journal Of Legal and Economic Studies ISSN 2602-7321/ EISSN 2773- 2649

Vol : 09 No: 01 Year: 2026 Page : 874- 887

"The Objective Criminal Confrontation of the Phenomenon of Online Defamation and Insult Across Social Media: A Comparative Study"

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Send Article Date: 10 /01/2026 Date of acceptance of the article: 01/05/2026

Abstract:

Social media platforms are considered the lifeblood of the modern era, serving as a bridge that shortens distances and connects continents. However, this vast virtual world is not without its dark side, where numerous crimes have proliferated, such as the theft of accounts and websites. Among the most widespread of these crimes are defamation and insult, the incidence of which has increased alarmingly in recent times, transforming social media platforms from tools of communication into weapons for tarnishing reputations and inflicting harm upon others.

Given the prevalence of this type of crime in Algeria, this study aims to clarify the stance of the Algerian legislator on the crime of defamation and insult via social media. It will conduct a substantive analysis, defining the elements of the crime and the applicable penalties for the offender, while also drawing a comparison with other legal frameworks, such as those of France and Egypt.

key words: Insult, Defamation, Electronic Crime, Social Media , Punishment .

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journal Of Legal and Economic Studies ISSN 2602-7321/ EISSN 2773- 2649

Vol : 09 No: 01 Year: 2026 Page : 874- 887

Introduction:

No rational person can deny the enormous positive revolution that modern technology has brought to all aspects of our lives, from facilitating communication to developing services in various social, economic, cultural, and political spheres.

The development of the telecommunications sector and the spread of the internet have also played a positive role, turning the world into a small village. Information has become accessible at the click of a button and in a matter of seconds. However, this global network (the Internet) that has connected the world also carries a darker side. It has created a vast space for the spread of unprecedented crimes, where cybercrimes such as hacking, identity theft, and data theft have proliferated. Among the crimes witnessing a significant and widespread increase globally are defamation and slander, especially across social media platforms. These platforms have become fertile ground for this type of crime, particularly since the offense is committed behind a screen with the click of a button.[1] The most prominent and popular of these platforms include Facebook, Twitter, TIKTOK, and YouTube.

Like other countries, Algeria is experiencing a noticeable increase in this type of crime. During an appearance on Algerian radio, cybercrime specialist Raid Farid Dramchia stated that cybercrime is continuously on the rise, with 2,838 crimes recorded in 2021, which increased to 4,600 in 2022. He also stated that approximately 65 to 75 percent of the cases handled are related to violations of individuals' private lives. Undoubtedly, discussing the private lives of individuals includes many crimes that affect personal life[2], such as threats of defamation, extortion, and slander.

It is worth noting that the largest proportion of crimes occurring on social media platforms involves electronic defamation and slander. Social media has become a stage for assaulting honor and reputations, where aggressors hide behind pseudonyms and fake accounts to launch their abusive statements without restraint. The Algerian legislator has intervened and criminalized defamation in Articles 296 and 298 of the Algerian Penal Code, and also criminalized slander in Articles 297, 298 bis, and 299 of the Penal Code.

[1] Ter Kah Leng, Internet defamation and the online intermediary, Computer Law & Security Review, Volume 31, Issue 1, 2015, P68. https://www.sciencedirect.com/science/article/abs/pii /S0267364914 0018 85.

[2] https://news.radioalgerie.dz/ar/node/21741.

However, after defamation and slander previously relied on traditional means such as publication in newspapers, radio, television, or even oral statements within a narrow geographical scope and small groups, we have moved to a new phase witnessed by the world: the era of communications development. This type of crime now occurs in the virtual space, spreading at lightning speed and being viewed by millions with the click of a button.

The reason for choosing this topic is that this type of psychological violence is no less dangerous than physical violence. Furthermore, the damages of electronic slander and defamation are comprehensive and long-lasting, not measured only by temporary psychological harm, but by permanent damage to reputation. Therefore, it should not be underestimated or considered mere "ordinary insults" on the internet; it is a real crime that destroys individuals and societies.

The problem that can be posed in this regard is: to what extent have penal legislations succeeded in confronting the crimes of slander and defamation across social media platforms? And what are the penalties applied to their perpetrators in Algerian and comparative legislation?

To answer this problem, an analytical methodology will be followed, involving the analysis of legal texts, as well as a descriptive methodology, by describing the legal phenomenon as it is in reality. A comparative approach with other legislations, such as Egyptian and French law, will also be utilized.

