

Study on Regulating Cyberbullying from the Perspective of Criminal Law

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Abstract: As the advance of the times and the popularization of the internet, a large number of netizens have entered cyberspace. Along with this, the phenomenon of cyber bullying has become rampant and a pressing social issue, but the criminal legislation of our country seems to lack sufficient measures to regulate such dangerous behavior. Currently, scholars have two main viewpoints regarding regulating cyber bullying. One revolves around existing legal frameworks or regulations and aims to address cyber bullying through an interpretive approach. Another argues that the existing criminal charges have numerous flaws and fail to adequately meet the regulatory demands, thus advocating for the creation of specific charges. Therefore, it is crucial to study the current situation and deficiencies in China's criminal regulation of cyber bullying and explore practical solutions to address these shortcomings.

Keywords: cyberbullying internet rumors, doxing internet language violence, criminal regulation

1. Introduction

On May 23rd, a tragedy occurred at a primary school in Wuhan. A first-grade student, Tan, was hit by a car driven by a teacher and later passed away despite efforts to save him. After media exposure, Tan's mother, Yang, faced cyber bullying and, unable to cope with the pressure, tragically committed suicide. This incident has drawn wide attention from Chinese society and sparked discussions on the regulation of cyber bullying. With the development of the internet in China, cyber bullying has become frequent, some of which leading to severe consequences such as self-harm and suicide, had not previously attracted public attention and discussion. This case has elevated the issue of cyber bullying to a new level of public scrutiny, prompting people to reflect on how to regulate such behavior on the internet.

According to the 51st Statistical Report on Internet Development in China released by the China Internet Network Information Center (CNNIC), as of December 2022, China's internet penetration rate reached 75.6%, with the number of netizens exceeding 1.067 billion. As a large number of netizens flood the public space, collective, irrational, large-scale, and continuous incidents of cyberbullying frequently occur in cyberspace. The consequences of such behavior have increasingly negative impacts on social development and people's lives.

However, most cases of cyber bullying in China are classified as tort under the civil law. However, even though the perpetrators are eventually subject to criminal regulation, the sentencing often reveals

a problem of leniency. For instance, in the “doxing” case in Shanwei [1], where the victim committed suicide, the perpetrator was sentenced to only one year of imprisonment for crime of insulting another. It is evident that the punishment does not match the severity of the consequences, making it difficult to achieve the justice expected by the public.

Moreover, the concept of cyber bullying is not explicitly included as a criminal charge in the criminal law, lacking clear legal standards. Many netizens are unaware that engaging in cyber bullying against others may lead to criminal consequences. Based on these factors, this paper examines the current criminal regulation of cyber bullying in China and discusses the necessity of introducing specific charges for cyber bullying.

Furthermore, the paper analyzes the constitutive requirements of cyber bullying and, based on the principles of criminal culpability and proportionality, proposes a reasonable and scientifically grounded sentencing framework for cyber bullying crimes.

2. Current Situation and Deficiency of Criminal Law Regulation of Cyberbullying in China

2.1. Current Situation of Criminal Law Regulation of Cyberbullying in China

Currently, China does not have a specific charge for cyber bullying in criminal legislation, resulting in deficiency in the regulation of such behavior under the criminal law. The current regulation of cyber bullying is mainly included in the Fourth Chapter Crime of Impairing Citizens’ Rights of Personal Security and Democratic Rights [2] and the Sixth Chapter Crime of Disrupting the Order of Social Administration. Additionally [3], there are also 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 such as Defamation through Information [4] and 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 of Infringement of Citizens’ Personal Information [5].

Despite the existing criminal laws and regulations in our country governing cyberbullying behavior, in judicial practice, most instances of cyberbullying have not received effective criminal regulation, and the punishments imposed on the perpetrators do not match the severity of the consequences caused. Looking at the current judicial practice in China up to 2020, only three cases of cyberbullying have ultimately entered the criminal litigation phase in such an era of advanced internet technology and widespread internet usage [6]. These cases include the 2013 suicide caused by “doxing” conducted by a shop owner in Shanwei [1], the 2014 Yunnan case where Meng sued Liu for insult [7], and the 2016 defamation case in Anhui where a food store owner sued eight individuals.

