitly stipulate that the right to one's image is one of the inherent rights of the individual's personality. They should provide special protection for it by developing the rules of civil law to keep pace with digital technologies prevalent in society.

The Egyptian and Algerian legislatures should enact legislation regulating the use of facial recognition technology before it is used by state officials, whether for searching for criminals or using it to identify individuals in cases of natural disasters in smart cities. Using electronic profiles of individuals without their knowledge constitutes an attack on the right to one's image, considered a violation of the right to privacy.

The Egyptian and Algerian legislatures should specify that the judgment should be published after it gains the force of *res judicata* in an electronic newspaper to ensure sufficient protection for the victims.

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