

A NEW CYBERBULLYING LAW? EXTENSION OF LEGAL INTERPRETATIONS IN CHINA AND RUSSIA

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Abstract: Cyberbullying is a form of psychological violence that is intentional, repeated, characterized by power imbalance, and uses cyberspace as its medium. Cyberbullying can be much more vicious than the ‘traditional’ face-to-face bullying because it is not limited by time and space, difficult to detect, and the aggressors often enjoy anonymity and impunity. Moreover, cyberbullying can exist as a self-contained phenomenon in cyberspace, which means that the aggressor and the victim may not know each other in the real world. Bearing these facts in mind, we need to answer two important questions: 1) Is cyberbullying a new type of offense? 2) Do we need a new anti-cyberbullying law? Scholars around the world are divided on these issues. While some countries, like the United States and New Zealand, have directly criminalized cyberbullying, others, like Australia and Canada, are simply amending their existing laws or extending their interpretations. This paper examines the legal situation in China and Russia, the two countries which do not have any specific laws regarding cyberbullying. The research is built upon the analysis of applicable laws and judicial decisions. The case studies overview the situations when victims of cyberbullying sought legal protection in court. The paper concludes that neither China nor Russia needs to pass a new anti-cyberbullying law. They are already doing adequate work to amend and interpret the existing civil, administrative, and criminal laws in order to counter cyber-offenses. However, more effort needs to be done to remove procedural barriers to litigation and prosecution, such as the costly and cumbersome notarization process in Russia, or the private character of the prosecution of defamation in China.

Keywords: Cyberbullying, Bullying, Defamation, Legal Interpretation, Civil Litigation, Criminal Prosecution, China, Russia

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INTRODUCTION

In Joanne Rowling's Hogwarts School of Witchcraft and Wizardry, one of the most important subjects was Defense Against the Dark Arts. In our modern world where technology, in Arthur Clarke's words, becomes sufficiently advanced to be indistinguishable from magic,¹ the most similar subject would be Defense Against Cybercrimes, and among them cyberbullying would bear the utmost relevance to the schoolchildren. In a civilized society, the most appropriate way to defend oneself is to seek legal protection. Therefore, this paper examines the adequacy of legal protection against cyberbullying in order to answer a central question: do we need a new anti-cyberbullying law?

A. Research Design and Method

This paper consists of an introduction, conclusion, and four parts in between. The first part traces the origins of cyberbullying research in the academia, summarizes scholarly definitions of cyberbullying and provides a classification of cyberbullying offenses. The second part summarizes legal definitions of cyberbullying and observes the current achievements, as well as gaps, in legal research. The third part observes cyberbullying-related laws in China and Russia. The fourth part provides a study of cyberbullying-related legal cases in China and Russia. Case studies are followed by a discussion of results and a conclusion.

This paper relies on case studies, legal, statistical, and comparative analysis, as well as a review of literature. Its primary sources are judicial decisions, laws, writings of legal scholars, psychologists and law practitioners. There are two hypotheses this paper looks at. First, existing laws are not adequate to protect the victims of bullying in cyberspace, and a new cyberbullying law is needed. Second, legislators can amend the existing laws and/or extend their interpretation, therefore, a new cyberbullying law is not needed. The conclusion shows which hypothesis turns out to be the correct one.

B. Research Limitations

This research is limited in scope, time, and space. First, it is primarily concerned with the legal aspects of countering cyberbullying. Psychological aspects of this behavior and technical issues of network operation may be examined only to promote the primary research objective and answer the central question. In addition, this paper does not limit cyberbullying to any age group. Second, this paper examines contemporary legal situation and court decisions of the last five years (2017-2021). Third, this research is focused on studying the laws and legal cases of China and Russia. Laws and cases of other countries will be reviewed only for illustrative purposes.

¹ Andrew Z. Jones, "What Are Clarke's Laws," *ThoughtCo.*, <https://www.thoughtco.com/what-are-clarkes-laws-2699067>.

The Chinese and Russian legal systems were chosen as objects of this research due to their similar characteristics. First, both China and Russia belong to the civil law system, also known as the continental system. Their legal systems are unitary, which means individual provinces cannot enact their own civil or criminal laws. Second, China and Russia are developing countries with an explosive growth of network coverage and similar legal problems arising from this rapid digitalization. Over the last ten years, the number of internet users has grown by 109.7% in Russia² and 231.9% in China.³ By contrast, in the United States, the growth was only 42.6%.⁴ Third, cyberbullying research in China⁵ and Russia is in its early stages, and more work needs to be done to catch up with our western colleagues.

