

Research on the Application of Private Prosecution Procedure in Cyber Violence Crimes in China

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Abstract: With the rapid development of China's economy and internet, cybercrimes have been on the rise. Among these, online violence has garnered the most widespread public attention, primarily regulated in judicial practice through charges of defamation and slander. For years, the "private prosecution" mechanism—apart from exceptional cases—has mainly relied on private litigation procedures. This entrenched perception poses significant challenges for effectively punishing cyberbullying. As such crimes no longer align with the legislative intent behind the private prosecution system, pressing issues include high court acceptance thresholds and victims' difficulties in gathering evidence through private litigation. Drawing on international practices and China's social realities, this paper proposes three effective solutions to address the paradoxes of cyberbullying: redefining "private prosecution" as either reporting to public security authorities or directly filing lawsuits; extending police assistance obligations throughout private litigation processes to activate Article 246 of the Criminal Law; and abolishing evidentiary standards for private litigation cases, implementing only formal review procedures.

Keywords: Cyber Violence; Private Prosecution Procedure; Tell Only; Case Acceptance.

1. Introduction

While the internet transforms modern life, it has also spawned cyberbullying. In recent years, cases of depression and suicide caused by online violence have extended beyond celebrities to include ordinary citizens [1]. Zheng Linghua, a student at Zhejiang Normal University, tragically committed suicide after posting a photo of herself with her hospitalized grandfather, having dyed her hair pink. Prior to

this incident, she had secured a postgraduate position at East China Normal University, seemingly destined for a promising future. When confronting cyberbullying, she once declared, "I must strive to survive." Unlike public figures, ordinary victims lack effective channels for advocacy and self-help mechanisms. Severe cyberbullying subjects victims to attacks, insults, and defamation, severely damaging their mental health and normal lives, ultimately leading to suicide [2]. Cyberbullying demands legal regulation through criminal law, while victims must seek legal recourse to protect their rights [3].

In academic circles, cyberbullying primarily manifests in two forms: doxxing and collective online verbal harassment. Doxxing involves obtaining and publicly disclosing sensitive personal information—such as contact details and home addresses—through legal or illegal means, subjecting victims to dual attacks in both cyberspace and real life. While some argue that unauthorized collection and dissemination of publicly available or voluntarily shared online information constitutes a violation of privacy rights, cyberbullying specifically targets individuals through defamation and slander, including aggressive expressions in real-world discourse and malicious spread of fabricated false information. Notable cases include a Guangdong man who faced cyberbullying after sharing his interview experience, and the "female courier station defamation case" where perpetrators deliberately created and disseminated false information about the victim. Psychologists categorize cyberbullying motives into online humiliation and cyberbullying. The former aims at moral judgment and social order maintenance, while the latter involves malicious attacks [4]. Though distinct in intent, both can inflict severe psychological trauma on victims, potentially leading to suicide. Victims often struggle to seek legal redress due to the prevalence of private prosecution in such cases,

compounded by the numerous procedural challenges they face during litigation.

To sum up, cyber violence not only violates personal privacy, but also may cause profound psychological impact on victims. The regulation and prevention of such crimes require comprehensive strategies at legal, social and psychological levels to protect the rights and interests of victims and reduce the occurrence of cyber violence incidents [5,6].

2. The Dilemma of Private Prosecution of Cyber Violence Crimes in China

There exists a significant contradiction between the legislative intent of cyber violence crimes and private prosecution offenses. According to China's Criminal Law and Criminal Procedure Law, offenses such as insult and defamation are categorized as private prosecution offenses, meaning victims typically decide independently whether to file lawsuits. However, the anonymity and widespread dissemination characteristics of cyber violence have transformed these crimes beyond ordinary disputes among acquaintances. Their severity far exceeds traditional insults and defamation, sometimes even leading to severe consequences like victim suicide. Therefore, simply categorizing cyber violence crimes under private prosecution offenses proves inadequate for effective prevention and control. Meanwhile, courts face multiple obstacles in adjudicating cyber violence cases [7]. As stipulated in the Supreme People's Court's Judicial Interpretation No.1 [2021], private prosecution cases require clear defendants, specific claims, and evidence proving criminal acts. Yet the anonymity and extensive reach of online environments make it difficult to identify perpetrators, while victims often lack professional evidence-gathering capabilities, creating significant challenges in evidence collection and preservation. Even when victims can provide relevant evidence, courts encounter numerous difficulties in case filing and acceptance, hindering the implementation of public security authorities' assistance regulations for evidence collection. Consequently, the unique nature of cyber violence crimes makes them incompatible with existing private prosecution systems, urgently requiring legal re-examination and adjustments to more effectively address the severe challenges posed by cyber violence.

