

Criminalization of Defamation through Social Media Platforms between Traditional Provisions and Recent Amendments – An Analytical Study in Light of Algerian and Comparative Legislation-

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Abstract :

Contemporary legal systems have devoted themselves to guaranteeing constitutional and criminal protection for the right to individuals' private life, as it is one of the highest rights inherent in human personality and in their freedom from interference in their privacy. As a result, criminal legislation in its legal provisions has criminalized any violation of the sanctity of private life, including defamation of it, whether such violation or infringement is committed by traditional means or by modern means through social media, digital platforms, and the Internet. In this section, we will provide an explanation and analysis of what is meant by defamation through infringement of individuals' private life, and cover the criminal framework of the acts constituting this crime.

Keywords : Defamation ; Private life ; Social media ; Criminal protection ; Criminalization

Introduction :

The private life of a person has always constituted a formidable fortress in which they seek refuge from the intrusion of others, and a vital sphere where their dignity is realized and their personality grows away from the public eye. For this reason, contemporary legal systems, whether constitutional or criminal, have been keen to surround this right with safeguards that protect it from any violation, considering it one of the rights inherently attached to personality. International instruments have enshrined it, foremost among them the Universal Declaration of Human Rights of 1948 in Article 12, and the International Covenant on Civil and Political Rights of 1966 in Article 17, and it was affirmed by the Algerian constitutional framer in Article 47 of the 2020 constitutional amendment.

However, the digital revolution has produced a reality different from that to which societies were accustomed; whereas defamation was once confined to statements circulated within a narrow physical space, it has, through social media platforms, become an instantaneous, cross-border act that reaches an unlimited number of recipients in moments, allows for republication, modification, and excerpting, and leaves a digital trace that is difficult to erase. Images of individuals, their conversations, and their audio and visual clips have become

material offered for circulation, and even a source of profit for some who practice defamation. This has revealed the inadequacy of traditional legal provisions in addressing these newly emerging patterns of violation, which led the legislator to intervene in two stages: the first under Law No. 06-23, which inserted Articles 303 bis to 303 bis 3 into the Penal Code, and the second under Law No. 24-06, which introduced Articles 333 bis 4 to 333 bis 7 to confront the most common forms of violation in the digital environment.

The importance of this study derives from two dimensions: a theoretical one, which consists in defining the concept of defamation through social media platforms and distinguishing it from neighboring offences such as slander, insult, and disclosure of secrets, in the absence of a legislative definition of it in Algerian law; and a practical one, linked to the growth of the phenomenon and the severe psychological, social, and familial effects it leaves on victims, and to the need to assess the effectiveness of criminal policy in confronting it, especially after the recent amendments, while drawing on comparative experience, in particular the French legislation from which the Algerian legislator drew its provisions.

From here, the problem of the study is framed in the following main question: **to what extent has the Algerian legislator, through the transition from traditional provisions to newly introduced amendments, been able to provide effective criminal protection for private life against defamation via social media platforms, in the absence of a specific provision criminalizing defamation in its general sense, and in comparison with French legislation?**

To answer this problem, we relied on the descriptive-analytical method to present the concepts related to defamation, analyze the relevant penal provisions and derive their objectives, while employing the comparative method to contrast the Algerian position with French legislation, particularly Article 226-1 of the French Penal Code, in terms of the forms of criminalization, the scale of punishment, the limits of the judge's discretionary power, and the aggravating circumstances.

Accordingly, we have divided the study into two main axes: the first axis addresses the conceptual framework of defamation via social media platforms, by explaining its linguistic, terminological, and legal implications and defining electronic defamation; the second axis examines the criminal framework of this conduct, and includes: first, criminalization under traditional provisions (Articles 303 bis to 303 bis 3) through studying the material element of the principal offence and subsequent offences, the moral element, and the prescribed penalties; and second, criminalization under the newly introduced amendments (Articles 333 bis 4 et seq. pursuant to Law 24-06), highlighting the areas of aggravation and the points of difference and overlap with French legislation.

First axis: Meanings of the term “defamation” in language, terminology, and law

In view of the seriousness of this crime, especially in its new form, we will examine in some detail the meaning of defamation linguistically, terminologically, and legally.