I. THE CYBERBULLYING PHENOMENON

In this part we shall trace the emergence of cyberbullying as a social phenomenon and an object of scholarly research. We will highlight core elements of cyberbullying among the numerous definitions in academic writings, draft a classification of cyberbullying, summarize its key features, and explain its detrimental effect on the person and society.

A. The Origins of Cyberbullying Research

The social phenomenon of bullying has existed for centuries before it received the prefix *cyber* in the late 20th century, but it has not always been an object of scrupulous research. Encyclopedia Britannica gives a clear and succinct definition of bullying: “*intentional harm-doing or harassment that is directed toward vulnerable targets and typically repeated.*”⁶ A definition by Dan Olweus, an authoritative Norwegian scholar and a pioneer in bullying research, allows to reduce all other definitions of bullying to a common denominator: bullying is (1) intentional; (2) repeated; and (3) characterized by power imbalance.⁷

Throughout the history, bullying has been viewed as an accepted and normalized experience in children, until its perception started to change in the late 20th century. Scandinavian scientists made the first attempts at systematic research in bullying in the 1970s, and in 1980s their colleagues from the United Kingdom, the Netherlands, the United States and Japan followed suit.⁸ By the end of the 20th century, scientists started to seriously challenge

² Statistics of Internet Users in Russia, *Rusind.Ru*, <https://rusind.ru/polzovateli-interneta-v-rossii.html>.

³ Number of Internet Users in China from 2008 to 2020, *Statista*, <https://www.statista.com/statistics/265140/number-of-internet-users-in-china/>.

⁴ Number of Fixed Broadband Subscriptions in the United States from 2000 to 2020, *Statista*, <https://www.statista.com/statistics/183614/us-households-with-broadband-internet-access-since-2009/>.

⁵ Jiaming Rao et al., “Cyberbullying Perpetration and Victimization Among Junior and Senior High School Students in Guangzhou, China,” *Injury Prevention* (2017): 6, doi:10.1136/injuryprev-2016-042210.

⁶ Diane Felmlee, “Bullying,” *Britannica*, <https://www.britannica.com/topic/bullying>.

⁷ Dan Olweus, “Annotation: Bullying at School: Basic Facts and Effects of a School Based Intervention Program,” *Journal of Child Psychology and Psychiatry* 35, no. 7 (1994): 1173.

⁸ Olweus, “Bullying at School,” 1171.

the conventional wisdom about the ‘normality’ of bullying.⁹ Columbine High School Shooting on April 20, 1999 was the turning point. This tragic event, in words of Rodkin and Fischer, “exposed a narrative of marginalized youth lashing out indiscriminately against a tormenting popular peer culture,”¹⁰ which in turn triggered a surge of bullying research.

Eight days after Columbine, a copycat shooting happened in a high school in rural Alberta, Canada. This induced a Canadian IT teacher Bill Belsey to start working on a separate field of bullying research – cyberbullying. Belsey noticed that the majority of mass shooting perpetrators were victims of school bullying. He also noticed that as school violence traversed borders and ceased being an exclusively “American problem,”¹¹ so did the bullying. As more teenagers were getting access to mobile phones and Internet, bullying was also moving from classrooms and playgrounds to a new realm of cyberspace. Shortly after launching his first project, bullying.org, Belsey received reports about the emerging phenomenon from all over the world. In response, he created www.cyberbullying.ca, the world’s first website specifically dedicated to cyberbullying.¹²

Developed countries witnessed an unprecedented growth of information and communication technology (ICT) in the late 1990s and early 2000s, which was inevitably followed by an increase in internet offense cases, cyberbullying among them. With many reports coming from the United States, Canada, the United Kingdom, Scandinavia, Japan, Australia and New Zealand, by 2005 cyberbullying was recognized as a global problem.¹³ Scholars, policymakers and legislators faced a list of tough questions. What is cyberbullying? Is it a new form of violence or just a variation of face-to-face bullying? Is it less or more harmful? And do we need to enact new laws to counter it?

B. Scholarly Definitions of Cyberbullying

Scholars have given many definitions of bullying and cyberbullying, some of them broad, others narrow, but all of them sharing a number of similar characteristics. Bullying is viewed in a broad sense as a form of intentional, persistent and malicious violence directed against people of all age groups, and in a narrow sense – exclusively against children. Although popular culture associates bullying with school students, it also occurs in adults’ workplaces and beyond, and research by Kowalski, Toth, Morgan, as well as Duggan proves this

⁹ Aiman El Asam and Muthanna Samara, “Cyberbullying and the Law: A Review of Psychological and Legal Challenges,” *Computers in Human Behavior* 65 (2016): 128.