3. The Criminal Procedure of Cyber Violence in China has been Improved and Changed into a Dual Prosecution Mode of Private Prosecution and Public Prosecution

3.1 The Prosecution Procedure Shall Apply

Jiang Jun argues that cyberbullying cases involving verbal violence should no longer follow the "reporting-first" approach but instead be transferred to public prosecution procedures, with prosecutors initiating lawsuits in court [5] (p.24). Zhang Jiahua also maintains that given the inherent challenges of evidence collection, proof presentation, and prosecution pursuit, cyberbullying should be classified as a public prosecution case [8]. Shi Jinghai further proposes that the newly established cyberbullying offense should adopt public prosecution procedures based on the principle of creating new crimes [3]. From the legislative purpose of defamation and slander offenses, applying public prosecution procedures can effectively resolve evidentiary difficulties. Even if private litigants waive their right to prosecute, public authorities may still file charges to strongly punish perpetrators. However, blanket adoption of public prosecution overlooks victims' personal preferences. Although the newly added offense overlaps partially with defamation and slander in infringing legal interests—both involving violations of personal dignity and reputation rights—victims might question: Do they have the will to sue cyberbullies? Is there any possibility of reconciliation between victims and perpetrators without trial? Can they withstand the potential "secondary trauma" from entering litigation?

3.2 The Procedure of Transferring a Private Prosecution to Public Prosecution Shall Apply

In 2020, the "Hangzhou Woman's Courier Complaint Case" saw the individual file a private prosecution. Given its significant social impact and alignment with the special circumstances of "seriously endangering social order," the case was later prosecuted by the procuratorate [9]. It was ultimately included in the Supreme People's Procuratorate's 34th batch of guiding cases. The case sparked intense academic debate and appeared to provide guidance for transitioning from private to public prosecution procedures in severe cyberbullying cases. However, the case wasn't flawless.

Questions like whether the state has authority to initiate public prosecution before concluding private litigation, or whether procuratorial organs can recommend police to file cases, still require systematic reflection. The transition process remains problematic [9]. Moreover, improper coordination between private and public prosecution procedures may lead to bureaucratic buck-passing. How should cyberbullying perpetrators be punished when victims or their relatives refuse to file private lawsuits due to various reasons, while the consequences are severe yet fail to meet the legal threshold for direct public prosecution?

3.3 The Dual Prosecution Mode of Private Prosecution and Public Prosecution is Applicable

When both approaches face unresolved controversies, the dual prosecution model of private and public prosecution demonstrates unique advantages. This framework diverges from the "public-private collaboration with prioritized prosecution" principle outlined in the *Guiding Opinions*. Professor Zhang Mingkai argues that criminal law's "reporting-based adjudication" mechanism restricts state prosecution authority to protect victims' interests (which also refutes arguments emphasizing exclusive use of public prosecution procedures) and necessitates reinterpretation of "reporting" [10]. Professor Xie Dengke similarly contends that "reporting" does not equate to "prosecution," advocating for a dual collaborative system of "private-public prosecution" in cyberbullying cases [11]. In academic and judicial practice, mainstream interpretations of "reporting-based adjudication" maintain that "reporting" specifically refers to victims initiating legal proceedings with courts, which then initiate adjudication processes. According to Article 210 of the Criminal Procedure Law, current scholarly consensus holds that "reporting-based adjudication" offenses are essentially equivalent to private prosecution cases, thus binding them together. Taiwan's Criminal Procedure Code defines "reporting" as victims or individuals with specific relationships reporting criminal facts to investigative authorities and requesting prosecution [12]. In Germany, private prosecution of crimes can be resolved through either private prosecution procedures or public prosecution procedures. If the public

