

Analysis on the Behavior Characteristics and Application of the Crime of Network Insult and Libel

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Abstract

Under the background of the large-scale popularization of network technology, the crime of network insult and libel has become a new form of the traditional crime of insult and libel in the network environment. The number of related cases has increased year by year, encroaching on the network security environment and affecting the social order. However, the two problems exist in the identification of disputes and the application of charges. In order to maintain social governance, it is necessary to provide clear boundaries for identification and to provide applicable charges to avoid cases where convictions are not possible or unclear. This paper mainly analyzes and studies the cases of online insults and defamation published in recent years by means of desktop research. This paper analyzes the behavior characteristics and regulation status of the crime of network insult and libel, and puts forward countermeasures and applicable charges, and distinguishes the applicable situations of the above different charges. It is clear that crimes in the network era should continue to follow up the legal construction, deepen the awareness of legal research, and at the same time, enhance the legal awareness of citizens to build a better society.

Keywords: internet legislation, network defamation, internet insult, cyber violence

1. Introduction

1.1 Research Background

In 2023, the 52nd Statistical Report on the Development of the Internet in China was released. According to the report, as of June 2023, the number of Internet users in China has reached 1.079 billion, and the Internet penetration rate has reached 76.4%. The total number of domain names in China is 30.24 million. The number of Internet users has increased, and the Internet environment has become complicated. Network insult crime and network libel crime threaten people's right of reputation, right of honor and other personal rights.

1.2 About the Research Methodology of This Paper

This paper adopts the method of desktop research, which is used in all stages of the project and can be used when facing the current situation and needing in-depth exploration. Through data analysis, we can understand the whole status quo of the project and obtain certain analysis results, which can pave the way for the next research. First of all, you can divide the project topic into several related topics to form a thinking tree. SWOT analysis and five forces model can be used in the process of splitting, and then search for relevant information according to the small topics, and continuously expand your initial thinking tree throughout the process. When searching for relevant materials, many and different data will be obtained. In order to avoid the inaccurate data of a certain channel and cause the wrong conclusion, it is necessary to verify the rationality of the data by multiple parties after collecting the data. Data verification methods include the following: horizontal comparison; Longitudinal time comparison; Expert verification. Focus on data sources. During the time of this desktop research project, I consulted relevant legal literature and legal works, and compared the content and direction of horizontal research. After discovering the correlation points, I integrated my own opinions into it, referred to the research results of previous scholars, inquired the data of relevant legal cases, and formed a broken line comparison, from which I obtained the correct data needed for better analysis. In the whole desktop research, the main themes of online defamation and online insult were first determined, and then divided into two sub-themes of behavioral characteristics and applicable charges. Under the sub-theme, regulation and application were divided. After splitting, I analyzed each small module, searched relevant materials and data, analyzed and compared the data, and integrated the data into the

module after my own thinking, and finally got a complete big theme thinking tree. Through the method of desktop research, we can efficiently obtain our own research results, and exercise the ability to find and summarize materials, which is helpful to promote individual progress and development, and contribute to the research.

1.3 Literature Review

The desktop research methods of literature analysis and case analysis are mainly used to analyze the judgment documents related to online insults and online defamation published in China in the past three years, as well as relevant Chinese legal works. The literature is summarized, sorted out and analyzed, and the relevant research results of previous scholars are summarized.

1.4 Problem Statement and Objectives

At present, the research direction of the crime of online defamation and insult in China is relatively simple, and there are still some disputes on the identification, and the application of some crimes also exist corresponding situations. This paper will elaborate the behavioral characteristics and regulatory status quo of the crime of network libel and insult, the identification disputes and the application of the crime, and summarize the analysis of the application of the crime of network insult and network libel.