First : The linguistic meaning of defamation:

In language, defamation (*tashhīr*) is derived from the verb “*shahhara, yushhir, tashhīr*,” meaning to make someone known for their faults, to disgrace or expose.¹ It is said “*shahara sayfahu*” meaning he drew and brandished his sword. It is also said that it is the appearance of something in an offensive way such that people publicize it. The expression “*shahhara bi-fulān*” means he spread bad things about him; “*shahharahu bi-l-amr*” means he reminded him of it and made him known by it. It is said “*shahhartuhu bayna-n-nās*” meaning I made him stand out among people; and “*shahhara-l-ḥadīth tashhīran*” means he publicized the report until it became well-known.² Thus, “*shuhra*” (fame) comes with many meanings such as scandal, broadcasting, announcement, or disparagement. The word “*tashhīr*” (defamation) is often used to denote “appearance” in general in all contexts, whether in good or evil, praise or blame, or disparagement.³

It is stated in “*Lisān al-‘Arab*” that “*al-shuhra*” (with *ḍamma* on the *shīn*) means scandal; “*ashhartu fulānan*” means “I belittled him, exposed him, and made him notorious.”⁴ It is said “*shahharahu bi-kadha*” meaning “he exposed him for such-and-such.” The predominant usage of the term “*tashhīr*” generally occurs in the negative aspects of people’s lives, such as attacking others’ honor through slander, insult, vilification, and the like, and making this known publicly.⁵

The term “*tashhīr*” corresponds in English to the term “Defamation,” and is also expressed by other terms such as “Libel” or “slander,” meaning defamation and false accusation. In French it is expressed by the word “Diffamation,” which is derived from the Latin root term “*diffamare*,” composed of two parts: “*dis*,” meaning destruction, and “*fama*,” meaning rumor.

In summary of the above, we clearly notice that “*tashhīr*,” as used in the linguistic definitions given by language scholars, tends to be used in contexts of harm; that is, the word “*tashhīr*” has an entirely negative connotation. It inherently involves abuse and portraying a person in a blameworthy manner or with a defect that harms his reputation or honor and publicizing this to the general public.

Second : The technical meaning of defamation

In technical usage, the meaning of defamation does not depart, in terms of use, from its linguistic meaning.⁶ It is stated in the book “*Al-Mabsut*” that defamation is: the loss of face

¹ _Abd al-Salam Stin, Crimes of Defamation and Electronic Blackmail via Social Media, first edition, Al-Ahram Publishing, Distribution and Legal Publications House, Cairo, Egypt, 2023, p. 200.

² _Saad Khalifa Al-Abbar, Punishment by Defamation in Islamic Jurisprudence, first edition, National Books House, Benghazi-Libya, 2018, p. 07.

³ _Ben Daas Lamia, The Crime of Defamation of Individuals by Attacking Their Private Lives through Social Networking Sites in Algerian Legislation, Al-Bahith Journal for Academic Studies, Vol. 09, No. 01, Algeria, 2022, p. 758.

⁴ _Abu al-Fadl Jamal al-Din Muhammad ibn Mukarram ibn Manzur, Lisan al-Arab, Dar Sader, 3rd ed., Vol. 4, Beirut, 1993, p. 431.

⁵ _Mishal Iyadah Askar Al-Enezi, Electronic Defamation and Its Punishment in Islamic Jurisprudence and Kuwaiti Law, Issue Thirty-Seven, Part Four, 2022, p. 234.

⁶ _Saad Khalifa Al-Abbar, Op.Cit, p. 09.

(honor) before people. And in “Takmilat al-Majmu‘ Sharh al-Muhadhdhab” it is said: “his matter is publicized,” meaning it is exposed and clarified to people, and fame means clarity.¹

It has been said that defamation is a form of dissemination, that is, spreading evil about a person among people.² Others have defined defamation according to actual cases and contexts of use. Several contemporary researchers have provided definitions of defamation; some defined it as: “broadcasting evil about a person, group, or entity and undermining their value in front of people.”³ Others defined it as: “showing a person in a particular matter that exposes him to people and reveals his hidden affairs, including what is rightful, such as prescribed punishments and discretionary penalties, and what is wrongful, such as backbiting and slander.”⁴

From the definitions presented by jurists and researchers, it can be understood that defamation, in its substance, is an act that inherently involves harming individuals and diminishing their worth and value before the general public, with the intention of damaging them or their reputation, honor, dignity, or personal standing. It takes the form of false accusation or slander, and thus leads to grave and negative consequences for the individual within their social, professional, or family environment, making them a target for various forms of hatred, contempt, or ridicule.

Third: The legal meaning of defamation

Defamation is a legal term borrowed from the books of jurisprudence, and the first to use this term was the judge and jurist “Shurayh ibn al-Hārith.” What is meant by it is the release of information, allegations, or false rumors with the aim of causing harm to the person being defamed, whether an individual or an institution. The term encompasses all forms of expression that wound the dignity of individuals or institutions, whether through broadcasting or releasing private factual information, or false allegations that cause harm or contempt for others.⁵

Legal scholars have defined defamation in various ways, but these definitions do not depart from its linguistic and conventional meaning. Some have defined it as: “A natural or legal person undertaking to write something that harms the reputation of a natural or legal person with the aim of tarnishing it.”⁶ This definition is criticized for limiting defamation to what is done in writing only, without addressing its other forms, namely oral and audio defamation, and defamation through images and visual media associated with modern communication technologies, given that these forms are the most prevalent and widespread in the modern era.