The study topic has been divided into two axes, so that the first axis will address the crime of electronic defamation, and the second axis will address the crime of electronic insult.

THE FIRST TOPIC: The Crime of Cyber Defamation

The pain of moral violence is sometimes parallel to physical pain, which makes it a subject that calls for research and intervention to find solutions to combat it. It also requires deterring and prosecuting the perpetrators. It is worth noting that these crimes cause indelible harm to a person's mind, and some call it verbal violence. Verbal violence is defined as hostile behaviors and statements aimed at inflicting

psychological harm and damage on the victim[3]. Among the most important of these crimes committed through social media is the crime of cyber defamation.

To elaborate on the crime, we will first address the meaning of the crime (first), then the elements of the crime (second), and finally the penalty (third):

FIRST REQUIREMENT - The Meaning of the Crime:

The crime of defamation is a crime against honor[4]. In language, defamation (qadhf) means to throw, and it is said: "qadhfu al-hijara" (throwing stones) is to throw them, and "qadafa al-muhsana" (he defamed the chaste woman) means he accused her[5]. In terminology, defamation means the allegation or attribution of a specific act to a specific person or persons[6], whether this person is natural or legal. This allegation must be of a nature that harms the honor and reputation of the victim.

The Algerian legislator criminalized defamation in Article 296 of the Algerian Penal Code, which states: "Any allegation of a fact that would prejudice the honor and reputation of persons is considered defamation..."

Defamation committed against a person through social media sites such as Facebook, Instagram, or Twitter is intended to attribute a specific act or fact to a person for the purpose of harming their honor publicly[7], which may cause them significant psychological damage.

[3] Issaoui Nassima, "Domestic Verbal Violence from a Sociological Perspective," Journal of Arts and Social Sciences, University of Blida, Vol. 5, No. 5, 2011,p162 .

[4] Ahcène Bouskia, *A Concise Guide to Algerian Special Criminal Law: Crimes Against Persons, Crimes Against Property* ,p197.

[5] Muhammad ibn Abi Bakr ibn 'Abd al-Qadir al-Razi, *Mukhtar al-Sihah*, Maktabat Lubnan (Lebanon Library), 1986,p220.

[6] Ibtissem garram, terminologie juridique dans la législation algerienne, palais du livre blida algerie, 1998.

[7] Merah Naïma, "The Crime of Slander Between Islamic Sharia and Algerian Law," Annals of Social and Human Sciences, University of Guelma, No. 16, 2016,p201.

The Egyptian legislator has followed the same path as the Algerian legislator, defining defamation in the first paragraph of Article 302 of the Egyptian Penal Code, which states: "Whoever attributes to another, by one of the methods indicated in Article 171 of this law, matters which, if true, would require the punishment of the person to whom they were attributed with the penalty prescribed for it by law, or would require his contempt among his countrymen, shall be considered a slanderer."

As for the French legislator, he defined defamation in the text of Article 29, paragraph 1 of the French Press Law[8], which states: "Any allegation or attribution of a fact that harms the honor and reputation of the person or body to which the fact is attributed..."

After defining the crime in Algerian, Egyptian, and French legislation, we will then address the elements of the crime of defamation.

SECOND REQUIREMENT - The Elements of the Crime:

The crime of defamation is based on two elements: a material element and a moral element, which we will detail in succession:

1- The Material Element:

For the material element to be present in the crime of cyber defamation, several elements must be present, the first of which is the criminal activity, which consists of the perpetrator claiming a shameful fact and attributing it to a specific person. As for the claim, it means mentioning news that may be true or false, and the attribution is to attribute the matter to the defamed person. Defamation is achieved even if it is implicit and not explicit, and even if it is in the form of praise. It is also considered defamation to publish the news and attach the phrase "on the authority of the speaker."