2. Current Situation of Regulation of Crime of Internet Insult and Internet Libel

In recent years, there have been frequent cases of online violence, among which the number of online insults and online defamation cases has gradually increased. The virtuality and anonymity of cyberspace make it more difficult for such cases to defend their rights and collect evidence, and the investigation rate is low. Moreover, online insults and defamation themselves have the behavioral characteristics of "many on one" and "superimposed harm". Once such crimes occur, the consequences of reputation infringement are extensive and far-reaching, with knock-on effects. Crimes of insult and libel are cases of private prosecution. If the victim is unable to tell because of coercion or intimidation, the people's procuratorate and the victim's close relatives may also tell. For example, after the sentencing of the Jiang Ge case, Lin released a series of blog posts related to the Jiang Ge case through his Sina Weibo account "Lone Wolf Solo Language 4". These contents to Jiang Ge and Jiang Ge mother constitute an insult, slander, so Jiang Ge mother to Lin committed the crime of insult, libel to Jian 'ou court filed a criminal private prosecution. After hearing, the court held that the Internet is not a place outside the law, and relevant words and deeds should be regulated by law. The defendant Lin insulted and libeled others through the way of Posting Weibo many times, and his behavior has constituted the crime of insult and libel, which should be punished for several crimes. Finally, the court sentenced the defendant to two years and three months in prison.

Compared with traditional insults and defamation, network insults and defamation are more harmful. This kind of behavior has the characteristics of "agglomeration", which is easy to produce agglomeration effect, spillover effect and agglomeration effect. Different from the traditional accumulation, the crime trend of network insult and slander appears alienation, and achieves cross-time, mass and persistence. On the Internet, these insults and defamatory remarks break the geographical space restrictions, spread and participate in a wider range, and stay in the network space for a long time, whether it is caused by personality infringement or sustained state of infringement, it is more harmful than traditional insults and defamation. For example, Liu Xuezhou's Internet storm death case, in December 2021, the progress of 15-year-old Liu Xuezhou's family search has been concerned by netizens. After Liu Xuezhou posted a recording of a phone call with his birth mother online, she accused him of forcibly demanding property from his parents. Public opinion immediately pressed to Liu Xuezhou, some people said that he was self-directed and self-hyped, some people abused him. On January 24, 2022, Liu Xuezhou committed suicide in Sanya, Hainan Province, after Posting a 7,000-character suicide note. In the suicide note, Liu Xuezhou recalled in detail the various unbearable encounters in the past 15 years, and responded to the process before and after the search for relatives, as well as the pressure after encountering Internet violence. At 12 o'clock on February 13, the case of Liu Xuezhou being killed by Internet violence was held online at the Beijing Internet Court. More than 2,000 abusive and defamatory messages were the final straw.

In the Internet era, the crime of online insult and defamation has shown a growing trend, and due to various reasons such as difficulty in obtaining evidence, the detection rate is low, and the superimposed harm and lasting infringement state make them more harmful. The scale of such cases is growing, but so is the crackdown on cyberbullying. The Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in Handling Criminal Cases Involving Defamation through Information Networks in 2013 and the Cybersecurity Law of the People's Republic of China in 2016 both provide judicial application for crimes of online insults and online defamation.

2.1 Controversy on the Identification of Crime of Internet Insult and Crime of Internet Libel

The popularization of network technology makes network culture develop rapidly, but at the same time, it also brings network environment problems. Vulgar and vulgar words abound on the Internet. Even with the emergence of the real-name system, the Internet language, because of its original characteristics, is flooded with vulgar and offensive language guided by extreme emotions. There are also disputes on the identification of the crime of network insult and network libel.

2.2 The Legal Definition of Verbal Insult or Slander Is Blurred

Because of the complexity, situationality and controversy of the Chinese language, there will be many complicated situations. First, some explicit words that distinguish insult or slander; The second, obscure, needs to be judged according to the subject and the situation is insulting or defamatory; Third, it's insulting or defamatory or inappropriately worded. Under different circumstances, the consequences are also different. In the 34th batch of guiding cases issued by the Supreme People's Procuratorate, Lang Mou and He mou libel case No. 137, Lang Mou secretly photographed the victim Gu Mou in the Courier station. Then the two pretended to be couriers and Gu, fabricating the wechat chat records of Gu and the Courier. Lang will be fabricated chat record screenshots, videos, pictures posted in the wechat group, causing a large number of vulgar speeches. In this case, the case was found to be libel, because the presence of a large number of statements clearly involved insults and defamation.