¹ _Mishal Iyadah Askar Al-Enezi, *Electronic Defamation and Its Punishment in Islamic Jurisprudence and Kuwaiti Law*, Issue Thirty-Seven, Part Four, 2022, p. 235.

² _Arkan Haidar Omar Salhi, *The Jurisprudential Characterization of the Punishment of Defamation on Electronic Sites (A Comparative Study)*, *Egyptian Journal for Islamic Research and Studies*, Faculty of Arts, Sohag University, Vol. 11, No. 11, Egypt, January 2024, p. 230.

³ _Ben Daas Lamia, *Op.Cit.*, p. 759.

⁴ _Ali bin Musa Ali Faqihi, “Defamation as an Administrative Sanction in the Saudi System,” *Journal of the Faculty of Sharia and Law in Tafna al-Ashraf – Dakahlia*, Issue Twenty-Seven, Part Two, Second Edition, Egypt, December 2023, p. 1976.

⁵ _Abd al-Salam Stin, *Op.Cit.*, p. 201.

⁶ _Maurice Nakhla and others, *The Trilingual Legal Dictionary*, First Edition, Halabi Legal Publications, Beirut, 2002, p. 511.

Some legal commentators have defined defamation as the publication of false statements that involve defaming another person without legal justification.¹ Defamation in law has been divided into two types: oral defamation and written defamation. Many legal systems do not distinguish between defamation and slander, and defamation has been expressed through related terms such as announcement, disclosure, informing, revelation, and rumor.²

We find that most of the Arab legislations reviewed did not use the term “defamation,” except for the Libyan legislator, who used the term and intended by it “insult,” influenced by the English Defamation Act of 1951, as well as the Saudi legislator in Article 3 of the Anti-Cybercrime Law of the Kingdom of Saudi Arabia issued in 2007. The term “defamation” is the closest, in Arab positive laws, to the term “insult.”³

The Algerian legislator, for his part, did not define the crime of defamation, but rather criminalized the material conduct consisting of the threat of defamation and classified it as an independent crime in Article 371 of Law 06/23 amending the Penal Code. The aim of this criminalization is to protect the private life of individuals from all forms of defamation, such as the disclosure of marital, sexual, emotional, professional facts or other events that are the subject of the threat of defamation and that carry a degree of personal privacy for individuals. The Algerian legislator has considered the right to private life a right guaranteed under Article 47 of the constitutional amendment of 2020. There is no doubt that what justifies the great attention the legislator has given to this right, and the criminalization of acts that infringe on the private life of individuals and the violations committed against them through defamation and other means, is the aggravation of criminal phenomena in recent times, especially in the virtual world, where websites, electronic pages, and social media platforms have turned the private lives of individuals into rich material, freely available for display and publication. They have even become commercial content generating income and financial revenues for those who defame individuals, whether natural or legal persons. This type of electronic crime has spared no one.

Fourth: Definition of defamation associated with social media

Traditional defamation differs from electronic defamation in the means used to commit the criminal act, and they also differ in terms of the seriousness and harm resulting from each of them. In this regard, it should be noted that defamation in general is not a product of technology, but rather a mere electronic media translation of a phenomenon already known in society in the form of backbiting and gossip that used to spread from mouth to mouth, as social behaviors that developed and emerged into the open due to modern technology.

Traditional defamation takes place in a real, physical setting and occupies a specific scope; accordingly, its harm or danger is confined to that scope or to a number of people who witnessed the incident or to whom it was conveyed. In contrast, electronic defamation (Cyber Defamation)

¹ _ Alia Yasser Mahmoud Amr, “The Provisions of Defamation of People in Islamic Jurisprudence and the Law in Force in Palestine: A Comparative Study,” Master’s Thesis, Specialization in Fiqh, Legislation, and its Principles, Graduate Studies Faculty, Al-Quds University, Palestine, 2011, p. 05.

² _ Mohammed Zakaria Kharab, Aqila Maqrou, “Electronic Defamation: The Problem of Concept and Application of the Law,” *Tabna Journal for Academic Scientific Studies*, Vol. 05, No. 01, Algeria, 2022, p. 1814.

³ _ Alia Yasser Mahmoud Amr, *Op.Cit*, p. 05.

occurs in a virtual environment characterized by synchronous communication, rapid dissemination of content, and the possibility of it reaching an unlimited number of users of the information network and social media platforms, which makes the harm greater to the victim and produces grave consequences for the person and their surroundings.

