

Research on the current situation and prevention countermeasures of the crime of network insult and libel

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Abstract: In recent years, with the continuous development of information technology and the increasing ubiquity of the internet, cyber insults and defamation crimes, represented by verbal abuse, have been on the rise. Cyber defamation is a new form of cybercrime. This criminal behavior not only seriously damages the personal dignity and social reputation of others but can also have a significant impact on social order, leading to substantial negative consequences. This article, based on judicial practice, comprehensively examines the current status of cyber insults and defamation crimes, and further proposes various preventive measures and strategies.

1. Introduction

With the rapid development of the internet in the era of the internet and the widespread adoption of 5G technology, people's lives have become increasingly convenient, with many aspects of learning and daily life relying on the internet. However, some individuals have a weak understanding of civil law, leading some students to believe that the internet is a lawless space where they can freely express themselves, even at the expense of harming others. The virtual nature of the online space should not serve as an excuse for criminal behavior. In September 2013, the "Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Defamation Committed through Information Networks" (hereinafter referred to as the "Interpretation") was issued, which explicitly defined the behavior, criteria for prosecution, and other aspects of online defamation [1]. This provided a more powerful legal tool for combating cyber insults and defamation crimes in China. Therefore, researching the legal regulation of cyber insults and defamation behavior is conducive to building a socialist legal system and combating cybercrime.

2. Overview

With the development of the internet age, the internet has taken on more and more social functions, and some unscrupulous individuals take advantage of the virtual nature of online platforms. Cyber defamation refers to the intentional fabrication and dissemination of false facts, which are sufficient to degrade a person's character and harm their reputation, with serious consequences. The object of infringement is the personal dignity and reputation of others, and the object of infringement is natural persons. In order to further penalize cyber insults and defamation,

the "Interpretation," jointly issued by the Supreme People's Court and the Supreme People's Procuratorate, states that if someone uses the internet to insult or intimidate others, with serious circumstances and causing disruption to social order, they shall be punished in accordance with Article 293, paragraph 1 (2) of the Criminal Law for the crime of provocation and trouble-making. The addition of this "Interpretation" demonstrates China's stance on cyber insults and defamation crimes and sends a clear message to criminals that the state will take strict action against any illegal and criminal behavior.

3. Current Situation Analysis

During the National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC) sessions in 2021, Huang Jianping, a National People's Congress delegate and Chairman of Weimei Group, put forward a proposal titled "Suggestions for Strengthening the Governance of Irregularities in Online Self-Media and Combating Online Defamation." He noted that with the rapid development of mobile internet in China, social media platforms with massive user bases have emerged, leading us into a new era where "everyone has a microphone, and everyone is a self-media outlet." "Self-media provides a channel for netizens to voice their opinions, but some self-media outlets blindly pursue economic interests, hype public opinion, create hot topics, and seek to capture the attention of netizens."

For example, the "Cheating Delivery Driver" online rumor incident, one of the top ten legal supervision cases in the annual report of the Supreme People's Procuratorate for 2020 [2], illustrates this point. It involved a 9-second hidden camera video, a fictitious dialogue, and dozens of fabricated chat records. These elements turned a simple act of picking up a delivery downstairs into a nightmare for Ms. Gu, disrupting her life completely. Since the incident, the relevant video materials have continued to spread and ferment on the internet, altering the situation of the case. The actions of Lang and He [3] not only violated the personal rights of the victim but also rapidly spread through the specific social sphere and region of the internet society, severely disrupting public order in the online community, causing a sense of insecurity among the general public. In accordance with Article 246(2) of the Criminal Law [4], they should be prosecuted through public prosecution procedures. The transformation of the case from a private prosecution to a public prosecution was completely unexpected for Ms. Gu and greatly emphasized the support of the judicial authorities. Ultimately, the actions of Lang and He were subjected to legal judgment, and Ms. Gu's rights were successfully upheld.

