

Pillars of the Crime of Cyber Libel

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Abstract

This research aims to identify the pillars of the crime of cyber libel from the UAE perspective. This research identified two pillars of this crime: the first is the material pillar that addresses criminal behaviour, criminal consequences, and causation. The second one is the moral pillar that addresses science, will, and publicity. The research argues that the United Arab Emirates has taken the lead in this regard, as it issued Federal Law Decree No. (34) in 2021 regarding combating rumours and cybercrime. It adds that the UAE legislator also dealt with the crimes of cyber libel. In this research. The research concludes that the crime of libel is an intentional crime, and the same applies to the criminal intent in the crime of cyber libel through electronic means. In addition, it is achieved by directing the offender's will into action by using the informational network and information technology as a means to deliver insults and slander to the victim.

Keywords: Cyber Libel, Federal Law, Technology, UAE

Introduction

The accelerating technological development, although it contributed to the progress and development of countries and societies, contributed to the creation of many crimes that constituted and still pose a great challenge to legislators in pursuing such crimes with laws that can combat them effectively, including the crime of cyber libel and related acts such as insulting, defamation, bullying and blackmailing. This crime and related crimes are considered among the most dangerous and most sensitive electronic crimes because they relate to human reputation and honor, as well as contribute to spreading hatred and bad morals in society. Therefore, it is important to study cyber libel in an in-depth and comprehensive way and compare the legislations, applications, and legal practices of countries that are similar in their social, cultural and religious dimensions. Also, it is significant to study the emotional of individuals (Ahmed et al., 2021a; 2021b).

As these crimes relate to technology and electronic media, continuous updating of research in this area is indispensable to provide accurate information to legislators, policy makers, and legal practitioners to improve professional practices.

The United Arab Emirates has taken the lead in this regard, as it issued Federal Law Decree No. (34) in 2021 regarding combating rumours and cybercrime. The UAE legislator also dealt

with the crimes of cyber libel. In this research, I will discuss the pillars of the crime of cyber libel according to the UAE federal law. Therefore, study consumer behaviour is significant for this process (Alsharif et al., 2021a; 2021b; 2022; 2023).

Each crime has pillars without which it cannot be achieved, they are divided into two parts: general pillars that are in all crimes in general, and special pillars that are stipulated by the law for each crime separately and they vary from one crime to another. This research discusses the general pillars that are in all crimes. Jurists differed regarding the division of the general pillars, some of them considered three pillars, the physical pillar, the moral pillar, and the legal pillar. Some of them considered two pillars: material and moral. This is what is going to be addressed according to this arrangement, in addition to the pillar of publicity, which we can count as one of the special pillars of the crime of cyber libel because publicity is a precondition for the crime of cyber libel.

First: The Material Pillar

The material element of the crime is the outward appearance of the offender's crime, which is a reason for criminalization and subject to punishment, because the Penal Code does not punish intentions to commit a crime and subconscious thoughts. If the ideas are associated with criminal activity, criminalization and punishment shall be imposed. It is very difficult to determine the material pillar in the crime of cyber libel because it is related to a crime whose scene is a virtual environment, which makes determining the criminal behaviour, the result, and the causal relationship of this crime a difficult matter. I will discuss it in detail as follows:

1. Criminal Behaviour

It is an important and necessary element in the composition of the crime. It is defined as: "The act of the perpetrator that causes an impact in the external world, and without this behavior the person cannot be held accountable" (Rahmani, 2006, p. 98). The criminal activity of libel via the Internet is every behavior through which information about people is published using a digital system established by an e-mail or a phone number, and its members are allowed to create a page and a group on that site, and to put comments and posts on it. It also allows the members to upload content or a picture on their pages, as well as writing comments, likes, or posts (Al-Borai, 2013, p. 12), whether in the form of pictures, videos, voice messages, or written chat, which harms the victim's reputation, destroys confidence in him, and changes the impression on him, whether the crime was committed with the knowledge of the victim or not, in his presence or absence. Therefore, neuroscience can be used to measure the individual behaviour such as violence and so forth (Ahmed et al., 2022; 2023a; 2023b). This necessitates the existence of publicity of the content.

Criminal behaviour in this crime takes several forms, including:

- A. Obtaining information, data, and secrets related to the private lives of the victims whether through trust, an abuser of people, or hacking into their devices and stealing their contents, such as photos, videos, recordings, chats...etc. For example, it happens when a person exploits very private information on a lost, stolen or purchased phone by retrieving sensitive photos and videos that were erased by its owner, who is himself the victim, using specialized applications.
- B. Creating offensive content for a person, violating the sanctity of his private life, and attaching it to words that offend reputation and dignity, and then publishing it, whether through pictures, videos, writing, or messenger chats on Facebook, or it contains false or fabricated information or news for a large number of users.

