



RESEARCH ARTICLE

The Extent to Which the Condition of Publicity is Fulfilled in The Crime Of Incitement Via Electronic Means

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ARTICLE INFO	ABSTRACT
Received: Sep 21, 2024 Accepted: Nov 3, 2024	The rapid scientific advancements in electronic means have led to the emergence of websites and social media platforms, which have increasingly been used in ways that contradict the legitimate purpose for which they were created. These websites have provided an opportunity for those lacking emotional and intellectual maturity to spread some of the most dangerous contemporary afflictions, disseminating their toxic ideas across the globe within seconds, reaching the ears and eyes of many people. Responses to these ideas vary from person to person, especially when they are seen or heard from individuals similar to those spreading them. ABSTRACT These platforms have become a vast source of virtual connectivity among people in all areas of life, enabling criminals to trespass on states and individuals to commit their crimes from anywhere in the world. The situation becomes even more dangerous when certain countries, organizations, or entities, directly or indirectly, seek to create crises in other nations. They do this by giving individuals of weak moral character the opportunity to engage in criminal activities through their electronic platforms, encouraging them to spread destructive ideas. This is particularly concerning when a state dedicates its immense technological capabilities to their disposal, which individuals cannot possess, in pursuit of its unlawful goals.
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INTRODUCTION

One of the requirements of love for one's country is the preservation of its security and stability. Security is a great blessing, a tremendous favor, whose value and importance are known only to those who have lost it. With its absence, security dissipates, fear surrounds people everywhere, rights and interests are lost, anxiety, fear, and looting occur, blood is shed, and unrest and turmoil ensue. Security is a universal need for all people, for in it lies the peace and tranquility of the heart, criminals have taken shelter under the guise of freedom of expression to commit this crime. Despite the sanctity of this freedom and the fact that most national and international laws and legislations have enshrined this right, freedom of expression cannot be entirely unrestricted. It requires regulation and limitation in accordance with the provisions of the law, by establishing legal controls for the exercise of this freedom, before the advent of electronic means, freedom of expression was primarily exercised through journalism. However, with the emergence of these new tools, this freedom has become accessible to all members of society, in all its diversity. This shift has turned freedom of expression into chaos, spiraling out of control.

2. LITERATURE REVIEW

2.1 Definition of Incitement

The inciter is the one who creates the idea of the crime in the mind of the perpetrator; they are the planner of the crime and the reason for its occurrence. The inciter often resorts to psychological

methods to achieve their criminal objectives by influencing the perpetrator's mindset. They make efforts to ensure that others carry out the crime they desire (Rossi, 1927).

2.2 Types of Incitement

There is no doubt that the crime of incitement has been recognized by societies since ancient times, as it is one of the crimes that shakes communities and dismantles their structure. Incitement can be classified into two types: specific incitement and public (or general) incitement. The following outlines these types (Besse, 2018):

1. **Specific Incitement:** This refers to inciting a particular individual or group to commit a specific crime. The inciter directly targets a person or group, providing encouragement or influence to carry out a particular unlawful act.
2. **Public (General) Incitement:** This involves inciting the general public or a wide audience to engage in criminal behavior. It often occurs through public speeches, writings, or online platforms, encouraging a larger group to act upon the incitement, potentially leading to widespread criminal activities.

A segment of legal scholars defines specific incitement as that which is issued by an accomplice to the perpetrator, leading to the commission of the crime. This incitement must be direct to establish the link between the actions of the accomplice and those of the perpetrator. If the crime does not occur, the inciter will not be punished (Calvert, 2019).

On the other hand, the public refers to a group of individuals present in a specific location at a specific time, whether they are readers, listeners, spectators, or viewers.

Another definition describes public incitement as the expression of a message to a group of individuals whose composition or scope is unknown, aimed at creating a favorable mental state among the audience, with the hope that one or more individuals will act upon the recommendations of the message to commit the crime (Al-khateeb, 2017).

2.3 Definition of Electronic Incitement Crime

Despite the positives of electronic means, which have advanced all aspects of life, there are also negative repercussions that have led to the emergence of new forms of crime. These advancements have enabled individuals of weak character to exploit these tools to commit crimes for the sake of achieving material and moral gains. Electronic crimes, including electronic incitement, are among the most significant threats facing the world today (Saleh, 2018).

Legislations, legal writings, and judicial rulings lack a clear and direct definition of the crime of public electronic incitement. To arrive at a definition that aligns with legal principles and logic, it is essential to persist in defining the terms related to public electronic incitement. Accordingly, we must address the nature of electronic crime.

