

# *Opinions on the Regulation and Governance of Online Insults and Defamation Offenses*

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**Abstract:** In the era of internet information, various criminal issues such as fraud, cyber insults, and defamation occur frequently. The implementation of national anti-fraud laws has yielded positive results in the management of fraud crimes. It is evident that the introduction of relevant laws can lead to better outcomes through the analysis of specific problems. However, cyber insults and defamation crimes remain rampant, resulting in severe consequences such as damage to victims' reputation, privacy, and even their physical and mental well-being. In this context, this paper compares cyber insults and defamation crimes with traditional insults and defamation crimes, analyzes the internal mechanisms of cyber insults and defamation, and provides recommendations for prevention and governance from the perspectives of current shortcomings, society, individuals, and platforms. Furthermore, it emphasizes the need for strengthening governance in the judicial and legislative aspects. By doing so, pocket crimes based on statutory offenses can be avoided, and the principle of leniency and severity in criminal law can be effectively implemented, thereby curbing cyber insults and defamation crimes and reducing harm to citizens, the state, and society.

## 1. Introduction

The rapid advancement of technology and the increasing speed of information exchange have brought immense convenience to human society. However, along with these advancements, there has been a significant rise in the number of cybercrimes, with network insults and libel taking a prominent position. These crimes infringe upon individuals' rights, subjecting them to both emotional and material harm. This essay aims to introduce the concept and characteristics of defamation, drawing a comparison with more traditional forms. It will then delve into the profound underlying reasons that make addressing network insults and defamation challenging, considering the rule of law and standards of conviction. Finally, from a legislative perspective, as well as through conscious operation of online platforms and engaging the public, feasible suggestions and corrective measures for regulating online violence will be proposed.

## 2. Overview of the offence of cyber insult and defamation

### 2.1 Concept and characteristics of the offence of cyber insult and defamation

Insulting or defaming others through the information network refers to deliberately insulting, fabricating, and spreading false information, thereby damaging the reputation and personality of others. This is done through various information networks such as the internet, radio and television networks, fixed communication networks, mobile communication networks, and public local area networks, using devices like computers, televisions, fixed telephones, and mobile phones. In addition to the characteristics of intentional fabrication and dissemination of false facts found in traditional insults and defamation, this behavior also brings about significant social harm [1]. Based on the above definition, we can identify distinct features of cyber insults and defamation crimes: a. Diverse subjects. In the online environment, the subjects involved in cyber insults and defamation are diverse and complex. They not only include individuals as in traditional environments but also encompass emerging entities such as network service providers and information disseminators. b. Novelty of the target: For instance, even government agencies' credibility can become a target of cyber insults and defamation. c. "Indirect intent" simplicity: In the online world, due to difficulties in management, internet users tend to exhibit higher levels of subjective malignancy and social harm. Casual remarks can cause serious harm, and individuals often disregard the consequences while intentionally harming others. d. Group dynamics: Compared to other media, the internet stands out for its widespread and rapid dissemination of information. Cyber violence takes advantage of this characteristic. Perpetrators not only engage in insulting and defamatory behavior themselves but also incite unknown netizens to join in the collective harm against the victim [2].

According to the Digital China Development Report (2022) published by the State Internet Information Office, the number of internet users in China reached 1.067 billion by the end of 2022, an increase of 35.49 million compared to the previous year. The internet penetration rate had reached 75.6 percent. While the internet has brought convenience in transportation, education, work, and other aspects, it has also fueled the boldness of criminals. Cases such as false rumors about a woman picking up a courier in Hangzhou, the death of Liu Xuezhou, a boy searching for his family, and the cyber-violent killing of a "pink-haired girl" demonstrate that the flat and fragmented nature of the internet has somewhat eroded social divisions. It has provided a broad platform for public participation in decision-making and given everyone the opportunity to express their opinions [3]. In the era where "everyone has a microphone," innocent people have become victims of cyber violence. The increasing cases of depression and suicide linked to the internet urge us to reflect on cyber insults and defamation crimes, while the authorities need to respond clearly to this issue.

