

Criminal Law Regulation and Conviction Standards of Cyber Violence: Taking the Crime of Cyber Insult and Defamation as an Example

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Abstract: With the advent of the Internet era, interpersonal communication in real space has gradually spread to cyberspace. Whether the legal regulation of real space should follow and restrict the behavior norms of virtual space has become an important issue discussed by the academic community. Although civil law and other laws have certain regulations on the cyberspace, it is not enough to rely solely on general laws such as civil law to limit the escalating problem of online violence in cyberspace. Therefore, discussing the intervention of criminal law has become of utmost importance. Due to the ease of making comments in virtual spaces, as well as the large number of people and a mix of good and bad, the phenomenon of insult, defamation, and wanton abuse is the most widespread. Therefore, online insult and defamation has become a typical manifestation of online violence. The provisions of China's criminal law on the crime of online insult and defamation are still relatively broad and lack specificity, which brings certain difficulties to judicial practice when facing serious consequences of online insult and defamation. By exploring the criminal law regulations and conviction standards for online violence, using case analysis and comparative research methods, the criminal law rules for online insult and defamation can be further refined, effectively punishing and timely preventing online insult and defamation, purifying the online environment, safeguarding the rights and interests of netizens, and promoting the further development of criminal law in virtual space.

Keywords: Crime of cyberbullying, Crime of online defamation, Cyberbullying, Incrimination criteria, Principal responsibility

1. Introduction

In recent years, with the rapid development of Internet technology, people's social activities, entertainment and other activities on the Internet have become increasingly widespread. In reality, face-to-face interpersonal problems have also extended to cyberspace, and a variety of new problems and new phenomena have emerged. According to the Guiding Opinions on Punishing Cyber Violent Crimes in accordance with the Law jointly issued by the Supreme People's Court, Supreme People's Procuratorate, and Ministry of Public Security in September 2023, online violent behavior targeting individuals who recklessly publish information such as insults, rumors, defamation, and infringement of privacy on the information network, denigrates the personality of others, damages their reputation,

and in some cases causes serious consequences such as "social death" or even mental disorders, suicide, etc; disrupting the order of the internet, disrupting the network ecosystem, causing a rampant atmosphere in the cyberspace, and seriously affecting the public's sense of security. From this, it can be seen that one of the serious problems that arise in the cyberspace today is the identification and regulation of online violence, especially the harm caused by the crime of online insult and defamation, which is extremely great and has various means, making it difficult to define. Unlike traditional crimes, online insults and defamation have their own uniqueness, with scattered and difficult to define subjects, leading to difficulties in conviction; Their methods are diverse, and the criteria for criminalization vary. The consequences are not limited to simple mental harm, but due to its exposure, it is greatly influenced by social public opinion, and may even lead to more serious consequences such as victim suicide, making it difficult to determine the sentencing standards. Although online violence is different from traditional violence in causing direct physical harm to the parties involved, the harm it causes to the victims online cannot be underestimated, which has become an international consensus. According to the legislative reasons of the Model Criminal Code of the American Law Society, criminal law should combat harmful behaviors that particularly disrupt social security. These behaviors may cause particularly serious harm, or those who clearly do not respect the rights of others may cause less harm to us, but are more likely to cause harm to us [1]. Therefore, it is of great significance to redefine and analyze the standards and regulations for the crime of online insult and defamation. At present, there are different theories about online insults and defamation in various countries. There are the theory of respecting speech freedom represented by the United States, and the theory of maintaining personal dignity represented by Germany. China adopts a compromise and mixed model, which shows that the international attention to such issues is gradually increasing. The current research status abroad can also provide effective reference for the research of related issues in China [2].

2. The Definition of the Crime of Online Insult and Defamation

2.1. The Concept of Cyberbullying and Defamation Crimes

2.1.1. The Constituent Elements of the Crime of Cyberbullying and Online Defamation

The crime of online insult refers to the act of posting insulting, insulting, and maliciously cursing remarks, texts, videos, images, etc. against others through information networks, resulting in mental harm [3]. This behavior is prone to attracting the participation of others and causing a large number of netizens to follow suit.

