

Difficulties and Cracking the Judicial Recognition of “Aggravating Circumstances” in Internet Defamation Crimes

Ruifang Fu

College of Criminal Justice, Shanghai University of Political Science and Law, Shanghai, China

ABSTRACT

The judicial determination of “aggravating circumstances” in online defamation is crucial, but faces many difficulties. The quantitative standard is irrational to criminalize the behavior of others, and it is difficult to reflect the effect of deeper dissemination; the assessment of the harmful consequences has the problems of vague definition of the scope and degree, and complicated determination of causality. The path to solving the problem lies in clarifying the substantive judgment standard of “quantity”, improving the diversified determination standard, comprehensively considering the degree of evil of defamation and the degree of infringement on the victim's reputation, and constructing a comprehensive assessment system by drawing on foreign experience. In-depth study of these issues is of great significance to the improvement of judicial practice and the protection of the legitimate rights and interests of citizens.

KEYWORDS

Network Defamation Crime; Aggravating Circumstances; Judicial Determination.

1. INTRODUCTION

In the Internet era, the anonymity, arbitrariness and rapidity of network communication have led to a surge in the number of defamatory statements, triggering chaos in cyberspace and seriously infringing on the rights and interests of citizens, such as the right to reputation. In order to effectively regulate such behavior, the two high courts issued the Interpretation on Several Issues Concerning the Application of Law to Criminal Cases Involving the Use of Information Networks for the Purpose of Committing Slander in 2013, which provides the basis for adjudicating online defamation cases. However, in judicial practice, the determination of “seriousness of circumstances” in the crime of cyber defamation still faces many dilemmas, which not only affect the fairness and accuracy of justice, but also bring challenges to the protection of citizens' rights and interests and the governance of cyberspace. Therefore, it is of great theoretical and practical significance to study in depth the dilemmas of the judicial determination of “aggravating circumstances” in network defamation crimes, and to explore effective paths to break the dilemmas. [1]

2. THE JUDICIAL DILEMMA OF THE DETERMINATION OF “SERIOUSNESS OF CIRCUMSTANCES” OF INTERNET DEFAMATION

2.1. Limitations of Quantitative Standards

2.1.1. Unreasonableness of Convicting Others' Behavior

As our country enters into the Internet era, it has ushered in the mode of network communication with anonymity, arbitrariness, and rapidity from the original form of one-line communication, which has led to a surge of the number of defamatory remarks on the network, resulting in certain chaos. This has led to a surge in the number of defamatory statements on the Internet, resulting in a certain amount of chaos. Therefore, in 2013, the “Interpretation on Several Issues Concerning the Application of Laws in Handling Criminal Cases of Using Information Networks to Commit Slander” (hereinafter referred to as the “Slander Interpretation”) was issued by the “two high courts” to seriously deal with the use of the Internet to slander others, causing serious harm to their reputation and personality rights and interests. The Interpretation has also become the basis for adjudicating most of the cases of online defamation, but the relevant provisions of the Interpretation on the determination of online defamation have also aroused certain controversies in theory and practice. It stipulates that if the same defamatory information is actually clicked or viewed more than 5,000 times, or forwarded more than 500 times, it can be recognized as “serious circumstances”. [2] This standard quantifies specific defamatory acts in an attempt to simplify the process of determining the circumstances related to online defamation and to clarify the judgment criteria, but this quantitative standard has given rise to an exchange of views as to whether it is possible to “criminalize the acts of others”. In terms of the defamatory behavior itself, this standard is to assess the severity of the defamatory subject's circumstances by the behavior of “others”, which is a breakthrough from the general basis of criminal law, and in fact may constitute a certain degree of expansion of the criminal law in the cyberspace, which leads to the irrationality of this judgment standard. [3] In some cases, the defamatory information published by the perpetrator may be less influential in itself, but due to the malicious promotion of third parties, such as marketing numbers on the Internet, in order to achieve certain purposes or simply to attract traffic by creating hotspots, the perpetrator intentionally brushes up the number of clicks and retweets, so that the scope of dissemination of the information expands rapidly and reaches the standard of incrimination. In this case, the responsibility will be completely attributed to the initial release of information on the perpetrator, contrary to the principle of self-responsibility.

