

The Crime of Insult in Cyberspace: A Discussion on the Identification of the “Aggravating Circumstances”

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Abstract: With the advancement of Internet technology, instances of insults or defamatory acts in cyberspace have become increasingly prevalent. The social harm arising from these acts surpasses that of traditional insults and defamation. However, China’s legal system lacks a unified standard for evaluating such acts committed through the Internet particularly when determining the criteria for “aggravating circumstances”. By analyzing the distinctive features insulting crimes in both physical and virtual spaces, it becomes apparent that there is a lack of a clear definition for “aggravating circumstances” specifically pertaining to insults in cyberspace. Furthermore, there is a delay in recognizing their consequences. To address this issue, judicial adjudicators should first refer to the *Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law to the Handling of Criminal Cases Involving the Use of Information Networks for the Purpose of Committing Slander and Other Criminal Cases* (the Interpretation on Internet Slander) in order to establish a standard for determining “aggravating circumstances” in cases of online insults. Second, the severity of the circumstances should be determined by considering relevant factors based on the harm inflicted upon others by cyber insults. Lastly, considering the unique characteristics of insults in cyberspace, additional factors to be considered when adjudicating such cases should be proposed.

Keywords: cyber, insulting behavior, crime of insulting, aggravating circumstances

1. Introduction

Due to the rapid development of Internet technology, there has been a rise in the frequency of criminal activities committed through online platforms. The distinctive characteristics of cyberspace have led to the emergence of new facets within these crimes, which differ from those in the physical realm. Consequently, China’s criminal law framework, primarily built upon traditional real space principles, faces certain disparities and delays in evaluating criminal acts occurring in cyberspace [1]. It has become imperative for China to address the pressing issue of achieving the integration of cyberspace and physical space while effectively regulating cybercrime offenses.

Furthermore, Article 38 of the *Constitution of the People’s Republic of China* recognizes the right to honour as one of the fundamental rights of citizens [2]. The right holds immense importance and its significance cannot be undermined. As the economy develops and society progresses, citizens’

consciousness of safeguarding their personal rights has grown stronger. To protect the right to honour, China's criminal law includes provisions for the crime of insult. The ninth amendment to the criminal law further supplements remedies for victims of insults in cyberspace, contributing to the protection of citizens' personality rights and the maintenance of cyber order.

To achieve the convergence of criminal regulation on insulting behaviour in cyberspace and traditional physical space, several factors need to be taken into consideration. First, insulting behaviour in cyberspace has distinct characteristics such as rapid dissemination speed, extensive reach, and unpredictable harmful consequences compared to insults in traditional space. However, China's Criminal Law provides only brief provisions regarding the crime of insult [3]. In practice and academic discourse, defamation receives more attention than insult within China's criminal law framework. For instance, in 2013, the Supreme People's Court and the Supreme People's Procuratorate issued the *Interpretation on Internet Slander*. Nevertheless, this interpretation does not specifically address cyber insulting behavior. Thus, there is a lack of standardized criteria for evaluating insulting behaviour in cyberspace, particularly concerning the determination of "aggravating circumstances". Although the Supreme People's Procuratorate has suggested using the *Interpretation on Internet Slander* as a reference in guiding cases, significant differences persist within academic circles regarding this matter. Consequently, challenges arise in establishing regulations for cyber insulting behavior and effectively curbing its frequent occurrence amidst the rapid development of the Internet today.

On the other hand, cyber insults have been identified by academics as a typical example of criminal alienation in real space [4]. In terms of the subject of behavior, the individual engaging in insulting behavior in cyberspace is alienated from the direct actor in traditional space and becomes the network user and the provider of network services. This means that not only the disseminator but also the person providing the dissemination platform may become the target of regulation for the crime of being insulted. In terms of behavior, cyber insults in the online space have virtual characteristics and the behavior itself possesses secrecy and convenience, which results in significant differences in harmfulness compared to traditional space [3]. Due to the alienation of behavior, the resulting harm is also alienated. In cyberspace, once information is published by an information publisher, curious or coaxed viewers can simply press the forwarding button, leading to the rapid and widespread dissemination of insulting information at an exponential speed. As a result, the number of people who become aware of the information multiplies quickly, resulting in more serious and harmful consequences of cyber insults. Many victims suffer great physical and mental harm, often leading to severe consequences, such as psychological trauma or even suicide. This has become a distinctive feature of insulting behaviour in cyberspace [1].