2.3 The Standard of Insult and Libel for Ordinary Speech Is Unclear

Due to the lack of literal and extended interpretation of "insult" and "slander" in legal provisions, especially regarding "insult", some judicial precedents distinguish derogatory words into "rhetorical derogatory words" and "insulting derogatory words", and rhetorical derogatory words are not insulting. In the first case of calligraphy criticism, the defendant Bai said, "Jin is really a real parasite, a yesman, a wood worm", "Jin is a shameless person who sucks the care of hemorrhoids for Wu Xue", "eats shit to be fragrant", and used these statements to criticize Jin. However, in the academic discussion of the case, some people also proposed that the defendant Bai is quoting a paragraph of Mr. Li Jianwu. A critical statement by Mr. Li once included the above three kinds of worms. In this case, there is no clear line between words that meet the insulting standard. Therefore, the judgment of the aggressiveness of some ordinary but insulting words needs to consider a variety of circumstances: first, the overall intention and feeling of the content, and what is the starting point of the speaker. Assuming that only individual words are clearly insulting, but that the whole expression satirizes the status quo, then it is not appropriate to assume. The second is a detailed analysis of the details to distinguish what the speaker is criticizing. The range of "insults" is very wide, and some involving appearance attacks or personality attacks are bound to be insults.

2.4 The Distinction between Crime of Internet Insult and Crime of Internet Libel

The crime object of network insult and network libel is the same, so it is very important and necessary to determine whether a case belongs to the crime of insult or libel. German criminal law theory generally holds that defamation is the fabrication of facts, while insult is the statement of a defamatory opinion, which is also recognized by our academic circles. In addition, the distinction between the two crimes also put forward the difference in methods, behavior and other ways, such as slander can only be oral, written, insulting behavior can be violence, action. But in the context of Internet Plus, traditional insults and defamation are taking on new forms online. Referring to the judgment documents of the type of network violence in recent years, the proportion of insult cases is relatively small compared with the proportion of defamation cases, which is also reflected in the judicial behavior of sentencing insult crimes is very careful.

In the Chang insult case, Chang obtained Ahn's personal information and connected the personal information of Qiao and Ahn with the hot online events with Chang and Sun, and posted insulting posts on social platforms, and contacted several media outlets to spread it. Eventually, there was a lot of abuse online. Such cases of publishing insulting comments and causing adverse social impact constitute insult cases.

Wu mou defamation case, Wu mou to "fly brother in Dongguan" compilation deeds to win attention, after Wu mou concerned about Shen Mou's "daily with grandpa", using Shen Mou's picture to publish information on his account, fabricating false news. Finally, the false information was forwarded and discussed in large numbers, resulting in netizens' indiscriminate abuse and slander against Shen, which caused a very bad social impact. Oh also targeted Min and posted defamatory information. The case was characterized as libel.

Through the above and in-depth study of other similar cases, it can be seen that the types of insult crime can be roughly divided into Posting insults and spreading personal private events to publicize, involving the above two types basically constitute the crime of network insult. On the other hand, the crimes of libel are mostly fabrications.

2.5 Identify the Social Impact of the Dispute

There is ambiguity in the judgment standard of verbal insult infringement, there are the same cases but different judgments, which is not conducive to the use of legal means to protect the network environment. The establishment of a unified judgment standard is beneficial to optimize the work of judicial organs; It will also help netizens participate in the construction of a clean cyberspace and better implement comprehensive Internet governance policies.

