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Penalty of the Crime of Cyber Libel in Positive Law

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Abstract

Since the advent of history, crime has been changing from one era to another in accordance with different communities and societies. In this era which advances technological development, cybercrime has taken the lead as the most common type of crime worldwide. It includes cyber libel, which is one of the most common electronic crimes, as computer data helps it to spread, whether in writing or orally, especially that electronic media technology enjoys anonymity. It relates to slander, dishonour, and defamation. The researcher recommended a need to codify specific legal texts so that criminals do not escape punishment. This necessitated the legislator to intervene by enacting legislation to combat cyber-crimes.

Keywords: Cyber Crime, Crime, Defamation, Libel

Introduction

Crime progresses and develops with the progress and development of humanity. Cybercrime, computer crime, or information technology crime is a new type of crime. This type of crime is represented by accessing the computers of victims through these criminals and destroying or damaging data, information, networks and operating systems, as well as stealing data and information stored in them (Al-Shayyab, 2015, p. 45).

The criminals who commit cyber IT crimes are mostly highly professional, as they create and use malicious and complex programs, most of which fall under the general name "viruses", these criminals are called "hackers". Likewise, among these criminals or intruders are young people, just to confirm their superiority and test their abilities in this field (Lutfi, 2020, p. 25).

This resulted in many new crimes that we cannot count, which requires the legislator to constantly update the laws criminalizing such acts. This type of crime required that countries pay attention to confronting them. Many countries have combated and confronted them from a legislative perspective, among these countries is the United Arab Emirates, which has encountered this type of crime by issuing its latest legislation in the field of information technology represented by the Federal Decree Law No. (34) in 2021 regarding combating rumors and cybercrimes (Ahmed, 2019).

Federal Decree Law No. (34) in 2021 included seventy-four articles. The legislator allocated the texts of articles from No. 2 to No. 55 thereof to the crimes stipulated therein, and each text contains one or more crimes. Whereas the gradual enactment of laws over the past years demonstrates the legislator's keenness to keep pace with the criminal development of individuals, whether cyber or traditional. An example of this are the crimes of libel and contempt, since they originated as traditional crimes until they became electronic.

Criminalization of libel in the Penal Code

The crime of cyber libel is one of the most common electronic crimes, as computer data helps it to spread, whether in writing or orally, especially that electronic media technology enjoys anonymity. The exploitation of information technology to carry out this type of crime has raised great challenges in relation to the laws that dealt with this type of crime within the framework of the society of electronic information. The senders fulfilled their purpose in publishing some messages that contain insulting and slanderous phrases because of the targeted persons themselves or because they belong to certain religious or ethnic groups or political parties.

Since the crimes of insult and slander are increasing significantly, the number of cases related to this cyber libel has increased. Article (43) of Federal Decree-Law (34) in 2021 regarding combating rumors and cybercrime stipulates that: "He [the criminal] shall be punished by imprisonment and a fine of no less than (250,000) two hundred and fifty thousand dirhams and no more than (500,000) five hundred thousand dirhams, or one of these two penalties which applies to anyone who insults others or ascribes to them an incident that would make them subject to punishment or contempt by others, using an information network, information technology means or information system.

If one of the acts mentioned in the first paragraph of this article is committed against a public servant or one entrusted with a public service on the occasion of or because of the performance of his work, this is considered an aggravating circumstance for the crime".

The crime of libel by electronic means assumes that the incident ascribed to the victim is of two types, that it causes his punishment or contempt among the people of his country or the society in which he lives. Conditioning in itself is considered one of the pillars of the crime, and then the general rules of intent require the realization of the crime.

Realization means the actual knowledge, so it is not sufficient to be presumptive, nor is it sufficient to be able to realize without realizing, as the offender must be aware of the meaning of the expressions that contain insult and libel that lead to insulting the honour or consideration of the victim.

Here the accused must prove the opposite, as the accused can deny the criminal intent if he proves that he was ignorant of the meaning of the words he addressed to the victim and the victim can prove that the accused intended by these phrases to undermine his honour and esteem (Bahr, 1998, pages 239-240).

A person is considered a slanderer if he ascribes to others, by one of the methods set forth in Article (171) of the Egyptian law, matters that, if they were true, would have required the punishment of the one to whom they were ascribed with the penalties prescribed for this by law, or which cause contempt by his society. Article (303) of the Egyptian Penal Code stipulates: "The slanderer shall be punished with imprisonment for a period not exceeding one year and a fine of not less than two thousand and five hundred pounds and not more than seven thousand and five hundred pounds, or one of these two penalties." - If libel is

committed against a public servant or a person with a public prosecution or charged with a public service.