The intended meaning of traditional defamation and its various implications has already been explained. As for electronic defamation, which in turn leads us to determining what is meant by defamation through social media sites, there are no comprehensive and exhaustive definitions of the term; some of them are limited to its written form. Through reviewing the studies and research that addressed the subject under examination, some researchers have defined electronic defamation as follows: “The offender’s use of written phrases broadcast through the information network or any technological means with the aim of harming another’s reputation and wounding his dignity,” or it is “the use of the Internet to publish anything that would harm the dignity and reputation of others by using the means of electronic publication and communication available via the Internet.”¹

Electronic defamation has also been defined as: “Electronic media consisting of slander, attributing a false accusation, or publishing a false statement or true but private information about a person or entity by using various websites on the Internet, for the purpose of achieving material benefits or inflicting harm on the victim.”²

From the above, the definition of defamation through social media can be stated as follows: any expression issued by a person that includes negative information that is true or misleading, or false rumors, or falsification of events or facts, and its dissemination through one of the social media platforms in written, visual, or audio form, with the intent of harming the reputation of a person, violating his privacy, intruding on his personal life, or offending him. It makes no difference whether the person defamed is an institution, an authority, or a group of individuals.

Axis Two: Criminalizing Defamation of Individuals by Violating Their Private Life

To begin with, the Algerian legislator has not dedicated specific provisions to the crime of defamation, whether in the Penal Code or in special criminal statutes. However, it has established protection for individuals against various violations affecting their private life, influenced in this regard by the French Penal Code. These violations or assaults are generally considered a form of defamation against individuals, as they lead to publication and enable the public to access content that contains an offense against the victim or harms their honor, dignity, reputation, or social standing.

The criminal protection granted to individuals against attacks on their private life comes as a result of the tremendous development witnessed in communication and media means, as well as the widespread use of modern means of communication and information technologies. All of this has led to the inadequacy of the traditional provisions contained in the Penal Code to confront new forms of assault that are not covered by the existing texts, which were established

¹ Zina Mohammed Saadoun Al-Samarani, “The Role of the Internet in the Spread of the Crime of Defamation,” *Dijlah University College Journal*, Vol. 6, No. 5, special issue of the Fifth International Scientific Conference on Human, Social and Applied Sciences, held on 16–17/9/2023, Istanbul, Turkey, December 2023, p. 76.

² Abdel-Salam Stin, *Op.Cit.*, p. 207.

to protect the sanctity of the individual, whether directly or indirectly, such as those relating to criminalizing violation of the inviolability of the home, disclosure of secrets, and others.¹

The protection of the inviolability of private life is one of the fundamental principles enshrined in many international instruments, foremost among them the 1948 United Nations Universal Declaration of Human Rights in its Article 12, as well as the 1966 International Covenant on Civil and Political Rights in its Article 17.² On this basis, the Algerian legislator proceeded to constitutionalize the principle of protecting the inviolability of private life starting from the 1996 Constitution, and reaffirmed it as a fundamental principle following the 2020 constitutional amendment in its Article 47, which states: “Every person has the right to the protection of his private life and his honor...”.

Criminal protection of individuals in this regard was embodied by the promulgation of Law 06/23 of 20 December 2006, amending the Penal Code, through the insertion of Articles 303 bis to 303 bis 3. These provisions included three forms of criminalization, with the aim of providing the necessary protection for individuals against various criminal acts that constitute a violation or infringement of their private lives. Moreover, through this criminalization, the legislator sought to address technological developments and to align legal provisions with new developments that may arise in this field. In addition to encompassing several criminal behaviors that infringe upon individuals’ private lives, the legislator also considered that committing these criminal acts may occur by any means or technique whatsoever. Consequently, the assault on individuals by defaming them or violating their private lives through social media platforms refers us to the substantive criminal provisions established in the Penal Code, namely Articles 303 bis to 303 bis 3 thereof.

First: Elements of the material aspect of the crime of violating individuals’ right to privacy

The criminal conduct of the crime of defamation against individuals by infringing on their private lives is realized when the user, through social media, harms and distorts the reputation of individuals by publishing what may be directly disseminated about them, or by broadcasting false news, facts, or events related to their private lives, or by targeting their families or the nature of their work. This is achieved when the user commits various material acts such as publishing, displaying, or distributing images of the victim that may be offensive to public decency, or publishing audio clips of the victim’s private conversations and making them visible and accessible to a large number of people, driven by motives of revenge, malice, or dominance.³

The criminal conduct of this crime committed via social media is embodied either in the form of images, videos, or audio messages whose content is harmful to the victim’s reputation or constitutes a violation of his privacy and the sanctity of his private life if they are published or disclosed on one of the social media platforms and made public and available to the public. Accordingly, the criminal conduct of the crime in question requires the condition of public

¹ _ Ezzeddine Tabash, Explanation of the Special Section of the Penal Code: Crimes Against Persons and Property, 2nd ed., Balqis Publishing House, Dar El Beida, Algeria, 2023, p. 122.

² _ Ibid., p. 123.