The crime of online defamation refers to the act of fabricating false information about damaging the reputation of others, spreading and disseminating it through the information network, thereby causing a negative impact on the reputation of others. This behavior is also prone to triggering the participation of other people, resulting in explosive dissemination of information.

2.1.2. The Similarities and Differences between Cyberbullying and Defamation Crimes

Firstly, both cyberbullying and cyberdefamation should be based on "false information or facts", both emphasizing the fabrication of facts related to the victim using "false information" and adding insulting and defamatory comments to this fact. If the parties involved do engage in misconduct or privacy that is disclosed by others, it cannot constitute the crime of insult or defamation, and can only be considered as the crime of infringing on personal information of citizens. In other words, the legal interests protected by the crimes of insult and defamation are not actually "evil".

The crimes of insult and defamation are based on false information, and the different attitudes of the whistleblower towards false information and the degree of subjective malice constitute specific

criteria for distinguishing the two. The crime of insult emphasizes more on attacking the victim's personality, targeting false information and facts with insulting and verbal comments and evaluations that have a personal attacking nature. The crime of defamation emphasizes the act of maliciously using false information to damage the social reputation of others, and its consequences are more in terms of personal reputation, social reputation, and reputation.

By distinguishing between cybercrime of insult and defamation, it is possible to have clearer conviction standards when facing similar cybercrimes and avoid confusion. Meanwhile, due to the blurred boundaries in the definition process, there is room for discussion on how to define "insulting speech", whether to define it based on the nature of the speech itself or based on the personal and mental harm caused to the victim. In addition, the definition and degree of infringement on the personal reputation of others are both debatable issues. Therefore, it is of great significance to define the two and further discuss their characteristics.

2.1.3. Distinguishing between the Two and Other Forms of Online Violence

Human flesh search is different from online insults and defamation crimes. Human flesh search usually refers to the tracking and collection of personal information related to the parties involved, such as identity, movement trajectory, various passwords, and personal life, by others, causing serious life troubles and threats to the victims. Its presentation form is not the same as online insults and defamation. In most cases, human flesh searches only use the internet as a means of their mobile information, rather than giving insulting and abusive evaluations of the victim's personal dignity or personal life. Objectively, human flesh searches may pose a threat to the privacy of the victim. The essential difference between the two lies in the fact that human flesh searches infringe more on the personal information rights of citizens, while online insults and defamation tend to infringe more on the personal dignity, reputation and other rights of citizens. Therefore, defining the relationship and differences between the two is conducive to a strict definition of the crime of online insult and defamation.

Online rumors are different from online insults and defamation crimes. Internet rumors usually refer to false information related to others spread by internet users to attract attention and traffic. The subject and subjective purpose it targets are somewhat different from online insults and defamation. Online rumors are more targeted at non-specific online user entities, with the main purpose of gaining attention and traffic by spreading false but attractive information and events that attract others' attention. The crime of online insult and defamation mainly targets specific target subjects, with a subjective purpose that is malicious and ultimately aimed at damaging the reputation and reputation of others. Therefore, there are substantial differences between the two, and it is extremely necessary to determine different legal penalties based on their severity.

2.2. The Characteristics of Online Violence

Online violence is different from violent crimes in real space. Crimes in real space often have substance and in most cases can cause direct physical harm to victims. However, online violence is more of a verbal assault, directly causing great psychological harm to the victim, and even indirectly leading to the victim causing physical harm on their own. Criminal law places emphasis on tangible violence while neglecting intangible harm, but online violence is based on the virtuality of its medium, and the harm it causes to others often occurs silently. After causing serious harmful consequences, the public may often not be aware or take it lightly. Although the forms and media of the two harmful behaviors are different, they are essentially violence. Modern neuroscience has proven that online violence and other behaviors can generate pain similar to tangible violence, indicating that tangible

violence and intangible violence have equivalence in legal infringement [4]. As a new type of crime that involves killing invisibly, online violence must improve relevant legislation to adapt to the reality.

