

Research on Judicial Application of the Crime of Collecting Illegal Debts

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ABSTRACT

The Crime of Collecting Illegal Debts, introduced by the Criminal Law Amendment (XI), is not only theoretically reasonable but also meets the practical demands of current judicial practice. However, due to the short time since this crime came into effect, the lack of revised supporting judicial interpretations, and the relatively vague wording of the provisions, various controversial issues inevitably arise during judicial application. Specifically, the criteria for identifying illegal debts remain unclear, the methods of debt collection are inconsistently determined in judicial practice, and the crime overlaps in its constituent elements with related offenses, further exacerbating the ambiguity and controversy in its application."

KEYWORDS

Crime of Collecting Illegal Debts; Illegal Debts; Debt Collection Acts; Serious Circumstances.

1. INTRODUCTION

With the rapid development of the social economy, the phenomenon of illegal lending in the financial sector has become increasingly prominent. Among them, illegal lending activities such as usury and 'loan traps' (taolu dai) have become particularly rampant, with the number of related cases rising sharply. At the same time, the criminal forms of such illegal lending are constantly evolving, showing diversified characteristics. For personal gain, some lawbreakers deliberately engage in lending through illegal means such as usury and 'loan traps.' In the process of debt collection, they stop at nothing, employing vicious methods such as violent threats, verbal coercion, malicious intimidation, covert stalking, and frequent harassment to forcibly demand debt repayment. These acts not only seriously infringe upon the legitimate rights and interests of citizens but also greatly undermine social stability and order. Based on this, the 'Crime of Collecting Illegal Debts' was newly established in the Criminal Law Amendment (XI) of the People's Republic of China. However, empirical analysis of existing judicial documents reveals that since the implementation of this crime, a significant 'impulse to apply' and a 'tendency toward overgeneralization' have emerged in judicial practice. According to data released by the Supreme People's Procuratorate, the number of prosecutions for this crime ranks second highest among newly added crimes, making it an active charge. Nevertheless, in the absence of uniform judicial interpretations, many difficult issues have surfaced in judicial practice that urgently need to be addressed."

2. PROBLEMS IN THE JUDICIAL APPLICATION OF THE CRIME OF COLLECTING ILLEGAL DEBTS

2.1. Ambiguity in Defining "Illegal Debts"

According to Article 293-1 of the Criminal Law of the People's Republic of China, the core prerequisite for establishing the Crime of Collecting Illegal Debts is to accurately determine whether the debt in question possesses the illegal attribute of "usury." However, empirical research shows that in current judicial practice, some courts apply inconsistent standards when determining usury, failing to strictly enforce relevant identification criteria. In the reasoning sections of judicial documents, the analysis of the illegality of debts is often superficial, with judges mechanically citing legal provisions rather than conducting substantive legal interpretation based on the specific facts of the case. Furthermore, the rulings lack sufficient justification regarding the criteria for determining whether a lending transaction constitutes usury, rarely engaging in systematic and in-depth logical reasoning on key factual elements such as the interest rate level, the specific use of funds, and the agreed repayment terms. This phenomenon, to some extent, reflects a tendency among some judicial personnel toward formalism and even subjective arbitrariness in the application of law.[1]

2.2. Different Standards for Determining Debt Collection Acts

The Crime of Collecting Illegal Debts stipulates three basic types of conduct. However, the connotations and extensions of core terms such as "violence, coercion" and "intimidation, stalking, harassment" are ambiguous, making it difficult to directly use them as the basis for conviction and sentencing. This results in unclear boundaries of punishment and inconsistent standards for determining the crime.[2]

2.3. Unclear Boundaries with Other Crimes

In current judicial practice, due to an incomplete and imprecise understanding of the legal provisions, the relationship between the Crime of Collecting Illegal Debts and other crimes remains ambiguous during application, and the boundaries between this crime and other offenses are often intertwined and difficult to distinguish. The various types of conduct encompassed by the constitutive elements of this crime—such as "intruding into another person's residence," "intimidating, stalking, or harassing others," "restricting another person's personal freedom," and "using violence or coercion"—objectively overlap to some extent with the following: "illegally intruding into another person's residence" in the crime of illegal intrusion into a residence; "chasing, intercepting, insulting, or intimidating others" in the crime of picking quarrels and provoking trouble; "unlawfully detaining another person or otherwise illegally depriving another person of personal freedom" in the crime of false imprisonment; and even the behavioral patterns in the crime of intentional injury. Against this backdrop, how to accurately distinguish this crime from related offenses has become a key issue that cannot be avoided in judicial application. Without a clear grasp of these distinctions, judges may find it difficult to unify their adjudicative standards when handling similar cases, which could lead to the practical dilemma of "different judgments for the same case."