Therefore, this study will examine and analyze the vacuum problem caused by the disconnect and lag in the establishment of laws on insults in cyberspace. Namely, the paper will focus on defining the criteria for determining "aggravating circumstances", by analyzing relevant research results, laws, and regulations in China. Additionally, the paper will examine specific cases in practice. Based on these findings, the paper will propose specific recommendations to improve the determination of insults in cyberspace.

2. The Dilemma of Determining the "Aggravating Circumstances" of Insults in Cyberspace

2.1. The Inapplicability of Aggravating Circumstances for Insults in Traditional Space to Cyberspace

It is evident that the definition of the crime of insult in traditional space does not align with the incessant flow of insults in cyberspace. Consequently, the existing definition of the crime of insult,

particularly regarding “aggravating circumstances”, necessitates adjustments. Cyberspace distinguishes itself from traditional space by encompassing violent insults, action insults, and other forms of insults that directly inflict harm on the victim’s physical well-being. Moreover, the nature of insulting behavior in cyberspace is influenced by the characteristics of the online realm. Thus, the entities involved in such behavior encompass not only the perpetrator but also information disseminators, network service providers, and others.

In terms of behavior, perpetrator commits criminal acts through cyberspace, and due to the virtual nature of cyberspace, information can be easily spread, amplified, and disseminated through speech alone. The cost of engaging in such insulting behavior is low, yet it can yield significant harmful consequences. Cyberspace differs from traditional space in its stability and speed, making insulting behavior in cyberspace more likely to cause harm and have a greater societal impact. When insulting information spreads in cyberspace, even if the original message is deleted, it is nearly impossible to halt its secondary dissemination on other platforms or channels, leading to an expansion in both the reach and scale of its dissemination. Consequently, the number of aggressors continues to grow during this continuous dissemination process. In cyberspace, anyone can become a perpetrator by making excessive or inappropriate remarks, as they may trust and propagate insulting information without realizing its consequences. Furthermore, considering the malleability of electronic data, it becomes crucial for judicial authorities to effectively determine whether insults are genuine or susceptible to tampering, deletion, and other forms of manipulation.

2.2. The Lack of Criteria for Defining Insults in Cyberspace

It is evident upon reviewing the existing normative legal documents that there is a lack of specific and clear standards for defining insulting behavior in cyberspace in China. Article 2 of the *Interpretation on Internet Slander* does provide for four “aggravating circumstances” for the crime of Internet defamation. However, since the crimes of insult and defamation share similarities in terms of behavioral approach, legal consequences, and content of protection, the law does not explicitly outline what constitutes an “aggravating circumstance” for insults. Therefore, in case of online insulting behaviors where the law does not clarify what qualifies as “aggravating circumstances”, Article 2(1) of the *Interpretation on Internet Slander* stipulates that “if the same defamatory information is clicked on or viewed more than 5,000 times or forwarded more than 500 times,” it constitutes the use of information to commit a crime under “aggravating circumstances” [5]. However, this provision is excessively abstract, as determining the seriousness of a situation solely based on the number of clicks is superficial and does not effectively address the numerous new types of insulting behaviors emerging in cyberspace.

Existing normative legal documents have not provided specific or separate regulations to establish clear definition standards of insulting behavior in cyberspace. Regarding the quantitative standard for determining “aggravating circumstances”, the traditional system of quantitative standards is seriously inadequate and outdated in the face of continuously evolving crimes. The types of crimes and their unlawful content in cyberspace incorporate new elements and exceed the scope of existing crime evaluation systems. The *Interpretation on Internet Slander* alone does not adequately cover the infringed legal interests and circumstances involved in the crime of insults in cyberspace. Furthermore, Article 246 of the *Criminal Law* cannot fully address the new forms of insults that occur online [6]. Although Article 2(3) of the *Interpretation on Internet Slander* states that causing the victim or a close relative to suffer from mental disorders, self-harm, suicide, or other serious consequences is considered “aggravating circumstances” [7], it is difficult to define the outcome of such behavior. Additionally, self-inflicted suicide cannot be directly attributed to insulting behavior. Hence, there is a need for specific stipulations and explanations regarding the circumstances of the crime of insults in cyberspace.