3. Analysis of the Applicable Situation of the Crime of Network Insult and Network Libel

3.1 Define the Problem Points and the Relevant Decision Circumstances Apply

In September 2023, the "Guiding Opinions on Punishing Crimes of Internet Violence according to Law" (hereinafter referred to as the "Opinions") was released. This paper only analyzes the application of the charges based on the Opinions and the crimes of insult and slander in the Criminal law, and combines the analysis already put forward by previous scholars. According to the judicial cases made public in China in the past three years, there are many cases with unclear boundaries in the judgment of the following two aspects: one is the judgment of "seriously endangering social order", and the other is the procedure of transferring private prosecution to public prosecution in criminal cases of insult and slander. There are many related cases with vague boundaries and unclear applicable charges. Therefore, this paper focuses on these two aspects, combined with cases and related legal literature analysis.

3.2 On the Judgment of Seriously Endangering Social Order"

3.2.1 Legal Provisions and Other Theoretical Basis

As mentioned above, the crimes of insult and defamation belong to private prosecution cases, which are not ignored, except those that seriously endanger social order and national interests." The meaning of "seriously endangering social order" here refers to the crime of insult, slander or the consequences of the victim's failure to tell. In judicial practice, there are cases that directly resort to "other serious harm to social order and national interests" and investigate by authority. Article 12 of the Opinions not only expands the specific circumstances under which "serious harm to social order" can be determined, but also indicates the criteria for determining "other circumstances".

"Opinions" from the perspective of crime and lawlessness listed five categories of circumstances to understand "serious harm to social order." From the perspective of the five situations, as long as the object of the behavior, the way, the method and even the subjective motive of any aspect of the situation is serious, it can be constituted. This method of judging the severity of wrongfulness, which is not based on the premise of the specific object of infringement or the occurrence of a specific incident, is obviously more convenient to activate the right of prosecution of the state.

Those who insult others or cause serious consequences such as mental disorder, self-harm or suicide of the victims may be identified as "serious circumstances". Where the perpetrator intentionally commits insulting acts to others on the Internet for the purpose of destroying the reputation or degrading the personality of others, such as spreading the victim's personal privacy, physical defects, etc., if the circumstances are serious, it shall be identified as the crime of insult.

3.2.2 Specific Analysis of Relevant Cases

The Supreme People's Procuratorate issued the 34th batch of guiding cases in the inspection case No. 138, Yue insult case. Yue spread the victim's nude videos, photos and insulting words on the network, which eventually led to the victim's suicide, seriously jeopardizing social order, and finally investigated for criminal responsibility for the crime of insult. In the case, the defendant Yue Mou and the victim Zhang Mou two people in the same village, during the two people's relationship, Yue Mou repeatedly took photos and videos of Zhang Mou naked body. After the two people broke off communication, Yue Mou in retaliation for Zhang and his family, in the social platform to spread the naked photos and videos of Zhang mou taken during the two people's communication, and sent to Zhang's family. One of the accounts after Yue was blocked because of Zhang's report. However, Yue once again applied for a new account and continued to spread the above video of Zhang and the photo of Zhang with insulting words, and the video and photo views of the social account reached more than 600 times. The above insulting information quickly spread and fermented in the local area, causing adverse social impact. At the same time, Yue also repeatedly harassed and provoked Zhang's husband through phone calls and wechat. Zhang was under pressure from public opinion, and finally swallowed poison and died. In the case, Yue in order to retaliate, in order to vent their emotions and spread the naked photos of Zhang, causing extremely serious impact on Zhang and his relatives and families, and eventually leading to the tragic outcome of Zhang suicide by poison, the social impact of the

case and its bad, nude photos, videos are widely spread, the end of Zhang's life, the fundamental reason for all this is Yue, Yue's behavior constituted the crime of network insult, and the direct consequences caused by serious harm to social order, so the court finally adopted the criminal facts and sentencing recommendations charged by the prosecution, and sentenced Yue to two years and eight months in prison for the crime of insult. After the judgment was announced, Yue did not appeal, and the judgment took effect.