However, in these three typical cases, only the Shanwei clothing store owner was sentenced to one year of imprisonment for the charge of insult [8]. In the Yunnan case, the court deemed that the circumstances did not reach the level of seriousness required for a criminal offense and, therefore, the defendant was not found guilty of any crime. In the Anhui food store owner’s self-prosecution case, the court rejected the charges, as it found no evidence of the accused individuals fabricating and spreading false information. These examples show that faced with the frequent occurrence of cyberbullying, nowadays our country’s criminal legislation is struggling to effectively prosecute and punish such behavior.

2.2. The Deficiency of Existing Regulation of Criminal Law

2.2.1. The Insufficient Criminal Law Regulation of Spreading Rumors

Internet rumors refer to statements that lack factual basis, fabricated and spread through the internet [9]. In recent years, the number of cases involving internet rumors which lead to suicide has been increasing. In judicial practice, when dealing with cases where internet rumors have caused severe consequences, such as inducing mental disorders, self-harm, and suicide, the usual charges brought against the perpetrators are crime of defamation or insulting another. Apparently, in these circumstances, the danger posed by cyberbullying behavior is comparable to intentional harm or even murder. If such behavior is only evaluated based on defamation or insult charges, it becomes challenging to achieve proportionate punishment [10], causing the problem of lenient sentencing and fails to meet the public's demand for fairness and justice.

Furthermore, according to criminal law, cases of insult and defamation generally belongs to private prosecution cases. Only when the harmful consequences of insult or defamation "seriously endanger social order and national interests" are met, will they be treated as public prosecution cases and are prosecuted by the procuratorial authorities. However, concerning the issue of what constitutes "serious endangerment to social order and national interests" in the offenses of insult and defamation, the judicial authorities have not yet provided a clear definition [11].

Moreover, the Supreme People's Court and the Supreme People's Procuratorate have not issued corresponding specific judicial interpretations, resulting in a lack of specific standards in application. This makes it difficult for judicial practice to determine cases of insult, thus hindering the effective punishment of cyberbullying and rumor-spreading.

2.2.2. The Insufficient Criminal Law Regulation of "Doxing" Cyberbullying

Doxing for others' information refers to the use of search engines or other Internet channels to actively obtain and sort out some specific information of third parties [12]. At the same time, they publish or use the information on the Internet to harass third parties and other illegal acts. Doxing may cause the victim to face serious personal privacy disclosure and security threats, and has the possibility of causing some serious harmful consequences. At present, China's provisions on the protection of citizens' personal information involve a wide range of aspects, but the legislature believes that the qualitative problem of doxing behavior is complicated, so it has not made a direct provision in the 2009 Criminal Law Amendment (VII) [13]. The "crime of infringing on citizens' personal information" in the amendment to the Criminal Law is difficult to effectively deter the behavior of netizens to "doxing" and expose the parties to the incident at will in the network environment. The lack of clear legal norms not only makes it difficult for most netizens to realize that exposing other people's information will violate the law, but also did not play a good role in deterring and preventing cyber bullying.

Moreover, when the perpetrators collect personal information that the victims have voluntarily disclosed in the online space and then use it to incite group bullying, it creates difficulties in convicting and sentencing. In cases where individuals themselves publicly share photos, home addresses, and other personal information on social media platforms, the perpetrators engage in "doxing" to instigate large-scale verbal violence. Since this behavior involves obtaining information lawfully, it cannot be solely regulated under the offense of "infringement of citizens' personal information."

2.2.3. The Insufficient Criminal Law Regulation of Internet Language Violence

The prevalence of online language violence on various websites and social media platforms, especially in comments sections, with numerous personal attacks and abusive language, goes beyond the scope of freedom of speech as defined in Article 35 of the Constitution. This online language violence seriously infringes on the personal rights of others, while “doxing” violates their privacy rights. Internet defamation infringes upon the reputation rights of others, causing significant harm to individuals. Therefore, it is essential to legally regulate online language violence.