At the present stage, there are fewer provisions addressing the perpetrator, victim, and specific circumstances of insults in cyberspace. This insufficiency hampers the support for judicial practice in handling such cases effectively. Therefore, it is necessary for the legislature to summarize guiding rules based on the problems encountered and the experiences gained from adjudicating cases. This will help maintain a stable and harmonious cyberspace as well as social order.

2.3. There is a Lag in Recognizing and Addressing the Aggravated Consequences of Insults in Cyberspace

According to the characteristics of cyberspace, there is a lag in reaching the aggravated consequences of insults in the crime. Due to the complexity of cyberspace, the outcome of insults is uncertain after they are committed. Additionally, the invisibility and rapidity of cyberspace result in the spread of insulting information across multiple network platforms, causing irreversible harm to both the victim and society. However, these consequences are not immediately apparent. In cyberspace, the harm caused by insults expands over time as the volume and scope of dissemination increase. This differs from the traditional space where the impact of insults is more immediate. Furthermore, new criminal subjects and acts may intervene during the dissemination process, further harming the victims. Therefore, the timeframe for providing relief for the harm caused by insulting behavior in cyberspace should be extended to protect the legitimate rights and interests of the victims.

The impact of insulting behavior in cyberspace surpasses that in traditional space. Take reputation infringement, for example, certain types of insulting behavior violate others' right to reputation. Even if the perpetrator clarifies and makes amends afterward, the uncontrollable nature of information dissemination in cyberspace leads to a profound impact on the victim's life. The damaging consequences of insulting behavior are also irreversible, considering the victim's social influence and level of popularity, as they significantly affect personal development and overall lifestyle. In summary, there exists a delay in realizing the consequences of "aggravated circumstances" in the crime of insult in cyberspace.

3. Path of Improvement for Determination "Aggravating Circumstances" of Insults in Cyberspace

3.1. Refining the Criteria for Determining "Aggravating Circumstances" of Insults in Cyberspace is Essential

Currently, based on the Yue's Insult Case (Prosecution Case No. 134) [8], which is one of the guiding cases issued by the Supreme People's Procuratorate, the criteria for determining whether an act of insult in cyberspace qualifies as "aggravating circumstances" consider factors such as the number of clicks, severity of the means used, and reference to relevant provisions in the *Interpretation on Internet Slander*. The *Interpretation on Internet Slander* outlines three situations regarding the "aggravating circumstances", namely: (a) *defamatory information that has been clicked or viewed more than 5,000 times or forwarded more than 500 times*; (b) *causing the victim or their close relatives to suffer from mental disorders, self-injury, suicide, or other serious consequences*; (c) *receiving an administrative penalty for defamation within two years and defaming another person* [9]. Building upon this provision, the paper proposes refining the criteria for determining the "aggravating circumstances" of insults in cyberspace from the following perspectives.

Firstly, when quantitatively assessing the severity of cyber insults, it is not appropriate to rely solely on a single quantitative standard to determine whether it is a crime or not. Instead, the seriousness of cyber insults should be evaluated by considering the number of occurrences along with other relevant factors. As discussed earlier regarding the nature of cyber insults, they possess characteristics of covert and convenient means in cyberspace, similar to defamation. Therefore, when

determining the criminality of cyber insults, reference can be made to the *Interpretation on Internet Slander*, which assesses the severity of harmful consequences based on the number of clicks, views, or retweets. However, *the Interpretation on Internet Slander's* reliance on a single quantitative criterion may be somewhat rigid and may not fully adapt to the regulation of cyber insult offenses. For instance, if the perpetrator deletes the defamatory information just before the number of clicks or views reaches 5,000, or the number of retweets reaches 500, according to the *Interpretation on Internet Slander*, their behaviour may not meet the requirement of “aggravating circumstances” and thus does not constitute a crime. However, when the number of clicks or views is near 5,000, or the number of retweets is close to 500, the severity of the harmful consequences caused by the behaviour is not significantly different from the actual threshold. Making a strict quantitative judgment based on this criterion alone could result in unfairness in individual cases. Therefore, the paper suggests that when formulating the standard for determining “aggravating circumstances” in cyber insults, further improvements should be made in the quantitative assessment. Instead of relying solely on a single quantitative criterion, the nature of the harmful consequences should be evaluated by considering a variety of factors. This approach will help in accurately determining whether the insulting behavior has constituted a crime.