4. Manifestations and Challenges in Seeking Legal Redress

4.1 Manifestations

(1) Internet users make arbitrary and harmful or insulting comments online regarding unverified or verified online events, causing damage to the personal dignity of the individuals involved. For instance, from November 2012 to August 2013, Qin Zhihui used various Sina Weibo accounts under pseudonyms such as "Huai Shang Qin Huo Huo," "Dong Tu Qin Huo Huo," "Jiang Huai Qin Huo Huo," and "Yan Huang Qin Huo Huo" to either fabricate facts, tamper with false information, or knowingly disseminate fabricated information on the internet. This led to a significant amount of negative commentary from netizens directed at individuals like Yang Lan [5]. In September 2013, the "Interpretation" jointly issued by the Supreme People's Court and the Supreme People's Procuratorate specified the conviction and sentencing criteria for crimes such as defamation and provocation committed through information networks. Qin Zhihui became the first online rumor monger to be sentenced following the issuance of the "Interpretation."

(2) Netizens publicly disclose personal privacy, infringing upon personal privacy rights. In 2021, Jiangsu public security authorities cracked down on a case involving individuals, including Guan, illegally obtaining personal information of citizens. The Jiangsu public security cyber department investigation revealed that the suspect Guan used multiple shell companies to contract with various telecommunications service providers, illegally obtaining data on the internet use labels of over 200 million mobile phone users. After classifying this data based on geographic location and industry, Guan sold it to downstream precision marketing personnel and telecommunications network fraudsters for profit. In 2021, national public security authorities vigorously promoted the "Clean Net 2021" special operation. Regarding the issue of personal information protection, they organized and carried out investigative actions, ultimately solving over 9,800 cases of personal information infringement and arresting more than 17,000 criminal suspects. This effectively maintained order in the online space and protected the legitimate rights and interests of the people.

(3) Netizens disrupt the normal lives of individuals and their relatives, engaging in harassing behavior and speech that damages personal rights. Netizens extend online violence to offline actions, including intercepting and insulting victims and their relatives, causing disorder, threats, and property damage. Such behavior falls under the provisions of Article 275 and Article 293 of the Criminal Law, leading to convictions for intentional property damage and provocation and trouble-making crimes [6,7].

In October 2009, a woman claiming to live in Rongcheng County, Hebei Province, and using the name "Yan Deli" [8], posted on a blog, recounting an incident from when she was 15 years old, alleging that she had been raped by her stepfather. She claimed to have later moved to Beijing for work, but due to a lack of education and skills, she ended up working in a nightclub. On the 13th day, she published a "Contact List of Sexual Partners" containing 279 phone numbers, asserting that she had been diagnosed with HIV/AIDS in early September. The news quickly spread across the country's major forums. However, after a police investigation, it was determined to be a typical internet rumor and malicious defamation against the victim (Yan Deli). Throughout the incident, all the seemingly credible "confessions," "contact lists," and "photos" were fabricated. It was revealed that in March 2008, Yan Deli, who had been working in Beijing, met Yang Mou, and they started living together. In 2009, Yan Deli learned that Yang Mou was already married, so she proposed breaking up. However, Yang Mou continuously harassed her, leading to Yan Deli's refusal. Yang Mou harbored resentment over this and, in early August, purchased a laptop, a mobile internet card, a printer, and a laminator in Zhongguancun. He printed intimate photos of the two of them on 250 sheets of A4 paper and added defamatory text about Yan Deli. On August 21 and 26, Yang Mou drove from Beijing to Rongcheng to distribute these materials, and he also sent images to Yan Deli's relatives via mobile phone MMS. On October 23, after verifying the information, Beijing police arrested Yang Mou, the creator of the so-called "AIDS Woman of Rongcheng" incident, and detained him on criminal charges. In the first-instance judgment, the court sentenced the defendant, Yang Yongmeng, to two years in prison for defamation and three years for intentional property damage.