¹⁰ Philip C. Rodkin and Karla Fischer, “Cyberbullying from Psychological and Legal Perspectives,” *Missouri Law Review* 77, no. 3 (2012): 621.

¹¹ Bill Belsey, “Cyberbullying: An Emerging Threat to the “Always On” Generation,” *Bill Belsey’s Personal Website*, March 24, 2019, <https://billbelsey.com/?p=1827>.

¹² Belsey, “Cyberbullying.”

¹³ Marilyn A. Campbell, “Cyber Bullying: An Old Problem in a New Guise?” *Australian Journal of Guidance and Counselling* 15, no. 1 (2005): 68-76.

phenomenon to be massive.¹⁴ The same assumption is likely to be true about the cyber form of bullying. Therefore, this paper shall investigate cyberbullying without prejudice to the age of victims and perpetrators.

The first and the most often cited definition of cyberbullying was given by Bill Belsey at dawn of the 21st century: “*Cyberbullying involves the use of information and communication technologies to support deliberate, repeated, and hostile behavior by an individual or group, that is intended to harm others.*”¹⁵ It can be compared with a recent definition by a Chinese scholar Xu Junke (2020): “*This behavior is defined as cyberbullying, in which the perpetrator persistently carries out an aggressive, intentional act using electronic forms of communication such as cell phone and the Internet, with intent to torture, threaten, hurt, harass or humiliate the victim.*”¹⁶ There is no universally accepted definition of cyberbullying, though the majority of scholarly definitions contain four core elements: cyberbullying is (1) intentionally harmful, (2) repeated, (3) characterized by an imbalance of power between the aggressor and the victim, and (4) uses electronic means of communication.¹⁷ This succinct and logical definition can be found in the works of El Asam and Samara,¹⁸ as well as Pennell et al.¹⁹ Evidently, it shares 3 out of 4 of its characteristics with the classic bullying definition given by Olweus in 1990s: (1) intentional; (2) repeated; and (3) characterized by power imbalance.²⁰ This takes us to the next question: is cyberbullying so much different from the ‘traditional’ face-to-face bullying?

Scholars tend to support the thesis that cyberbullying is a direct extension of face-to-face bullying.²¹ In other words, the same aggressor that has been previously harassing the

¹⁴ Up to 30% Americans reported being bullied at work, see Robin M. Kowalski, Allison Toth, and Megan Morgan, “Bullying and Cyberbullying in Adulthood and the Workplace,” *The Journal of Social Psychology* 158, no. 1 (2018): 64-81; up to 65% young Internet users reported being harassed online, see Maeve Duggan, “Online Harassment,” *Pew Research Center*, October 22, 2014, <https://www.pewresearch.org/internet/2014/10/22/online-harassment/>.

¹⁵ Belsey, “Cyberbullying.”

¹⁶ Xu Junke, “Legal Regulation of Cyberbullying – From a Chinese Perspective,” Paper presented at 2020 IEEE Intl Conf on Dependable, Autonomic and Secure Computing, Intl Conf on Pervasive Intelligence and Computing, Intl Conf on Cloud and Big Data Computing, Intl Conf on Cyber Science and Technology Congress (DASC/PiCom/CBDCCom/CyberSciTech), August 2020: 322.

¹⁷ These electronic means of communication include but not limited to: mobile communications, instant messengers, e-mail, forums and chats, social networks, webcams, video hosting services, gaming sites and virtual worlds – see Aliya Kintonova, Alexander Vasyaev and Viktor Shestak, “Cyberbullying and Cyber-Mobbing in Developing Countries,” *Information & Computer Security* 29, no. 3 (2021): 439.

¹⁸ El Asam and Samara, “Cyberbullying and the Law,” 128.

¹⁹ Donna Pennell et al., “Should Australia Have a Law Against Cyberbullying? Problematising the Murky Legal Environment of Cyberbullying from Perspectives Within Schools,” *The Australian Educational Researcher* (2021): 1, <https://doi.org/10.1007/s13384-021-00452-w>.

²⁰ Olweus, 1173.