3. DETERMINATION OF "ILLEGAL DEBTS"

The understanding of "illegal debts" involves two aspects: "illegal" and "debt." First, regarding the concept of debt, from the perspective of civil law, a debt refers to a relationship of rights and obligations between specific parties, whereby one party may request the other to perform or refrain from performing a particular act. The provisions concerning "debt" are generally governed by the relevant rules of the Civil Code of the People's Republic of China. In the field of criminal law, there are roughly three types of expressions related to debt: "lawful debts" under Article 60 of the Criminal

Law, "illegal debts" under Article 293-1, and "legal debts" under Article 307-1. According to relevant legal provisions, within criminal law, "lawful debts" refer to legal debts.[3]

Secondly, in understanding the concept of "illegal," attention must be paid to the source of "illegality"-that is, whether the illegality of the debt stems from the underlying act that created the debt or from the debt itself. Within the normative framework of the Crime of Collecting Illegal Debts, the creation of illegal debts is often accompanied by the combined effect of the collector's unlawful acts and the suppression of the debtor's freedom of will. Once such a debt is established, it is entirely denied legal validity. Thus, the core issue in determining illegal debts boils down to this: does the illegality of the underlying act that established the claim render all derived creditor-debtor relationships illegitimate, or, despite the illegality of the underlying act, may the derived debt still be partially or fully recognized by law? This analysis directly concerns the delineation of the boundaries of illegal debts and the prerequisite judgment for the application of this crime.

4. DETERMINATION OF DEBT COLLECTION ACTS

4.1. Determination of "Violence and Coercion" Acts

As a normative term, violence is generally understood as the application of compulsory force. In practice, it often manifests as acts of intrusion by the perpetrator, through physical force or instruments, against another person's body, property, or mental sphere. Following the general principles of legal interpretation, the subject of a violent act must be a human being; harm caused by an animal's instinctive behavior or by objective factors such as natural disasters cannot be defined as "violence" in the normative sense. This is the fundamental premise for defining such acts. This article argues that the concept of violence under this crime should be interpreted in the broadest sense, encompassing both acts directed against the person and acts directed against property.

The essence of coercion can be summarized as the perpetrator threatening others through words or actions, causing the victim to feel fear and thereby fall into a state of psychological control or mental subjugation. This effect does not mean that the victim becomes a completely manipulated object; the intensity of coercion at most results in a partial restriction of the other person's actions, making it difficult for them to independently decide on certain activities due to fear. From a mental perspective, although coercion imposes some limitation on the individual's mental autonomy, the subject still retains the capacity for independent decision-making. This psychological influence does not cause them to lose control over their own behavior. The coercion required for the Crime of Collecting Illegal Debts must reach a level that causes the victim to abandon resistance out of fear, but its intensity is lower than that required for serious crimes such as rape or robbery. As a minor offense, this crime carries a statutory penalty of up to three years of fixed-term imprisonment, criminal detention, or public surveillance. Coercive means-such as threats of harm or disclosure of private information-must exceed the legally permissible scope and create psychological compulsion, without necessarily suppressing resistance. The focus is on disrupting property order and causing psychological coercion. A comprehensive assessment should be made based on the illegality of the means, the degree of psychological compulsion, and the harm caused, so as to avoid overcriminalization.