prosecution procedure is applied, the victim must first inform the procuratorial organ before the procuratorate can initiate a public prosecution. Japan implements a public prosecution monopoly system, so the "inform" in its private prosecution concept actually refers to informing the investigative authorities rather than filing a lawsuit with the court [13]. The dictionary definition of "inform" as "to tell someone and make them aware" suggests that even through textual interpretation, this term cannot be narrowly confined to filing a lawsuit with the court. Its true meaning aligns more closely with the concept of "inform" in legal contexts both internationally and in Taiwan, China. Professor Zhang Mingkai argues that the principle of "inform first" means that only when victims report crimes to public security or judicial authorities can these authorities proceed to criminal proceedings. The "inform first" approach emphasizes that criminal litigation should not violate the victim's will [10]. Wang Yichao notes that the subject of inform is typically limited to victims, and its content usually includes two components: exposing criminal facts and expressing prosecution intent [14].

By integrating extraterritorial provisions and textual interpretation, the "reporting requirement" refers to situations where victims or those specified in Article 114 of the Criminal Procedure Law encounter special circumstances. In such cases, qualified parties may file complaints with public security organs or procuratorial organs, which then initiate prosecution, or victims may directly file lawsuits with courts for case registration and processing. This interpretation suggests that private prosecution offenses should not be limited to private litigation procedures. Parties may choose to report to investigative authorities for prosecution or file lawsuits themselves, thereby respecting victims' aspirations for legal recourse. Cases involving public prosecution are typically deemed to endanger national and social interests. Although personal interests play a greater role in private prosecution cases, violations of national interests and legal order cannot be excluded. Meanwhile, cyberbullying crimes, due to their unique characteristics in occurrence and dissemination platforms, cause severe public opinion impacts, disrupt social order, and undermine public security. Therefore, public prosecution procedures cannot be

excluded. However, it should be noted that once initiated, public prosecution procedures are no longer subject to victims' preferences—a crucial factor to consider when choosing prosecution. Before initiating public prosecution, victims must reaffirm their willingness to sue and be informed of its consequences. Beyond cyberbullying, many scholars have long questioned equating "reporting requirement" with private litigation cases. The renewed understanding of reporting should also apply to other private prosecution offenses.

Not all cyberbullying cases require public prosecution after victims file complaints. Otherwise, it would unduly burden prosecutors, waste litigation resources, and undermine the purpose of private prosecution. Authorities should conduct preliminary reviews before filing cases, with standards not being overly stringent to ensure the mechanism achieves its intended purpose. For minor cyberbullying incidents within manageable scope, mediation should be prioritized—offenders can obtain victim forgiveness through apologies, cessation of harmful behavior, and voluntary compensation. Cases involving negligible criminality or where victims possess evidence-gathering capabilities may qualify for private prosecution. These improvements in private prosecution procedures ensure rights protection even when victims initiate legal action. Many offenders lack awareness of their misconduct and show no malicious intent, making mediation a chance for reconciliation. However, for massive, severe, or organized cyberbullying incidents, authorities must transfer cases to prosecutors after investigation, ensuring proper prosecution.

3.4 Distinguish the Standards of Filing and Acceptance, and Reduce the Threshold of Accepting Evidence

Article 320 of the Criminal Procedure Interpretation stipulates that "after review, if the conditions for acceptance are met, a decision to file the case shall be made." Article 316 specifies that one of the requirements for people's courts to accept private prosecution cases is "having evidence proving the defendant's criminal acts." While the wording suggests these filing and acceptance criteria are equivalent, Article 316's evidentiary standard remains abstract and vague, requiring further clarification. Different litigation stages involve

varying levels of understanding and objectives, necessitating tiered evidentiary standards [15]. The initial acceptance and filing conditions in private prosecution procedures should not set excessively high standards but serve as preliminary proof to demonstrate case feasibility, with supplementary evidence collection during review. Germany requires courts to conduct formal reviews before initiating legal proceedings, followed by evidence collection according to law; Russia and Taiwan region adopt only formal reviews [16]. These jurisdictions maintain low acceptance thresholds initially while leveraging public authority for post-acceptance evidence investigation. China's approach could draw on international practices to lower acceptance thresholds for private prosecutions, as overly stringent standards may exclude victims from seeking justice. Abolishing evidentiary requirements for accepting private prosecution cases would require that the plaintiff's claims meet procedural compliance criteria [16]. If this is changed, even if the application stage of the obligation of public security organs to assist fails to apply the whole process, assistance can be provided after acceptance in accordance with the current provisions.