### 2.2 Difference between cyber insults and defamation offences and traditional insults and defamation offences

There are standard ways of identifying the offenses of insult and defamation in the traditional sense. Article 246 of the Criminal Law provides that "Anyone who openly insults another person or fabricates facts to slander another person by violence or other means, if the circumstances are serious, shall be sentenced to a fixed-term imprisonment of not more than three years, criminal detention, control, or deprivation of political rights." However, the specific connotations of the offenses of insult and defamation differ. The crime of insult generally involves using factual information to harm the victim, causing material and mental harm. On the other hand, the crime of defamation mainly entails the compilation of false content to insult the victim, resulting in material and mental harm. With the development of big data and artificial intelligence, various new types of crimes have emerged. Due to the convenience of the internet and the virtual nature of online

platforms, "photo fraud" has become extremely rampant, along with a high incidence of insult and defamation. In comparison to traditional insult and defamation offenses, those committed using the internet as a vehicle are often characterized by low cost, rapid dissemination, and difficulties in obtaining evidence, all of which serve as limiting factors for convictions.

### **2.2.1 Low costs of online insult and defamation offenses, both in terms of time as well as material costs**

Internet-based insults and defamation offenses can be carried out in fragmented time. The creation of insulting and defamatory statements and events only requires simple editing and organization, and the time cost is undoubtedly lower compared to the large amount of time needed to create and disseminate traditional insults and defamation. At the same time, the material cost is also much lower than the traditional offense of insult and defamation. Online defamation offenses often require little more than registering for a social account, which costs almost nothing, whereas traditional defamation offenses cost more money, especially when compared on the same scale. For example, in the case of a school-based offense of libel and insult, the traditional offense of libel and insult often requires the creation of a more favourable public opinion environment through the establishment of a good network of people through social contacts or the publication of leaflets to create a more favourable atmosphere. If the Internet is used as a carrier, it only requires a forum account and a false story. Therefore, the low cost of the offense of insult and defamation using the Internet as a carrier is an important reason for the gradual increase in the incidence of the offense of insult and defamation on the Internet.

### **2.2.2 Internet-based insults and defamation spread significantly faster than traditional insults and defamation**

Firstly, due to the gradual development of Internet technology, information can be exchanged to multiple terminals in a very short time, which is the fundamental factor of its fast-spreading speed. Secondly, due to the blindness of Internet communication, people are not as simple as in real life to examine whether some statements are true. The insults and slanders carried by the Internet can be spread to people in different regions at the same time. Under the influence of this situation, some of the public's mainstream thinking is even derived from the theoretical views of the communicator, for the network of unfamiliar events cannot form an objective evaluation of the content of the substance. In this situation, a statement on the Internet once the wind is formed, may produce a large wave of blind netizen friends. In contrast to the traditional offense of insult and defamation, "rumors" will always be challenged, and the more people who know about it, the more skeptical voices will be heard, which will ultimately lead to a more serious public opinion. This is an important reason why the offense of insult and defamation on the Internet has a high chance of success once it is implemented. Finally, based on the interactivity of information, interactive behavior such as leaving messages and replying can be carried out among network users. Compared with traditional media, this has the advantages of timeliness, no screening, and no cost, so the fermentation of events far exceeds the speed at which people can identify the truth of the events.

### **2.2.3 Difficulties in obtaining evidence for the offense of insult and defamation using the Internet as a vehicle**

In terms of the form of evidence, the offense of insult and defamation on the Internet presents a challenge as it involves citizens' privacy and personal rights. Platforms are required to cooperate with state authorities in retrieving personal information, creating a dilemma. On the one hand, platforms have an obligation to protect user information; on the other hand, they need to assist in

state investigations. This situation erodes public trust in the platform's safeguard mechanisms, impacting its business reputation and prospects. Regarding the content of evidence, traditional cases of insult and defamation involve various physical evidence. However, when the offense occurs on the internet, the incriminating evidence is generally virtual. Compared to physical and documentary evidence, virtual evidence in internet-based insult and defamation cases is more susceptible to destruction. Especially given that platforms have different user registration standards, with some not requiring real-name registration, forensic investigation often encounters difficulties when dealing with only virtual accounts. Therefore, it is undoubtedly very difficult to obtain evidence for the offense of insult and defamation using the Internet as a carrier.

The above are the main differences between the offense of insult and defamation using the Internet as a vehicle compared with the traditional offense of insult and defamation, and these changes urgently require the criminal law to make corresponding changes to adapt to the development of society. The Interpretation of Cyber Defamation issued by the Supreme People's Court and the Supreme People's Procuratorate in 2013 contains specific provisions on the conviction of insult and defamation in cyberspace, in an attempt to solve this problem. However, at the legislative level, the relevant measures and laws have indeed not been well implemented, including for the following reasons.