There is a divergence among researchers and legal scholars regarding the definition of electronic crime. Some define it based on the subject of the crime, considering it an information crime if it involves a computer or its information system. Others focus on the means or profit, defining electronic crime as one that utilizes a computer or its networks for the purpose of achieving financial gain. Additionally, some define electronic crimes by emphasizing that computers are used as a means to commit these offenses. Furthermore, some legal scholars categorize electronic crimes into two main types (Prates, 2007):

First Category: Target Crimes

These are crimes that specifically target the electronic system itself, such as information theft, hacking, or violations of intellectual property rights.

Second Category: Means Crimes

These refer to the electronic means used to commit crimes, often referred to as "soft weapons," which allow for the execution of criminal activities without violence.

Electronic crime is defined as: "New patterns of criminal behavior linked to modern electronic technologies, which have become either the subject of the crime or the means of committing it (Boos,2018)".

Based on the above, we define electronic crime as: "Any deliberate act or omission committed through any electronic medium or means with the intent to cause material or moral harm to the national security of states, or to property or individuals)".

3.1 The Extent of the Condition of Publicity Through Electronic Means

Legal legislators have mentioned the term "publicity" in multiple articles within legal texts. It is evident that legislators have not confined the term to a single context. Publicity has been described as an element of the crime, as a crime itself, as an aggravating circumstance, and as a condition. We will clarify this as follows:

- Element of the Crime: In some legal provisions, publicity is considered a fundamental component that must be present for the crime to be established.
- Type of Crime: Publicity can also categorize certain actions as crimes, distinguishing them from private actions that may not attract legal penalties.
- Aggravating Circumstance: In other contexts, publicity is seen as a factor that can increase the severity of the punishment, reflecting the broader impact of the crime on society.
- Condition: Lastly, publicity may serve as a prerequisite for the application of specific legal rules or penalties, emphasizing the importance of public exposure in certain offenses. By recognizing these various roles of publicity in legal contexts, we can better understand its significance in relation to electronic means of communication.

1. Publicity as an Element:

The legislator punishes certain crimes specified in laws due to their association with the element of publicity. If this element of publicity is absent, there can be no punishment for these crimes. Publicity serves as a distinguishing and foundational component for the establishment of such offenses. Court rulings have consistently emphasized the necessity of demonstrating this element; otherwise, the judgment may be deemed

2. Publicity as an Aggravating Circumstance:

Publicity serves as an aggravating circumstance in certain crimes because they are committed in a public context. This public nature of the crime can increase the severity of the penalty, reflecting the broader impact of the offense on society and the potential for greater harm caused by actions taken in a public setting.

Publicity refers to the communication of information to the public in an unlawful manner, expressed through speech, action, writing, or any other means of expressing opinion and meaning. The public comprises a group of individuals who do not have direct connections to the perpetrator or the victim.

3.2 Methods of Publicity:

1. Verbal Communication: This includes spoken statements made in public settings, such as speeches, public addresses, or conversations.
2. Written Communication: This encompasses written materials disseminated to the public, including articles, books, flyers, or social media posts.
3. Visual Media: This refers to images, videos, or broadcasts that convey information to a wide audience, such as news broadcasts or social media videos.
4. Public Demonstrations: This involves actions taken in public spaces, such as protests or rallies, where messages are conveyed to onlookers.
5. Digital Communication: This includes the use of electronic platforms, such as websites, blogs, and social media, to share information with a global audience.

Each of these methods plays a role in how information is publicly communicated and can significantly impact the nature of the crime in question.

First: Publicity of Speech or Shouting:

"Speech" refers to "the sound that emerges from the mouth in the form of words or phrases to express a specific meaning." It is irrelevant whether the speech comes directly from the mouth of the accused or if it has been broadcast after being recorded on discs or cassette tapes. Publicity is achieved even if the act occurs in a private location, provided that it can be heard by those in a public space (Calvert, 2019).

Shouting refers to sounds emitted by a person that express various emotions. This sound must be made at a high volume, even if it is not composed of clear words.

There are many social media platforms, satellite channels, and media outlets that promote destructive ideas with the intent to incite discord by spreading thoughts that represent a false provocation, without any oversight or legislation at the national or international level to deter these troubled individuals.

From the above, it is evident that speech must originate from the inciter in a public place or in a private setting, provided it can be heard by those in a public space or is likely to be heard. However, public electronic incitement can occur from a private location to another private location. Therefore, we hope that the Egyptian legislator will consider electronic websites as a public space virtually, thus acquiring the status of publicity since they are accessible to the public at all times.