4.2. Determination of "Restricting Another Person's Personal Freedom and Intruding into Another Person's Residence" Acts

Debt collection methods that restrict personal freedom often manifest as confining the victim to a specific physical space, thereby substantially depriving them of their autonomy of movement in real-life contexts. Such controlling conduct frequently appears in the form of false imprisonment. Therefore, whether it reaches the level of "serious circumstances" should be comprehensively determined by reference to the threshold for establishing the crime of false imprisonment, and accordingly, whether the Crime of Collecting Illegal Debts can be established should be judged. The

“restriction of personal freedom” under the Crime of Collecting Illegal Debts is not limited to enclosed private spaces; it also includes public places where the perpetrator can exercise control. The key to false imprisonment lies in the substantial deprivation of personal freedom, not whether the space is enclosed.

The right of citizens to be free from intrusion or unlawful search of their residence is called the right to residential inviolability. This right reflects the close connection between an individual’s living space and personal dignity, and is an important component of fundamental citizen rights. The Constitution also explicitly demonstrates the importance and protection of citizens’ right to residential inviolability. This paper argues that the core characteristic of collecting illegal debts by intruding into a residence is that the collector enters the debtor’s living space, imposes psychological pressure, and thereby disturbs the peace of habitation. This takes two forms: formal intrusion and substantive intrusion. Formal intrusion is physical forced entry, while substantive intrusion is psychological coercion.

4.3. Determination of “Intimidation, Stalking, and Harassment” Acts

Collecting illegal debts by intimidation refers to conduct where the collector, through genuine threats or intimidation, causes the victim to feel fear, thereby exerting psychological pressure, with the ultimate aim of recovering the debt. Such conduct takes various forms and may target the debtor or their close relatives; its essence is the imposition of psychological and mental coercion. It should be noted that intimidation must contain genuine threats, not false scares, and must cause the victim a sense of psychological oppression and a state of persistent fear.

Collecting illegal debts by stalking is characterized by the perpetrator intentionally engaging in follow-up behavior that is perceptible to the victim, creating an atmosphere of tension and terror, thereby forcing the victim to repay the debt as soon as possible due to sustained psychological pressure. Such follow-up conduct is essentially close physical movement, intended to constrain the target’s freedom of movement and exert controlling influence over their mental and psychological sphere.

Collecting illegal debts by harassment refers to, apart from intimidation and stalking, conduct that significantly interferes with another person’s normal work and daily routine through means such as bullying, threatening, controlling, suppressing, or even intimidating, thereby exerting psychological coercion on the victim to achieve the purpose of debt collection. Although harassment takes various forms, only those acts that cause actual harm to social public order and the personal legal interests of others may enter the scope of evaluation under this crime. Within the normative framework of the Crime of Collecting Illegal Debts, for harassment to enter the scope of criminal evaluation, it must satisfy two substantive requirements: first, the conduct has caused actual disruption to social public order; second, the conduct has caused actual infringement of the personal legal interests of citizens. Only when both conditions are met may it be classified as harassment-type debt collection.

5. DISTINCTION BETWEEN THE CRIME OF COLLECTING ILLEGAL DEBTS AND OTHER RELATED OFFENSES

5.1. Distinction Between This Crime and the Crime of Picking Quarrels and Provoking Trouble

This paper analyzes that the Crime of Collecting Illegal Debts and the Crime of Picking Quarrels and Provoking Trouble are mutually exclusive. First, the subjective purposes differ. The perpetrator of the Crime of Collecting Illegal Debts has a clear purpose of collecting illegal debts; the conduct is “motivated by a cause,” based on an objectively existing creditor-debtor relationship. In contrast, the Crime of Picking Quarrels and Provoking Trouble is typically characterized by “making trouble

without cause,” with subjective motives that may be summarized as seeking excitement, venting emotions, or showing off power. Second, from the perspective of the object of conduct, the target of the Crime of Collecting Illegal Debts is relatively fixed, usually focusing on the debtor, guarantor, and close relatives of the debtor. In contrast, the object of the Crime of Picking Quarrels and Provoking Trouble is often the unspecified public, with randomness and arbitrariness; the perpetrator does not target specific individuals but rather provokes indiscriminately and disrupts social order.

5.2. Distinction Between This Crime and the Crime of False Imprisonment

Both the Crime of Collecting Illegal Debts and the Crime of False Imprisonment involve conduct that infringes upon another person’s personal freedom, but they differ significantly in the degree of conduct, protected legal interests, and requirements regarding the nature of the debt. Accurate distinction is crucial for judicial application.

