

The legal and practical issues raised by the elements of crimes committed through social media platforms



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Abstract

Crimes committed through social media raise several theoretical and practical challenges related to the difficulty of establishing the material and moral elements of these crimes, as they are perpetrated within a technical logic in a virtual stage different from the traditional crime scene. The complexities these crimes pose make dealing with them challenging for experts and judges, especially concerning determining the criminal responsibility of the perpetrators.

This study aims to identify the challenges associated with crimes committed through social media, explore methods of addressing and dealing with them, and subsequently extract their material and moral elements. Additionally, it examines the extent to which the element of publicity is available in these crimes as a presumed pillar and essential element in attributing the committed act to its perpetrator, the user.

Keywords

Social Media ;
Virtual Stage ;
User ;
Criminal Responsibility;
Element of Publicity.

الكلمات المفتاحية

المسرح الافتراضي؛
المستخدم؛
المسؤولية الجزائية؛
عنصر العلانية؛
وسائل التواصل
الاجتماعي.

الإشكالات القانونية والعملية التي تثيرها أركان الجرائم الواقعة عبر وسائل التواصل الاجتماعي

ملخص

تثير الجرائم الواقعة عبر وسائل التواصل الاجتماعي عدّة إشكالات نظرية وعملية تنصب على صعوبة استخلاص العناصر المادية والمعنوية لهذه الجرائم كونها ترتكب بمنطق تقني في مسرح افتراضي يختلف عن مسرح الجريمة التقليدي، والإشكالات التي تثيرها هذه الجرائم يجعل التعامل معها من المهمات الصعبة عند أهل الاختصاص وقضاة الموضوع، لاسيما من ناحية تقرير المسؤولية الجزائية لمرتكبيها . وتسعى هذه الدراسة إلى الوقوف على الإشكالات التي تعترض الجرائم الواقعة عبر وسائل التواصل الاجتماعي وسبل معالجتها والتعامل معها ومن ثم استخلاص العناصر المادية والمعنوية لها، وكذا البحث في مدى توافر عنصر العلانية في هذه الجرائم كركن مفترض وعنصر جوهري لإسناد الواقعة المرتكبة إلى فاعلها وهو المستخدم.

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I- Introduction :

The pursuit of keeping up with technological advancements in the field of information and communication technology has become the concern of many countries and governments. With the widespread use of communication and information technologies, modes of communication and interaction have shifted from the physical tangible reality to the virtual space. The individual has transformed from a physical person with a real existence to a digital or electronic user whose actions, transactions, and management of life depend on digital performance.

The reality has shown that social media has gained the lion's share of the information society and information and communication technology revolution, as evidenced by the usage rates of these platforms, which have exceeded all expectations. This is attributed to the technical and technological services provided by social media in the field of communication and knowledge, achieving speed and synchronicity among its users, not to mention being an outlet for many users to express their opinions, tendencies, and lifestyle.

Despite the many positives brought about by this technology in facilitating the transfer and exchange of information, visual communication, and other advantages, it has become a stage for many newly emerging forms of crime as a result of its misuse. Crime has now entered into a reciprocal relationship with technology. The more technological tools for social media evolve, the higher the rates of crime committed through these platforms. From a legal perspective, this has led to the inability of traditional criminal texts to confront the new forms of crime committed in the virtual environment. This in turn makes it difficult to extract the material and moral elements of these crimes in the absence of a regulatory framework for social media platforms. Crimes committed through these platforms are based on a technical logic and take place in a virtual stage. The criminality therein is centered around an electronic system that is misused, causing the tangible impact to disappear and be replaced by moral impact. All of this complicates dealing with this type of crime, especially in terms of researching its constituent elements.

Based on the foregoing, the subject raises a central question that represents the problematic aspect of the study, namely: How can the legal issues raised by the components of crimes committed through social media be addressed and their elements extracted?

In order to answer the posed question and study the subject, we primarily relied on descriptive and analytical methods in elucidating the issues raised by the elements of complex crimes committed through social media and clarifying some objective aspects of the study.