### **3. Exploration of the deep-rooted reasons for the difficulty in administering the offence of insult and defamation using the Internet as a vehicle**

Internet-based insult and defamation offenses have become a major social pain point, usually due to a lack of evidence or public opinion pressure to end hastily. Because some citizens in China do not understand that insults and defamation in the network may also lead to a crime, they will choose to tolerate the aggression rather than to file a lawsuit, which ultimately leads to this situation becoming more and more difficult to clean up. In recent years, the data related to the offense of insult and defamation show that the number of cases of network insult and defamation is decreasing year by year, which does not match the number of incidents of network insult and defamation in real life. With the development of society, the social conflicts in China have become more complex, the national awareness of the protection of their personality rights has increased, and the related cases should have increased year by year. This situation may reflect the fact that in the era of information technology, most of the insults and defamation offenses have developed into the phenomenon of insults and defamation offenses using the Internet as a carrier. The lack of publicity on how to resist and defend against the offense of insult and defamation on the Internet is a reason for the collective silence of the people who have no recourse when they encounter the relevant situation. There are also two other reasons why it is difficult to tackle the offense of defamation and insults on the Internet.

#### **3.1 Improving inadequate law and enhancing the rule of law**

Firstly, in terms of legislation, the offense of insult and defamation under 246 of the Criminal Law is a relatively broad offense, giving judicial workers a wide margin of freedom. With the emergence of the problem of the difficulty of determining the offense of cyber-based insult and defamation, the 2013 Interpretation of Cyber Defamation issued by the Supreme People's Court and the Supreme People's Procuratorate provides more detailed provisions on the conviction of cyber-based insult and defamation, but this law is mainly aimed at legal staff and is not very popular with the public. For example, there are no provisions on how the public can clarify what the offense of cyber insult is and under what circumstances they can bring a lawsuit. This situation may lead to the public not knowing whether and how to defend their rights after they have been insulted

and defamed using the Internet as a tool. For ordinary citizens who are not deeply familiar with the law, it is difficult for them to discern from a vague provision whether or not they should use it to defend their rights.

Secondly, in terms of judicial work, in order to prevent the offense of insult and defamation from being "pocketed", judicial workers tend to be cautious about convicting the offense of insult and defamation on the Internet, applying the principles of *nullum crimen sine lege* and *nullum crimen sine lege* to adjudicate the cases, which results in the majority of insults and defamatory acts not being recognized as criminal acts. Criminal offenses. Penalties are both punitive and educational and are the main means by which criminal law can be effective, but an overly cautious attitude may diminish the educational aspect of criminal law, as well as the warning aspect. An overly cautious approach to the administration of justice may create a disguised form of encouragement and support for cybercrime offenders, who may perceive it as a tacitly legal act and commit the same type of offense many times over.

### **3.2 Inconsistent standards and lack of remedies**

According to the law, when a victim files a private prosecution, there should be a clear defendant and a specific lawsuit request. The private prosecutor shall identify the person against whom the complaint is to be brought, and if he or she is unable to identify a specific defendant or if the whereabouts of the defendant are unknown, the private prosecution cannot be established. A private prosecutor shall make specific requests for action, including the specification of the offense, and request the people's court to pursue the victim of criminal responsibility. The victim also has to be able to prove that the defendant is guilty of the alleged offense. The victim must also have evidence that proves that the defendant committed the offense he or she is accused of. Most victims of online insults and defamation will be found by the court to be ineligible for prosecution, unable to satisfy the elements of the offense of insult and defamation on the basis of a few screenshots alone, and so the self-represented litigant is denied the relief he or she deserves, and ultimately no case is filed on the grounds that the facts are not clear and there is insufficient evidence.

Public security organs need to play a role. Owing to the convenience of various conditions, such as geography, mode, and speed of dissemination, it is not easy to detect and control the illegal and criminal behaviour of defamers, and it is difficult to collect and obtain relevant evidence. People can change their screen names and other means to fabricate facts and defame others as they wish. In such cases, it is very difficult for the person concerned to obtain relevant evidence by his or her limited strength, and without the intervention of the public security authorities, it is sometimes not even possible to determine who the defamer is, not to mention defending one's rights and interests [4].