First, the degree of conduct differs. The Crime of False Imprisonment requires “depriving” another person of personal freedom, meaning the victim completely loses the freedom of physical movement, is placed under the perpetrator’s control, and cannot act freely according to their own will. In contrast, the Crime of Collecting Illegal Debts only requires “restricting” personal freedom. Second, the protected legal interests differ. The Crime of False Imprisonment falls under Chapter IV (“Crimes of Infringing upon Citizens’ Personal and Democratic Rights”), and its normative protective purpose is to safeguard the personal freedom interests of specific individuals. In contrast, the Crime of Collecting Illegal Debts falls under Chapter VI (“Crimes of Obstructing the Administration of Social Order”), and the legal interests it protects are compound, focusing on maintaining social public order while also encompassing the protection of citizens’ personal rights. Therefore, restricting another person’s personal freedom for the purpose of collecting illegal debts not only infringes upon personal freedom but also disrupts social public order, involving dual legal interest infringement. Third, the threshold for criminalization differs. The Crime of False Imprisonment is a behavioral crime; in principle, as long as an act of depriving another person of personal freedom is committed, the crime is established, with the duration affecting only sentencing. In contrast, the Crime of Collecting Illegal Debts explicitly requires “serious circumstances” for criminalization, meaning the degree, duration, frequency, etc., of the restriction of personal freedom must reach a certain level of seriousness. Conduct that restricts personal freedom for a short duration, with few instances, and without causing serious consequences should be treated as an administrative violation and should not be easily criminalized.

This author analyzes that if the detention conduct during the process of collecting illegal debts has not yet met the statutory threshold for the Crime of False Imprisonment, it should be evaluated under the Crime of Collecting Illegal Debts. For conduct that has met the threshold for the Crime of False Imprisonment, a distinction must be made: if no serious injury or death results, the statutory penalties of the two crimes are comparable, but the Crime of Collecting Illegal Debts more comprehensively evaluates the purpose of the conduct and should be applied preferentially; if aggravated consequences such as serious injury or death result, the aggravated penalty under the Crime of False Imprisonment should apply to achieve proportionality between crime and punishment.

5.3. Distinction between This Crime and the Crime of Unlawful Intrusion into a Residence

The form of criminalization involving “intruding into another person’s residence” under item 2 of the Crime of Collecting Illegal Debts is closely related to the Crime of Unlawful Intrusion into a Residence. The Crime of Unlawful Intrusion into a Residence regulates conduct where a perpetrator forcibly enters another person’s residence without the occupant’s permission, or refuses to leave after being asked to do so, thereby sufficiently disturbing the occupant’s daily peace. The two crimes are

highly similar in appearance, but differ in protected legal interests, subjective purpose, and requirements regarding circumstances, necessitating accurate distinction.

First, the protected legal interests differ. The Crime of Unlawful Intrusion into a Residence protects citizens' right to residential peace, which is a personal legal interest. The residence is a space for citizens' private lives, a carrier of privacy rights, property rights, and other rights; intrusion into a residence directly infringes upon citizens' peaceful living. In contrast, the Crime of Collecting Illegal Debts protects compound legal interests. Second, the subjective purposes differ. The perpetrator of the Crime of Collecting Illegal Debts intrudes into a residence with a clear purpose of collecting illegal debts, which is a subjective element of the crime. The motives for the Crime of Unlawful Intrusion into a Residence are more diverse. Third, the requirements regarding circumstances differ. The Crime of Unlawful Intrusion into a Residence is a behavioral crime; in principle, as long as an act of unlawful intrusion into a residence is committed, the crime is established. Article 245 of the Criminal Law does not specify a "serious circumstances" requirement, but under the principle of modesty in criminal law, a crime is established only when the conduct seriously interferes with the safety and normal peaceful living of citizens' residences. In contrast, the Crime of Collecting Illegal Debts explicitly requires "serious circumstances" for criminalization, imposing higher requirements regarding the means, frequency, duration, and impact of the intrusion.