The initiators of online violence have group characteristics, and they are usually the initiators. However, it is often only after a large number of netizens follow the trend and a large number of group attacks and comments appear on the internet that substantial harm is caused to the victims. It can be seen that the regulation of online violence is closely related to social public opinion. Due to the difficulty in identifying and tracking the initiator, it is difficult to define the responsible criminal subject. At the same time, it is difficult to distinguish the severity of different comments made by netizens, making it difficult to hold others criminally responsible.

Online violence has difficulty in relief. Firstly, the responsible parties are too dispersed, making it difficult to determine the level of responsibility they need to bear based on the severity of their statements. Secondly, online violence often causes significant psychological damage to victims, which varies from person to person and is difficult to compensate for through substantial compensation. Therefore, the criteria for identifying crimes of online violence need to be refined.

3. Objective Obstacles in the Conviction Process of Cyber Violence

3.1. The Relationship and Contradiction between the Crime of Online Insult and Defamation and Freedom of Speech

Many scholars argue against the constitutional protection of citizens' right to freedom of speech in response to online insults and defamatory remarks. Due to the fact that netizens may not be able to predict the consequences of posting comments online in advance, punishing unintentional comments by netizens at this time is indeed unreasonable and unfair, and to a certain extent, it will violate citizens' right to freedom of speech. However, the internet is not a lawless place, and its behavioral norms should be consistent with those of the real space. Based on the difficulty of managing the cyberspace, its behavioral regulations can even be more stringent than real standards. Therefore, in cyberspace, restrictions and constraints should also be placed on online speech in order to maintain a good and harmonious cyberspace and purify the online environment. The controversy and divergent views in academia regarding the two rights have also hindered the definition of cyberbullying and defamation in judicial practice.

3.2. Insufficient Legislation

3.2.1. The Absence of Charges of Online Insult and Defamation

In the Criminal Law of our country, only Article 246 of the Criminal Law mentions online insult and defamation with the expression "committing insult and defamation through the internet". The legal provisions are not specialized, and the specific charges related to online insult and defamation have not been clearly established, and there is no definition and detailed explanation of online insult and defamation. Therefore, in the handling of serious cases of online insult and defamation, the following situations may occur. Even if the court and society both determine that the parties should be punished criminally, there are no relevant charges and legal provisions to support it. According to the principle of legality, online insult and defamation cannot receive the appropriate punishment to a certain extent.

3.2.2. The Boundary between Incrimination and Sentencing Standards is Blurred

The Criminal Law has not yet provided further explanation on the extent to which insult and defamation can be criminalized. There is no clear standard for determining which specific behavior, severity, and causing certain harm should be considered as charges, and there is also a problem of

blurred boundaries in sentencing for different consequences, making it difficult to measure the severity of the consequences in judicial practice. At the same time, because the Internet is a new technology emerging in recent years, the judicial intervention in online defamation is not in place, and there are few relevant cases. The guiding cases for the punishment of online defamation are limited, and it is difficult to obtain guidance and reference in subsequent judicial practice. For example, currently in China, there are only a dozen or so typical criminal justice cases that can be used for reference, such as the Yue insult case. In recent years, the handling of online insults and defamation in domestic judicial practice has mainly been judged through administrative penalties. For example, in 2023, Fuzhou online anchor Lin had a conflict with another online anchor and spread rumors and insults about his family's "improper lifestyle" through live streaming promotion, which resulted in administrative penalties. Coincidentally, Wang from Quanzhou also fabricated rumors such as "cheating on multiple people" to insult others, damaging their reputation and social reputation, causing serious negative effects, and ultimately being subjected to administrative penalties. The more serious plot is that from 2022 to 2023, Lin, a netizen from Putian, repeatedly filmed videos insulting, defaming, and intimidating others in order to vent his emotions and seek stimulation. He also sent messages insulting, defaming, and intimidating others, and posted videos and screenshots of the messages on social media platforms. The relevant information has attracted a large number of netizens' attention, causing extremely adverse effects on multiple victims and seriously disrupting social public order. As a result, he was criminally punished and sentenced to three years in prison. Although more serious online insults and defamation have been criminally punished, judging whether the consequences have truly caused more serious consequences solely based on the severity of the circumstances is still ambiguous and one-sided. In addition to considering the severity of the insult and defamer's own circumstances, it is also necessary to combine the victim's psychology and the actual degree of damage to their reputation and social reputation to measure their severity. Therefore, further refinement of their conviction standards in criminal law is extremely necessary.

