

# Research on the Criminal Law Regulation of Online Violence

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## Abstract

With the help of the Internet platform, cyber violence wantonly abuses and maliciously slanders the parties, thereby affecting their privacy and personal safety. This kind of behavior usually has characteristics such as collectivity, incitement, and uncontrollability, which are fundamentally different from traditional violence. These characteristics lead to behavior patterns of online violence that are not in line with the legal application rules established in the "Guiding Opinions on Punishing Illegal Crimes of Online Violence" jointly launched by the Supreme People's Court and the Supreme People's Procuratorate in 2023. The construction of rules for the application of criminal law on online violence requires a systematic and comprehensive evaluation of the behaviors that cause serious consequences, based on their unique characteristics and essence, and expanding the interpretation and application to current legal rules.

## Keywords

Online violence, Spreading rumors and slander, Infringement of privacy, Provoking troubles, Criminal law regulation.

## 1. Introduction

The frequent occurrence of vicious incidents of cyber violence has made the effective combating of cyber violence-related illegal and criminal activities a hot topic of social concern. Unlike traditional violence, cyber violence primarily causes harm by mentally distressing the victims. Since the introduction of the Seventh Amendment to the Criminal Law in 2009, which marked the first time cyber violence was regulated by criminal law, China has continuously revised relevant laws, judicial interpretations, and administrative regulations. The Provisions on the Ecological Governance of Network Information Content, promulgated in December 2019, emphasized the "pursuit of criminal responsibility in accordance with the law" for cyber violence. Furthermore, the Guiding Opinions on Punishing Illegal and Criminal Activities of Cyber Violence in Accordance with the Law, issued in 2023, aim to purify the cyberspace environment and combat crimes. However, the continuous occurrence of cyber violence incidents undoubtedly indicates that there are still deficiencies in governance and enforcement efforts. Based on judicial practice, this article analyzes real-life cases of cyber violence to understand the current legal regulation status of cyber violence and reveals the difficulties and challenges faced by cyber violence in judicial practice. It then proposes targeted solutions to provide reference ideas for further improving the criminal law regulation of cyber violence.

## 2. Relevant Elaboration on Cyber Violence

### 2.1. The connotation of cyber violence

There is no term for online violence in China's current criminal law, so online violence is not a normative concept in criminal law. Generally speaking, online violence refers to a series of complex social phenomena such as verbal abuse, fabrication and dissemination of online rumors, and human flesh searches. At the same time, the internet has led to more private

domains and private spaces being introduced into the public domain, exacerbating the possibility of social suppression of individuals and reflecting the tyranny of the majority. Based on this observation perspective, cyber violence refers to a group, seditious, aggressive, and persistent behavior that severely infringes the legitimate rights and interests of other citizens or organizations, which is maliciously launched by an unspecified majority of Internet users in cyberspace against specific objects, using language attacks, human flesh searches, threats, harassment, insults, rumors, and other means as the main means [1].

## 2.2. Characteristics of Online Violence

First, The bullying nature of group mental torment. There are different opinions in academia on whether online violence must have a collective nature. Some people believe that online violence can be carried out by individuals and groups. This article argues that individuals who maliciously attack others through information networks exhibit characteristics of cyberbullying, but far from reaching the level commonly referred to as cyberbullying. The initiators and main participants of online violence will actively incite others to participate and use the power of the group to achieve the effect of suppressing public opinion. At the same time, online violence also includes situations where groups target groups, such as online influencers hiring water soldiers to insult and defame each other, and stir up hype. The term 'bullying' here mainly reflects the mental torment caused by mental bullying. Online violence presents a situation of 'suppressing the minority with the majority' by placing individual individuals in opposition to the mainstream social group, causing psychological oppression and the illusion of standing in opposition to society.

Second, Uncontrollable triggering range. With the help of social media as a medium of communication, online violence is prone to quickly gain momentum in a short period of time, producing impacts that transcend regions and even borders. The spread of online violence is not only unaffected by the presence or absence of relevant personnel, but also by the physical geographical space. As the scope of dissemination expands, the intensity and effectiveness of online violence attacks will be further strengthened based on the special public opinion field effect in cyberspace. Due to the characteristic of leaving traces of everything online in the online society, the spread of online violence not only exhibits infinite spatial extension, but also shows a timeless aspect [2].

Third, The uncontrollability of participants. The perpetrators of online violence can be roughly divided into the following three categories: one is the initiator for a specific purpose, usually a very small number of people or groups, who, driven by certain interests or in order to maintain so-called justice, induce the public to attack individuals who intend to engage in online violence. The second is to guide the online "navy" of cyberbullying according to the needs of employers. The third is an ordinary username that does not reveal the truth. These people's comments are not related to their interests or disputes with the parties involved, often just random comments during leisure time. This is precisely the biggest perpetrator of online violence, and also the reason why online violence has uncontrollable factors in its scope.

