



# Judicial Cognizance of Other Serious Cases of Defamation Crime in Cybercrime

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**Abstract.** With the continuous development of modern network technology, the Internet has changed people's way of life. However, with the continuous expansion of the use of the Internet, while enjoying the efficient life brought by the Internet, people have gradually increased their behaviors of infringing others' rights and endangering others' interests through the Internet. Online defamation is a very important part of it. As a kind of crime to protect people's right of reputation, the crime of libel not only stipulates the conventional situation, but also determines the aggravated legal punishment for the "serious circumstances" that infringe people's right of reputation and have serious consequences. Among them, the first three paragraphs are relatively clear provisions. Therefore, the focus of this paper is to study the nature and constitution of the crime of libel, mainly using the analysis method of researching "other serious circumstances" in the case study. Through the study of judicial practice, the author concluded that "serious social influence and simultaneous defamation of many people" can affect the scope of sentencing. Meanwhile, long-term defamation of others or seriously affecting the reputation of others can also become an important principle of judgment.

**Keywords:** Cybercrime · Defamation · serious circumstances

## 1 Introduction

This paper mainly discusses the issue of "other serious circumstances". As a concept of academic theory, the "bottom" clause is widely existing in the special provisions of criminal law in our country. It has the characteristics of distinctive supplement and openness, but also has ambiguity, which has become the focus of academic attention. At present, scholars have put forward the theory of integral evaluation elements and comprehensive constitutive elements for the determination of "serious circumstances". The theory of integral evaluation elements requires that on the basis of making clear the facts of the case, the whole case should be evaluated comprehensively [1]. However, according to the constitutive requirement theory, the seriousness of the case can only be recognized if it reaches the level clearly specified [2]. Therefore, over the years, the academic circle has made a lot of efforts for serious researches. Moreover, the bottom-saving clause not only gives judicial discretion, but also promotes the protection of

specific rights and interests of individual cases. In addition, with the rapid development of network technology, the speed of information dissemination is faster and the content is more abundant. Everyone faces sifting through a lot of information every day. In the process of communication, the network information is unavoidably good and bad, and the phenomenon of releasing false information and defamatory information to others is common. Defamation is also easier to spread quickly and widely through online platforms. Therefore, the study of defamation on the Internet has significant practical and academic significance. As a major part of this crime, it is particularly important to pay attention to the obvious functions and practical characteristics of “other circumstances” in this crime under the background of free speech and frequent libel. Therefore, in the first part of this paper, the main body of research will be put forward, and the nature of the problem and the main body will be analyzed and introduced. In the second part, the author will analyze and summarize cases, and draw specific research conclusions and relevant countermeasures in the last part.

## 2 The Dilemma of the Practice

With the continuous development of network technology, people have been applying various social media more widely. In practice, it is one of the difficulties in judging network crimes to slander others through network. The determination of “serious circumstances” has always been a difficult problem to deal with. In the case of cybercrime, the “serious circumstances” of online defamation include “other serious circumstances” in addition to the conviction criteria of clear number of retweets and clicks, serious consequences for the victim, and repeated defamation.

As the legal provisions do not clearly specify “other circumstances” which are different from the above three circumstances, in the past academic research, there are many studies on serious acts in other crimes. However, the discussion of serious acts in libel crime is very limited. “Other serious circumstances” are hardly taken seriously by the academic community. Professor Zhang Mingkai put forward the theory of integral evaluative elements for the orientation of serious circumstances. He argued that after determining that an act satisfies the objective elements of a crime, the judicial department should also make a holistic assessment of the act. Then they can determine whether the illegality of the case warrants the degree of criminal punishment. For example, the criteria of “serious circumstances” set up in some crimes are evaluative elements of this type [3]. In addition, from the perspective of judicial practice, Men Zhiyuan also proposed *the dilemma and Countermeasures of Online Insult and Defamation in the Context of the Amendment* at the Second National Internet Law Conference, in which he listed the urgent problems to be solved for the crime of online defamation. It is controversial to determine whether the court has jurisdiction. The anonymity of the Internet makes it difficult to meet the condition of “the defendant is clear”. Meanwhile, it is impossible to convict and punish the perpetrator in some cases simply based on the number of crimes [4]. All of them provide more ideas for us to understand the problems arising from the serious circumstances and further establish research objectives.

Therefore, according to the doctrine of legality, as a relatively unclear legislative form, the bottom clause will often cause practice to fall into a dilemma contrary to the

clarity of criminal law. Therefore, this paper will study the treatment of “other serious situations” in judicial cases through judicial practice. By retrieving the previous cases that were judged as “serious” in accordance with the three provisions, the author summarized and sorted out the judgment of serious in practice according to the actual situation. It is hoped that after analyzing the cases and previous judgments, the judiciary can find out the cases that constitute “other serious circumstances” and summarize the principles of judgment classification.