²¹ El Asam and Samara, 128; Junke, “Legal Regulation of Cyberbullying,” 327.

victim in the physical space continues to do so in the cyberspace.²² Interestingly enough, the same scholars (e.g. El Asam and Samara, Junke) equally admit that cyberbullying can happen anytime and anywhere,²³ and victims can be anyone,²⁴ which implies that the aggressor and the victim may not necessarily know each other offline. The coronavirus pandemic has dramatically altered the offline-to-online ratio of human interaction, and the digitalization of society is likely to continue in the future. Today, a student can earn a university degree without actually showing up on campus for the whole duration of one's studies. In the same fashion, online violence will probably not require an offline trigger. After all, the numbers of the 'old-fashioned' physical bullying cases are declining, while cyber-violence is on the rise. The data from the 2014 Report by ChildLine (the largest counseling service for children in the UK) is particularly significant as it shows an 18% decrease in physical abuse²⁵ against an 87% increase in the number of counselling sessions about online bullying.²⁶ In addition, I would like to confess that I have also been a target of verbal offense from people I have never met in the physical world. These encounters mainly happened in Chinese messenger WeChat and Russian social network vk.com. Nevertheless, my confession should not be regarded as credible evidence (since personal experience does not count as a scientific source) and was given here exclusively for illustrative purposes.

C. Classification and Features of Cyberbullying

The greatest difficulty in defining cyberbullying is the volatility and elusiveness of its medium, the cyberspace. Scholarly articles may contain a long list of cyberbullying varieties, each of them showing a different aspect of this multifaced phenomenon. For this reason, cyberbullying is sometimes regarded as an 'umbrella term' that includes various offenses perpetrated with the use of ICT.²⁷

Since different scholars view the problem from different angles, there is no single article or book to include a complete and comprehensive typology of cyberbullying. Bearing that in mind, I have analyzed the lists of cyberbullying offenses that were already published in scholarly articles and tried to compile a classification that would be as full and inclusive as possible. The articles I relied on were written by Kintonova, Vasyaev, and Shestak,²⁸ Azimov,

²² Jaana Juvonen and Elisheva F. Gross, "Extending the School Grounds? – Bullying Experiences in Cyberspace," *Journal of School Health* 78, no. 9 (2008): 497.

²³ El Asam and Samara, 130; Junke, "Legal Regulation of Cyberbullying," 323.

²⁴ El Asam and Samara, 130.

²⁵ ChildLine, "ChildLine Annual Review: Under Pressure" (2014): 11, available at: <https://letterfromsanta.nspcc.org.uk/globalassets/documents/annual-reports/childline-review-under-pressure.pdf>.

²⁶ ChildLine, "Childline Annual Review" (2014), 7.

²⁷ Nikola Paunovic, "Cyberbullying of Children: Challenges of Victim Support," *Temida* 21, no. 2 (2018): 253.

²⁸ Kintonova, Vasyaev, and Shestak, "Cyberbullying and Cyber-Mobbing," 440.

Gorshkova, and Karasyova,²⁹ El Asam and Samara,³⁰ Xu and Trzaskawka.³¹ I have identified twelve different types of cyberbullying and listed them in alphabetical order.

1. *Assisted cyber suicide* is a form of psychological abuse when a perpetrator brings the victim to suicide through psychological manipulations or psychological pressure.³² The abuser often controls the victim's actions via the Internet. A notorious example is the 'Blue Whale' game.
2. *Catfishing (Impersonation)* means creating a fake account using another person's photo and personal data without the person's consent. The perpetrator often uses this page to post malicious content thereby damaging the victim's reputation.³³
3. *Cyber-mobbing* is a form of offensive behavior which manifests itself in insulting, threatening, or humiliating a person by a group of people using electronic communication. In China, a large-scale form of cyber-mobbing is known as '*human flesh search engine*' (Chinese 人肉搜索 – rén ròu sōu suǒ).
4. *Cyberstalking* is a systematic deliberate persecution of an individual, group of people, or organization. Cyberstalkers obsessively monitor the victim's activities in cyberspace, collect and/or steal confidential information to intimidate, blackmail and make claims.³⁴ Unlike trolls, some cyberstalkers may never initiate a direct contact.
5. *Defamation (Denigration)* is an offence of deliberately posting or sharing online information about an individual which was known to be false by the person who disseminated it. Such acts are usually motivated by a desire to psychologically suppress the victim, ruin his/her reputation and destroy social connections.³⁵
6. *Fraping* means illegally obtaining control over the victim's account and using it for disseminating malicious content in the name of the victim.³⁶ While *catfishing* involves creating a fake account, *fraping* goes further and hijacks the victim's real account.
7. *Griefing* is a form of in-game hooliganism by online game players who intentionally hunt down other players within the virtual reality with a purpose of making their gaming experience painful and unbearable.³⁷ Imagine a group of players attacking and trying to kill the avatar (in-game character) of the same player again and again every time he or she enters the game – this is *griefing*.