## 3. Behavior Patterns and Typical Cases of Online Violence

### 3.1. Verbal insults and typical cases of online violence

Verbal insult type online violence refers to the use of online platforms, such as text and images, to insult and attack others, causing psychological harm and mental fear. Some people will use abusive language on online platforms to release hostility and malice, guiding netizens who do not know the truth to follow suit, resulting in physical and mental damage to the victims of online bullying. And cyberbullies enjoy this achievement, satisfying their "evil taste" in the midst of public outrage, while also gaining traffic and profits.

A typical case of this type is the Nanjing wrist cutting suicide to pay for the life of a dog. Mr. Tong's son was bitten on the hand by a dog, and in a fit of anger, he threw the dog to death. The perpetrators of online violence take advantage of the sensitive point of the dog loving community, standing on the moral high ground and so-called just stance, inciting the public to launch cyber attacks on the parties involved, triggering public opinion fermentation. Dog lovers and followers subjected him and his family to phone harassment and text message threats of "cursing", causing Mr. Tong's wife to be unbearable and choose to commit suicide by cutting her wrist to "pay for the dog's life".

### **3.2. Fabricating and spreading online rumors and typical cases**

Fabricating and spreading online rumors and online violence mainly refers to the use of social media platforms such as Weibo as a means of dissemination, fabricating false information to spread and spread rumors, achieving the effect of defaming others' reputation and damaging their image. This behavior can mislead public opinion, not only causing damage to the victim's reputation, but also potentially having a negative impact on their life and work. Moreover, in the era of the internet, the speed and scope of spreading rumors are fast, and in severe cases, they can disrupt the order of cyberspace.

A typical case of such online violence is the case of a woman in Hangzhou who was falsely accused of picking up a package in 2020. Gu was secretly filmed by Lang, the owner of the neighboring convenience store, while picking up the package. Later, he fabricated ambiguous chat records with He and spread rumors that Gu was cheating. He sent the secretly filmed video and chat screenshots to the car enthusiast group. These rumors quickly spread on the internet, causing serious impact on Gu's reputation and normal work and life.

The court held that the defendants Lang Moutao and He Moukai fabricated facts that damaged the reputation of others for the purpose of seeking stimulation and gaining attention, and spread them on the information network, causing the information to be widely read and forwarded, seriously infringing on the personality rights of the victim Gu Moumou, affecting his normal work and life, and causing him to suffer certain economic losses. The social evaluation was also somewhat degraded, which constitutes fabricated facts to defame others and the circumstances are serious. Both defendants' actions have constituted the crime of defamation.

### **3.3. Privacy related online violence and typical cases**

Privacy infringement online violence refers to the act of online violence committed by infringing on the privacy rights of others, including collecting public information or illegally obtaining personal information, such as through hacker attacks, internal leaks, illegal purchases, etc; Online harassment, such as disturbing others' normal lives through sending spam emails, text messages, social media harassment, and other means. The most important form of crime is human flesh search, which uses the traces left by netizens on the Internet to search for and piece together detailed personal information and continuously harass and attack the individual. The most typical case of such online violence is the 2019 case of Liu infringing on citizens' personal information. Liu illegally purchased the personal information of anchor Li, maliciously edited his photos, and posted them multiple times through several online accounts, claiming that "Li's identity is used for online loans". Liu also privately sent Li's personal information to his fans, threatening to kill Li. The victim Li's job income has significantly decreased, and a large number of fans have cancelled their attention to him.

The court held that there are various types of behaviors involved in online violence, and infringing on citizens' personal information is one of them. Especially, through methods such as "human flesh search" and "unboxing", illegal exposure of others' privacy and publication of citizens' personal information on the internet can lead to online violence directly targeting specific individuals, causing more serious harm and even potentially transforming into offline

violence, thereby directly damaging personal rights and interests. Based on this, the behavior of infringing on citizens' personal information involved in online violence must be severely punished to effectively safeguard the legitimate rights and interests of victims. This case is a cyberbullying case committed through the infringement of citizens' personal information. The perpetrator purchased personal information and released it to the public through the internet, seriously infringing on the rights and interests of the victim's personal information, and causing serious disturbance to the victim's normal work and life. It should be deemed as "serious circumstances". Based on this, the People's Court convicted and sentenced the defendant Liu for the crime of infringing on citizens' personal information.