- C. Eavesdropping on private or secret conversations. It can be defined as: “listening secretly, by any means, of any kind, to private or confidential speech emanating from a person or exchanged between two or more persons without their consent.” The almighty Allah has forbidden interfering and searching people’s secrets. He said: “And follow not that of which you have not the knowledge; surely the hearing and the sight and the heart, all of these, shall be questioned about that.” (Al-Israa, verse Nom 36). By simply listening to and using this illegally obtained recording to libel a person or threaten him of defamation, the material element of the crime is achieved. It is noted that the legislator does not require the use of specific devices that lead to the criminal result, which means the widening of the use of any devices that may appear in the future, which reflects compliance of the legislator with the significant scientific development in the field of communications.
- D. Publication: The concept of publication expands to include an addition to the traditional concept of allowing others to see the picture or hear the conversation. The word “others” here means an unlimited number of people. The legislator equalized between doing the activity or allowing the activity (Saqr, 2009, p. 181). In the sense that the criminal himself publishes or enables others to publish the content in his possession. Publishing or sharing an offensive post attached to a comment indicating endorsement or admiration for its content is a joint responsibility between the original publisher and the commenting person. If the comment was offensive to a non-offensive post, the criminal responsibility is upon the commenter alone. It is sufficient for the criminal liability to be fulfilled that the publisher performs an activity through which he can view private content. Whenever it is published on social networking sites, responsibility has been achieved without requiring that it be actually seen by others.

As for the means of disseminating information, the law does not stipulate a specific means or method, what is important is to spread the news among the public (Bouqaia, 2007, p. 152). This is what happens by posting on social media.

In this context, the American courts concluded that the misdemeanour of cyber libel is complete if the publication is within communicative groups, because the concept of publishing has already been achieved with the presence of the publisher, who is the accused, and the receiver, who is the victim, and the third party represented by thousands of users (Al-Faisal, 2014, p. 325).

Criminal behaviour revolves around a person exploiting offensive content made by himself or others to libel.

This criminal activity in all its forms leads to harm the victim in particular and society in general. This is what will be discussed in the next pillar.

2. Criminal Consequence

It means: “The effect of criminal behavior, which is represented by the positive crime in the change that occurs in the outside world, whether material or psychological” (Rahmani, 2006, p. 102). The consequence can be defined as the damage or danger caused by criminal behavior that affects or threatens an interest protected by law, as is the case in the crime of murder. It may be moral, as is the crime under this study.

The criminal consequence in the crime of cyber libel occurs when the offensive content is posted on social networking sites, regardless of the purpose. The crime of libel is achieved due to the availability of the element of publicity. Therefore, it is an element that is assumed

to occur, as is assumed in libel through newspapers, which is less in scope. Libel through social communication is extremely criminal.

3. Causation

It is not enough for the material pillar of the crime to be established that criminal behaviour is issued by the perpetrator against the victim and that a criminal consequence occurs. Rather, there shall be a relationship between the behaviour and the consequence, which is the causal relationship. The causative relationship can be defined as “the set of positive and negative factors whose realization entails the necessary occurrence of the consequence (Hosni, 1979, p. 24).

No problem arises on the issue of causation if it appears that the offender’s act and criminal behaviour is the cause of the harmful consequence. For example, when someone who stabs a person with a knife and kills him, the criminal cause is clear here. The difficulty arises if several reasons overlap in causing the criminal consequence (Rahmani, 2006, pp. 104-105).

Determining the causal relationship in this crime is very difficult because of the complexities related to it as it takes place in a virtual environment in which there are intertwining stages of electronic input and output. It causes the occurrence of the consequence, which is the abuse of the victims and the violation of their reputation and esteem. From this standpoint, the causal relationship in the crime of cyber libel of persons, it is between the perpetrator publishing secrets, information, and data related to the privacy of the victims on social networking sites, and the resulting libel of persons.