This author analyzes that when a perpetrator intrudes into another person's residence with the intent to collect illegal debts, and the elements of both crimes are simultaneously satisfied, it should be examined as a concurrence of offenses. Under this structure, the Crime of Collecting Illegal Debts, because it doubly evaluates the specific purpose and means, should be defined as a special law; in contrast, the Crime of Unlawful Intrusion into a Residence occupies the position of a general law. Following the principle of "special law prevails over general law," it should be determined as the Crime of Collecting Illegal Debts. The value of this approach is reflected in two aspects: first, it fully evaluates, from a normative perspective, the substantive infringement of social public order caused by such conduct; second, it helps maintain a cautious attitude at the criminalization stage, strictly controlling the threshold for prosecution. This path both effectively regulates illegal conduct and implements the criminal policy stance of combining leniency with strictness and ensuring that punishment fits the crime.

5.4. Distinction Between This Crime and the Crime of Intentional Injury

Item 1 of the Crime of Collecting Illegal Debts provides for the conduct of "using violence or coercion," which overlaps with the Crime of Intentional Injury. The two crimes differ in the degree of violence, subjective purpose, and attribution of results, requiring accurate distinction.

First, the required degree of violence differs. The violence required for the Crime of Collecting Illegal Debts is primarily aimed at causing psychological fear in the victim, without needing to reach a level sufficient to suppress the victim's will to resist. In contrast, violence in the Crime of Intentional Injury is result-oriented; the crime is established on the premise that the violence causes at least minor physical injury to another person, and if the statutory injury threshold is not met, criminal punishment is excluded.

Second, the subjective purposes differ. The perpetrator of the Crime of Collecting Illegal Debts uses violence for the purpose of collecting illegal debts, not to pursue injury; violence is merely a means to achieve the purpose of collection. In contrast, the perpetrator of the Crime of Intentional Injury holds a hope or reckless indifference toward the injury result; the injury itself is the purpose of the act or the result that is recklessly allowed. This distinction is important when dealing with injury results: if the perpetrator, during the process of collection, forms a spontaneous intent to commit violence exceeding the necessary scope of collection and has an independent intent to injure, it may separately constitute the Crime of Intentional Injury.

This author analyzes that for acts of collecting illegal debts by violence or other means that cause minor injury to another person, the Crime of Collecting Illegal Debts and the Crime of Intentional Injury are in imaginary concurrence, and the heavier punishment should be imposed. However, if the result is beyond “minor injury or below,” it falls outside the scope of the Crime of Collecting Illegal Debts; if it constitutes concurrent offenses, it should be determined as both the Crime of Collecting Illegal Debts and the Crime of Intentional Injury, with punishment imposed concurrently.[4]

6. CONCLUSION

This paper takes the newly established Crime of Collecting Illegal Debts in the Criminal Law Amendment (XI) as the research object, focuses on the core disputes arising in the judicial application of this crime, systematically combs and deeply analyzes them, and on this basis, analyzes the criteria for determining “illegal debts,” the typological definition of debt collection acts, and the boundaries between this crime and related offenses. Through analysis, it is found that in current judicial practice, there is a certain tendency toward overgeneralization and inconsistent standards in the application of this crime, manifesting as: no unified understanding of the connotation of “illegal debts”; varying degrees of semantic ambiguity and typological confusion in the determination of debt collection acts such as “violence,” “coercion,” “intimidation,” and “stalking,” with some cases judging the degree of legal interest infringement too formally; moreover, the high degree of overlap in the constitutive elements between this crime and the crimes of picking quarrels and provoking trouble, false imprisonment, unlawful intrusion into a residence, intentional injury, etc., further exacerbates the blurred boundaries between crime and non-crime and between this crime and other crimes. The emergence of these problems stems not only from the general and principled wording of the legal provisions but also from the absence of judicial interpretations and the lack of theoretical consensus. Based on the analysis of the above problems, combined with the principle of unity of legal order, the theory of legal interest protection, and the principle of suiting punishment to crime, this paper proposes corresponding interpretative approaches and application suggestions, aiming to provide theoretical support and practical guidance for the standardized application of this crime in judicial practice.

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