## **4. The Dilemma of Criminal Law Regulation of Online Violent Crimes**

### **4.1. The legal provisions are incompatible with the behavior of online violence**

As a subsidiary phenomenon of the rapid development of the internet, online violence is an emerging social problem with significant characteristics of the times. It is a relatively special criminal behavior. Traditional legal regulations targeting insults and defamation in real life are often difficult to fully match the characteristics of online violence when faced with its complexity and diversity.

### **4.2. The dilemma of 'law not punishing the public'**

In online violence incidents, perpetrators of online violence have various roles, including initiators, instigators, blindly following the trend and making fun of others, and those who only like but do not speak up to increase their popularity[3]. The role played by these participants in online violence is difficult to accurately measure, making it difficult to determine the responsibility of each perpetrator in online violence incidents. At the same time, one of the characteristics of online violence is its group nature, which means that in online violence, individual actions do not reach the level of illegality, making it more difficult to determine the causal relationship between the corresponding behavior and the harmful consequences; Due to the lack of meaningful communication among participants, it is difficult to handle legal remedies based on private enforcement, unlike in cases of joint infringement or joint crime.

### **4.3. The inherent defects of the private prosecution procedure**

As mentioned earlier, the perpetrators of online violence are collective forces. Therefore, in online violence, individuals are in a disadvantaged position, and it is inappropriate to treat both parties as equal subjects. Instead, substantive equality should be pursued by providing biased protection to individuals who are vulnerable. The crimes of defamation and insult are generally classified as private prosecution cases, but there is a fallback clause in judicial interpretations: "seriously endangering social order and national interests" can initiate public prosecution. Due to the vague expression and lack of actionable details, this fallback clause has actually been dormant on paper for many years.

Crimes committed through the internet have become more sophisticated and covert, with a variety of methods, mostly involving personal privacy information and internal company data. It is difficult to obtain evidence solely through personal efforts. Criminal proceedings have high requirements for evidence and strict rules, making it even more difficult for private prosecutors to achieve the standard of "clear facts, reliable and sufficient evidence". According to Article 246, Paragraph 3 of the Criminal Law, if an act specified in the first paragraph is committed through an information network and the victim files a complaint with the people's court, but it is indeed difficult to provide evidence, the people's court may request assistance from the public security organs. Similarly, the statement is not clear, and it is difficult to determine what kind of situation constitutes 'truly difficult'.

## 5. Suggestions for Improving the Criminal Law Regulation of Online Violence Crimes

### 5.1. Improve the applicable rules for online violent crimes

There are currently two main viewpoints in academia regarding the selection of criminal law rules for online violence: "establishing new charges" and "interpreting and amending old charges". Scholars who support the establishment of new charges believe that China's civil and administrative laws are powerless in the governance of online violence and insufficient to curb the phenomenon of online violence. Moreover, after multiple revisions and interpretations of criminal law legislation and judiciary, the original charges still cannot effectively prosecute online violence, so it should be considered to add it as a new charge[4]. Scholars who hold another viewpoint believe that although relevant laws do not directly stipulate the legal responsibility for online violence, online violence is still within the scope of legal regulation. It is a manifestation of the internet information age, and although it is a new form of "violence", it still has the commonality and essence of violence. The substantive characteristics of "violence" determine that the evaluation and identification of online violence cannot be carried out in isolation from other constituent elements of the corresponding crime [5].

This article believes that in terms of the various characteristics of online violence, a regulatory model should be adopted to modify or interpret existing charges. As mentioned earlier, online violence is a complex social phenomenon that includes intertwined and intricate forms, and may also infringe upon different types of legal interests such as privacy rights, reputation rights, and social management order. The addition of the crime of "online violence" not only fails to completely solve the various difficulties in regulating online violence in criminal law, but also limits the scope of criminal law's crackdown on online violence. Therefore, this article advocates for the concept of online violence to be broken down and reduced to criminal offenses such as insult, defamation, infringement of citizens' personal information, and provocation.

### 5.2. Clarify the subject of accountability for online violent crimes

In the era of the internet, individuals are often more susceptible to the influence of group emotions, giving up independent thinking and blindly following the trend to speak up. They believe that they will escape legal sanctions because the law does not punish the public, or they will not even think that the consequences are related to themselves. This is an important reason for the frequent occurrence of online violence. Therefore, accurately defining and assigning responsibility to numerous actors is one of the ways to crack down on online violence, and it can also effectively deter participants who hold a lucky mentality.