Second: The Moral Pillar

It is defined as the knowledge of the elements of the crime with the direction of the will to achieve or accept it, or it is the direction of the will of the offender towards committing the crime with knowledge of the availability of its legal pillars” (Rahmani, 2006, p. 114). From this definition, it can be concluded that this pillar consists of two elements: knowledge and will. Knowledge is the realization of things in a way that conforms to reality, it precedes the will. As for the will, it is represented in the direction towards achieving criminal behaviour. This can be detailed as follows:

1. Science

It is defined as: “a state of mind or a degree of awareness that precedes the realization of the will and serves to perceive things correctly” (Suleiman, 2002, p. 250). This means that knowledge is the psychological state that is established in the mind of the defamer, the essence of which is awareness of the reality of the elements of the criminal incident from which the material pillar is formed regarding libel through the use of social media while imagining the criminal consequence.

The elements of the criminal incident that shall be known in order to carry out the criminal intent are what the legislator requires to give the incident its legal status and distinguish it from other criminal incidents and also from legitimate incidents (Salamah, 2018, p. 250). The perpetrator shall realize that publishing information about the victims on social media, with the resulting serious harm, is a crime punishable by law. He shall also know all elements of the crime from the first step of taking their private information, pictures, recordings, and communications, whether the offender obtained them himself or through others and publishing them on electronic platforms, whether this was done through trust and security

due to the existence of a relationship linking them, or through hacking and theft, or even by accident (Musa, 2019).

2. Will

The previous element suggests that “Knowledge is a mental will by which the crime is imprinted in the mind of the offender, so it balances between daring and reluctance and the consequences of each of them. The will performs two roles, the first of which is deciding the choice, and the second is transferring the idea from the mind to reality (Rahmani, 2006, p. 119). The consequence of the offender’s intention is publication of offensive information about people on social networking sites, with the knowledge that it causes serious harm to the victim. In other words, cyber libel requires the presence of the offender’s will towards achieving the material elements of the crime by modifying the privacy setting before pressing the “publish” button that makes the post available to the public users, or in the case that it is made available to be seen by all the friends of the user. Thus, the conditions of publicity necessary for the occurrence of the crime are met.

Forms of criminal intent in the crime of cyber libel

Criminal intent takes several forms, including general intent and private intent:

- A. The general criminal intent is the immediate and direct purpose of the criminal behavior and is limited to achieving the purpose of the crime, i.e., it does not extend beyond that (Al-Durra, 1990, p. 79).
- B. Special criminal intent is an element whose presence is required in some crimes. In this case, it is not sufficient to merely achieve the purpose of the crime, but rather it goes beyond that, i.e., it examines the intentions of the criminal. From here, one shall think about the criminal intent that shall be present in the crime of cyber libel.

The cybercriminal commits an illegal or impermissible act with this criminal’s knowledge of the elements of the crime. Although some hackers justify their actions by being just curious and that they have infiltrated by chance, there is no lack of knowledge here as a pillar of criminal intent, and they should have retreated as soon as they entered and did not continue in accessing the secrets of individuals and institutions because all criminals and people who commit these acts have great mental and cognitive skills.

General criminal intent is available in all information crimes without any exception, but this does not preclude that there are some information crimes that require that special criminal intent be available, such as cyber libel via the Internet without considering the motive for this crime (blackmailing, revenge, libel), noting that the accused’s commission of this crime may reveal that he has committed other crimes whenever its elements are available, such as threatening to blackmail the victim by keeping the recording, photo, or document. This is stipulated and punishable in Article 42 of Federal Decree-Law No. (34) in 2021 regarding combating rumors and cybercrimes, or the sexual exploitation and incitement of the victim stipulated in Article (33) of the aforementioned law and what follows that such as the availability of publicity through publication or advertisement, insult and slander, which incur punishment as stipulated in Article (43) of the aforementioned law.

To sum up, in order for the crime of cyber libel to be completed, it is required that the provocation be based on bad intent, aiming at harming personal reputation, violating privacy and personal security, provoking feelings, diminishing dignity and consideration, or contempt, ridicule, and deliberate lying. It is also required to be seen and read by a third party, i.e., the availability of the element of publicity. Therefore, the crime of cyber libel is not complete if it

is confined to the circle of bilateral correspondence (Al-Faisal, 2014, p. 322). So, what is meant by publicity?

3. Publicity

The concept of publicity means “disclosure and dissemination, i.e., communicating the public’s knowledge with action, saying, book, or acting” (Abdul-Khaleq, 2002, p. 10).

“Publicity is considered the essence of the crime of cyber libel, and its absence means the non-existence of this crime, even if its other pillars are available. Likewise, publicity indicates that the accused wants to inflict limitless harm on the victim, so it shows the seriousness of the offender and the crime he is committing.” (Amin, 2007, p. 105). Publicity may be achieved in several ways, which will be mentioned in the next section.