4.2 Challenges in Seeking Legal Redress

(1) Determining whether the statements made online are genuinely insulting, involve fabrications, or consist of false information, and whether they are infringing and inciteful in nature. Some inflammatory and coordinated attack statements may appear as insults. To establish defamation, it is not only necessary for the content to be insulting but also for there to be a subjective intent to harm someone's reputation. Even if the content is insulting, it may not constitute defamation if there is no subjective malicious intent, such as when presenting factual statements. Public figures may need to

tolerate a higher degree of criticism and commentary in some circumstances, while private individuals may enjoy greater protection of their reputation. When it comes to statements related to public figures and public affairs, a more specific analysis and judgment may be required. There is a distinction between stating facts and expressing opinions in the eyes of the law. Fair criticism based on truthful facts generally does not qualify as defamation. However, defamation based on false facts or insults rooted in fabricated information may indeed constitute defamation.

(2) Cyber insults and defamation crimes are typically handled as private prosecutions, making it difficult for the involved parties to seek police intervention. Conversion to a public prosecution case is only possible if the evidence meets the criteria for serious circumstances, severely disrupts public order in the online community, causes a sense of insecurity among the general public, and seriously endangers social order. As mentioned in this article, in the case of the "Cheating Delivery Driver," it was only after the evidence met the criteria for serious disruption of public order that it was converted from a private prosecution to a public prosecution case with police involvement.

(3) The difficulty of gathering evidence in cyber insults and defamation crimes. Relying solely on the abilities of the victim to investigate and gather evidence can indeed be challenging. Moreover, during the lawful process of seeking redress, victims may face secondary harm from malicious individuals. Direct evidence in such cybercrimes typically consists of chat records and similar digital data, making the investigation wide in scope and the evidence-gathering process challenging.

5. Preventive Measures

(1) Victims should promptly preserve evidence of infringement, using methods such as copying to save relevant information, images, links, and other evidence.

(2) Online platforms should establish mechanisms to protect victims. In November 2022, the Cyberspace Administration of China issued the "Notice on Strengthening the Governance of Online Violence" [9], which suggests that website platforms should establish a robust system for predicting and preventing online violence and strengthen the protection of online violence victims. Website platforms should establish classification standards for online violence information and a sample library of typical cases. On the basis of distinguishing between public opinion supervision and constructive criticism, they should clearly define and detail the criteria for online violence content to enhance accuracy in identifying and warning about such content. Website platforms should organize dedicated teams to collect timely information on online violence-related hot topics and public opinion clues, strengthen pre-warning of online violence, and take preventive measures. They should monitor signs such as a significant increase in messages from strangers, rapid escalation of topic popularity, rapid growth in search volume, and an increase in reporting frequency to detect abnormal online violence behavior promptly. Depending on their own characteristics, website platforms should establish and improve emergency protection features, such as one-click blocking of messages from strangers, comments, and message forwarding. When users are at risk of online violence, the platform should send timely system messages, prompting them to activate one-click protection to avoid harassment and infringement from online violence messages. Website platforms should provide quick reporting mechanisms for online violence information in comments, private messages, and other locations, streamline the reporting process, and promptly handle content that is clearly identified as online violence. They should offer users functions such as one-click evidence collection for online violence information, making it easier for victims to gather evidence quickly. Platforms should adhere to the principle of acting in the best interests of minors and give priority to handling reports of online violence involving minors.

(3) Various government agencies should vigorously combat criminals involved in cyber insults

and defamation crimes. On June 9, 2023, the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security released a draft "Guiding Opinions on Legally Punishing Cyber Violence Crimes" for public consultation. This effort demonstrates the importance that relevant government agencies in China attach to cyber insults and defamation crimes and provides a legal framework for victims to seek justice. Various community organizations should regularly hold seminars on cyber defamation to educate the public on the standards that qualify as online defamation and what steps to take when subjected to online defamation. Through illustrative case discussions, they should warn the public not to become accomplices to criminal activities. It's essential to emphasize that the internet is not a lawless space, and individuals are responsible for their actions and words online.

6. Conclusion

This article has provided an introduction to the definition and current state of cyber insults and defamation crimes. It has summarized the concepts and current status of these crimes and concluded by proposing preventive measures for cyber insults and defamation crimes: strengthening public awareness of information security. By empowering the public to exercise self-restraint and enhance their online security, we can better achieve the principles of governing the country according to the law.

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