The study is divided into three main axes: In the first axis, we will address the components of the physical aspect in crimes occurring through social media in terms of clarifying the issues raised by the elements of this aspect. As for the second axis, we will discuss the moral aspect as an element for establishing the criminal responsibility of social media users and the issues surrounding it, while we dedicate the third axis to examining the availability of the element of publicity in crimes occurring through social media.

II – The material elements in crimes committed through social media:

One of the fixed legal principles, agreed upon by jurisprudence and judiciary, is the principle of personal criminal responsibility¹. which dictates that only the person who committed the criminal act or participated in its commission as an actor or accomplice shall be criminally liable². This general rule represents one of the fundamental principles on which modern criminal legislation is based. Only the human being is criminally responsible for the acts deemed criminal by the law, as legal texts are directives in the form of commands to perform certain actions at times and to refrain from certain actions at other times. These directives are addressed by the legislator to humans as the created beings whom God has favored over many others, entrusting them with the responsibility of reason. Therefore, it is the human being who understands the nature of these directives, their contents, and the consequences that may arise from violating the legislator's commands and prohibitions, whether the violation is by action or by refraining from performing an act that may harm the interests that the legislator deemed worthy of criminal protection, which may harm both public and private social interests³.

In order for criminal responsibility to be imposed on the perpetrator of a crime, a set of elements recognized by law must be present, including the material and moral elements in addition to the legal element that attributes criminality to the act. These elements, when present, lead to consequences that result in the commission of the crime and subsequently the imposition of criminal responsibility on the perpetrator. The prevailing law requires the presence of these elements in all crimes regardless of their type or nature. However, the nature of these elements varies between traditional crimes and modern crimes such as those committed through social media platforms. Dealing with the former occurs in a physical tangible space, whereas the latter finds its place in a digital or electronic space, starting from the commission of the

criminal activity, through the use of a social media platform as a tool or electronic means in committing that activity, and culminating in the direction of the will towards completing the crime and making it visible to the public, as is the case in most crimes committed through electronic platforms, the subject of the study.

Before delving into the complications raised by the physical aspect in crimes occurring through social media, it is necessary to define the meaning of these technical means, as they are defined as: "Electronic social networks dedicated to social interaction, where they are open platforms for everyone to exchange dialogue, opinions, and write whatever they wish to share or publish with others from all around the world"⁴. they are also a group of websites provided by the Internet as well as social applications available on mobile phones connected to the Internet, which provide an opportunity for individuals who share common links and share the same hobbies and interests, to communicate with each other and create a space for expressing their opinions, ideas, and orientations freely⁵.

The European Economic and Social Committee has defined social media as: "Online services aimed at creating groups of people and connecting them, where these people share common activities and interests, or wish to know about the favorite things or activities of others, and these services offer them a range of functions that allow interaction between them."⁶.

As for crimes occurring through social media, they are any unlawful act stemming from a criminal intent of the user resulting from the misuse of social media, for which the law decides a penalty or precautionary measure.

Each crime requires material elements embodying the criminal intent of the perpetrator, known as the material component of the crime representing its external aspect. In every traditional crime, there must be a material entity expressing its material reality, and this entity does not appear to the outside world and has no existence except through the person's performance of tangible material acts or refraining from them as defined by the criminal texts in the prevailing legislation⁷. However, committing a crime in virtual reality, whether it is a crime on social media or a cybercrime, requires a technical logic consisting of material behavior, criminal outcome, and a causal relationship between them, as these elements constitute the material essence of crimes. One of the practical problems raised by crimes committed on social media platforms and the responsibility of their perpetrators is the nature of the material element in them. This is because the criminalization focuses on an electronic system that is misused or unlawfully accessed, with the unlawful use or misuse having a tangible material impact that appears in multiple forms, constituting crimes that occur in cyberspace, including social media platforms⁸.

The material element represents one of the pillars on which crimes committed through social media platforms are based, and hence the resulting criminal responsibility. Its absence prevents the commission of these crimes and negates the crime from the outset, as it is the physical representation through which the unauthorized use of social media platforms and its criminal images appear, embodying the actual illegitimacy of this activity⁹.