3.3. The Criteria for Conviction are Greatly Influenced by Subjectivity

3.3.1. The Subjective Differences of Victims

In reality, different individuals have varying levels of psychological resilience towards online insults and defamation, and the same comments may have varying degrees of severity in the eyes of different victims. For example, individuals who are more sensitive in life tend to view daily jokes as insulting and defamatory remarks, leading to misunderstandings and even more serious consequences when both parties have different levels of understanding and awareness of the same statement. At this point, the law should assess its evaluation and not favor any party. Firstly, it is not appropriate to convict and sentencing the perpetrator solely based on the victim's psychological and cognitive state and self-reported mental harm, otherwise it is easy for the victim to maliciously exploit the law and intentionally exaggerate the facts, leading to excessive punishment for the perpetrator. Secondly, we cannot simply interpret from the literal meaning of our speech and overlook the subjective malice of the perpetrator and the mental impact suffered by the victim. Therefore, the law should establish a general standard for whether a certain speech constitutes insult or defamation, which is to determine whether it constitutes insult or defamation from the perspective of the majority of people based on their acceptance of the speech. This will not lose fairness, nor cause significant social justice or interference from public opinion in the judicial trial, which is conducive to ensuring fairness and justice in the judicial trial and safeguarding the rights and interests of both parties.

3.3.2. Decentralization of Responsible Parties

3.3.2.1. The Initiator is Difficult to Determine

Online insults, defamation, and personal attacks on victims often have an initial initiator. The initiator's remarks may be aggressive or insulting, but not necessarily have a great subjective malice or hype mentality. Afterwards, someone may maliciously use such remarks for hype, by pushing them to the headlines or hot searches to attract attention and attract attention, leading to the spread of such remarks on the internet, causing significant negative effects. Due to the large number of online users, it is difficult to trace the initial initiator identity of malicious comments, and it is also difficult to determine the identity of promoters and the degree of subjective malice, lacking certainty and clarity. Therefore, in the first stage of conviction, there are significant difficulties in judicial practice.

3.3.2.2. The Number of Followers is Huge

The main reason why online slander is more harmful to victims is that it has a wide range of influence. There is a tendency of group attack on victims throughout the Internet, which leads to damage to the social reputation of victims, and thus severely damages the mental psychology of victims. It can be seen that all netizens who blindly follow the trend and freely comment and forward on the internet have a certain responsibility. However, given the large number of such subjects, it is even more difficult to determine whether to punish netizens, which also poses significant challenges to rectifying the online culture in judicial practice.

3.3.2.3. The Responsibilities of Network Platform Operators and Regulators

Network platform operators and regulators are also responsible for the widespread dissemination of insulting and defamatory remarks [5]. Article 286-1 of the Criminal Law of China provides clear provisions on the crime of refusing to fulfill network management obligations. If a network service provider fails to fulfill the information network security management obligations stipulated by laws and administrative regulations and refuses to take corrective measures ordered by regulatory authorities, they shall bear criminal responsibility, including situations that cause the large-scale dissemination of illegal information. The Cybersecurity Law of the People's Republic of China also clarifies the regulatory obligations of network operators and managers. Article 10 stipulates that "when constructing and operating a network or providing services through the network, technical measures and other necessary measures shall be taken in accordance with the provisions of laws, administrative regulations, and mandatory requirements of national standards to ensure network security and stable operation, effectively respond to network security incidents, prevent network illegal and criminal activities, and maintain the integrity, confidentiality, and availability of network data." If network platform operators timely intercept and refuse to send malicious comments during the information filtering process, this situation can be effectively alleviated. Network regulators should fulfill their responsibilities when purifying the online environment, promptly clean up inappropriate speech, and prevent public opinion from fermenting.