Article 8 of the "Guiding Opinions" stipulates: "We must adhere to strict law enforcement and judiciary, strictly investigate and punish online violence and illegal crimes in accordance with the law, and effectively correct the erroneous tendency of" law not punishing the public ". We should focus on cracking down on malicious initiators, organizers, malicious promoters, and those who repeatedly fail to reform. This regulation overcomes the dilemma of the law not punishing the public. Although there are a large number of ordinary netizens involved in online violence, their identities in the case are relatively certain as organizers responsible for initiating, planning, and arranging the entire incident, as well as key actors responsible for inciting group emotions and inciting conflicts. Blindly following the trend and being incited, although their behavior is malicious, are tools that are exploited and do not care about the development and popularity of the event itself. In ancient China, there were criminal laws and regulations aimed at this situation, such as the Tang Code's "Mingju" chapter which recorded that "for all co conspirators who commit crimes, their intentions shall prevail, and their followers shall be reduced by one grade. This regulation still has reference significance in the present [6].



### **5.3. Constructing a parallel prosecution procedure for both private prosecution and public prosecution of online violent crimes**

Internet violence incidents with severe public opinion fermentation have a wide range of dissemination, strong social harm, and difficult impact to eliminate. Victims of online violence often face difficulties in obtaining evidence and the tortuous path of safeguarding their rights. It is difficult to achieve rights relief through private prosecution, and ultimately the perpetrators escape unscathed and legal sanctions, while the victims are trapped in the vortex of public opinion and unable to live a normal life.

Therefore, this article believes that cases involving online violence crimes should be defined as victims' autonomous choice of self prosecution or public prosecution. Traditional crimes that violate reputation and privacy rights are private prosecution cases, unless they are prosecuted in cases of serious disruption of social order. In theory, such regulations are considered to be concerned that prosecution may expand the scope of knowledge and cause secondary harm to the parties involved [7]. However, online violence itself carries a collective nature, and the use of prosecution can quickly guide public opinion into the case, which is more conducive to the restoration of the victim's reputation. In addition, in judicial practice, due to the complexity of the online environment, the evidence collection of online violence cannot be independently completed by the victim. Without the assistance of relevant departments, the evidence is easily lost, resulting in the case being left unresolved. If the public prosecution intervenes, this problem can be largely solved. Some scholars are concerned that in similar cases, there may be legal provisions that allow for the parallel or transformation of private prosecution and public prosecution, which could lead to mutual shirking or poor coordination among departments[8]. This article believes that as long as the judicial department has a clear understanding of the boundary between the two, the above problems will not occur. The parallel implementation of private prosecution and public prosecution not only strengthens the protection of victims, but also saves judicial resources to a certain extent, without causing an increase in the burden on judicial organs.

### **5.4. Provide legal penalties for online violence crimes**

Currently, online violent crimes are often included in the categories of insult, defamation, and infringement of citizens' personal information. According to the provisions of the Criminal Law on the crime of insult and defamation, when the circumstances are serious, the maximum statutory sentence is only three years of imprisonment. The social impact and harm caused by using the internet for insult and defamation are more severe than traditional forms. Therefore, the sentencing standards for traditional insult and defamation crimes appear too low when facing online insult and defamation. This sentencing standard not only fails to effectively curb online violence, but also makes potential offenders more reckless due to the low cost of committing crimes, thereby promoting the spread of online violence. At the same time, victims and their families may also feel disappointed with the justice system or engage in extreme behavior due to the lenient punishment imposed on perpetrators of online violence, believing that justice has not been upheld.

According to the principle of proportionality between crime and punishment, this article believes that there is no need to establish exclusive regulations for online violence [9], according to the sentencing standards for the crime of intentional injury, it can be handled as follows: those who commit suicide through online violence shall be sentenced to imprisonment for not less than three years but not more than ten years. In this way, the punishment for online violence can match the serious consequences it leads to.

## 6. Conclusion

In summary, strengthening the criminal law regulation of online violence is of great significance for maintaining social stability and protecting citizens' rights and interests. The characteristics of online violence include the bullying nature of group mental torment, the inciting nature of moral kidnapping, and the uncontrollability of the scope and participants, which are not present in traditional violent crimes. Therefore, a thorough analysis should be conducted on the current difficulties in criminal law regulation caused by these characteristics, in order to explore effective countermeasures for existing problems. This article proposes some suggestions for the regulation of the three types of online violence: verbal abuse, rumors and defamation, privacy infringement, and proposes the establishment of a parallel prosecution procedure for both private and public prosecution. It should be pointed out that the regulatory power of criminal law alone cannot completely curb the phenomenon of online violence. The governance of online violence requires the joint efforts of the whole society, comprehensively using various means such as law, education, and public opinion to form a comprehensive crackdown on online violence, effectively curbing the occurrence of online violence, and jointly building a safe, harmonious, and civilized cyberspace.

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