³ _ Saif Majid Al-Ani, The Criminal Responsibility of the User for Crimes of Social Networking Sites: A Comparative Study, n.p., Duroob Al-Ma’rifa for Publishing and Distribution, Alexandria, Egypt, 2022, p. 116.

dissemination of the content, and the criminal conduct of the crime appears in several criminal acts and forms of assault contained in Articles 303 bis and 303 bis 1 of the Penal Code.

By referring to Article 303 bis of the Penal Code, we find that it contains two forms of criminalization, through which it limits the scope of private life intended to be protected: the first is the right to the confidentiality of conversation, and the second is the right to the confidentiality of image. It criminalizes the forms of infringement against them as follows:

1_ Interception: this means secretly listening, by any means whatsoever and of any kind, to speech of a private or secret nature made by a person, or exchanged between two or more persons, without their consent. As for image interception, it is the technical process by which, using a camera device, a picture is taken of a person or several persons who are present in a private place or in a particular situation that differs from the situation in which these persons would appear if the place were public. The intercepted private conversation or image may then be subject to modification or alteration by using technical devices or software designed for that purpose, in a way that may distort the context or content of the conversation and lend it a different interpretation, or they may remain in their natural state. In both cases, the criminal conduct of this form of infringement is realized.¹

2_ Recording: this means retaining a person's image or private conversation on tape or on material prepared for that purpose, in order to view it later, or to broadcast or display it. Outside the scope of criminalization are drawing and engraving the image on paper or glass, since the legislator required, under Article 303 bis of the Penal Code, that the recording be carried out by a specific technology. Among such means are hard drives, optical and compressed discs, and electronic media (CD-R, DVD, USB).²

3_ Transmission: This refers to transferring a recorded conversation or a captured image from the place where it was recorded or taken to another place. For example, recording a private conversation between two people and transmitting it to the media through a television broadcast, or taking a photograph of a person that has a private nature and transferring it to a smartphone or computer, and then to internet sites and social media platforms, in such a way that the act of transmission makes it possible for others from the public to view it.

As for the means used, we find that the Algerian legislator followed the example of the French legislator, as no specific means were determined by the phrase "by whatever technique," and the use of this expression was intended to broaden the scope so as to encompass all modern scientific means or any devices that may appear in the future.³ Thus, the legislator keeps pace with scientific developments in the field of communications and information, and accordingly, social media platforms fall under the generality of the expression used.

¹ _ Sarah Mehnawi, "Criminal Protection of the Right to Privacy in Algerian Legislation," *Journal of Legal and Social Sciences*, Vol. 5, No. 2, Algeria, June 2020, p. 190.

² _ Haroun Noura, Baraza Wahiba, "The Right to Privacy over One's Image between the Requirements of the Right to Respect for Private Life and the Necessities of Crime Detection," *Annals of the University of Algiers 1*, Vol. 35, No. 3, Algiers, 2021, p. 314.

³ _ Abdelrahman Khalfi, "The Right to Private Life in Algerian Legislation (A Foundational, Analytical, and Comparative Study)," *Journal of Research and Studies*, Issue (12), Year (8), Algeria, Summer 2011, p. 172.

In addition to the above, the Algerian legislator stipulated in Article 303 bis of the Penal Code, for the crime to be established, that the act of capturing, recording, or transmitting a private conversation or image must be carried out without the victim's consent. This is an essential element of the material component of the crime, and its absence means that the elements of the material component are incomplete, and thus the criminal liability of the perpetrator does not arise. This is because the purpose of criminalizing these acts is to protect individuals' privacy and private lives from any violation that may affect them, as every person has aspects they do not wish to reveal. However, if these acts are carried out with the concerned person's consent and approval, this removes the criminal character from the act. The determination of this element is left to the trial judges.

Second: Elements of the material constituent of subsequent crimes to the original crime:

The forms of criminalization stipulated in Article 303 bis of the Penal Code constitute preparatory or preliminary criminal acts for the crime of defamation via social media. There are crimes that follow the crime of taking, recording, or transmitting private conversations, namely those set forth in Article 303 bis(1) of the Penal Code, whereby the Algerian legislator criminalizes three forms of criminal conduct resulting from the original crime punished in Article 303 bis. These forms are the retention, disclosure, or use of the private conversation or image obtained unlawfully, and it thus appears that committing these acts constitutes the crime of defamation of persons by violating their private life via social media.¹

And this occurs through engaging in criminal activity that takes the form of possession, disclosure, or use. As for possession, it means that the offender deliberately keeps a document belonging to a person, or a picture, or a recording, while being aware of the content of that recording or picture, and provided that the offender obtained the document by unlawful means such as eavesdropping, recording, transmission, or taking photographs.²

This situation arises whether the offender keeps the document for himself or for someone else. Here, the question is raised regarding the offender's purpose in retaining the document or picture. In truth, from the standpoint of logic and reason, it is inconceivable that the offender's purpose in keeping it is a noble one; therefore, it is more accurate to say that his intent is unlawful. He either uses the document as a means of threat, blackmail, or pressure on the victim, or keeps it in preparation for broadcasting and publishing it later at a time he deems appropriate.