Secondly, it is necessary to conduct research on the level of acceptance of the consequences of an insult, and the standard for determining whether “aggravating circumstances” exist should be based on whether the result exceeds what would normally be acceptable to a reasonable person. The *Interpretation on Internet Slander* states that causing the victim or his/her close relatives to suffer from mental disorder, self-injury, suicide, or other serious consequences is considered to be “aggravating circumstances” under the criminal law. According to *the Chinese Criminal Law*, the crime of insult and defamation protects citizens’ legal interests such as personality rights and the right to honour, but not the right to life. The act of insult or defamation does not automatically lead to self-inflicted or suicidal behaviour as it depends on the psychological resilience of different individuals. If the criminal law is used to regulate acts of suicide or self-harm solely based on their unacceptability, it would result in leniency in the criminal law’s regulation of such acts. Therefore, if “aggravating circumstances” stipulates that the victim or their close relative commits suicide or self-injury, the standard of acceptance of insults by a rational person should be explored. If a person engages in self-harm or suicide due to the insult exceeding the upper limit of what a normal rational person can accept, then punishment under criminal law is appropriate. However, if the victim commits suicide or self-harm due to having a weaker psychological tolerance than a normal person and is unable to handle even minor insult or defamation, it would be unfair to subject the perpetrator to criminal law as well.

Finally, *the Interpretation on Internet Slander* should not be directly copied and applied. Instead, it should be analyzed in the context of cyber-insulting behavior, and specific evaluation criteria should be established. *The guiding case of the Supreme People’s Procuratorate’s Procuratorate Case No. 134*, suggests that the criteria for determining “aggravating circumstances” in cyber insults can refer to the content of the *Interpretation on Internet Slander*. However, considering the analysis above and the distinctions between the crimes of defamation and insult, the paper deems it inappropriate. The regulation of insulting behavior in cyberspace should be addressed separately to effectively utilize the role of criminal law. Although the crimes of insult and defamation share the same article of law, there are still differences between them. For instance, in acts of insult, the spread of facts aims to degrade the personality and tarnish the reputation of others, whether those facts are true or fabricated [10]. On the other hand, acts of defamation involve the dissemination of false facts with the intention of damaging a person’s reputation. Therefore, there are differences in the nature of harm and the outcomes of these two offences. Consequently, the paper asserts that the *Interpretation on Internet Slander* can serve as an important reference for formulating evaluation criteria related to online insults, particularly in terms of determining “aggravating circumstances”. Nevertheless, when establishing

criteria for “aggravating circumstances” in network insult behaviour, the specificity of the offense should still be taken into account, considering multiple factors. This approach will help prevent practical difficulties in determining which offence and standard should be applied.

3.2. The Approach of Integrating Multiple Factors to Determine the “Aggravating Circumstances” of Cyber-insult Crimes

Firstly, the internet differs from traditional space in that insulting behaviors are limited by time and space. The consequences of such behaviors can expand continuously, unlike in traditional settings. The scope of insulting behaviors on the internet is virtually infinite. Therefore, the platform on which insulting information is released plays a significant role in determining the extent of dissemination and the potential negative consequences. When insulting information is released on a platform with a large user base, the reach and impact of the information are greater compared to other platforms. To summarize, the platform used for disseminating insulting information can be considered one of the important factors for adjudicators to determine whether the insulting behavior constitutes “aggravating circumstances”.

Secondly, the extent of information dissemination varies among different accounts on social platforms. Accounts with high activity level have a wide reach and greater information dissemination. Taking Weibo accounts as an example, accounts with low activity may not appear in the information square after posting content. Other users would need proactively visit their account homepage to view the content. However, when an account with high activity releases information, it automatically appear in the information square. Other users can easily see the content when searching for relevant information in the information square. Therefore, if the perpetrator deliberately chooses highly active accounts to post insulting content on the internet due to the low activity level of their own account, the adjudicator should consider this as an aggravating factor indicating the use of more severe means.