In the manner indicated the material element of a crime generally consists of the commission of an intentional act resulting in a criminal consequence linked by a causal material connection. However, the material element in crimes committed on social media by its users is based on the technical relationship between the perpetrator or user and the means used and the nature of the medium in which the crime is committed. If the material elements constituting the material pillar do not pose any problem regarding the issue of holding traditional criminals accountable, the matter is not the same regarding crimes committed through social media platforms. There are many issues related to the material elements of these crimes, which necessitates addressing them through study and analysis of the constituent elements of the material pillar according to the following elements:

II.1.Criminal behavior or activity:

Refers to that external physical activity that emanates from the perpetrator and is capable of causing the result criminalized by the law¹⁰, representing the common denominator behavior among all types of crimes that require the commission of criminal behavior for their occurrence and those that require the occurrence of a criminal result resulting from it, and therefore there is no material element without behavior and no crime without a material element¹¹.

Criminal behavior is considered the actual and practical translation of criminal thinking, as well as a translation of the criminal intent intended to be achieved as well. Without criminal behavior, there is no punishment, so intent must be coupled with execution, as without behavior, it remains mere internal thoughts, and execution or refraining from execution brings it into existence, and positive behavior, i.e., action, is equivalent to negative behavior, i.e., refraining from action, as long as the behavior is capable of achieving the criminal result criminalized by the law and punishing its perpetrators¹².

The activity or criminal behavior in crimes occurring on social media and internet crimes in general requires the presence of a virtual environment and connection to the internet network, as well as knowledge of the beginning, commission, and result of this activity¹³. This activity takes two forms: the first is the form of positive behavior that requires a simple mental and physical effort translated into movements that the perpetrator makes with the aim of attacking

the interest protected by the legislator, such as the perpetrator hacking into the accounts of other users on social media platforms in order to obtain data or information related to their private lives and using it for unauthorized purposes including defamation, extortion, and others, The second form is negative behavior, which is the refusal to comply with a lawful order. It is possible to commit a crime by refraining from performing a specific act that should have been undertaken, and this refusal violates a legislative rule. Examples of this refusal in crimes occurring on social media platforms include not reporting a crime that has taken place on social media platforms in order to protect the rights and privacy of others¹⁴.

By doing so, the criminal responsibility of the user on social media arises through their behavior on these platforms whenever what they broadcast or publish constitutes an unlawful act that violates the legal regulations governing these platforms¹⁵. Therefore, they are liable for criminal prosecution for their unauthorized use of these platforms or for infringing upon an interest worthy of criminal protection under the law.

II.2.Criminal Outcome:

This means the material and legal consequences resulting from the commission of a criminal act, namely the assault on the interest protected by the law¹⁶, It is understood from this that the criminal result as previously described has two implications. The first is a physical material implication that can be sensibly perceived, embodied in the impact or effects resulting from the behavior, and the result in this sense is a change that occurs in the external world. The second implication is a legal moral implication that consists of aggression against the right or interest deemed worthy of criminal protection by the legislator¹⁷.

The result is attributed to behavior if the latter was the cause of its occurrence, as the criminal act must be the one that led to the realization of the result, and therefore the result would not have occurred if the perpetrator had not engaged in that criminal behavior. This does not mean that the behavior the perpetrator took alone led to the realization of the result, and thus one of the factors that led to it may be among other factors that collectively contributed to its achievement¹⁸.

It is evident that the crimes committed by the user through social media are expressive crimes, and the result in them as an effect of behavior is not a tangible material occurrence, but rather a non-tangible moral sensation. Therefore, the legal implication of the result is relied upon without its material implication, and in this regard, the crime of defamation and insult through social media by the user is attributing an event to another if it were true, it would have warranted his contempt by his compatriots, The material implication of the outcome and the psychological impact it left on the victim's psyche are not considered, thus crimes committed through social media are formal crimes that do not require a specific outcome to establish criminal liability on the user of these platforms¹⁹.

The criminal outcome regarding crimes committed by the user finds its place in the virtual world and its impact can extend to the physical world. Examples include drug trafficking through promotion on social media platforms, where the promotional activity occurs in the virtual environment, while the sale and delivery as another criminal activity of the crime occur and take place in the real world.