The crime of insult "seriously endangers social order" can be determined by combining the behavior pattern and social impact. The crime of insult belongs to the crime to be dealt with only after telling, except that it seriously endangers social order and national interests. In the case of the perpetrator using the information network to insult others, whether it is a "serious harm to social order" can be determined according to the relevant provisions of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in Handling Criminal Cases involving the use of information Network to slander. Where the perpetrator disseminates on the Internet information that seriously infringes on the privacy of others, such as nude photos and videos of the victims, resulting in adverse social impact, or disseminates insulting information on the Internet, resulting in a large number of negative evaluations of the victims, resulting in adverse social impact, not only infringing on the personality rights of the victims, but also seriously disrupting social order, It can be identified as "other situations that seriously endanger social order" and prosecuted in accordance with the public prosecution procedure.

3.3 Procedure for Transfer from Private Prosecution to Public Prosecution in Criminal Cases of Insult and Slander

3.3.1 Procedure for Transfer from Private Prosecution to Public Prosecution in Criminal Cases of Insult and Slander

According to the criminal law, crimes of insult and libel shall be dealt with only if they are told, except those that seriously endanger social order and national interests. In other words, online insults and defamation are usually brought by the victim in a private prosecution, which meets the conditions of "serious harm to social order" and applies the public prosecution procedure. However, in order to further smooth the litigation process and do a good job in the coordination and conversion of relevant cases, Article 13 of the Guiding Opinions provides guidance on the conversion of private prosecution to public prosecution in cases of Internet insult and defamation." No matter in the legal provisions, or in theory, or in practice, private prosecution to public prosecution is possible and possible, there is no applicable obstacle. First of all, from the perspective of legal provisions, according to the provisions of the second paragraph of Article 246 of the Criminal Law, the crime of insult and libel shall be dealt with only if it is told, except if it seriously endangers social order and national interests. In this case, the relevant video materials were further spread and fermented on the network, which made the situation of the case change. The behavior of the defendants Lang and He not only damaged the victim's personality rights, but also spread rapidly through the specific field and region of the network society, which seriously disturbed the public order of the network society and caused insecurity to the general public. It is an act that seriously endangers social order. Therefore, the prosecution procedure to investigate criminal responsibility conforms to the provisions of the law. Secondly, from a theoretical point of view, there is private prosecution first, and then public prosecution, which does not violate the principle of "non bis in idem". With the start and advancement of public prosecution procedure, private prosecution will be absorbed or integrated by public prosecution. Thirdly, from the perspective of practice, the effect of private prosecution of libel crime is not ideal. In practice, the innocence rate of private prosecution cases is far higher than that of public prosecution cases. The fundamental reason is that it is difficult for the plaintiff to provide evidence and prove evidence. After the public authority on behalf of the state conducts investigation and evidence collection, the final treatment effect is naturally not what private prosecution cases can achieve. Compared with private prosecution and public prosecution, the prosecution procedure to investigate such serious online defamation cases is more in line with the requirement of "striving to let the people feel fairness and justice in every judicial case". Finally, from the perspective of comparative law, some civil law countries have made special provisions on the procedure of private prosecution to public prosecution. For example, Article 377 (2) of the German Criminal Procedure Law stipulates that the prosecution has the power and obligation to take over a case brought by a victim as long as it considers that it is in the public interest to convert the case into a public prosecution case. What is in the public interest is left to the discretion of the procuratorial organ.

3.3.2 Specific Analysis of Relevant Cases

The Supreme People's Procuratorate issued the 34th batch of guiding cases in the inspection case No. 137, Lang Mou, He Mou libel case. In the case, the defendant Lang used his mobile phone to secretly take photos of the victim Gu, who was waiting for delivery, in a Courier station, and posted the video on a wechat group. The defendant He Mou used wechat to pretend to be Gu Mou to chat with himself, and then he and Lang used their

respective wechat signals to pretend to be Gu mou and couriers, fabricating wechat chat records of Gu Mou meeting couriers and repeatedly having improper sexual relations. In order to enhance the credibility of chat records, Lang and He also fabricated videos and pictures such as "on the way to the appointment" and "dating scene". During this period, Lang will be the above fabricated wechat chat records of dozens of screenshots and videos, pictures have been published in the wechat group, causing a large number of vulgar and obscene comments in the group. Later, the above secretly taken video and fabricated wechat chat record screenshots were merged and forwarded by others, and successively spread to more than 110 wechat groups, with a total of more than 20,000 members, causing a large number of vulgar comments, and a number of wechat public accounts and websites reprinted tweets on the above chat records, a total of more than 20,000 times, affecting Gu's normal work and life.