## **4. Recommendations for regulating and restricting, and thus reducing, online insults and defamation**

### **4.1 Fundamental regulation in terms of legislation**

In response to the problems it currently faces, the State is actively promoting the governance of cybersecurity. The Ninth Amendment to Criminal Law adds a third paragraph to Article 246 of the Criminal Law on the offenses of insult and defamation, which reads: "Where an act of insulting another person or fabricating facts to defame another person is committed through an information network, and the victim tells the people's court of the difficulty in providing evidence, the people's court may request the public security organs to provide assistance." This amendment, by stipulating the obligation of the public security organs to assist in evidence collection, has to a certain extent

changed the problem of difficulty in obtaining evidence for insult and defamation offences on the Internet. In September 2013, the Supreme People's Court and the Supreme People's Procuratorate adopted the "Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Using Information Networks to Commit Slander and Other Criminal Cases" (hereinafter referred to as the "Interpretation"), which refined the criminal composition of the offense of online insult and defamation. For example, how to determine the "fabrication of facts to defame others" and the "seriousness of the circumstances"[5].

Although Article 2 in the Interpretation states that If the same defamatory information is actually clicked or viewed more than 5,000 times, or forwarded more than 500 times, it shall be deemed as "serious circumstances" as stipulated in the first paragraph of Article 246 of the Criminal Law. We believe that filing a case purely on the basis of the number of times will result in the failure to convict and punish the perpetrator in some cases. For example, insulting or defamatory information published in the microblogging application, although the number of times each status is viewed, often does not need to click, and therefore the number of times the status is viewed does not truly reflect the real state of the information is viewed. This standard of proof is very likely to result in the helpless end of a self-represented person who has no recourse.

In addition, the State should strengthen the publicity and popularisation of the newly established laws, so as to better enable judicial workers and the people to understand the content and significance of the relevant laws, so that the new laws can really be put to good use.

#### **4.2 Restrictions in terms of online platforms**

As the offense of insult and defamation using the Internet as a carrier has the characteristics of fast dissemination, low cost, and not easy to be detected in the process of the offense, the governance of cyberviolence is very unlikely to be intercepted in the middle of the process, and in most cases, the results of the criminal act will take place as soon as it is committed. The fundamental way to solve the problem should start from the network platform. As the first party to receive and review, managing the online platform is the only way to reduce the occurrence of criminal behavior from the root. Suggested practices are as follows:

The introduction of relevant administrative regulations, urging the platform as soon as possible to improve and strengthen the speech audit and reporting mechanism; for the laissez-faire platform, to give a certain penalty, to effectively avoid the platform with a fluke mentality; the use of the first off the speech to hype, increase the heat of the platform, for the attitude of laissez-faire, or even to encourage an attitude of the platform to be punished severely.

#### **4.3 Raising public awareness**

A comprehensive examination of online insult and defamation reveals that a significant portion of the victims are internet users with limited judgment and legal awareness. Particularly concerning current news on the internet, after a brief period of online public opinion amplification, many internet users struggle to independently discern the truth. Instead, they tend to support existing viewpoints prevalent on the internet, inadvertently becoming accomplices in perpetuating online violence against others. In such communities, there is no clear leader directing and instructing participants on how to communicate and attack others. Most participants seek validation and approval from their peers, blindly conforming to the majority without considering the veracity of the situation. Consequently, the incident often deviates further from the truth.

To address this issue, society as a whole, including the media, government, and social organizations, should enhance public awareness regarding the criminal nature of online insult and defamation. It is crucial to disseminate legal knowledge among the public and promote an

understanding of the law. Internet users need to be reminded to regulate and moderate their own behavior. By comprehending the perils of cybercrime, refraining from believing or spreading rumors, actively debunking falsehoods, and avoiding blind conformity to trends, we can foster a positive cyber culture.

## 5. Conclusion

This essay provides a systematic introduction to the definition and characteristics of Internet insults and defamation crimes. It highlights the issues within the legal system in terms of legislation and conviction, and explains the challenges faced in governing these crimes. Furthermore, this essay presents specific suggestions for preventing online violence from the perspectives of government departments, online platforms, and the general public. By presenting a comprehensive analysis, this essay aims to increase awareness of online insults and defamation crimes among a wider audience. It serves as a reminder for government departments to strengthen legislation and enhance their awareness in order to better protect individuals' rights.

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