▪ Forms of Publicity

It may be through actions, movements, speech and shouting, writing, and pictures in all their forms and their like.

- 1- The publicity of actions and movements: The publicity of actions and movements is achieved if they occur in a public place or a place open to the public or displayed to be viewed. Publicity is achieved in this form due to the nature of the place in which the expressions of slander and contempt were spoken out loud.

Acts and movements are made public if they take place in a private place other than the aforementioned places while whoever is in such places can see such actions. Actions and movements are also publicly realized if they take place in a private place and this place turns into a public place by chance. (Al-Shawabkeh, 2009, p. 50).

And since Internet technologies allow the transfer of sound and images from one user to another anywhere in the world, the publicity of actions and movements can be imagined within the scope of the Internet.

If the origin of slander, insult, and humiliation occurs in words and in writing, then it is rarely achieved by actions and movements, such as the movements of the deaf and dumb.

- 2- Publicity of speech is achieved openly by speaking and saying whether they are spoken out loud or transmitted by mechanical means, so that in both cases they are heard by those who have nothing to do with the act.

If the speech is in a public place by its nature, then publicity is achieved even if the place is empty of people, as they may hear it, but if the public place is by allocation or by chance, then publicity is not available unless the loudness of speech and utterance enables the audience to hear that as the place is transformed into a public place with the presence of this audience. In all cases, it is up to the judge to assess whether the private place has been transformed publicly by chance (Bosqaia, 2007, p. 203).

The publicity of this act is also achieved if speech is transmitted by automated means, and it is intended to use devices that make speech audible throughout the place, whether this is done with loudspeakers, microphones, or any means revealed by science that perform the same purpose. The basis for this is that the legislator does not limit what is meant by electronic means nor does he limit it to a time and place. Therefore, if speech is transmitted via the Internet as one of the automated means of transmitting sounds, then the element of publicity is achieved if it was heard by someone who has nothing to do with the act. But if the correspondence is limited between two parties without the knowledge of a third party, then publicity is not achieved.

- 3- The publicity of writing: it is achieved through displaying writing, hand and solar writings, films, badges and photographs of all kinds in a public place or a place open to the public or an exhibition (Al-Shawabkeh, 2009, p.50). This includes what is published on social media, where what is displayed becomes available to all users.

The extent to which the publicity condition is fulfilled in the crime of cyber libel

Social networking sites are a means of expression. These sites were originally created to help people get together, share, connect with friends and family, discover local and international events, and find groups to join. However, these sites are like a double-edged sword, because some may commit illegal acts of libel crimes by publishing and broadcasting. These crimes do not differ in their nature by changing the means through which they are committed (Sorour, 2013, p. 60).

Egyptian jurisprudence considers social media as one of the means of dissemination with which publicity is achieved. It states that: "An act is considered public if others touch it with their senses, or if that is possible".

This means that publicity has two forms, an actual form and a judgmental form. In the actual form, the person touches others with his senses, that is, with his sight, hearing, or any other sense. This is the physical act that the perpetrator performs, such as when someone commits libel in the roads, streets, and public places. (Al-Borai, 2013, p. 11).

As for the judgmental form, others do not actually touch that act with their senses, but it is possible, i.e. it is in the ability of others to touch it. Publicity is established by judgment, not by action, meaning that it is considered legally established even if it does not actually occur, and this applies to publishing on the Internet.

It is noted that most of the Arab legislation mentioned speech, shouting, gesture, movements, images, symbols, drawings, and writing, for example, as ways of publicity. (Amer, 2015)

From the foregoing definition of what the crime of cyber libel is, it is clear that it is a crime with all pillars, even if it differs from the crime of libel in the traditional way, due to different means and crime scene.

Conclusion

The crime of libel is an intentional crime, and the same applies to the criminal intent in the crime of cyber libel through electronic means. It is achieved by directing the offender's will into action by using the informational network and information technology as a means to deliver insults and slander to the victim.

The crime of cyber libel assumes that the incident attributed to the victim is based on two conditions: that it incurs the victim's punishment or contempt among his society or environment in which he lives. Conditioning itself is considered one of the pillars of the crime, and then the general rules of intent require that the offender to be aware of that. What is meant here is the actual knowledge, so it is not sufficient to be presumptive, nor is it sufficient to be able to know without knowing, as the offender shall be aware of the meaning of the expressions that contain insult and slander that lead to insulting the honor or consideration of the victim. This knowledge is presumptive as long as the expressions offend the honor of the victim.

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