[8] Loi du 29 juillet 1881 sur la liberté de la presse art29/1 : « Toute allégation ou imputation d'un fait qui porte atteinte à l'honneur ou à la considération de la personne ou du corps auquel le fait est imputé est une diffamation. La publication directe ou par voie de reproduction de cette allégation ou de cette imputation est punissable, même si elle est faite sous forme dubitative ou si elle vise une personne ou un corps non expressément nommés, mais dont l'identification est rendue possible par les termes des discours, cris, menaces, écrits ou imprimés, placards ou affiches incriminés. Toute expression outrageante, termes de mépris ou invective qui ne renferme l'imputation d'aucun fait est une injure. »

It is also required to specify the fact that is the subject of the defamation, and this distinguishes defamation from insult. It is also required that the fact be of a nature that would harm the honor and reputation of the person in question. The honor intended here, according to the jurist in criminal law, Dr. Ahsan Bousqi'a, is the value in the eyes of the person and not in the eyes of others. For example, if a person describes another person as a "son of adultery" based on the fact that he is an illegitimate child, the perpetrator in this case is considered to have defamed the person. As for the attack on the victim's reputation, it is the act that degrades the dignity of a human being in general in the eyes of others. It is worth noting that the Algerian legislator did not specify the methods of defamation and did not require publicity, but was content with mentioning the phrase direct attribution and republication, shouting, threats, writing, publications, banners, and advertisements.[9]

The Algerian legislator is criticized for not mentioning modern means of communication such as the Internet, and he should have included the phrase "whatever the means used for defamation, whether electronic, handwritten, or by voice...".[10]

The material element of this crime may be purely electronic, and cyber defamation is more capable of harming a reputation than defamation in its traditional form[11]. The most prominent example of the material element of this crime through social media is when a person publishes a paragraph on their Facebook wall describing their friend as a foundling and disrespectful, or when a person on Facebook republishes a previously published image that contains writings that insult an artist and describe them as a song thief.

2- The Moral Element:

This element is established as soon as the perpetrator is aware of all the elements of the crime, that is, his knowledge that these facts that he stated would harm the

[9] Ahsan Bousqia, previous reference, p. 198.

[10] Toumi Yahia, *Crimes of Assault Against Individuals Using Information and Communication Technology*, Doctoral Dissertation, Faculty of Law, University of Algiers, 2017-2018 , p279.

[11] Kah Leng, Ter ,Internet defamation and the online intermediary, Computer Law & Security Review ,elsevier , 2015, p6 . https://www.sciencedirect.com/science/article/abs/pii/S0267364914001885.

honor of the victim. It is also required that the perpetrator committed these acts of his own free will and without coercion from others[12].

Third REQUIREMENT : The Penalty:

The Algerian legislator criminalized the act of defamation in the text of Article 298 of the Algerian Penal Code, which stipulates a penalty of between 2 months and 6 months in prison and a fine of 25,000 to 100,000 Algerian dinars for the perpetrator of this misdemeanor.

However, if the defamation concerns a person because of their affiliation with an ethnic group, the provisions of the third paragraph of the same article shall apply, which states: "Defamation directed at a person or persons because of their affiliation with an ethnic group, a religious sect, or a specific religion shall be punished with imprisonment from one month to one year and a fine of 20,000 Algerian dinars to 100,000 Algerian dinars, or with one of these two penalties only if the purpose is to incite hatred among citizens or residents."

The Egyptian legislator has followed the example of the Algerian legislator, criminalizing the act in the text of Article 303-1 of the Egyptian Penal Code, which states: "Defamation shall be punished with imprisonment for a period not exceeding 1 year and a fine of not less than two thousand five hundred pounds (2500) and not exceeding seven thousand five hundred pounds (7500), or with one of these two penalties.[13]"

The French legislator also punished this crime in the text of Article 32, paragraph 1 of the French Press Law, which states: "Defamation committed against individuals by one of the means set forth in Article 23 of the same law shall be punished with a fine of 12,000 euros.[14]"

[12] Rifan Mustafa Rashid, *Crimes of Psychological Violence Against Women*, 1st Edition, Al-Markaz al-Qawmi lil-Intaj al-Qanuni (The National Center for Legal Publications), Cairo, Egypt, 2016 ,p153.

[13], Rifan Mustafa Rashid the same reference, pp. 155-156.

[14] Loi du 29 juillet 1881 sur la liberté de la presse art32/1 : "La diffamation commise envers les particuliers par l'un des moyens énoncés en l'article 23 sera punie d'une amende de 12 000 euros."..

THE SECOND TOPIC : The Crime of Electronic Insult

The misdemeanor of insult is one of the crimes that affects the victim's reputation and honor. The Algerian penal legislator has criminalized this act to protect the honor of victims, following in the footsteps of the preceding Egyptian and French legislations.

This type of crime has recently increased, especially with the spread of social media platforms, and it has become a serious phenomenon that requires study and monitoring.