### **3 The Analysis of Serious Nature of the Circumstances**

First of all, generally speaking, “serious” mainly refers to the situation of repeated crimes, criminal record, illegal activities, bad influence and so on. In the process of identifying serious criminal circumstances, the author can judge the perpetrator’s subjective malignancy and harm degree. Therefore, in judicial interpretation, serious circumstances have formed the subjective aspect of crime mainly composed of two forms of judgment standards. The same illegal act repeatedly commits a crime or commits a crime after punishment and the purpose of the crime.

Therefore, it can be understood that in judicial practice, it is difficult to use a single standard to measure the seriousness of the circumstances. “Other serious circumstances”, as a backstop provision premised on the provision of enumeration, does not include in the definition of generality matters which are different in nature from those clearly stipulated in the enumerated items [5]. “Other circumstances” are restricted by the foregoing provisions. Meanwhile, characteristics and ideas similar to the foregoing provisions should be reflected in the judgment. Therefore, the academic opinion mainly lies in how to clarify its principles and limit its use. For example, the determination of the provision for the bottom of the law must be determined to have the same or similar value by comparing it with the behavior type specified in the same provision [6]. Therefore, the focus of “other serious circumstances” is to prevent all cases with unclear boundaries and facts from being classified as such in the trial process. It will ensure the impartiality and accuracy of justice and prevent the abuse of judicial authority. Therefore, the accurate definition of “other circumstances” has become an important issue in libel crime in practice. The following content of this paper will also focus on the specific jurisprudence of “other circumstances” in practice. Based on the case facts, the author will explore the identification ideas in different cases, summarize certain rules in specific cases, and follow this principle to explore better solutions in practice from two aspects of subjective malignancy and social harm.

## **4 The Ategorization of Other Serious Situations**

### **4.1 Defamation Results in Relatively Serious Adverse Social Impact**

#### **4.1.1 The Subjective Malignancy is Deep**

First of all, the author will study the following cases of bad social impact caused by network defamation. Subjective malignancy is also very important as a standard. Criminal behavior is the manifestation of subjective malignancy of criminals. The specific

determination of subjective guilt is also helpful to evaluate the degree of subjective malignancy accurately [7]. When the degree of subjective malignancy is deep, the result of defamation will lead to widespread adverse social impact. Judicial personnel can judge the severity of the circumstances in the crime of defamation by the subjective degree of the perpetrator's malignancy.

In the case of Fan Yanqiong in 2008, Yan Xiaoling died in hospital due to ruptured fallopian tubes. However, Fan Yanqiong made a fictitious account of Yan Xiaoling's death as gang rape of a woman by police and uploaded a video online after knowing this fact.

In this case, the author will discuss whether the defendant's conduct constitutes a serious issue in the case of defamation. According to the verdict, the defendants spread a large amount of false information on the Internet about collusion between police and bandits. She also fabricated "underworld background" and other content, accusing the judicial department personnel of illegal dereliction of duty. Therefore, according to the analysis and trial of this case, although the slanders didn't meet the identification standard of the number of retweets and clicks in cases of serious circumstances, the victim's personal personality and reputation were damaged. The victim's family life was seriously affected and harassed. Moreover, in terms of public opinion, the defamatory information has triggered a wide range of discussions and accusations in the network public opinion. The behavior of fabricating facts and arousing concerns seriously damages citizens' right to know and disturbs the public order on the Internet, with deep subjective malignant effect. Therefore, it can be concluded that the behavior of the defendant in this case constitutes serious circumstances in the crime of defamation.

When researchers talk about subjective malignancy, they inevitably refer to motive and means. The criminal motive in the crime of libel is an important standard to measure the subjective malignancy of the perpetrator. Criminal motives stem from strong, distorted needs. It comes into being because the subject deviates from social norms under the stimulation of the external environment [8]. According to this, when criminal intention is transformed into extremely positive criminal motivation, it shows the perpetrator's deep subjective malignancy. There is a clear difference between defamation with the intention of retaliating against a government agency and subjective malignancy driven by personal curiosity. Therefore, subjective malignancy as a standard of incrimination can affect the conviction and sentencing, is very reasonable.

#### **4.1.2 Great Social Impact**

Network order is subordinate to social public order. Social order plays a dominant role in social life. Under normal conditions, traditions, customs, social norms and legal rules control the society within a stable and orderly range [9]. The large-scale spread of defamation on the Internet, which leads to serious consequences, not only damages the reputation and image of the individual, but also endangers the social order and public interests, and the "social harm" is serious. Therefore, for this kind of defamation, the judicial practice classifies this kind of case as serious in the crime of defamation.