Public authority and the law are the most effective remedies for addressing online language violence. The law should play a role in educating, foreseeing, and regulating people’s behaviors. Currently, China has not established a specific charge for cyberbullying.

Therefore, it is necessary to accurately define the concept of online language violence and explicitly include it as a prohibited act in relevant legal regulations through clear legal expressions and interpretations. Ultimately, this will enable the law to play its role in combating online language violence effectively.

3. The Necessity of Adding the Crime of Network Violence

As mentioned earlier, this article suggests the establishment of a specific charge for cyberbullying and the use of punitive measures under criminal law to regulate cyberbullying behaviors. The main reasons for this proposal are as follows.

3.1. The Gradually Increasing Social Harm of Cyberbullying

The social harm of the same behavior varies under different social contexts. In 2013, the Supreme People’s Court and the Supreme People’s Procuratorate issued the “Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Defamation and Other Crimes Committed through Information Networks,” which provided certain regulations on cyberbullying behavior. However, our society still lacks specific and clear legal provisions and judicial interpretations to regulate cyberbullying, nor is its legal connotation well-defined. This indicates that, in the view of legislators at that time, cyberbullying behavior was not considered to have significant social harm, and therefore, did not require separate criminal regulation. This evaluation was in line with the lower internet penetration rate in China’s social development at that time.

According to the 32nd Statistical Report on Internet Development in China issued by the China Internet Network Information Center, by the end of June 2013, China’s internet user base reached 591 million, with an internet penetration rate of 44.1%. However, with the rapid development of the internet, by December 2022, China’s internet penetration rate had reached 75.6%, and the number of internet users exceeded 1.067 billion. With the widespread adoption of the internet, various new situations and issues have emerged, leading to significant changes in the social harm of cyberbullying. In terms of objective harm, cyberbullying has taken on new characteristics, such as the potential to cause “social death” of victims or even lead to consequences like suicide [14].

Furthermore, in terms of subjective perceptions, with the increased involvement of news media and other objective factors, cyberbullying behavior is increasingly mentioned in public affairs, making the public more aware of the high risk and concern over the infringement on their personal well-being caused by such behavior. Therefore, both in terms of objective harm and subjective perceptions, the social harm of cyberbullying behavior is showing an increasing trend. Consequently, in the current era, the assessment of the social harm of cyberbullying behavior should be reevaluated in criminal legislation.

3.2. Existing Laws: Struggling to Cope with the Rising Cyberbullying Problem

Cyberbullying behavior has long existed, but it didn't attract widespread attention and extensive discussions. With the continuous development of internet technology in China, the harm of cyberbullying behavior has escalated, and with the increased involvement of news media and other objective factors, such behavior has started to appear in people's view, starting with the scandal of a woman picking up a package' case.

The cases triggered by cyberbullying behavior have caused a significant impact nationwide, and the continuous attention from the public regarding their progress and outcomes reflects society's urgent demand for severe punishment of perpetrators and protection of the rights of victims. People have come to realize that cyberbullying not only damages the dignity and rights of individuals but also poses a challenge to the overall social order and moral values.

As mentioned earlier, although cyberbullying behavior is highly regarded, the existing criminal legislation for regulating such behavior has some shortcomings, resulting in certain cyberbullying acts which causes harm that does not match the severity of the penalties imposed. The current criminal legislation lacks clear standards and guidelines for convicting and sentencing cyberbullying behavior, leading to doubts among the public regarding the classification and punishment of such acts. Currently, although the issues caused by cyberbullying have emerged, the corresponding resolution mechanisms are still not fully developed.

3.3. The Role of the Establishment of the Crime of Cyberbullying in the Prevention and Suppression

In China, most cyberbullying behaviors are classified as civil wrongs under civil law. However, it is evident that the punishment received by the perpetrators does not match the severity of the consequences they cause. Relying solely on civil law to address such behavior has proven ineffective in providing a strong deterrent and regulation, leading to a worsening trend of cyberbullying behavior.