For example, “Hangzhou woman pick up the courier was rumored to be derailed case”, 2020, Hangzhou, a woman in pick up the courier by the convenience store owner Lang Mou video, Lang Mou and his friend He Mou fabricated a woman derailed courier and other false information, sent to the WeChat group, and then was a large number of reposting, the relevant content in the network of the number of clicks, the number of views grew rapidly. Originally, Lang Mou and his friend He Mou for the purpose of seeking excitement, gaining attention, etc., only a small range of WeChat groups, the scope of dissemination is limited, but because of the malicious retransmission of others, the video of the above sneak peeks and the fabricated WeChat chat record screenshots were merged by others to be retweeted, and successively spread to more than 110 WeChat groups, with the total number of group members amounting to more than 20,000, which triggered a large number of vulgar comments, and a number of WeChat public numbers, websites etc. on the above chat record compilation reprinted tweets, the total number of readings of more than 20,000 times, resulting in the woman's life and work were seriously affected. Based on the quantitative standard, Lang and his friend He were found to constitute the crime of defamation, but in reality, Lang and his friend He may not have had the foreseeable and controllable ability to widely disseminate the information, and such a finding may be slightly unfair, and there is a certain degree of irrationality. [4]

2.1.2. Difficulties in Reflecting the Deep Dissemination Effect

In practice, with the information network, the development of emerging technology software and technology enhancement, the original quantitative standards may not be applicable to the current network environment, indirectly leading to a low threshold of criminalization gradually reduced. In addition, the current trend of fragmentation of network information, which leads to many Internet users for the network of big data pushed the existence of the phenomenon of shallow, many network information, even if there is a higher number of data views, retweets and other output data, but it does not represent the actual impact on the audience. Therefore, the author believes that the harm of online defamation lies not only in the amount of information disseminated, but also in the actual impact on the audience, i.e., the effect of deep dissemination. It is difficult to accurately measure the actual degree of harm of defamation simply based on the quantitative standards of the number of views and retweets. [5] Although some defamatory information has been clicked and forwarded by a large number of people, the audience may have browsed the information but not fully accepted it, or with the improvement of the quality of netizens, most of the audience still maintains their rationality and does not gullibly believe in it, and may even question the publisher and defend the victim's reputation on their own initiative, and at this time, the extent of the damage caused by the defamatory act to the victim's reputation is relatively small. On the contrary, some defamatory information, the number of which does not reach the quantitative standard, may have a bad impact on a specific group, seriously damaging the victim's reputation and social evaluation. For example, on an internal industry forum, a defamatory post against the head of an enterprise, although the number of clicks and retweets did not meet the standards set by the judicial interpretation, the forum's main audience is industry insiders, and the content of the post led to the head of the industry's reputation being damaged, and business cooperation was seriously affected, so that the actual degree of harm should not be underestimated. However, according to the existing quantitative standards, it may not be possible to effectively regulate such behavior. In addition, there is a group of so-called "cyber water army" in cyberspace, whose ability to disseminate defamatory information is astonishing. In this case, it is outdated to rely solely on quantitative standards to determine the number of clicks and retweets, which is not only difficult to reflect the effect of deeper dissemination, but also prone to the illusion of seriousness of the situation, and unfairly determines the culpability of the defamer, as well as the protection of legal rights and interests. The protection of legal interests is one-sided.

2.2. Difficulties in Assessing the Harmful Consequences

2.2.1. Ambiguous Definition of the Scope and Degree of the Harmful Consequences

The harmful consequences of Internet defamation are diverse and complex, and there are difficulties in defining their scope accurately in judicial practice. In addition to the direct infringement of the victim's right to reputation, a series of indirect consequences may be triggered, such as the victim's mental anguish, damage to social relations, economic losses and so on. However, in practice, there is a lack of clear criteria as to which consequences should be included in the consideration of "aggravating circumstances".