3.5 The Obligation of Public Security Organs to Assist Shall be Activated in The Self-Plaintiff Procedure

Article 246(3) of the Criminal Law stipulates: "Where a victim files a complaint with the People's Court but encounters genuine difficulties in providing evidence, the People's Court may request assistance from public security organs." The law does not explicitly specify the applicable stage for the obligation to assist public security organs, merely stating that complaints must be submitted to the court. Article 11 of the "Guiding Opinions on Punishing Cyber Violence Crimes According to Law" (hereinafter referred to as the "Guiding Opinions") defines the applicable stage of the obligation to assist public security organs as between the court accepting the case and before filing the case. Courts only request assistance from public security organs after reviewing self-prosecution cases and determining that victims face genuine difficulties in providing evidence. However, courts require clear identification of defendants and sufficient evidence proving criminal facts when accepting

cases. Given the underdeveloped safety management obligations for cyber violence on online platforms, individuals lack mandatory means to collect evidence through the internet, making it difficult to meet the requirements for case filing. Regarding the applicable stage of this obligation, besides the "case acceptance review theory" upheld by the Guiding Opinions, there is also the "full-process theory," which Professor Cai Yuanpei supports. He argues that the provision for assisting in evidence collection applies from the moment victims file a self-prosecution with the People's Court [17] (p.92). Allowing self-prosecutors to apply for evidence assistance before the court accepts their self-prosecution cases, while permitting them to decide whether to continue the self-prosecution after obtaining assistance from public security organs, helps better balance the protection of legal interests with the voluntariness of self-prosecution, allowing self-prosecutors to decide whether to initiate criminal proceedings based on their own discretion [18]. When the aforementioned amendment of acceptance criteria proves unfeasible, activating this obligation allows private litigants to obtain assistance from public security authorities during the self-prosecution process. Beyond safeguarding their rights, such collaboration enables effective case screening through evidence collection for cases lacking evidentiary support, thereby alleviating judicial workload. However, the obligation to assist public security authorities should only be activated when the litigant genuinely encounters difficulties in evidence gathering. Otherwise, it would unduly burden these authorities.

The involvement of public security authorities can effectively identify cyberbullying perpetrators on online platforms, pinpointing initiators, organizers, and instigators of such violence, while penalizing premeditated "internet trolls." Simultaneously, the deterrent power of state agencies increases the criminal costs and exposure risks of cyberbullying. Current online platforms predominantly operate under real-name registration systems. Strengthening platform security management obligations and fostering collaboration between the state and platforms can effectively target perpetrators, encouraging restraint among irrational or unwitting followers. Drawing from academic perspectives, these approaches may resolve three paradoxes in self-prosecution

cases of cyberbullying: the uncertainty of criminal subjects versus prosecutorial certainty, the state's proactive prosecution versus respecting victims' choices, and the self-prosecutor's limited evidence-gathering capabilities versus rigorous evidentiary standards [17].

4. Conclusion

The escalating prevalence and severe consequences of cyberbullying have drawn widespread attention, primarily manifested through human flesh searches and verbal abuse. Cyber violence now extends beyond targeting public figures to include ordinary citizens, frequently triggering depression and suicide. While defamation charges are applied in judicial practice to regulate online harassment, the "private prosecution" mechanism proves ineffective due to digital anonymity that complicates victim-attacker identification and evidence collection, creating systemic barriers to rights protection. Current legislation inadequately punishes cyberbullies, with low criminal costs exacerbating the crisis. Scholars propose redefining the concept of "private prosecution," advocating a dual-track system combining private and public litigation procedures. They recommend establishing pre-trial review and mediation mechanisms before initiating public prosecution to balance state authority with victims' autonomy. Additionally, differentiated evidentiary standards for private cases should be implemented, simplified preliminary evidence verification processes streamlined, and proactive activation of police assistance protocols to facilitate evidence collection. These measures aim to safeguard legitimate rights regardless of whether prosecution or private recourse is pursued.

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