II.3.Causal relationship:

The third element of the material component represents the link or relationship between criminal behavior and its outcome, where criminal behavior is the cause of the criminal outcome²⁰, meaning the connection between the act and the result, which is the cohesive link between the criminal act occurring on social media platforms and the criminal outcome achieved through it.

The causal relationship aims to link the activity or behavior to the criminal result, so that the main cause of the criminal result is the activity or behavior carried out by the actor, and therefore, activities such as defamation, slander, privacy violation, intrusion, or extortion as unlawful activities, lead to the occurrence of an assault on information, data, individuals, and their private lives, and these activities are the direct and main cause of the damage, whether material or moral²¹.

It should be noted that, the causal link in its legal concept as an element in the material aspect of the crime differs from the concept of criminal intent considered in turn as an element in the moral aspect, as the former has an objective nature derived from the material characteristics of the behavior itself in causing the prohibited result legally, while the latter, i.e, criminal intent, has a subjective moral nature derived from the mental state of the perpetrator in terms of his knowledge of the legality of the behavior to cause the result and his desire and intention to achieve that²², This will be explained in detail later.

It is also, The causal relationship in crimes committed through social media can be divided into two categories: direct causation is established when the act constituting the material element of the crime is the direct cause of the criminal result, such as a user sending an electronic message containing a virus to another user, resulting in the infection of the latter's device and consequently the loss of data stored on the device. In contrast, the indirect causal relationship is established when the act constituting the material element of the crime indirectly causes the criminal result to occur, through a series of events leading to the commission of the criminal result, such as a user creating an account on a social media platform in the name of another person or user, and using this account to disseminate fake news, false information, or misleading information that could incite chaos and violence. In this case, we are dealing with an indirect causal relationship alongside the transfer of the criminal act from the virtual reality to the tangible material reality.

When discussing the physical elements of crimes committed through social media, it is important to mention an important issue related to the nature of the perpetrator, namely the user. Their criminal behavior does not require effort or substitution to be carried out, as they are knowledgeable about these means and can fully envision committing their act, as the stage of their crime is virtual. Thus, they can test their crime before committing it and take advantage of gaps or vulnerabilities that may allow them to be identified or detected. This poses another obstacle and challenge in the process of extracting the physical elements, especially the difficulty of estimating the extent of the damage caused by the user's criminal behavior, as their behavior may spread and expand rapidly in the virtual environment, making it difficult to comprehend the criminal result caused by their behavior.

III- Moral Element as a Component for Establishing Criminal Liability of Social Media Users:

The mere commission of the physical act of a crime as mentioned above is not sufficient to establish criminal liability on the part of a social media user. Rather, the actor (the user) must be aware of the elements of the crime and willing to commit it, which is commonly referred to as the moral element. This is translated as the psychological aspect of the perpetrator's behavior (the user), as modern criminal law has settled on the principle that the material aspects of the crime do not establish liability or warrant punishment unless accompanied by the psychological elements required by the nature of the crime²³.

The moral element is the mental or psychological path of the perpetrator as the axis of criminal law, as within this pillar, all elements of criminal responsibility are available, from sinful knowledge and will, criminal intent along with the recognition of the state's right to punishment based on these elements²⁴. This pillar is defined as : "The relationship that links the material aspects of the crime and the personality of the perpetrator, and this relationship is the subject of liability in the sense of deserving punishment, hence the law's blame and punishment are directed towards it²⁵.

From here, it can be said that the criminal responsibility of the actor is based on a psychological link between the actor and the result, so that the behavior of this actor can be attributed as wrong or sinful. Committing the material elements of the crime is not sufficient in itself to prosecute its perpetrator criminally²⁶, but it is necessary to have criminal intent indicating the direction of the perpetrator's will to engage in the criminal behavior punishable by law²⁷.

Considering that crimes committed on social media by its users are intentional crimes, they are committed with criminal intent, and it is not conceivable that these crimes are committed accidentally, not to mention that the essence of crimes is to be intentional, and it is established that the legislator requires in these crimes the presence of general intent, and some crimes may require the presence of specific intent in addition to general intent, with each based on the elements of knowledge and will.