Article (308) of the Egyptian Penal Code No. 147 in 2006 clarified the cases in which a severe penalty is imposed on the accused in the crimes of insult or libel by stipulating that if the libel, insult, or defamation were committed in one of the ways set forth in Article (171) in the purpose of libeling Individuals or defaming the reputation of families, the penalty shall be imprisonment and a fine together within the limits set forth in Articles (179, 181, 182, 303, 306, and 307), provided that the fine in the case of publication in a newspaper or printed media is not less than half the maximum limit, and the imprisonment is not less than six months.

Whereas in the UAE law, in Article (374) of Federal Law No. (3) in 1987 regarding the issuance of the Penal Code, it states: "He [the criminal] shall be punished with imprisonment for a period not exceeding six months or a fine not exceeding five thousand dirhams if the libel or insult takes place on phone, or in front of the victim and in the presence of others.

The penalty shall be a fine not exceeding five thousand dirhams if the slander or insult takes place in the face of the victim in the absence of anyone, or in a letter sent to him by any means".

It is considered an aggravating crime if the libel or insult is committed in the cases indicated in the two preceding paragraphs against a public servant or one entrusted with a public service during, or because of, or on the occasion of performing the job or public service, or if it harms one's honor or harms the reputation of families, or if it is noticeable that it achieves an illegal purpose.

In the same aforementioned federal law, it is mentioned in Article (373) that: "Anyone who insults another by any means of publicity in a way that offends his honor or dignity without including a specific incident shall be punished by imprisonment for a period not exceeding one year or a fine not exceeding ten thousand dirhams".

The penalty shall be imprisonment for a period not exceeding two years and a fine not exceeding twenty thousand dirhams, or one of these two penalties, if the insult is committed against a public official or one charged with a public service during, or because of, or on the occasion of performing the public service, or if it is offensive to the honor or defaming the reputation of families, or if it was noticeable that it achieves an illegal purpose, and if the insult occurred by means of publication in a newspaper or printed media. This is also considered an aggravating crime.

The same article from the same law states that "the crime is negated if the perpetrator proves the authenticity of the incident when it is directed at a public employee or assigned to a public service and the incident is related to the job or service. In this case, it is also permissible to prove the insult if it was issued by the perpetrator himself and it is related to the incident of libel, and it is not permissible to prove the incident if it took place more than five years ago, or if the crime had expired by one of the reasons of its termination, or if the judgment issued in it had been forfeited".

A person is considered a slanderer if he ascribes to others by one of the methods set forth in Article (171) of the Egyptian Penal Code and of Law (375,373,374), matters that, if they were true, would cause the punishment of the one to whom they were ascribed by the penalties prescribed for that by law, or cause his contempt among his society.

Libel against the actions of a public employee or a person with a public consideration or charged with a public service shall not be included under the provision of the previous paragraph if it occurred in good intention and did not go beyond the duties of the position,

representation or public service, provided that the perpetrator of the crime proves the truth of each act attributed to him, and his belief in the correctness of it does not replace this act, and it is not accepted from the slanderer to establish evidence to prove what he slandered except in the case indicated in the previous paragraph.

The penal laws under study referred to a group of penalties that were imposed for the crime of insult and libel. Among these penalties

First: Fine

The fine is either an original or supplementary penalty replaced by the money of the accused without his person or his freedom, it is an original penalty prescribed for misdemeanors and violations (Ibrahim, 2014, pages 174-176). The fine is considered the oldest alternative to short-term imprisonment. The Jordanian Penal Code (16) in 1960 defines the fine in Article (22) as: Obliging the convict to pay to the government treasury the amount estimated in the judgment, which ranges between five dinars and two hundred dinars, unless the law stipulates otherwise."

In the UAE Penal Code in Article (71) thereof, the fine was defined as: Obliging the convict to pay to the treasury the amount adjudicated. The fine may not be less than one thousand dirhams, nor may it be more than one million dirhams in felonies and three hundred thousand dirhams in misdemeanours, unless the law stipulates otherwise."

As indicated in Article (302) of the Egyptian Penal Code, which was amended in 2006, the prison sentence was abolished, and the fine was doubled, so that it is not less than 7,500 pounds and not more than 22,500 thousand pounds. It is indicated that the fine varies according to the same article if the crime of "defamation" is proven. If the victim is a public employee in one of the state agencies, or holds a parliamentary status, or may perform a public service, provided that the crime is related to his job, the fine shall not be less than 15,000 pounds and not more than 30,000 pounds.