Punishment, as a legal measure, plays a crucial role in maintaining social order and preventing crime. It not only affects the criminals but also generates a series of beneficial effects for society and the victims. The functions of punishment can be categorized into three aspects: the functions for criminals, for society, and for the victims [15]. The primary function of punishment is to penalize and reform the criminals. By imposing appropriate penalties, criminals lose certain rights and undergo educational processes that make them realize the error of their criminal behavior. As a result, they not only refrain from committing further crimes but also become unwilling to engage in criminal activities.

Another aspect of punishment is its impact on society. Through education and public awareness, punishment helps people understand the law, the difference between legal and illegal behaviors, and the consequences of illegal acts. The severity of punishment often instills a sense of caution among the public, leading them to consciously avoid criminal behavior. This deterrent effect is essential for maintaining social stability and order, as people refrain from committing crimes due to fear of punishment.

Punishment also serves the function of comforting the victims. By imposing penalties on the perpetrators, the legitimate demands of the victims are addressed, and their retaliatory emotions are appeased. It reflects society's pursuit of justice and helps restore the psychological order disrupted by the criminal behavior [16]. An appropriate and reasonable punishment not only provides solace to the victims and prevents them from seeking personal revenge but also satisfies society's demand for fairness and justice, contributing to social harmony and stability.

Criminal law plays a unique guiding role in shaping cultural norms among the public. It is not just a punitive regulation but also a behavioral norm. Karl BinDing first proposed the normative and

guiding function of criminal law, stating: “The behavior of offenders is a violation of the broad law, such as the punishable violation of certain legal rules, rather than a violation of the predicted punishment, such as the violation of the rules of punishment.” [17].

The establishment of a cyberbullying offense can actively contribute to cultivating positive online behaviors among citizens and guiding them to use the internet responsibly. By doing so, the normative and guiding function of punishment is realized, leading to the consensus in society to eliminate cyberbullying and helping to reduce cyberbullying behavior from its roots.

4. The Concrete Conception of Crime of Cyberbullying

Cyberbullying behavior poses significant harm to society, but the current criminal law and related judicial interpretations face challenges in effectively addressing various forms of cyberbullying behavior. As a result, when attempting to punish certain cyberbullying acts, there is often a dilemma of insufficient applicable measures. Although civil and administrative methods are actively utilized in judicial practice to regulate cyberbullying behavior, their punitive power is limited, making it difficult to fundamentally curb the occurrence of cyberbullying.

With the rapid development of the internet, traditional crimes are gradually taking on a digital characteristic. However, conventional criminal charges may not fully meet the requirements of prosecuting cybercrimes in reality. Therefore, establishing a cyberbullying offense not only aligns with the trend of cybercrime development but also effectively regulates cyberbullying behavior. By introducing this charge, it becomes possible to better adapt and respond to the constantly evolving forms of cyberbullying, providing a solid legal basis for controlling cyberbullying effectively.

4.1. The Penalty Setting of the Crime of Cyberbullying

4.1.1. The Positioning of Crime of Cyberbullying

The establishment of cyberbullying offenses does not conflict with the existing criminal charge system. Although the traditional criminal charges in the current legal system can partially regulate cyberbullying crimes, as mentioned earlier, there are still some instances where traditional charges face difficulties in regulation. In practice, the object infringed upon by cyberbullying mainly involves the personal rights of citizens within social relations. Therefore, the cyberbullying offense should be established within the category of crimes related to the infringement of citizens' personal rights and democratic rights in Chapter Four of the Criminal Law [18].