After the trial, the court held that the defendants Lang and He, for the purpose of seeking stimulation and gaining attention, fabricated facts that damaged the reputation of others and spread them on the information network, causing the information to be read and forwarded in large numbers, seriously violating the victim Gu's right to personality, affecting her normal work and life, causing her to suffer certain economic losses and social evaluation to be certain derogated. It belongs to fabricating facts to slander others through the information network and the circumstances are serious, the two defendants' behavior has constituted the crime of libel, and the charges charged by the public prosecution organ were found guilty. In view of the fact that the criminal behavior of the two defendants has not only affected the victim Gu, the randomness of the object selection has caused an unspecified public panic and a decreased sense of social security and order; Defamatory information spread widely on the Internet, causing a large number of obscene and vulgar comments, although the public security organs refuted the rumors, it still caused a great impact on the network public order and seriously endangered social order. The public prosecution organ prosecuted the two defendants for defamation, which is in line with the law.

In this case, for the first time, Gu filed a criminal private prosecution to the court. However, the incident fermented quickly, public opinion is increasingly inclined to vulgar direction, the prosecution believes that the case has seriously disturbed the public order of the network society. It is difficult for a private prosecutor to collect evidence, so the best way is to turn to public prosecution. This is a case of private prosecution to public prosecution. Due to the nature of cyberspace, the incident ferments quickly and spreads and influences widely, so it is difficult for the private prosecutor to effectively investigate the criminal responsibility of the criminal suspect. If the public interest is infringed, the public prosecution procedure shall be applied.

4. Conclusion

This paper introduces the characteristics and current situation of network insult and network libel, and puts forward some cases of applicable crimes.

Through the research and analysis of legal provisions, judgment documents and previous research done by scholars, the relevant information of network insult crime and network libel crime is obtained. This paper summarizes the current handling of Internet insult and Internet libel related cases and puts forward the method of analysis of applicable charges. However, this paper only draws data and conclusions from literature and judgment documents, and lacks practical and testing. In the future, we should continue to participate in court hearings and other ways, go deeper into relevant cases, more deeply experience and understand the case itself and the law itself, and increase field experience on the basis of desktop research, waiting for better improvement. Nowadays, with the rapid development of network technology, the incidence of network insult and network slander is increasing year by year, and it is urgent to deal with such incidents correctly. The promulgation of a series of laws and judicial interpretations, such as the Cybersecurity Law of the People's Republic of China and the Guiding Opinions on Punishing Crimes of Cyber Violence according to Law, has also provided the hardest backing for combating cyber crimes and cyber violence.

But at the same time, in the process of searching legal provisions, judgment documents and journals written by scholars, deficiencies and regrets are still found.

Most of the cases of Jiang Ge series rely on Jiang mother's private prosecution; In the libel case of journalist Zhu Wenna, the scope of application is too wide. The poor mother who was hit by Internet violence in the incident of the mother who lost her child fell from a building in Wuhan finally chose to jump off the building to end her life; The Guangzhou subway camera incident is Shouting about how to protect their rights in the face of Internet violence, and so on, the handling of relevant cases still has shortcomings. The state should strengthen the construction of relevant laws, deeply follow up the scope and object of application of the law, keep pace with The Times, and enhance the applicability of the law; Judicial and law enforcement agencies shall be impartial and strictly enforce the law to ensure that the law is implemented in all aspects; Citizens should enhance their awareness of the law and resolutely not cross the red line of the law.

A harmonious society with legal system needs the joint efforts of all subjects to achieve, we believe that in the future, in the aspects of online insults and online defamation, the law will be more and more perfect, to protect the legitimate rights and interests of every citizen.

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