²⁹ Eldar M. Azimov, Maria V. Gorshkova, and Rosa E. Karasyova, "Legal Aspects of Countering Cyberbullying," *Zametki Uchenogo* 3 (2021): 80-81.

³⁰ El Asam and Samara, 129.

³¹ Youping Xu and Paula Trzaskawka, "Towards Descriptive Adequacy of Cyberbullying: Interdisciplinary Studies on Features, Cases and Legislative Concerns of Cyberbullying," *International Journal for the Semiotics of Law* 34 (2021): 932-933.

³² Kintonova, Vasyaev, and Shestak, 440.

³³ Azimov, Gorshkova, and Karasyova, 81.

³⁴ Kintonova, Vasyaev, and Shestak, 440.

³⁵ El Asam and Samara, 129.

³⁶ Azimov, Gorshkova, and Karasyova, 81.

³⁷ Azimov, Gorshkova, and Karasyova, 80.

8. *Harassment* is a repeated psychological cyberattack aimed at a certain person. It is manifested by stubborn insults, claims and verbal aggression and usually takes the form of “numerous messages, intrusive round-the-clock calls and conversations of a humiliating and offensive nature.”³⁸
9. *Ostracism (Exclusion)* means intentionally excluding an individual from online groups, such as games, messaging, chat, or social network groups. For instance, students of the same class can create an online group in a certain social network but refuse to add one of their classmates, thereby ostracizing him or her.
10. *Outing* is a form of cyberbullying when aggressors publicly and deliberately share private information about an individual (usually sensitive or embarrassing) without one’s consent.³⁹ *Trickery* is essentially the same offense, but with a difference that the victim shares embarrassing information about oneself voluntarily, only to find out later that it has been shared further without one’s consent.
11. *Sexting* (also called *cyber-grooming*) is sending pictures of naked people or pornographic images using means of electronic communication, often accompanied by obscene and sexually harassing messages.
12. *Trolling (Flaming)* is a form of aggression in cyberspace which usually creates severe social provocation and conflict situations.⁴⁰ Messages may contain an “aggressive, hostile, intimidating, insulting, sarcastic, unfriendly and uninhibited content.”⁴¹ In most cases, the purpose of trolling is to provoke an aggressive response from the opponent.

This classification by no means claims to be full and complete. In fact, a rapid evolution and sophistication of the ICT renders any classification obsolete⁴² in a relatively short period of time. Instead of trying to catalogue all possible forms and instruments of cyberbullying, it would rather make sense to distinguish its key features which all of the aforementioned types may contain.

1. Cyberbullying is not limited by space or geography, it transcends the national borders,⁴³ and the offender could “conceivably be halfway across the globe from the victim of harassment.”⁴⁴
2. Cyberbullying is not limited by time. It can happen 24/7, as long as both the aggressor and the victim have access to electronic means of communication. Unlike the victims of ‘traditional’ bullying, cyber-victims cannot be at ease even at home, which renders their privacy practically nonexistent. Cyberbullying can potentially last infinitely long. In some cases, harassment has been carried out for years.

³⁸ Kintonova, Vasyaev, and Shestak, 440.

³⁹ Xu and Trzaskawka, “Towards Descriptive Adequacy of Cyberbullying,” 933.

⁴⁰ Kintonova, Vasyaev, and Shestak, 440.

⁴¹ El Asam and Samara, 129.

⁴² Paunovic, “Cyberbullying of Children,” 252.

⁴³ Juan Huang, “On the Status Quo of Network Defamation Crimes and Preventive Strategies,” *Oriental Enterprise Culture* 19 (2013): 172.

⁴⁴ Rodkin and Fischer, “Cyberbullying from Psychological and Legal Perspectives,” 622.