The second form, which is disclosure, refers to broadcasting, publishing, and displaying the document that contains the private conversation or picture in a manner that makes it visible to the public, using means of publication such as written or electronic messages, media outlets, the internet, and social networking sites through chat rooms, groups, and pages. This allows an unlimited number of people to view the content of the document, and to circulate and re-share it with other users, thereby widening the scope of awareness of that content. In doing so, the offender commits the crime of defamation of individuals by violating their private lives.

As the second image may overlap with other criminal acts that include moral multiplicity in some crimes, and the matter relates in particular to the crimes of insult and defamation, as the

¹ _Ezzeddine Tabash, Op.Cit, p. 133.

² _Abdelrahman Khalfi, Op.Cit, p. 183.

perpetrator may attach to the document in question while publishing or broadcasting it via one of the social media sites phrases or writings that include an infringement on the victim's honor or consideration or dignity, or attributing an indecent incident or incidents to him that harm him or his family or his status.¹

As for use, it is meant by it the use of that document or speech or image for a specific purpose, such as the perpetrator taking a photo of a girl for personal purposes or to satisfy sexual desires, which is personal use, and the use may be after broadcasting and publishing the document or private speech or image through one of the publishing means and via social media platforms, so that the use here is by another person, which is the most widespread and prevalent use especially on social media sites , and examples of that include recording visual clips or taking photos or audio recordings of ordinary people or those with mental or intellectual disabilities such as those with Down syndrome or the elderly and publishing them on one of the digital platforms, and these clips or photos are of a humorous or sarcastic nature, and after their popularity and the expansion of their scope and circulation among users they are often re-employed in a humorous context and their content is projected onto specific events and incidents in reality, and this process is done through the use of composition, merging, and cutting tools with the help of software and technologies that serve this purpose, and then outputting that document or video or image in the context desired by the user, to be then published and circulated in the virtual space.²

Third: The mental element of the crime of defamation of persons by violating their private life:

From the phrase “anyone who intentionally” contained in Article 303 bis of the Penal Code, it is understood that the crime of capturing, recording, or transmitting a person’s image or private conversation is an intentional crime that requires, for its occurrence, the presence of general criminal intent with its two elements: knowledge and will. Accordingly, the perpetrator must be aware that undertaking any of the acts set out in Articles 303 bis and 303 bis 2 of the Penal Code constitutes an infringement and violation of the sanctity of private life and an intrusion upon privacy in contravention of the provisions of criminal law, and that the perpetrator’s (user’s) conscious and free will, free from any defects, must be directed toward engaging in the criminal activity represented in recording, capturing, transmitting, retaining, publishing, or using, with his presumed knowledge that this may cause harm and injury to others or fear and psychological impact on the victim.

However, the criminal intent in the acts provided for in Article 303 bis differs somewhat from the criminal intent for the situations and acts provided for in Article 303 bis 1 of the Penal Code, as its establishment requires the perpetrator who retains, publishes, or uses the private conversation or image to know that they were obtained through one of the forms of criminal conduct set out in Article 303 bis, namely capturing, recording, or transmitting the private conversation or image without the victim’s consent.³

¹ _ Ezzeddine Tabash, Op.Cit, p. 134.

² _ Ibid, p. 134.

³ _ Ezzeddine Tabash, Op.Cit, p. 134.

Once criminal intent is established through its two elements, knowledge and will, the offense is thereby realized, and the motives or reasons behind committing the criminal conduct are of no consequence. It makes no difference whether the motive for committing the crime is admiration, the desire to cause harm to the victim and injure him by defaming him, obtaining a benefit, or even mere curiosity.¹

Fourth: Penalties prescribed for the crime of defaming individuals by violating their private lives:

One of the characteristics of the crime of defaming individuals by violating their private lives is that it harms personal interest more than public interest. Nevertheless, the Algerian legislator has subjected it to the same policy applied to crimes affecting honor and reputation. On the one hand, the initiation of public prosecution is not made conditional upon a complaint, and on the other hand, the victim is allowed to exercise the right to waive the case at any stage it is in, whether in the original crime related to the recording, taping, and transmission of conversations and images, or in the resulting crime in the event of prosecution for possession, publication, or use. The victim's pardon puts an end to all prosecution in accordance with the last paragraph of both Articles 303 bis and 303 bis 1.²