4.1.2. Principles for Setting Penalties for Crimes of Cyberbullying

The establishment of the cyberbullying offense should follow the principle of compatibility of crime responsibility and punishment. Article 5 of our country's Criminal Law states, “The severity of the punishment should correspond to the criminal conduct and the criminal responsibility borne by the offender” [19]. Therefore, the principle means that the punishment received by the offender should be in proportion to the facts, character, circumstances, social harmfulness, and the criminal responsibility they should bear. Hence, in the legislative design of the cyberbullying offense, the relevant content of the punishment must thoroughly consider these factors. It should be used as a critical basis for determining the conviction and sentencing, ensuring that the criminal receives a fair and appropriate punishment.

The establishment of the cyberbullying offense also needs to consider the principle of restraint in criminal law. Scholars believe that the principle of restraint in criminal law means that if behaviors that infringe upon or threaten the rights of others can be regulated through other social means, the use of criminal law should be avoided. Only when other social regulatory measures are insufficient for

effective governance can criminal law be employed [20].

As mentioned earlier, the current provisions of our country's criminal law have shortcomings in regulating cyberbullying behavior and do not meet the requirements of the principle of modesty. Therefore, it is necessary to introduce it as a new charge. At the same time, excessive emphasis on punitive measures should be avoided to cater to the psychological needs of the public. Where legislative social benefits can be achieved, the use of punishment should be minimized. However, the principle of restraint in criminal law demands a "frugal approach", which refers to being economical with the use of criminal law. Frugality in criminal law is a relational concept and does not mean blindly reducing the use of criminal law but rather obtaining maximum criminal law benefits with minimal intrusion of criminal law resources [21].

Furthermore, it is crucial not to excessively prioritize the principle of restraint in criminal law and allow criminal behavior to go unchecked. Instead, appropriate and suitable punishment should be imposed based on the criminal conduct to achieve effective prevention and control of crime.

4.1.3. Concreting Penalty Setting

In the case of the cyberbullying offense, the punishment for the perpetrator should be based on the subjective and objective circumstances at the time of committing the crime and the magnitude of its social harm. Cyberbullying carries the possibility of causing severe personal injuries or fatalities. To reduce the occurrence of such behavior, appropriate punishment should be specified in accordance with the principle of compatibility of crime responsibility and punishment.

It is important to note that while the perpetrator of the cyberbullying offense may have intentional motives for engaging in such behavior, they may not necessarily have the intention to cause bodily harm or fatalities to the victim. Very few criminals seek to cause the death of others through cyberbullying. Therefore, excessively severe penalties may not be appropriate for punishment in these cases.

The punishment for cyberbullying offenses should differentiate between first offense and recidivist, as they represent two different subjective mental states. Repeat offenders exhibit a greater degree of malicious intention compared to first-time offenders, and therefore, stricter penalties should be applied to deter them from repeating the crime. Additionally, the cyberbullying offense serves an important educational function. While imposing punishment on the perpetrators, emphasis should also be placed on educating them to fully understand the danger of their actions and the potential harmful consequences to society.

In daily life, utilizing the power of media and online platforms is essential to conduct extensive awareness and educational campaigns, thus safeguarding the safety and stability of society.

In summary, the punishment for the offense of cyberbullying can be set as follows: for those who commit the acts specified in the cyberbullying offense, with serious circumstances but without causing harmful consequences, they shall be sentenced to fixed-term imprisonment for less than three years, criminal detention, or control. The criteria for "serious circumstances" can refer to the provisions regarding "serious circumstances of online defamation" in the Interpretation of Several Issues Concerning the Application of Law in Handling Criminal Cases such as Defamation by Information Network. The specific criteria are as follows:

- a. If the number of clicks or views of the cyberbullying content exceeds five thousand, or it has been forwarded more than five hundred times.
- b. If the cyberbullying leads the victim or their close relatives to suffer severe consequences, such as mental disorders, self-harm, suicide, or "social death."
- c. If the perpetrator has received administrative penalties for cyberbullying within the past two years and commits cyberbullying again.
- d. Any other circumstances deemed to be serious.