3. Cyberbullies are likely to have a piece of strong technology knowledge and skills. Some of them use spyware and hacker programs⁴⁵ to steal the personal information and inflict more damage on their victims.
4. Cyberbullying can be anonymous and pose a difficulty to establish a link between the offender's online profile and the physical person who owns it, unless the aggressor openly shows one's identity, or the rules of the service provider strictly oblige to reveal the user's credentials.
5. Cyberbullying is hard to detect⁴⁶ and hard to prove. Due to the vastness and volatility of cyberspace, it may be hard to track the actions of a certain person. It may be even harder to retain the evidence because online content is being constantly altered.
6. The Internet is plagued with impunity, both perceived and practical. The difficulty of holding cyberbullies accountable makes the victims abandon their hope for justice and gives their offenders a false feeling of being invincible before morality and law.
7. Moral disengagement⁴⁷ prompts the person to show one's 'dark side' which is more often kept private in a face-to-face interaction.⁴⁸
8. Imbalance of power buttressed by the superiority of aggressor's technological skills, the anonymity,⁴⁹ and the perception of impunity.
9. Unknown and potentially infinite audience, as the information in cyberspace can spread rapidly and unrestrictedly, and the victim may never know the circle of individuals who has or will witness his/her harassment and humiliation.⁵⁰

D. The Severity of Cyberbullying

The severity of cyberbullying is often underrated due to its detachment from the real world. Cyberbullying does not headline the criminal news that often since it is usually shadowed by more physical and definitely more heinous crimes, such as robbery, rape and murder. Nonetheless, cyberbullying is far from being a petty offense, as its viciousness, anonymity, and 24/7 pervasion make it even more devastating than 'traditional' bullying.⁵¹ The victims of online violence can develop depression, stress, loneliness, anxiety, low self-esteem, suicidal thoughts, and even commit suicide.⁵² Some of them may lead a wretched

⁴⁵ Kintonova, Vasyaev, and Shestak, 445.

⁴⁶ Rodkin and Fischer, 621.

⁴⁷ See Lin Wang and Steven Sek-yum Ngai, "The Effects of Anonymity, Invisibility, Asynchrony, and Moral Disengagement on Cyberbullying Perpetration Among School-Aged Children in China," *Children and Youth Services Review* 119 (2020): 1-9.

⁴⁸ Paunovic, 256.

⁴⁹ El Asam and Samara, 128.

⁵⁰ Rodkin and Fischer, 622.

⁵¹ Kathleen Conn, "Cyberbullying and Other Student Technology Misuses in K-12 American Schools: The Legal Landmines," *Widener Law Review* 16, no. 1 (2010): 99.

⁵² El Asam and Samara, 128; Pennell et al., "Should Australia Have a Law Against Cyberbullying?" 2.

existence later in their lives suffering from emotional traumas and having a higher tendency to abuse drugs or alcohol.⁵³

The majority of young people in developed countries are already being affected by cyberbullying. To illustrate, the 2014 Report by ChildLine indicated that 60% of British teenagers aged 13-18 reported being asked for a sexual image or video of themselves (an example of sexting).⁵⁴ In China and Russia, the figures are also rising to alarmingly high levels. There are multiple sociological reports about cyberbullying in Chinese schools with rates of victimization ranging from 8% to 20% in Taiwan (TW), from 13% to 62% in Hong Kong (HK), and from 3% to 69% in Mainland China (CN), as summarized by Ji-Kang Chen and Li-Ming Chen.⁵⁵ Using their own questionnaires, Chen and Chen found that 33.0%, 23.8%, and 31.7% of students from HK, CN, and TW, respectively, reported experiencing at least one form of cyberbullying.⁵⁶ A study by Jiaming Rao et al. shows that 44.5% of junior and senior high school students of China's southern city of Guangzhou reported being victims of cyberbullying within the previous 6 months.⁵⁷ Zongkui Zhou et al. revealed that cyberbullying is also common in central China, where 56.88% of high school students reported having been bullied online.⁵⁸ Anna Kuznetsova, Russian Presidential Commissioner for the Rights of the Child, estimated that about 30% of Russian children have been bullied on the Internet.⁵⁹ *Rossiyskaya Gazeta* ('Russian Newspaper'), an official newspaper of the Russian Government, reports that 48% of Russian children aged 14-17 have been blackmailed, and 44% received aggressive electronic messages. Only 17% of teenagers asked their parents for help.⁶⁰

In addition, cyberbullying is becoming increasingly common among grown-ups. At least 20% of Americans are being cyberbullied at work,⁶¹ and the total share of adults who have experienced at least one type of online harassment has reached 44% for men and 37% for women overall, with the highest percentage in the 18-24 age category – 70%.⁶² Evidently,

⁵³ Xu and Trzaskawka, 934.

⁵⁴ ChildLine, 44.

⁵⁵ Ji-Kang Chen and Li-Ming Chen, "Cyberbullying Among Adolescents in Taiwan, Hong Kong, and Mainland China: A Cross-National Study in Chinese Societies," *Asia Pacific Journal of Social Work and Development* (2020): 3. <https://doi.org/10.1080/02185385.2020.1788978>.