In both cases, the Algerian legislator classifies it as a misdemeanor punishable by imprisonment from six (6) months to three (3) years and a fine from 50,000 to 300,000 Algerian dinars, with mandatory confiscation of the means used to commit the crime in accordance with paragraph two of Article 303 bis of the Penal Code. The same article also allows the court to impose deprivation of one or more of the rights listed in Article 9 bis 1 for a period of five years, as well as the possibility of publishing the conviction judgment in accordance with Article 18 of the Penal Code as supplementary penalties.³

It is observed from the preceding provisions that the Algerian legislator has granted the judge discretionary power in determining the penalty prescribed for the offense, whether in relation to custodial sentences or financial penalties in the form of fines. This is contrary to the French legislator, who has established a one-year prison sentence for anyone who commits the offense of taking, recording, or transmitting an image without the permission or consent of its owner, in addition to a financial fine set at 45,000 euros. The judge is required to impose this fine alongside the prison sentence, leaving no room to exercise discretionary power, in accordance with Article 226-1 of the amended French Penal Code.⁴

The penalty is increased under French law to two years' imprisonment and a fine of 60,000 euros if the acts are committed by the victim's spouse or fiancé, or by a person bound to the victim by a civil solidarity pact, as well as when the acts are committed against a person representing public authority or holding a public office, or against a member of their family, as stipulated in the last two paragraphs of Article 226 of the French Penal Code.

¹ Haroun Noura, Baraza Wahiba, Op.Cit, p. 315.

² Ezzeddine Tabash, Op.Cit, p. 134.

³ Ibid, p. 134.

⁴ Article 226-1 of the French Penal Code, amended by Law No. 2024-247 of March 21, 2024 - art. 4, Legifrance, French Republic, available at the following link: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000049312755, consulted on: 03/09/2024, at 5:30 a.m.

The Algerian legislator punishes the attempt to commit the acts provided for in Articles 303 bis and 303 bis 1 with the same penalties prescribed for the completed offense.

With the growing seriousness of crime and its spread in the environment of social media, and the increasing number of attacks targeting individuals and violating their private lives, the Algerian legislator has introduced criminal penalties and criminalized new forms of crime by creating Articles 333 bis 4 to 333 bis 7 of Law No. 24-06 amending the Penal Code, issued in 2024. The Algerian legislator tightened the penalty prescribed for acts of taking or obtaining photos, video clips, electronic messages, or any private information of any person by any means whatsoever, as soon as the offender publishes or broadcasts their content, or threatens to do so, without the permission or consent of the owner. The penalty was set at imprisonment from one year to five (5) years and a fine ranging from 100,000 to 500,000 Algerian dinars, in accordance with paragraph 1 of Article 333 bis 4 of the Penal Code.

The Algerian legislator also penalizes the use of electronic images, or their editing, transmission, copying, or publication with the intent to harm others, with imprisonment from three (3) years to seven (7) years. Here, the legislator has limited the sanction to imprisonment only, without imposing a fine or other supplementary penalties.¹ In the event that the above-mentioned acts are committed by exerting pressure on the victim with the aim of obtaining material benefits, a service, or any other consideration, whether direct or indirect, the penalty is doubled, pursuant to paragraph 2 of Article 333 bis 4 of the Penal Code.

In this way, the Algerian legislator has addressed the most widespread and prevalent forms of this crime, especially through social media platforms, and has filled the legislative gap that used to surround this offence when it was committed using technical or artistic tools made available to users by those means, such as the “screenshot” technique, which has become a real problem and source of fear for users and has turned into a means of defamation and harm to individuals. It is exploited to capture images of private text conversations and what takes place in chat rooms and modern communication applications, and then stored for future use or transferred to third parties or leaked and publicly shared on other digital platforms and media. The danger increases due to the possibility of editing screenshots or images, fragmenting and cutting parts of them in order to remove their content from its real context and highlight a specific part that serves the goals of the person who captured or obtained them, whether for the purpose of damaging the reputation of individuals, defaming them, or harming their interests or private lives.

The Algerian legislator has also become aware of the increase of this criminal phenomenon among those bound by a marital tie or within a lawful relationship, as social media platforms have become a receptive environment for publishing and broadcasting everything that represents the privacy of both parties, whether as a result of disputes, out of revenge, or for any other reason. The Algerian legislator has stipulated a penalty of imprisonment from five (5) years to ten (10) years for any husband, fiancé, or fiancée who broadcasts or publishes disgraceful or indecent images of his spouse, fiancée, or her fiancé, or threatens to do so by any

¹ Article 333 bis 4/1 of Law No. 24-06 dated 19 Shawwal 1445 corresponding to April 28, 2024, amending and supplementing Ordinance 66-156 dated June 8, 1966, containing the Penal Code, Official Gazette, No. 30, dated 21 Shawwal 1445 corresponding to April 30, 2024, p. 17.

means whatsoever. The perpetrator of these acts is subject to the prescribed penalty whether he commits them during the subsistence of the marital bond or engagement, or after it has ended.¹

The reason for the harsher penalty in the last form of the crime, in our estimation, lies in the nature of the special relationship between the parties involved, which is, so to speak, deeper than others. This makes the harm resulting from these acts more serious, with greater psychological and social impact on the victim, in addition to its repercussions on the family unit and family relations.