For example, in the "Qin Huohuo Internet Defamation Case", Qin Huohuo (Qin Zhihui) deliberately fabricated and disseminated a series of false information on the Internet, maligning the image of Yang Lan, Zhang Haidi, and other public figures and state organs. For example, he fabricated rumors about Yang Lan's fraudulent donations, claiming that Yang Lan had transferred huge sums of money fraudulently obtained from the stock market to foreign countries. These rumors spread rapidly on the Internet and caused a bad impact. Taking Yang Lan as an example, after being maliciously rumored and defrauded by Qin Huohuo, she suffered great mental pressure. Misunderstandings and questions from the public came like a tidal wave, causing her reputation to be damaged, her personal image to be severely impacted, and she suffered great psychological pain and suffering. This mental pain is a direct consequence of online defamation, which seriously affects the

victim's normal life and mental health, but this mental pain is subjective and difficult to quantify as clearly as economic loss. [6]Different people have different levels of tolerance and feelings of mental suffering, and it is difficult to determine a uniform scale of measurement to judge the degree of mental suffering, which may bring operational difficulties to judicial practice and affect the accuracy and fairness of the law. Moreover, the determination of mental suffering often relies on the victim's statements and subjective judgments, and the lack of objective and verifiable evidence may give rise to unnecessary disputes and controversies.

Meanwhile, in terms of economic loss, for some public figures or enterprises, online defamation may lead to the direct loss of business cooperation opportunities, endorsement contracts and so on. For example, Yang Lan may be rumored to have made fraudulent donations, which may cause some brands or project parties who were originally interested in cooperating with her to have concerns and cancel their cooperation, which in turn may cause direct economic losses. However, in some cases, it is difficult to fully establish a direct causal relationship between the financial loss and the online defamation behavior. There may be other factors that also affect the victim's economic situation, such as changes in the market environment and competition in the industry. Simply attributing economic losses to online defamation may be too one-sided and lead to inaccurate determination of liability. The ambiguity in cases such as the above leads to a lack of clarity in defining the scope of harmful consequences, and a lack of uniform, objective standards of judgment in judicial practice, which relies heavily on the subjective discretion of the judge. Different judges may make different judgments on the seriousness of the consequences of harm in the same case due to differences in personal experience and values, leading to large differences in the results of similar cases in judicial practice.

2.2.2. The Complexity of the Determination of Causality

In the network environment, information dissemination is rapid and extensive, often involving multiple dissemination subjects and multiple dissemination factors. Defamatory information may be processed and disseminated many times during the dissemination process, and it is difficult to accurately determine the specific role of each dissemination link on the final harmful consequences, which leads to the complexity of determining the causality between online defamation and harmful consequences in practice. For example, in 2020, a network defamation case occurred in a certain place. Zhang Mou released an unconfirmed message on his personal microblog, claiming that a well-known local entrepreneur, Li Mou, had serious tax evasion and collusion with the forces of darkness and evil. After the release of this microblogging, Wang Mou, Chen Mou and other microblogging users forwarding, and in the process of forwarding, Wang Mou added some of their own speculation and comments, saying that Li Mou's business will certainly be closed down, Chen Mou will be the message to make some modifications to the amount of tax evasion and tax evasion exaggerated by several times. With the continuous spread of this news on the network, Li's corporate image has been seriously affected, partners have called to inquire about the situation, some cooperation projects are suspended, the enterprise's stock also fell sharply, Li himself also suffered great mental pressure, insomnia, anxiety and other symptoms. In the above case, the multiple processing and dissemination of defamatory information led to the formation of a more complex information dissemination network by numerous processors and forwarders, making it difficult to determine which of the final harmful consequences was caused by which piece of inaccurate information, and it was difficult to define the specific causality between them. In addition, many dissemination and processing subjects lead to difficulties in the division of responsibility, each person's processing and forwarding may have led to the occurrence of harmful consequences to a certain extent, but the actual degree of causality between each subject's behavior and the final harmful consequences cannot be clarified, which makes it difficult to accurately assign legal responsibility. In addition, the processing of content and inaccurate speculation have also led to an expansion and unpredictability of influence and dissemination effects and scope, which, together, have made the causal relationship even more complex and difficult to accurately determine.