4. Feasibility suggestions for conviction and sentencing of cyberbullying and Defamation Crimes

4.1. Make up for Legislative Deficiencies

4.1.1.Imprisonment for Cyberbullying and Defamation

The rapid development of the Internet has led to a serious gap in the relevant legislation on the network. The network is usually only covered in other legal categories as a means of crime, lacking specialized laws on cyberspace, especially the criminal law provisions on cyber violence. Despite the increasing call for decriminalization based on the modesty of criminal law, foreign countries once adopted decriminalization measures. However, when it comes to behaviors that truly harm the interests of victims, only criminal punishment can better protect legal interests. Online violence "kills invisibly", therefore the perpetrator cannot shirk criminal responsibility. Incorporating the crime of cyberbullying and defamation into the criminal law, establishing specific charges, and clarifying the definition and content of cyberbullying and defamation, as well as defining the constituent elements, can to some extent serve as a warning to netizens, help prevent the implementation of cyberbullying and defamation, further rectify the online environment, and maintain the personal and social reputation of internet users. In criminal legislation, the UK was the first to advocate and implement decriminalization, but this was done in the 1950s and 1960s. Moreover, in the 1970s, Britain shifted from decriminalization to criminalization. The Japanese legislative body used to have a pyramid like silence, which originated from Japan's relatively stable social background. However, with the changes in society, starting from the late 1980s, the Japanese legislative body frequently revised the Criminal Code and related laws, implementing a large number of criminalization [6].

4.1.2.Defining the Standards for Criminalization and Sentencing

In the legislative process, clarifying the boundary between cyberbullying and defamation crimes and other types of cyberbullying, distinguishing between cyberbullying crimes and cyberbullying behaviors, and thus determining which specific behavior is recognized as cyberbullying and defamation crimes, helps to determine reasonable criteria for criminalization.

At the same time, based on the degree of insulting language and the severity of the consequences caused by online insults and defamation, and considering multiple factors such as criminal means and social influence, the sentencing standards are measured to achieve reasonable punishment, neither excessive nor insufficient punishment. For relatively minor acts of online violence and secondary subjects, such as internet followers, criminal punishment should not be used. General laws and regulations can be used to regulate or provide ideological education to protect the reputation of victims while not infringing on the necessary legal rights of other citizens. For relatively serious online insults and slanders that cause negative social impact and even physical harm to victims such as self harm and suicide, they can be defined as cyberbullying crimes and must be severely punished by criminal law to achieve "no tolerance for guilt".

4.1.3.Strengthen Relevant Theoretical Research

It is essential to learn from foreign research achievements while improving legislation and academic research in China. In recent years, there have been rich research achievements in the causes and behavioral mechanisms of online violence abroad. Several researchers conducted a study on online violence using the stimulus organism response theory. After modeling and analyzing 531 samples using partial least squares structural equation modeling, they pointed out that an obvious external

stimulus that has led to the continuous escalation of online violence cases in recent years is information inequality, which has led to distrust and negative emotions among netizens [7].

4.2. Clarify the Responsibilities of Multiple Parties in the Process of Online Violence

4.2.1. The Main Responsibility of the Initiator of Speech

Whether it is the publisher of insulting and defamatory remarks or maliciously hyping the author, they should bear the main responsibility. As the source of public opinion, they have subjective malice and objective behavior, and criminal punishment is necessary. Providing necessary and timely punishment and education to violators can not only play a punitive role, but also serve as education and vigilance for other netizens, thereby reducing such crimes and playing a preventive role.