III.1.Extraction of criminal intent in crimes committed through social media:

Criminal intent in general is manifested in the intention directed towards violating criminal law, or in the will directed towards committing a criminal act with the knowledge of the criminalization of this act. It encompasses the perpetrator's knowledge that the act they committed is contrary to criminal law. Consequently, this intent is not fulfilled unless the perpetrator (user) is aware of the basic elements of committing the crime, whether related to their criminal behavior or the subject of the assault²⁸.

In other words, the mere direction of the will towards committing a crime, and the knowledge of its elements without seeking a specific goal or motive, is sufficient for the establishment of general intent or simple intent. Therefore, the nature of the goal, whether noble or evil, is irrelevant to the completeness of the general intent, and likewise, the motive, whether honorable or malicious, also has no effect on the completeness of the general intent. As for specific intent, it tends towards the result and somewhat towards the motive. In addition to the general intent, the legislator may require in some crimes committed through social media and by its users an additional element, represented by the direction of the perpetrator's (user's) intention to achieve a specific goal or the presence of a specific motive with reference to the

general origin²⁹. In this regard, specific intent is defined as: "the will to commit or achieve a goal beyond the goal of the general criminal intent," requiring the initial establishment of general criminal intent, mentioning the distant goal, and stipulating it within the legal text to become a specific criminal intent³⁰.

The specific criminal intent differs from the motive in that the latter is the feeling or interest that drives the perpetrator to commit the crime, or it is the driving force of will or psychological motive to satisfy certain needs such as hatred, revenge, and resentment³¹. Examples of motives include spreading images or videos that are offensive to someone with the aim of seeking revenge against them, or spreading and promoting false rumors about a person with the aim of tarnishing their reputation, making revenge a motive for the crime.

III.2.The Impact of the Elements of Criminal Intent on the Criminal Liability of the User:

We have mentioned previously that the elements of knowledge and will are the essence of criminal intent in the moral aspect of the user's criminal liability. Therefore, it is necessary to have knowledge of the nature of criminal behavior and the alignment of the perpetrator's (the user's) will with this behavior. These two elements are addressed in some detail as follows:

III.2.1. Knowledge:

Criminal intent is based on awareness of all the circumstances and facts that give the act its criminal significance³². Knowledge is divided into legal knowledge, which is presumed knowledge, and factual knowledge. Legal knowledge relates to the absence of excuses due to ignorance of the law, while factual knowledge refers to the perpetrator's (the user's) awareness of the material facts constituting the crime. If there is confusion regarding an essential element of the crime, criminal intent is prevented. However, if ignorance pertains to secondary facts that lead to the commission of the crime and do not affect its legal status, it has no effect on criminal intent or criminal liability.

In crimes committed by a social media user (perpetrator), it is necessary for them to be aware of their electronic behavior, which includes publishing through these means, whether in writing, drawing, images, videos, or articles with illegal content, or interacting with a post through liking, commenting, reposting, or similar actions. Furthermore, they should be aware of the public nature of publishing such content on social media platforms, as well as the subject of the violated right, whether infringing on public rights or the rights of other individuals, such as the right to honor or defamation³³.

One of the examples is for the user to know that publishing pornographic materials on a social media platform or sending them to users under 18 is a legally prohibited act that causes harm to others. Also, knowing that the user's actions or behaviors are aimed at invading the privacy of individuals or violating their digital privacy is an infringement of the rights of others, their honor, or an assault causing psychological harm to the victim or his family, or harming his social status. One of the issues raised by this element is the extent of the user's knowledge and awareness of his actions in the digital environment. In reality, many users lack awareness, as in the crime of spreading rumors and biased or false news. Many users often share news, information, or repost them on their accounts or pages for publication and media. A prominent example of this is what happened in 2014 on Twitter in April, known as the Ebola rumor, where rumors spread that it was a deadly disease sent by God to punish the atheists in the capital Conakry in Kenya, as well as rumors related to the health situation the world experienced in 2020.