The fine can be an original penalty imposed alone without other penalties or a complementary penalty that is adjudicated in addition to the original penalty that causes deprivation of freedom. It is a penalty imposed by the state by its authority to punish individuals as a result of violating the rules of law, and it does not result from an agreement between individuals or from a breach of a contractual obligation. Therefore, the proceeds of the fines go to the state treasury and are not the share of the victim because the state is the one that imposes this penalty with its power of punishment (Rizk, 2012, p. 191).

For normal persons, a fine is preferred over short-term freedom-restricting penalties, because it achieves the purpose of punishment in general without fear of the danger of contagion of criminality, which often results in the mixing of convicts from among the prisoners inside the prison, in addition to considering it a financial resource. It is mostly an original punishment, and it may be complementary at times according to the facts of the crime, the judge's ruling, and the text of the law (Al-Qadi, 2013, p. 245).

As for legal persons, the penalty of fine is considered one of the most essential and prominent penalties applied to them. The judge does not feel embarrassed in ruling it (Ramses, 1991, p. 145).

Second: Imprisonment

Article (308) of the Penal Code indicated and specified the penalty of imprisonment "in such cases, in the case that the "defamation" includes words affecting honor and clarifies that "plaintiffs" in cases of "defamation" by publication rely on that article to ensure the maximum

penalty on the defendants. It is indicated that the penalty of “imprisonment” in the previous article varies according to the court’s ruling and the judge’s assessment, so that it is not less than six months and not more than three years. The “imprisonment” penalty is not approved by the Penal Code unless it is only related to libel of the honor of other people.

Article (69) of the UAE Penal Code regarding imprisonment stipulates that: “Imprisonment is the placement of the convict in one of the penal facilities designated by law for this purpose, for the period to which he is sentenced. The minimum period of imprisonment may not be less than one month, nor more than three years, unless the law stipulates otherwise.

The incidents of insult and defamation are considered as a misdemeanour against an ordinary person that is considered by misdemeanour courts, but if the defamation occurred against a public employee or a person holding a parliamentary status, or performs public service, then it is considered “a misdemeanour as well, but it is judged in felony courts, and the punishment is severer in the case of conviction.

The appeal against the cases of “defamation” is conditional, the judgment is final and does not accept appeal in the case that the fine is less than 20 thousand pounds, unless there is a fundamental mistake in the judgment in which the court occurred, but if it is more than the amount, then the defendant has the right to appeal on the judgment in cassation.

The Egyptian Penal Code indicated that there are two circumstances that are due to the character of the victim, such as slander against the public employee or those in a similar position and slander against public transport workers. The first circumstance is related to the means of slander, which is the commission of the crime by publication. The second circumstance is related to the type of slander incidents if it includes libelling individuals or harming the reputation of families.

The Crime of Libel in the Cybercrime Law

The Egyptian legislator criminalizes the crime of libel in the Information Technology Crimes Law No. (175) in 2018. The legislator imposed the prison penalty of no less than two years and no more than five years, as well as a large fine, or one of the two penalties. Article (26) of the aforementioned law stipulates that Whoever deliberately uses a computer program or information technology to process personal data of others in order to link them to content contrary to public morals, or to show it in a way that would prejudice his status or honour shall be punished by imprisonment for a period of not less than two years and not exceeding five years, and a fine of not less than one hundred thousand pounds and not exceeding three hundred thousand pounds, or either of these two penalties. This text criminalizes in part the perpetrator’s use of a program or information technology to prejudice the honour and dignity of the victim.

Whereas in the UAE, Federal Decree-Law No. (34) in 2021 regarding combating rumors and cybercrime stated in Article (43) that: “a person shall be punished by imprisonment and a fine of not less than (250,000) two hundred and fifty thousand dirhams and not more than (500,000) five hundred thousand dirhams, or one of these two penalties, if he insults others or ascribes to them an incident that would make them subject to punishment or contempt by others, using an information network, an information technology means, or an information system. If one of the acts mentioned in the first paragraph of this article regarding a public employee or one assigned to a public service on the occasion of or because of the performance of his work shall be considered an aggravating crime.