⁵⁶ Chen and Chen, "Cyberbullying Among Adolescents," 5.

⁵⁷ Rao et al., "Cyberbullying Perpetration and Victimization," 6.

⁵⁸ Zongkui Zhou et al., "Cyberbullying and Its Risk Factors Among Chinese High School Students," *School Psychology International* 34, no. 6 (2013): 634.

⁵⁹ "Zhertvami travli v internete stali okolo 30% detei, zayavila Kuznetsova (About 30% of children have been bullied on the internet, says Kuznetsova)," *RIA Novosti*, January 26, 2017, <https://ria.ru/20170126/1486543536.html>.

⁶⁰ Natalia Kozlova "Travlya pod stat'yei (Bullying to be indicted)," *Rossiyskaya Gazeta* federal issue 176, August 10, 2020, <https://rg.ru/2020/08/10/zakonoproekt-o-borbe-s-travlej-v-seti-vnesut-v-gosdumu-oseniu.html>.

⁶¹ Kowalski, Toth, and Morgan, "Bullying and Cyberbullying in Adulthood," 64.

⁶² Duggan, "Online Harassment."

cyberbullying has ceased to be a strictly ‘school problem.’ As our entire society enters the danger zone, we must examine the legal base and question its adequacy for our protection.

II. LEGAL DEFINITIONS AND LEGAL RESEARCH

In this part, we will be looking at how cyberbullying is defined in legal systems around the world, and in China and Russia in particular. We will also examine the state of affairs in legal research on cyberbullying, outline its progress and detect the gaps.

A. Legal Definitions of Cyberbullying

There is no universally accepted legal definition of cyberbullying.⁶³ The United Nations system of conventions and treaties does not offer one. The 1989 UN Convention on the Rights of the Child (UNCRC) does not contain any specific provision on cyberbullying of children, because, as we know, at that moment scholars and legislators were not yet fully alarmed at this problem. Nevertheless, Article 19(1) of the Convention obliges States Parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.”⁶⁴ Cyberbullying can surely be interpreted as “mental violence,” which means it is not necessary to amend the document to include a new definition. Instead, the UN bodies and officials responsible for the Convention implementation remain seized of the matter and regularly publish reports on the bullying and cyberbullying situation.⁶⁵ As the majority of countries (including China and Russia) have ratified the UNCRC, State parties are expected to keep their laws and practices up to date to adequately counter cyberbullying.⁶⁶ This, however, does not explicitly require them to define cyberbullying in a separate legal term or enact a special ‘cyberbullying law.’

Most countries do not have a legal definition of bullying or cyberbullying. In the UK, “there is no specific law criminalizing bullying, whether it be offline or online.”⁶⁷ Due to a lack of clarity, British scholars El Asam and Samara describe the legal status of cyberbullying in their country as “an area of legal limbo.”⁶⁸ There is no single definition of cyberbullying agreed upon at the European Union level either.⁶⁹ Australia does not have a specific law devoted to cyberbullying as well,⁷⁰ but Australian federal laws, such as *Enhancing Online*

⁶³ Paunovic, 252.

⁶⁴ The United Nations Convention on the Rights of the Child (1989), Art. 19(1).

⁶⁵ “Bullying and Cyberbullying,” *UN Special Representative of the Secretary-General on Violence Against Children*, <https://violenceagainstchildren.un.org/content/bullying-and-cyberbullying-0>.

⁶⁶ Paunovic, 258.

⁶⁷ El Asam and Samara, 131.

⁶⁸ El Asam and Samara, 131.

⁶⁹ Paunovic, 252.

⁷⁰ Hannah Young et al., “Cyberbullying and the Role of the Law in Australian Schools: Views of Senior Officials,” *Australian Journal of Education* 60, no. 1 (2016): 87.

Safety Act (2015) and *Australian Student Wellbeing Framework* (Australian Government Department of Education, Skills and Employment, 2020) can “enable take-down notices to be issued to social media platforms if they fail, following a complaint, to remove cyberbullying material targeting an Australian child.”⁷¹ Moreover, some Australian states are updating their existing laws to define and target certain types of cyberbullying behavior from the aforementioned classification. For example, in the State of New South Wales, the *Crimes (Domestic and Personal Violence) Amendment Act 2018 (NSW)* has recently updated its definitions of ‘stalking’ and ‘intimidation’ in order to include online versions of such behaviors.⁷²

New Zealand was one of the first countries to take firm steps in order to rigorously counter cyber-offenses. In 2015, the New Zealand Parliament passed the Harmful Digital Communications Act,⁷³ which allowed the victims of cyberbullying to apply for civil remedies, and the government – to criminally prosecute the acts of cyberbullying. Although the Act does not contain an explicit definition of cyberbullying, it lays down ten communication principles, among them – prohibition of threatening, intimidating, menacing, harassment, indecency, obscenity, as well as false allegations.