We believe that it is possible for the crime of public electronic incitement to be committed by a mute person, either through speech or shouting, by writing the post on an electronic device and then giving a command for it to be repeated by that device (Fahmy, 2017)

Second: The Publicity of Physical Means or Gestures.

The term "physical means" refers to conveying meaning, news, or information through a specific action, which results in harm to others through incitement or committing crimes.

As for the publicity of gestures, it refers to expressive bodily movements that affect the psyche of others. These include movements of the limbs and parts of the body, using gestures to convey a particular stance that conventionally has a specific and defined meaning. Examples include expressions of sarcasm, contempt, or disapproval, as well as gestures indicating prohibition, urging, or incitement. When such gestures are commonly understood, they are treated in the same way as spoken words or shouting (Al-Hanbali, 2004).

Third: The Publicity of Writing.

Writing, as a means of publicity, refers to any expression in written language, whether in coordinated words or scattered letters, that can be easily understood by the reader, along with its implications and intended purpose, as long as it is comprehensible to the public and intended for them.

The transmission and publication of writing that contains a criminal offense is, under the law, treated as a new publication. No one can evade criminal liability by claiming that the writing was merely copied from another newspaper. It is incumbent upon anyone who republishes previously published material to ensure, before proceeding with publication, that the content does not contain any legal violations. It is noted that a public place has an impact on the element of publicity, as publicity is closely linked to general accessibility. Publicity derives its nature from the character of a public place. The legislator has stipulated that, for publicity to be established, it must occur in a public place or a place that allows for general accessibility. Social media networks are characterized by the unique ability to grant users control over the privacy of the information or posts they share on their personal pages or on friends' pages, limiting visibility only to their friends or approved individuals. Such content cannot be accessed by the general public except through selective permission granted by the user, thereby imparting a private nature to these groups regardless of their size. It is evident from the above that anyone who republishes writing containing a criminal offense punishable by law is subject to liability. However, this applies to the traditional form of writing. With electronic advancements, it is now possible to share or repost content, whether in the form of text, images, videos, symbols, or other expressive posts.

4. CONCLUSION

While technology has provided immense services to society, it has also led to the emergence of numerous crimes due to the misuse of electronic means, particularly when exploited by individuals with malicious intent to threaten the security and safety of the state and society. Among the most serious of these crimes is the crime of public electronic incitement. Individuals have become participants in journalistic activity beyond the scope of regulation and oversight, by disseminating information. The ordinary individual has become a news carrier, sharing information on websites and social media networks, thereby breaking the state's monopoly on media and the restrictions imposed by regulations, which has made it easier for individuals to promote values and spread deviant cultures and extremist ideas that constitute public incitement to crime, whether directly or indirectly. This is achieved through undermining convictions, recruitment methods, propaganda, or through provocative and appealing rhetoric aimed at undermining national security, state sovereignty, or societal stability, or inciting internal disturbances.

5. RESULTS

The crime of public electronic incitement has a distinctive nature that sets it apart from traditional crimes. Despite the seriousness of traditional public incitement, incitement through electronic means is far more dangerous, as it has increased significantly. Consequently, the crime of public electronic incitement has strongly imposed itself on both national and international levels, becoming an offense that is easily committed and capable of reaching a vast audience within seconds. Social media platforms have also become a source of news that impacts national security, representing a form of indirect incitement, unrestricted by regulations or conditions.

The insufficiency of legislation to keep up with the challenges posed by cybercrimes limits the ability to control electronic attacks. Legal provisions lack clear and explicit references to include electronic means as forms of publicity, which may lead to disputes regarding the nature of these methods and means. The same article refers to locations where the condition of publicity is met, such as a public gathering, a public road, or any frequented place, listing these locations exhaustively. These are spatial, geographic scopes that do not fulfill the condition of publicity, which may require the judiciary to expand and interpret to meet the condition of publicity.

6. Recommendations

Establishing a comprehensive and specialized legislative framework as a basis for criminalizing public electronic incitement, including the re-publication of unlawful content or sharing content to expand its reach to a larger audience, and criminalizing indirect public incitement that affects national security. The legislation should explicitly and directly address electronic means and define environments that fulfill the condition of publicity in an electronic context. This can be achieved by updating traditional, substantive, and procedural legislative texts to align with technological advancements, allowing both to evolve and coexist harmoniously, thereby making the consideration of committing such a crime more challenging.

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