It is well known that honour and consideration mean the social status of a person and the need to respect him from others, so any violation of that status is a crime, such as publishing a link and attributing it to a person in a way that leads to contempt him among people. It is not considered a crime if the publication or broadcast is made for the purpose of commenting, constructive criticism, or express advice, or praise.

It is equal to the perpetrator to be an ordinary person or legal body such as a company, and the same applies to the victim. The point here is that it should be noted that Article (36) of the Egyptian Information Technology Law stipulates that in the cases in which any of the crimes stipulated in this law are committed, in the name of, or for the account of the legal body, the person in charge of that body shall be punished with the same penalty as the ordinary perpetrator if it is proven that he had knowledge of the crime or facilitated its commission in order to achieve his interest or others interest.

The court may decide to suspend the license for the legal person and prevent him from practicing the activity for a period not exceeding one year, and in case of recurrence it may order the cancellation of the license or the dissolution of the legal body, as the case may be, and the judgment shall be published in two widely circulated daily newspapers at the expense of the legal person.

Article (58) of Federal Decree-Law No. (34) in 2021 regarding combating rumors and cybercrimes stipulates that: "The person responsible for the actual management of a legal body shall be punished with the same prescribed penalties for acts committed in violation of the provisions of this Decree-Law if it is proven that he was aware of them. If his breach of the duties imposed on him by that body contributed to the occurrence of the crime, the legal person shall be jointly responsible for fulfilling the fines or compensations adjudicated if the violation was committed by one of his employees and in the name and for the benefit of the legal person."

Also, it should be noted that it is stated in Article (37) of the Egyptian Information Technology Law that, in applying the provisions of this law, the determination of the responsibility of the actual management of the legal person does not entail the exclusion of the criminal liability of the ordinary persons, the original perpetrators or partners, for the same incidents of the crime.

Conclusion

The Internet is considered a means of publicity, taking into account that the Internet is more widespread than all other means of publishing. There is a need to codify specific legal texts so that criminals do not escape punishment. This necessitated the legislator to intervene by enacting legislation to combat cyber-crimes. This is what the law does, it criminalizes libel. The legislator does not specify the means used in this crime because the point here is the cause of the crime, not the means.

Reference

- Al Shayyab, T. A. (2015). Crimes against persons. Al-Waseet in explaining the Federal Penal Code of the United Arab Emirates, 1st Edition. Abu Dhabi, UAE.
- Jaafar, A. A. (2013). Modern media technology crimes against people and the government. Zain legal publications, 1st Edition. Beirut, Lebanon.
- Ahmed, K. H. (2019). Internet crimes between electronic piracy and electronic extortion crimes. University Thought House.

- Bahr, M. K. (1998). Principles of the Jordanian Criminal Procedure Code. House of Culture. Amman, Jordan.
- Sulaiman, A. (2002). Explanation of the Penal Code, the general section. University Press Office. Algeria, Algeria.
- Abdel-Khalek, I. (2002). Al-Wajeez in press and publishing crimes. Technical office for legal issues.
- Bouskaia, H. (2007). Al-Wajeez in private criminal law. Dar Houma. Algeria, Algeria.
- Sorour, T. F. (2013). Al Waseet in the Penal Code Special Section. Arab Renaissance House. Cairo, Egypt.
- Al-Faisal, A. A. (2014). Studies in electronic media. University Book House. Abu Dhabi, UAE.
- Lotfi, K. H. A. (2020). The law applicable to information crime. University Thought House.
- Musa, A. (2019). Legal adaptation of the crime of slander through social media. Journal of Legal and Political Studies, 1(5), 15-32.
- Salama, M. (2018). Penal Code. Dar Salama for publication and distribution. Cairo, Egypt.
- Durra, M. A. S. (1990). General provisions of the Penal Code. Ibn Al-Atheer Press for printing and publishing.
- Shawabkeh, M. A. (2009). Computer and Internet crimes. House of Culture for publication and distribution. Amman, Jordan.
- Amer, M. S. A. (2015). Criminal liability for spreading rumours through social media. Social Communication Conference, Applications and Methodological Problems, Imam Muhammad bin Saud University. Riyadh, Saudi Arabia.
- Hosni, M. N. (1979). Explanation of the Penal Code, Special Section. Arab Renaissance House. Cairo, Egypt.
- Rahmani, M. (2006). Al-Wajeez in the general criminal law. Dar Al Uloom for publication and distribution. Annaba, Algeria.
- Saqr, N. (2009). Mediator in the crimes of persons. Dar Al-Huda for publication and distribution. Algeria, Algeria.