There are a lot of cases that are judged as serious because of the bad social influence caused by network defamation. For example, in August 2009, Chen and Li produced economic dispute. Chen claimed to the public security Bureau that Li's company was

involved in fraud. At the same time, he sent a letter to the CENTRAL Commission for Discipline Inspection, the content is Li suspected of corruption. Then Chen released a number of related rumors in some websites.

The verdict shows that Chen fabricated false facts and reports economic crimes related to Li to the relevant authorities for many times. At the same time, he openly spread false information on several websites, which caused serious negative social impact and damaged the victim's right of reputation. Therefore, this case should be considered serious.

The harmful consequences of bad social impact cannot be measured, but the opportunity for harm is objective [10]. Therefore, social impact requires the masses to be able to widely perceive the changes in social opinion before and after the case. It can refer to the related manifestations of the damage consequences of "causing bad social impact" in the provisions of the crime of abuse of power by judicial staff. For example, the behavior caused the destruction of regulatory order, resulting in mass petitions, mass incidents, media reports and so on. The judicial organs can refer to the form of harmful consequences of "causing bad social impact" in the provisions of the crime of abuse of power by judicial staff. For example, the destruction of regulatory order, resulting in mass petitions, mass incidents, media reports and so on. In this case, social influence and consequences are mainly used to determine the seriousness of the crime of defamation.

It is worth mentioning that when we identify serious social impact to determine the seriousness of the case, the judiciary should always adhere to the principle of adaptation of crime to punishment and the principle of causality of criminal law. The subject of the crime and the actual damage consequences should have a causal relationship, its criminal behavior should be consistent with its responsibility. It should be able to determine the inevitable result that the actor's defamation will cause serious influence. The judiciary should always adhere to the case-by-case analysis, and should not blindly categorize the impact of all kinds of cases as "serious", so as not to damage judicial justice and the principle of correct sentencing.

## 4.2 Slander Multiple People at the Same Time

Professor Zhang Mingkai believed that in order to protect citizens' constitutional rights, the state must weigh whether the severity of the damage caused by their wrong speech to the rights of public figures exceeds the limit of our protection of their right to freedom of speech [11]. Party and government officials elected by citizens form a large part of the spectrum of public figures. Then the author will study how to identify the seriousness of the violation when the subject object of the infringement is the reputation of several civil servants.

In 2019, the defendant, Chen Guangping, published nearly 30 articles on Sina Weibo and wechat. He claimed that Shao Changbin, Wu Wenjun and Ni Jun were criminal gang members who colluded with the underworld and created unjust, false and erroneous cases. The posts were clicked and viewed more than 670,000 times, triggering negative comments from netizens.

According to the judgment in the case, the defendant Chen Guangping fabricated false facts through the online platform to slander others and many people, so it can be considered as serious in the case of defamation. In this case, not only the defamatory

information had been viewed more than 670,000 times, but also the defendant Chen Guangping slandered many people at the same time, which constitutes a serious case.

In the case, Chen Guangping used the information network to spread rumors about others. At the same time, she slandered more than three people, smearing many people as gangsters, which constituted the slander of many people. As a typical case of defamation of many people, it also reflects the precise positioning of different cases and situations in judicial practice. These principles show how to judge whether a case is serious or not from multiple angles. Therefore, in addition to judging the social impact that causes adverse consequences as serious circumstances, the defamation of a number of people can also be judged as one of the elements of serious circumstances.

### 4.3 Slandering Others for a Long Time

In the case of judicial practice, long-term defamation of others can also be identified as serious circumstances in the crime of libel. For example, Wang Peirong was the resident committee director of the village. She and Liu, Xue produced contradiction because of working problem. Since 2006, the defendant, Wang Peirong, has repeatedly posted posters in the community and posted articles online, claiming that the victims jointly violated the public interest. She carried out a long and continuous personal attack on the victim.

According to the judgment, the determination of serious circumstances of the crime of libel should be based on the nature of the case, the perpetrator's own behavior and the degree of social harm, combined with judicial practice, a comprehensive analysis and judgment. According to the facts and specific circumstances of the crime identified in this case, the court of first instance held that Wang Peirong deliberately fabricated facts and spread relevant false facts in the form of Posting large-character posters in the community and Posting on the Internet. The defendant has long and repeatedly defamed others. This kind of behavior degrades others' personality and destroys others' reputation. Therefore, the judge found that Wang peirong's defamation was serious.

This case also proves a basic concept. Whether the circumstances of defamation are serious should be judged according to the facts of the case and in combination with judicial practice and regulations. Since Wang Peirong has been spreading the facts of many people's suspected crimes for a long time, not only in the form of Posting big-character posters, but also on the Internet to attract attention. His criminal behavior and means are relatively bad, which can be judged as serious.