3. EXPLORING THE PATH OF DETERMINING “AGGRAVATING CIRCUMSTANCES” OF INTERNET DEFAMATION CRIMES

3.1. Clarifying the Substantive Judgment Standard of “Quantity”

In order to avoid the irrationality of quantitative standards, the number of clicks, views and retweets of defamatory information should be counted according to the actual standard. This means that only the number of clicks, views and retweets that have actually occurred and can be determined should be counted, excluding those clicks, views and retweets that may be false or uncertain. There are many uncertainties in the dissemination of information on the Internet, such as the fact that although information is posted at the risk of being seen by more people, the potential number of views should not be counted until it has actually been viewed in large numbers. When calculating the number of times, the calculation should be based on the actual behavior that has occurred, which can more reasonably define the scope of punishment for the crime of online defamation, avoiding the inclusion of behaviors that have not yet produced actual harm in the scope of criminal punishment, and ensuring that the application of criminal law is reasonable and accurate. In addition, when calculating the number of times defamatory information has been disseminated, it is necessary to ensure that the data are true and effective, and that “distorted data” are deducted. These “distorted data” include the number of malicious clicks made by a third party to incriminate the perpetrator, the number of repeated clicks under the same Internet Protocol (IP) address, and the number of clicks made by website administrators to increase traffic or maintain the website, etc. These data do not truly reflect the number of times the defamatory information was disseminated. These data do not truly reflect the actual dissemination effect and social harm of the defamatory information, and their inclusion in the calculation may lead to an erroneous determination of the perpetrator's liability. In some cases, it was found that there was malicious brushing by competitors, and if these false data were not excluded, it would make the defamatory behavior look much more serious than it actually was. Therefore, by accurately screening and deducting “distorted data”, the degree of harm caused by defamation can be more objectively assessed, providing a reliable basis for judicial decisions. In judging the extent of dissemination of defamatory information, the number of times rather than the number of people should be used as a criterion. Although some scholars advocate using the number of people as the judgment standard, believing that this can better distinguish between “effective dissemination” and “ineffective dissemination”, in practice, there are many difficulties in using the number of people as the standard. On the one hand, it is difficult to obtain evidence, and in the network environment, it is very difficult to accurately count the number of people who viewed and forwarded the information, which will increase the difficulty of obtaining evidence for both the self-execution and the public prosecution authorities, and will not be conducive to the smooth handling of the case. On the other hand, even if the number of people is determined, it is difficult to accurately determine the degree of acceptance and dissemination of the information by each person, because netizens may share the information with others after browsing it on the Internet, which makes it difficult to estimate the real number of people. On the other hand, the number of clicks, views and retweets is relatively easy to obtain and count, and it can intuitively reflect the scope and frequency of information dissemination. Through the analysis of the number of times, combined with other factors, the degree of harm of defamation can be judged more effectively, and social justice can be realized.

3.2. Improve the Diversified Determination Standards

3.2.1. Considering the Degree of Severity of Defamation in a Comprehensive Manner

Given that defamation is a typical circumstantial crime, and that defamation has been extended and developed in the cyberspace, a single quantitative index has its own necessity, but the degree of “seriousness of circumstance” should not be judged according to a single so-called minimum standard of incrimination, but should be evaluated comprehensively according to all elements of the crime, so

as to prove the objective illegality of the degree of severity of the infringement of legal interests. However, the degree of “aggravating circumstances” should not be judged according to a single so-called minimum standard of incrimination, but should be evaluated comprehensively according to all elements of the crime, so as to prove the objective unlawfulness of the degree of seriousness of the infringement of legal interests. Therefore, whether or not the harmful act of defamation is “aggravated” needs to be examined in terms of the static content of the defamation and the dynamic means of dissemination. Considering the differences in the risk of infringement of others' reputation by different means of dissemination of defamatory information, further substantive judgment is needed on the means and manner of defamation. [7]When the content of defamation involves other people's privacy, moral bottom line or maligning and insulting others, the degree of badness is relatively high; if defamation is carried out by means of fabricating facts, distorting the truth and disseminating it widely, it is more harmful than general defamation; if the perpetrator knows that his or her behavior will cause serious damage to other people's reputation, but still intentionally acts on it and commits the act of defamation many times, his or her subjective malignancy is more serious than that of fabrication, distortion of the truth and so on. The subjective malice is more serious than that of fabrication, etc. Privacy is sensitive to the individual, and once it is maliciously disclosed and combined with untrue information for defamation, it may cause a certain degree of trauma to the victim and lead to a certain range of social misunderstanding and discrimination. Defamation by attacking the morals of others will damage the social evaluation and reputation of others, and morals are closely related to social order and morality, which may lead to the loss of information about others, isolation of the victim, and the destruction of social networks. Therefore, the above behaviors may have a certain degree of impact on the victim's life, and their severity is relatively high. The fabrication of facts, distortion of the truth will blind network users, malicious disseminators know that is false, and intentionally disseminate, completely malicious damage to the victim's reputation, this malicious dissemination may be in a short period of time on the network to spread, the subjective malignancy is greater, is a kind of serious infringement, contrary to the objective facts, intentionally damage to the reputation of others behavior. The perpetrator knows that his behavior will cause serious damage to the reputation of others, but still intentionally, and many times to implement the defamation behavior, which indicates that the perpetrator has a strong subjective malice and continuous infringement of the intention of the damage to the reputation of others is more serious, it should be judged as the most serious subjective malice, and in the aspect of culpability to carry out a comprehensive assessment and considerations.