To elaborate on this crime, we will address its definition (First), its elements (Second), and the penalty (Third):

FIRST REQUIREMENT : Definition of the Crime

The Algerian legislator referred to the misdemeanor of insult in the texts of Articles 297, 298 bis, and 299 of the Penal Code. An insult is defined as the utterance of offensive expressions, and these expressions include terms of contempt or invective[15]. The Algerian legislator defined insult in the text of Article 297 of the Penal Code as follows: "Any offensive expression or phrase that includes contempt or disparagement not involving the attribution of any specific fact shall be considered an insult."

From reading this article, we can deduce that insult is similar to defamation; however, the difference lies in the fact that insult does not involve the attribution of a specific fact, unlike defamation, which must include the attribution of a specific fact.

The expression that constitutes an insult varies from one region to another; what is considered offensive speech in one region may be considered normal in another. It should be noted that the judicial police reports and the court's judgment must explicitly state the words of insult; otherwise, the judgment would be flawed due to insufficient reasoning.

The means used for the insult is irrelevant, whether traditional, such as an insult in front of the general public, or by using modern electronic means like social media platforms such as Facebook and Twitter.

[15] Ibtissem Garram ،Terminologie juridique dans la législation algérienne،Palais du livre ،Blida،Algérie،1998 ،p.158.

As for the Egyptian legislator, insult was defined in the text of Article 306 of the Egyptian Penal Code as: "Any insult that does not include the attribution of a specific fact, but includes in any way an offense to honor or reputation, shall be punished..."

Regarding the French legislator, they followed the path of the two preceding legislations and criminalized insult in the text of Article 33 of the French Press Law, which stipulates that an insult directed at individuals—if not preceded by provocation—is punishable by a fine of 12,000 euros.[16]

SECOND REQUIREMENT: Elements of the Crime

The crime of electronic insult requires the presence of two elements: a material element, which will be discussed (1), and a moral element, which will be addressed (2):

1- The Material Element (Actus Reus):

The material element of the misdemeanor of electronic insult is fulfilled by a verbal assault on the victim that harms their honor and reputation without attributing any specific fact to the victim. Examples include describing a person on social media as a "foundling," "son of adultery," or a "thief," or by uttering one of the obscene terms known in the social environment where the victim and the perpetrator live. These terms vary from one region to another, and the judge has discretionary power to determine whether the uttered word constitutes an insult or not. Furthermore, the expressions containing the insult must be directed at a specific individual and not at unknown persons.

It is noted that when the Algerian legislator addressed this crime, he did not refer to the act of insult committed via modern means of communication such as the internet. It would have been advisable to include a phrase like "regardless of the means used for the insult, whether electronic, handwritten, or by voice." In contrast, we find that the French legislator did refer to the establishment of the crime through electronic means in the French Press Law, specifically in the text of

[16] Loi du 29 juillet 1881 sur la liberté de la presse ,Modifié par LOI n°2024-247 du 21 mars 2024, Art33/2 : «..L'injure commise de la même manière envers les particuliers, lorsqu'elle n'aura pas été précédée de provocations, sera punie d'une amende de 12 000 euros… »

Article 23 of the Law of July 29, 1881, as amended by Law No. 2004-575 of June 21, 2004.[17]

2- The Moral Element (Mens Rea):

For the establishment of criminal intent, it is sufficient that the perpetrator directed abusive and obscene expressions towards a person, regardless of whether they are male or female, an adult or a minor. Moreover, the element of provocation does not negate criminal liability.

Third REQUIREMENT: The Penalty

The first paragraph of Article 299 of the Algerian Penal Code specifies the penalty applicable to the perpetrator of the misdemeanor of insult, stating: "Insult directed at an individual or several individuals shall be punished by imprisonment from one (1) to three (3) months and a fine from 20,000 to 100,000 Algerian dinars."

However, if the insult is directed due to affiliation with a religion or an ethnic group, the penalty, according to Article 298 bis of the Algerian Penal Code, is imprisonment from five (5) days to six (6) months and a fine from 20,000 to 100,000 Algerian dinars, or one of these two penalties.