Furthermore, the legislator has stipulated the mandatory confiscation of the means used to commit the crimes provided for in Articles 333 bis 4, bis 5, and bis 6, including devices and software, as well as the proceeds obtained from them, and the closure of the website or electronic account used in committing the crime or blocking access to it. If the crime is committed in premises or a place that was exploited in its commission, it shall be ordered closed if its owner was aware of the criminal activity.²

From the above, we can conclude that the Algerian legislator imposes criminal sanctions on perpetrators of crimes that infringe upon individuals' private lives and violate their sanctity and privacy. These sanctions consist of principal custodial penalties, namely imprisonment, and financial penalties, namely fines, in addition to mandatory supplementary penalties, specifically confiscation, which the judge must impose alongside the principal penalty. It is also permissible to impose other optional supplementary penalties, such as deprivation of one or more national, civil, or family rights, or ordering the publication of the conviction judgment. Penalties are doubled if the purpose of the criminal activity is to obtain benefits from the victim by exerting pressure on him or her, and they are further aggravated if the activity is committed by parties bound by marriage or engagement at any stage of the relationship.

Conclusion :

This study has concluded that defamation through social media is not a fundamentally new phenomenon; rather, it is a digital extension of old social behaviors such as backbiting and gossip. However, the technological medium has multiplied its danger, broadened its impact, and made it more difficult to remedy its consequences. It has become clear that the Algerian legislator, although not providing a specific provision that defines defamation or criminalizes it by name, has surrounded private life with graduated criminal protection. This began with Articles 303 bis and 303 bis 1, which criminalized capturing, recording, and transmitting, then keeping, publishing, and using, and reached a more specialized stage with Articles 333 bis 4 and subsequent ones introduced by Law 24-06, which targeted the most common forms in the digital environment, such as publishing conversations and screenshots, and defamation between spouses and fiancés.

Results :

_ Algerian legislation does not include a definition of the crime of defamation, nor an independent provision bearing this description; instead, it addresses it within offenses against

¹ _Article 333 bis 5 of Law No. 24-06, Op.Cit, p. 17.

² _Article 333 bis 7 of Law No. 24-06, Op.Cit, p. 17.

private life, which makes the legal characterization of the facts dependent on the judge's discretion.

_The phrase "by any technique whatsoever" contained in Article 303 bis has a flexibility that allows it to encompass digital means and any that may emerge, which brings social media platforms within the scope of criminalization without the need for amendment.

_The absence of the victim's consent is considered a fundamental element of the material component of the original offense, and knowledge of the unlawful source of the content is deemed a condition for the existence of criminal intent in offenses of possession, dissemination, and use, while motive is irrelevant.

_The crime of defamation is actually realized at the stage of disclosure (public publication), whereas capturing, recording, and transmitting are preparatory acts that may overlap morally with the crimes of insult and slander.

_Law 24-06 significantly increased the severity of penalties (imprisonment from one to five years, from three to seven years, and from five to ten years _depending on the form), established the confiscation of means and the closure of accounts and websites, and doubled the penalty when the act is associated with blackmail, which reflects an awareness of the gravity of the phenomenon.

_The legislator maintained the effect of the victim's pardon in terminating prosecution for Articles 303 bis and 303 bis 1, which may open the door to pressure or bargaining with the victim.

_The fine prescribed in Articles 303 bis and 303 bis 1 remains limited compared to the revenues that some defamers derive from this activity.

Recommendations :

_Legally defining online defamation within the Penal Code or in a specific provision on cybercrimes, to unify judicial practice and prevent confusion with slander and insult.

_Introducing a special aggravating circumstance when the act is committed via digital platforms or against vulnerable groups such as children, persons with disabilities, and the elderly, with explicit criminalization of exploiting them in satirical content.

_Addressing modified or fabricated content (such as deepfakes and composites) through a clear legal provision, given the increasing use of artificial intelligence in distortion and context manipulation.

_Reconsidering the effect of pardon in a way that balances the victim's rights with the need to protect them from coercion, for example by subjecting it to judicial safeguards in cases involving blackmail.

_Strengthening procedural mechanisms by training judges and judicial police officers specialized in digital evidence, expediting cooperation with platform providers to preserve evidence and block content, and activating international judicial cooperation due to the cross-border nature of such acts.

_Establishing effective mechanisms for civil redress, foremost among them the right to delete content and erase the digital footprint (the right to be forgotten), in addition to compensation.

_Prevention and awareness through educational and media programs that entrench a culture of respect for privacy and digital responsibility, since criminal deterrence alone is not sufficient.

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