3.2.2. Considering the Degree of Infringement on the Victim's Reputation

The degree of infringement on the victim's reputation is an important factor in determining the “aggravating circumstances”, which should be due to the occurrence of defamation, causing the victimized citizens to feel a kind of unjust social pressure or psychological burden, and suffer a certain degree of mental torture as well as psychological trauma caused by the defamatory acts on their real life, work and social life. The extent of the actual impact on real life, work and socialization should be considered from multiple perspectives. A comprehensive judgment can be made by investigating the evaluations of people around the victim, understanding the changes in his or her reputation in the workplace, and the feedback from his or her social circle. If the defamation leads to serious damage to the victim's reputation in his or her community or industry, causing him or her to suffer from misunderstanding and discrimination by others, or even loss of job opportunities or opportunities for business cooperation, it can be concluded that the defamation has infringed upon the victim's reputation to a more serious extent. In addition, the victim's mental state should also be considered, such as whether depression, anxiety or other mental disorders have occurred as a result of the defamatory act, which are important indicators of the degree of infringement of reputation.

4. CONCLUSION

The judicial determination of “seriousness” of network defamation crime is a complex and critical issue, which concerns the legitimate rights and interests of citizens and the healthy development of cyberspace. The current dilemma in quantitative standards and assessment of harmful consequences needs to be solved by clarifying the substantive judgment standard of “quantity”, improving the diversified determination standard, and constructing a comprehensive assessment system based on foreign experience. In judicial practice, various factors should be taken into account to balance the relationship between freedom of expression and protection of the right to reputation, so as to ensure that the determination of online defamation crimes is both accurate and fair. At the same time, with the continuous development of network technology, the forms and means of network defamation crimes are also changing. Judicial organs and theoretical circles should pay continuous attention to this field and continuously improve the relevant determination standards and legal provisions, so as to effectively deal with the challenges brought by network defamation crimes and maintain social fairness and justice as well as the stability of network order.

REFERENCES

- [1] Liu Canhua. Achievements and Experiences of China's Internet Rule of Law Construction since the 18th CPC National Congress. [J]. Research on Modernization of Rule of Law,2022.
- [2] ZHAO Bingzhi. Criminal Law Review 2014 Vol. 2, No. 26. [M]. Beijing:Law Press,2014.09.
- [3] Chen Junyi. The Criminal Law System of Internet Rumors. [J]. Wen Cun Reading Journal,2021.
- [4] Reporter, Yu Wen. The defendant in the case of woman picking up a courier was rumored to be cheating on her husband, and was found guilty of libel. [N]. Yuhang Morning News, 2021.05.01.
- [5] Zheng Heping. The constitutionality regulation of the criminal law system of online defamation - A sample of 151 adjudication documents during 2014-2018. [J]. Journal of East China University of Political Science and Law,2019.
- [6] Zhou Tiezhen, Jiang Shundong. Research on the criminal law system of cyber violence. [J]. Journal of Shanxi Politics and Law Management Cadre College,2024.
- [7] Jin Honghao, Yang Yingze. Comprehensive judgment on “seriousness of circumstances” of online defamation. [J]. Journal of National Prosecutors College,2022.