It is worth noting that if the insult is accompanied by racist vocabulary, the Algerian penal legislator was vigilant by introducing the crime of discrimination as a separate offense under the repealed Article 295 bis 1[18], which was replaced by Article 30 of Law 20-05 of April 29, 2020, related to the prevention and combating

[17] Loi du 29 juillet 1881 sur la liberté de la presse , Modifié par Loi n°2004-575 du 21 juin 2004 - art. 23 « Seront punis comme complices d'une action qualifiée crime ou délit ceux qui, soit par des discours, cris ou menaces proférés dans des lieux ou réunions publics, soit par des écrits, imprimés, dessins, gravures, peintures, emblèmes, images ou tout autre support de l'écrit, de la parole ou de l'image vendus ou distribués, mis en vente ou exposés dans des lieux ou réunions publics, soit par des placards ou des affiches exposés au regard du public, soit par tout moyen de communication au public par voie électronique, auront directement provoqué l'auteur ou les auteurs à commettre ladite action, si la provocation a été suivie d'effet."

[18] The text of the first paragraph of the repealed Article 295 bis 1 of Law No. 14-01 dated February 4, 2014, reads as follows:
"Discrimination is any distinction, exclusion, restriction, or preference based on sex, race, color, descent, national or ethnic origin, or disability, which aims at or results in nullifying, impairing, or denying the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life."

of discrimination and hate speech[19]. The first paragraph of Article 30 is as follows: "Discrimination and hate speech shall be punished by imprisonment from six (6) months to three (3) years and a fine from 60,000 to 300,000 DZD..."

It should be highlighted that an insult is considered more dangerous if coupled with racist speech, whether through traditional methods like insulting someone in public or through electronic means, which is considered more severe as public exposure is greater and may stir up racist strife in society.

An example of this is the perpetrator uttering clear words of insult that include a racist term, such as adding "you black."

As for the French legislator, they followed the Algerian legislation and criminalized insult in the text of Article 33 of the French Press Law[20], stating that an insult directed at individuals—if not preceded by provocation—is punishable by a fine of 12,000 euros.

It is observed that the French legislator increased the fine compared to the Algerian legislation to give it a stronger deterrent effect.

The Egyptian legislator criminalized insult in Article 306 of the Egyptian Penal Code and punished an insult that does not involve the attribution of a specific fact, but in any way harms honor or reputation, with a penalty of imprisonment for a term not exceeding one year and a fine of not less than one thousand pounds.

It is observed in the aforementioned legislations that the French legislation, unlike the Algerian and Egyptian ones, focuses on monetary penalties while avoiding custodial sentences. In this regard, we criticize the two latter legislations for their focus on custodial sentences compared to the non-significant financial fines.

[19] Law No. 20-05 issued on April 29, 2020, concerning the prevention and combating of discrimination and hate speech, Official Gazette of the People's Democratic Republic of Algeria, Issue 25, Year 2020, page 4.

[20] Loi du 29 juillet 1881 sur la liberté de la presse ,Modifié par LOI n°2024-247 du 21 mars 2024, Art33/2 : «..L'injure commise de la même manière envers les particuliers, lorsqu'elle n'aura pas été précédée de provocations, sera punie d'une amende de 12 000 euros… »

Conclusion:

Based on the foregoing, it can be said that defamation and insult using modern communication technologies have become a dangerous phenomenon that has spread like wildfire across social media platforms, threatening the stability and values of societies.

It is noted that the majority of the legislations previously studied—such as the Algerian legislation and the Egyptian and French legislations—focus on traditional crimes of insult and defamation, without giving sufficient attention to the modern methods through which these crimes are practiced. This legislative shortcoming highlights the urgent need to update legal systems to keep pace with technical developments in this field, especially in light of the widespread proliferation of Artificial Intelligence technologies that create new forms of electronic violations.

Although deterrent laws and penal sanctions constitute the cornerstone in combating these crimes, relying on them alone is insufficient. The real confrontation begins with the preventive aspect, through concerted efforts to raise awareness of the dangers of these behaviors. Among the recommendations we propose as researchers are:

- The necessity of amending laws to focus on compensating the victim for moral and material damages to deter the perpetrator economically, rather than burdening the state with the costs resulting from the deprivation of the perpetrator's liberty and their imprisonment, which weighs heavily on the state.
- Instilling the ethics of dialogue and constructive criticism in youth and children.
- Activating the role of the family and educational institutions in promoting respect for others and rejecting verbal violence in all its forms in the digital world.
- Including awareness programs on digital ethics within school curricula.
- Creating media awareness campaigns that clarify the legal and ethical consequences of electronic verbal violence.
- Updating laws to align with continuous technological developments.

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