Thirdly, different subjective intentions reflect varying degrees of maliciousness in the perpetrator’s harmful actions. When perpetrators engages in insulting behavior, their subjective intention can be either to defame or to pander, which are two distinct motives. Obviously, the former is more severe than the latter. Therefore, the adjudicator should differentiate between the subjective differences of those who actively make insulting remarks with malicious intent and those who unconsciously participate in such remarks. For example, let’s consider two cases:

Perpetrator A joins an online discussion about a controversial topic and posts abusive content on the internet targeting a young man who didn’t give up his seat to an elderly person. The content spreads widely, resulting in the degradation of the young man’s reputation. On the other hand, Perpetrator B, due to longstanding personal grudges against the victim, releases a multitude of insulting remarks on the internet, exaggerating some of the victim’s morally flawed behaviors to manipulate public opinion against them. This leads to a collective “crusade” against the victim, resulting in a significant decrease in their social standing. In both cases, the victim’s reputation is damaged, but Perpetrator B’s subjective intention is to maliciously defame and manipulate public opinion, while Perpetrator A simply participates in the discussion. It is evident that Perpetrator B’s subjective malice is greater than that of Perpetrator A. Therefore, in many judicial cases, the adjudicator should assess the subjective intention of the perpetrator to determine whether the online insulting behavior meets the criteria for aggravating circumstances.

Fourthly, network insulting behavior infringes upon the victim’s reputation, and the nature of the perpetrator’s actions determines the extent of the damage caused to the victim’s reputation. The adjudicator should consider the content of the perpetrator’s behavior when determining the presence of “aggravating circumstances”. In reality, the nature of insulting behavior can be intuitively sensed through the actions of the perpetrator. However, when it comes to online insulting behavior, which is conveyed through written language, it becomes challenging to assess the degree of egregiousness

based solely on intuition. In this regard, one of the factors to determine the severity of online insulting behavior is the content that the perpetrator disseminates. Through analyzing the content, one can assess the extent of harm inflicted upon the victim, the crossing of moral boundaries, and make a specific judgment about the level of egregiousness.

Fifthly, the occurrence of harmful consequences is a necessary condition for the establishment of a crime. When determining the seriousness of an act based on its harmful consequences, the adjudicator should consider both the physical harm inflicted upon the victim and the mental distress caused by acts of humiliation. Currently, there are frequent cases where the protection of the victim's mental health is overlooked. However, it is important to recognize that mental damage can lead to severe consequences, and the impairment caused by such mental injuries is often irreversible. Once the level of mental impairment reaches an irreversible stage, it can result in mental disability. The mental issues caused by the perpetrator can have a lifelong impact on the victim's personal life and social functioning, with the degree of harm being no less significant than that caused by other behaviors. In this case, the situation should be acknowledged as "aggravating circumstances".

Sixthly, the frequency of the perpetrator's actions can reflect their personal danger and likelihood of committing repeat offences. *The Criminal law* and penalties aim to make the perpetrator realize the illegality of their actions and encourage them to repent and reform. If the perpetrator repeatedly commits crimes and violates the criminal law on multiple occasions, it indicates a deep subjective malice and a higher probability of recidivism and personal danger. Many offenses in the criminal law consider multiple offenses as an aggravating circumstance. Therefore, in the case of online insulting behavior, whether the perpetrator publishes more than one insulting message against the same individual or multiple individuals, as long as they repeatedly engage in publishing insulting content on the internet towards others, it should be considered as an "aggravating circumstances" by the adjudicator when making a determination.

4. Conclusion

When reviewing the current reality of cyber insults, it becomes apparent that the rapid development of cyberspace poses challenges to the traditional crime of insult. The increasing variety of insults in cyberspace makes it difficult to meet the requirements of judicial practice. Although there are some provisions in the judicial interpretations, they are insufficient to adapt to the evolving nature of online platforms. The definition and legal constraints surrounding insulting behavior in cyberspace remain inadequate, granting judges greater discretion in their rulings. Furthermore, due to the unique characteristics of cyberspace, the consequences of insulting behavior may have a delayed impact. By referring to the *Interpretation on Internet Slander* and establishing comprehensive guidelines for insulting behavior in cyberspace, taking into consideration the criterion of "aggravating circumstances", we can better meet the demands of judicial practice, enhance the law's prescience, and ensure that the crime of cyber insults evolves in tandem with the times.

Authors Contribution

All the authors contributed equally and their names were listed alphabetical order.

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