4.2. The Constitution of Crime of Cyberbullying

The subject of the offense of cyberbullying should be considered a general subject, that is, reaching the age of criminal responsibility and possessing criminal capacity. Minors who have not reached the age of criminal responsibility should not be considered the main subject of this offense, and their criminal responsibility should not be pursued. If they commit the acts specified in the cyberbullying offense, their parents or other guardians shall be ordered to discipline them, and if necessary, specialized corrective education may be provided in accordance with the law.

Furthermore, according to common crime theory, the initiator of the cyberbullying behavior is the principal offender. If there are plotters, they are also considered principal offenders. If the initiator is manipulated or used, they are considered accomplices, and the plotter is considered an indirect principal offender. If there is no clear plotter, the individuals responsible for criminal responsibility can be determined based on the extent of the spread and the magnitude of their influence and contribution.

The subjective aspect of the offense of cyberbullying requires intention as a constitutive element of the crime, demanding that the perpetrator engages in cyberbullying with deliberate intention. In this context, intention refers to the attitude the perpetrator holds towards committing the act of cyberbullying, rather than their attitude towards the potential harmful consequences of cyberbullying. As the offense of cyberbullying aims to regulate the act of cyberbullying itself, its purpose is to strictly control cyberbullying acts and prevent the occurrence of harmful consequences. Therefore, when determining the offense of cyberbullying, the primary consideration should be the subjective mindset of the perpetrator at the time of committing the act of cyberbullying.

The object of crime refers to the social relationships protected by the criminal law that are violated by criminal acts [22]. As mentioned earlier, the offense of cyberbullying mainly infringes upon the personal rights of citizens. Corresponding to the three manifestations of cyberbullying, it violates the rights of reputation, privacy, and health which are contained in the personal rights of individuals.

The dissemination of online rumors as a form of cyberbullying primarily infringes upon the reputation rights of citizens. Due to the fast and wide spread of online communication, spreading rumors through the internet poses a higher level of harm to the reputation rights of the victims compared to traditional rumor spreading methods. On the other hand, doxing activities mainly violate the privacy rights of citizens. In the information age, collecting and disseminating someone's personal information without their consent is an infringement of their privacy rights. This personal information includes details about their personal life, social status, financial situation, and online activities [23].

As discussed in the previous text, doxing undoubtedly constitutes an infringement of citizens' privacy rights. Almost all forms of cyberbullying infringe upon the health rights of citizens. This is because cyberbullying is characterized by bullying behavior, which places individuals in opposition to mainstream social groups, creating a situation of "many against one." This leads to psychological pressure on the individual and subjecting them to collective negative evaluation and bullying harassment.

Cyberbullying makes these individuals feel as if they are standing against society, amplifying their sense of fear in the virtual world. This significant psychological torment can lead to tragedies, including irreversible consequences like suicide [18]. Such experiences can undoubtedly cause harm to the victims' mental health.

Based on the previous discussion of different manifestations of cyberbullying, the objective aspects of the offense of cyberbullying should include the following actions carried out through the internet:

- a. Fabricating and disseminating false information.
- b. Illegally collecting and spreading personal information of citizens.

- c. Publishing electronic information such as text, images, audio, or video content with insult or aggressiveness.
- d. Planning or inciting others to commit the above-mentioned acts.

5. Conclusion

Today, the internet has deeply penetrated all aspects of people's lives, and the connection between virtual space and real space is becoming increasingly close. Netizens' behaviors in the online space unconsciously influence their real-life actions, and the internet space should not be a lawless place. Cyberbullying is a type of behavior that possesses certain social harm and has the potential to cause severe harm to individuals. Strengthening the legal regulation of cyberbullying requires the establishment of specific criminal charges targeting such behavior, defining the boundaries of cyberbullying, and establishing legal constraints on cyberbullying. The final goal of introducing cyberbullying offenses is not merely to punish offenders but to prevent such incidents from happening. Therefore, while using the criminal law as a weapon, we should also pay attention to the media and other propaganda and education forces, enabling people to fully understand the dangers of this behavior and consciously refrain from engaging in it, thus safeguarding social safety and stability.

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