III.2.2. Will:

The element of will is considered the link between the crime as a material reality, and the human from whom it originated, as it directs itself to the human who committed the crime (the user). Therefore, searching for it means searching into the will of the doer and its internal content. Here, the discussion about the element of will will not change regarding the moral aspect in crimes occurring on social media from its judgments regarding traditional crimes, as long as the focus is on the culprit or the doer of the crime (the user), as the doer is a human whether in traditional crimes or crimes occurring on the confusing social media platforms in the digital environment³⁴.

We also note that the fragmentation of the moral element into the elements of knowledge and will is important, as this fragmentation distinguishes between intentional crimes and unintentional crimes. A crime is considered intentional if the perpetrator's will, at the time of committing the crime, was directed towards committing the prohibited act, and at the same time extended to achieving the criminal result that occurred, or any other criminal result. A crime is considered unintentional if the criminal result occurred due to the actor's mistake, which means that the actor intended to commit the

prohibited act, but his intention did not include achieving the result that ensued. Therefore, criminal intent is present when the actor's intention includes both the intention to commit the prohibited act and to cause the result together³⁵.

Based on this, to hold the user criminally accountable, they must be knowledgeable about their criminal behavior, and their will must also be directed towards committing criminal activities or spreading inappropriate and illegal content on social media platforms, such as spreading content that incites violence or hatred, or disseminating fake or misleading news, or content that includes information that invades the private life of another user or person or harms their reputation. If the culprit, meaning the user, is aware of the nature of the content they are sharing and realizes that what they are about to do may cause harm to others, their criminal responsibility for the criminal acts they commit is established by the prevailing laws, as the will, being the essence of criminal intent in the moral aspect, requires it to be distinctive and free, as two essential conditions for the will in all crimes, and the absence of one or both of them results in the criminal responsibility being negated.

IV- The Degree of publicity in Confused Crimes Committed by Users on Social Platforms:

Referring to the concepts related to social media sites, we find that they are based on the idea of providing a social communication service among a group of individuals who have common interests, which represents the concept of the public community³⁶. In addition, there is a consensus among jurisprudence that social media represent the new media and that the crimes committed through them mostly fall under opinion and expression crimes, known as expressive crimes.

From this perspective, the importance of publicity in crimes committed through social media platforms by their users emerges, and this is manifested in the fact that publicity is what makes the crime committed by the user appear externally in the manner determined by the law, and therefore it justifies the legislator's intervention in punishing the misuse of freedom of opinion in the virtual realm³⁷. Here, publicity, linguistically, means showing or disclosing, and dissemination and circulation³⁸. As for publicity in terms of public law, it does not depart from its meaning in language. Everything that falls under the public's view, or reaches their hearing, or they can come across by their own will without hindrance, is considered public³⁹. It is therefore contrary to secrecy, meaning the declaration of something and its generalization or display, i.e., informing the public about it, also known as "a means of informing members of society about the incident attributed to the victim"⁴⁰.

The publicity in the circle of crimes committed by the user through social media is the public's awareness of a specific harmful or offensive content expressed on social media platforms⁴¹. This definition raises an important question : do all crimes committed by the user and occurring on social media platforms require the element of publicity ? In other words, does publicity necessitate holding the user criminally accountable for a crime that occurred on social media?

The reality is that whether or not the element of publicity is achieved is closely related to the nature of the electronic means used in committing the criminal act. As we mentioned earlier, social media platforms are classified into general and private according to patterns and purposes of use. Therefore, publicity cannot be envisioned in private social media platforms such as messaging applications like WhatsApp, Telegram, Messenger, Viber, and others, as they are considered closed social communication tools. The chatting or communication process generally occurs between two individuals, and publicity assumes a significant public awareness of the inappropriate and offensive content, which does not align with private social media platforms. Examples of such crimes include insults and defamation committed by a user against another user on one of the aforementioned messaging applications by sending a message containing offensive phrases to the second party in the conversation. The offensive content here is directed towards the user themselves and not to a specific audience or a number of other users. Publicity is not considered in this case unless the scope of access to the offensive content widens and reaches a broad audience.