In fact, it also demonstrates the practical effect of a backstop clause. That is to say, the judiciary is not always able to make judgments according to carefully planned details. Legal interest is the basis of the charge. The fact of the case is the core problem of the criminal procedure part. If the basic facts cannot be comprehensively analyzed, it will fall into the situation of "separating the criminal law system from the objective need of solving problems in the real world" criticized by scholars [12].

#### 4.4 Defamatory Information Has the Characteristics of Seriously Affecting the Reputation of Others

Reputation is a very important part of personal legal interests, but why is the right of reputation valued and become a part of the incriminating conditions? The author hopes to deal with this problem from the function of reputation right itself. Reputation is regarded as a prerequisite for communication, and loss of reputation leads to loss of freedom to communicate with others [13]. Conceptually, reputation is defined as a person's ability to meet the normative expectations required for communication between equal subjects. Therefore, from the perspective of social communication mechanism, the behavior affecting the reputation of others in defamation is not only the violation of personal dignity in the Constitution, but also the violation of the right of effective communication between individuals and society. In terms of the concept of the crime of libel, Professor Li Xiandong believed that the so-called libel refers to an act in which the perpetrator spreads false facts to a third party and damages the reputation of the party concerned. Therefore, the protection of personal reputation is one of the key points in dealing with defamation [14].

The perpetrator defames an unspecified object through the Internet, and the defamatory information spreads widely on the Internet. The author will analyze the following case. In a Courier station, the defendant Lang secretly took photos to take the Courier valley. He framed Gu for having sex with the Courier and forged evidence of Gu's marital infidelity. Then he posted the video along with forged evidence to a Wechat group.

The verdict showed that Lang seriously violated the victim's right of reputation. It has not only negatively affected her normal work and life, but also damaged her social image. The case belongs to fabricating facts and defaming others through the Internet and the circumstances are serious. Its related rumor content is obscene and vulgar, and triggered a large number of vulgar remarks. It not only leads to severe damage to the image of the victim, but also leads to disorder of Internet order, seriously hinders the construction of green and healthy Internet, and leads to extremely bad influence. Therefore, due to the intentional guiding of bad vulgar speech subjectively, defamation is judged as serious.

In this case, the characteristics of the objective elements of the criminal constitution of libel crime are also reflected in the two points including the overt nature of the behavior and the falsity of the facts. There are always different views on the determination of "overt nature" in criminal law. However, the Chinese mainland usually adopts the general view. That is to say, Chinese scholar Zhang Mingkai believed that the academic circle defined it as "The non-specific majority" [3]. There is no limit on the specific number of people in the identification, and the victims do not have a special relationship with the crowd. The possibility of spreading danger to society would qualify as "overt". Therefore, in this case, the WeChat group, as a public environment with no specific object, should not be understood as a general private occasion. As it is not only open in behavior but also open in result, it also affects others' reputation and degrades others' personality. This case fully embodies the characteristics of defamation in which the defendant wants to discredit others [15]. Therefore, it explains the reason why this point is regarded as the standard of serious circumstance from various dimensions.

## 5 Conclusion

Therefore, this paper mainly discusses the forms of libel cases in judicial practice, and sort out the libel cases. The main core of this paper is the analysis of four common judgment criteria in practice. The criteria include “causing adverse social influence and simultaneously defaming many people”, and “perpetuating defamation of others and seriously affecting the reputation of others”. The author also analyzes the constitutive elements of the crime of libel and the characteristics of the judgment of serious circumstances. Besides, this paper clarifies the judgment of social impact, the importance of the right of reputation and the role and function of the backstop clause, so as to better deepen the theme of the paper. When demonstrating the scope of serious circumstances, the author advocates following the basic principle of statutory punishment for a crime, and analyzes the whole case from an overall perspective whether it meets the incriminating conditions. “Other serious circumstances” have long been criticized for failing to reflect the accuracy of criminal law. However, laws need to adapt to changing social realities. Judicial interpretation cannot always accurately anticipate all specific violations. Therefore, the existence of such clauses is very necessary.

As for how to solve the difficulties brought by this clause in practice, the judiciary can apply this clause in a comprehensive and limited way by analogy with clearly prescribed judicial interpretation. In addition, the judicial organs should start from the case and seek truth from facts according to the specific situation of the case. In the process of trial, the valuable experience in judicial practice is combined to grasp the particularity of each case. Only by promoting the unity of subjective and objective in the judicial process can we find the general law in the complicated and changeable judicial cases. It's also conducive to judicial personnel better solve the difficult problem of libel crime in the new network situation.

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