4.2.2. The Supervisory Role of Network Platform Operators and Regulators

The operation of online platforms requires a purified network environment, which is a responsibility that platform operators and regulators cannot shirk. Operators of online platforms should reduce the circulation of malicious comments in the network from the source, and regulators should promptly detect, handle, and punish such phenomena. This requires that more efforts should be made to search, improve supervision technology and enhance the sense of responsibility in the process of Internet operation and supervision. For example, in South Korea, the regulation of online violence is relatively comprehensive. The South Korean Police Department has established a specialized network police department to deal with cybercrime. By timely capturing negative information clues on the internet, investigating the implementation of cybercrime, and cracking down on new types of crimes such as online extortion, online tracking, and online violence [8].

4.2.3. The Secondary Responsibility of Netizens in Online Violence

The reason why victims of online violence are bombarded by public opinion is that a large number of netizens blindly follow the trend and comment, resulting in the phenomenon of unconscious online violence and the consequence of a large number of insulting remarks spreading. Therefore, timely publicity and education should be provided to netizens, clarifying that the internet is not an illegal place, and freedom of speech should have its necessary boundaries. Netizens should be encouraged to view other people's comments with a rational perspective and perspective, and not blindly follow the trend, in order to prevent and reduce the occurrence of online violence at the source.

5. Conclusion

The law has openness and should continue to develop and improve with the changes of the times. With the advent of the Internet era, there is a gap in the legal norms of cyberspace. Only by filling the gap in time can we adapt to the development of the times and promote social progress. Due to the constitutional protection of citizens' right to freedom of speech, citizens can speak freely in cyberspace. However, cyberspace is not an extralegal space, and freedom of speech should have boundaries and limitations. Therefore, verbal insults and malicious defamation on the internet should be included in the scope of criminal law punishment. Specialized laws should be used to define the crime of online insults and defamation, filling legislative gaps and deficiencies, and facilitating conviction and sentencing in judicial practice. At the same time, strengthen the review and determination of relevant responsible parties, in order to solve the practical problem of excessive dispersion of responsible parties. It is also necessary to clarify the supervisory and review responsibilities of network operators and regulators, and establish relevant legislation to define their obligations. Finally, we need to strengthen the quality education of netizens, purify the online space,

guide society to go online in a civilized manner, and speak friendly, in order to reduce the occurrence of online insults and slanders from the source.

References

- [1] *Model Penal Code* §250.7 cmt. At 44 (Tentative Draft No. 13, 1961).
- [2] Xiang Luo. (2024) *Path Selection and Reflection on the Criminal Law Regulation of Cyber Violence: Starting from the Separation of the Crime of Insult*. *Chinese and Foreign Law*, 36(02), 285-306.
- [3] Xiaohu Zhang. (2024) *Typical factual forms of online violence and their criminal law characterization*. *Gansu Social Sciences*, 2, 162-171.
- [4] Jing Wang. (2021) *Research on Criminal Law Issues of Suicide Caused by Cyber Violence*. Lanzhou University.
- [5] Weihua Tong, Yuwen Luo. (2024) *Explanation of the Purpose of Criminal Law Regulation on Cyber Violence: Position Positioning and Practice Choice*. *Yuejiang Academic Journal*, 16(02), 103-115+173-174.
- [6] Mingkai Zhang. (2014) *The Concept of Criminal Law in the Internet Era - Centered on the Humility of Criminal Law*. *People's Procuratorate*, 9, 6-12.
- [7] Fan, Huang, Qalati, Shah. (2021) *Effects of Information Overload, Communication Overload, and Inequality on Digital Distrust: A Cyber Violence Behavior Mechanical Organizational Psychology*. 4, 10.
- [8] Shangcong Song. (2023) *Legal Rectification of Cyber Violence in Various Countries*. *Prosecutors Feng Yun*, 21, 16-17.