Publicity is achieved in public and open social media platforms for all users. If inappropriate or offensive content is published on a public social media platform, widely circulated and reaches a wide audience, such as being reshared or reposted on pages representing digital media outlets with a large percentage of followers, and the like, publishing content that incites violence and hatred against a specific group or community on Facebook or Twitter, or filming videos containing offensive content for this group and posting it on YouTube, all these social platforms provide public services to the audience of users and are characterized by open access and interaction, thus achieving publicity in them.

Contrary to what was mentioned, publicity may not be achieved on public social media platforms and is not legally recognized. This is because the offensive or illegal content is not public and has not reached a wide audience. This was confirmed by the French Court of Cassation when it overturned a previous judicial decision condemning a French citizen who posted on her personal Facebook page a publication containing defamatory statements against her employer. The court found a lack of publicity on which the lawsuit was based, forming its opinion based on the fact that the post was private and personal, only accessible to close friends, and that it was placed on a limited access personal page. In

addition, access to the information published online was restricted to a very limited number of selected users. Therefore, this offensive information did not constitute a public nature of publicity, leading the court in its ruling issued by the First Civil Chamber to conclude that publicity was not achieved in the case⁴².

Therefore, it is the responsibility of the subject judge to extract the element of publicity from the facts of the case presented to him according to the circumstances, place, and electronic means of social media used in committing the criminal act⁴³.

As a conclusion of the foregoing, the element of publicity can be considered a fundamental presumed element in the commission of the crime and hence the criminal responsibility of the user for the criminal act committed through social media, for several considerations, the most important of which is that social media platforms are considered media outlets and are described as new media. Therefore, crimes arising from them are of the category of opinion and expression crimes, or what is known jurisprudentially and legally as expressive crimes, and criminal law scholars agree that publicity is the distinctive element and essential component in these crimes, with some considering it an independent and self-standing element. In addition, the forms of publicity or its means stipulated by law find a place in social media platforms and are available in them, which are achieved by writing as the most prominent forms of publicity, or by attributing speech as is the case in audio or visual recordings containing insults and defamation or inappropriate and unlawful content, as well as images and drawings containing insulting phrases directed at the victim or undermining his private life or his status or honor, and the like.

V- Conclusion:

In this research paper, we attempted to address the challenges posed by elements of crimes committed through social media platforms in terms of the difficulty of extracting the material and moral elements of these crimes in the absence of a regulatory framework governing modern technology. According to our estimation, this is due to the relative modernity of social media platforms and their rapid evolution. Consequently, confronting activities resulting from their misuse using traditional texts presents several obstacles arising from the unique nature and technical characteristics of social media platforms, which traditional texts cannot accommodate. The latter are designed to protect values of a tangible material nature and cannot deal with the moral values generated by the virtual stage.

The problems and practical, legal obstacles in dealing with crimes that occur on social media and electronic crimes are also attributed to the mismatch between legislation and the requirements of these emerging crimes, due to their difference from traditional crimes in terms of their essence, nature, and methods of commission, in addition to the crime environment, the specificity of the perpetrator and the victim, which creates difficulty in determining the appropriate legal classification for the crime, requiring the adaptation of legal texts to keep pace with technological developments and be able to deal with their rapid transformations.

The study has reached a set of results as follows :

- Crimes committed through social media are soft crimes committed with a technical logic in a virtual stage, and they have a special nature dominated by a technical character.
- Dealing with crimes committed through social media platforms requires extensive expertise in the field of modern technology, especially in the issue of extracting the material and moral elements of this type of crime.
- The criminal outcome in the studied crimes is realized in the virtual world and can spill over into the external world, thereby having a tangible material impact, as is the case with drug trafficking and the display of pornography through social networks.
- Publicity represents the assumed cornerstone of crimes committed through social media resulting from their unauthorized use, and it is the essential element that the public is aware of the abusive content, achieved through its publication, republication, or sharing of such content.

The study presents a set of proposals that we see as feasible, as follows:

- Establishing a practical mechanism stipulated by law to determine how to deal with social media when they are misused.
- Establishing a specialized body to carry out internal and external supervision of illegal or abusive content on social media, which constitutes crimes from a criminal law perspective. This supervision would achieve proactive control and prevent crime.
- We call on Algerian legislators to adapt legal texts and modernize newly emerging crimes committed through social media, facilitating judges' handling of this type of crime.

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