The Criminal Code of Canada does not contain a specific provision for cyberbullying, but Canadian legislators are taking efforts to keep the Code up to date with the latest developments in the ICT and its usage by the criminals.⁷⁴ Its close neighbor, the United States, has taken its legislative initiative to define and combat cyberbullying further than any other developed country. Currently, all 50 American states have already enacted anti-bullying laws, 48 of them including definitions of ‘cyberbullying’ or ‘electronic harassment’ with 44 states stipulating criminal sanctions for these offenses.⁷⁵ There is an overall trend in developed countries to criminalize cyberbullying,⁷⁶ both directly and indirectly, with legislators on the North American continent being the most proactive. The reason for that might be that the public opinions in the U.S. and Canada were shocked and outraged over such tragic events as the

⁷¹ Pennell et al., “Should Australia Have a Law Against Cyberbullying?” 2.

⁷² Pennell et al., 2.

⁷³ Harmful Digital Communications Act 2015, *New Zealand Legislation*, Version as at 9 March 2022: <https://www.legislation.govt.nz/act/public/2015/0063/latest/whole.html>.

⁷⁴ See Bill C-13: An Act to Amend the Criminal Code, the Canada Evidence Act, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act (Assented to 9th December, 2014), available at: <https://www.parl.ca/DocumentViewer/en/41-2/bill/C-13/royal-assent/page-27>.

⁷⁵ Sameer Hinduja and Justin W. Patchin, “A Brief Review of State Cyberbullying Laws and Policies,” *Cyberbullying Research Centre* (updated January 2021): <http://cyberbullying.org/Bullying-and-Cyberbullying-Laws.pdf>. This document is a comparison table briefly representing the status of anti-cyberbullying legislation in each of the 50 American states.

⁷⁶ Xu and Trzaskawka, 936.

suicide of the American teenager Megan Meier in 2006 and the Canadian teenager Amanda Todd in 2012.⁷⁷

Massive internet and mobile network coverage came to developing countries about a decade after its emergence in the West, which brought the problems previously experienced in the developed world, and even more. An infamous online game ‘Blue Whale’ allegedly originates from Russia,⁷⁸ where it was first spotted in 2013. ‘Blue Whales’ were also reported in Arab countries, Eastern Europe, and South America. In this game, teenagers are enlisted in closed groups or forums in social networks. Then, they get in touch with their online curator, someone they have never met in real life and whose true identity they do not know. After that, the curator urges them to perform a long list of tasks using different forms of mind control, such as persuasion and intimidation. Some tasks involve harmful and dangerous actions like self-mutilation. The final 50th task is to commit suicide.

The ‘Blue Whale’ caused a serious disturbance in the Russian society. What was first considered a ‘city legend’ later resulted in real convictions when the ‘curators’ got arrested and confessed.⁷⁹ Up to date, Russia has still not passed or amended any law to include specific definitions of cyberbullying or its elements. Nevertheless, the interest in cybersecurity in Russia is on the rise, and an initiative group of State Duma (the lower chamber of Russian Parliament) is already working on a bill⁸⁰ which, if passed, will define cyberbullying and enable the courts to protect the victims and penalize the offenders.

China has also been working on improving its citizens’ cybersecurity. In 2021, the Standing Committee of the National People’s Congress (NPC) enacted the new Personal Information Protection Law of the PRC. And a year before, it amended the Law on the Protection of Minors (2020 Amendment) to include a new chapter on internet protection.⁸¹ Worthy of note, this is the first law in China to directly mention the term ‘cyber bullying’ (written in two words in the English version), or 网络欺凌(wǎng luò qī líng) in Chinese, which can be found in Article 77(1):

⁷⁷ Xu and Trzaskawka, 934.

⁷⁸ Jan Lindenau, “Hinter dem Hashtag #BlauerWal Steckt Eine Verstörende Geschichte,” *Die Welt* (May 18, 2017): <https://www.welt.de/vermischtes/article164709981>.

⁷⁹ “Kuratorov “gruppy smerti” osudili za pokusheniye na ubiystvo shkol’nitsy (Curators of the “death group” were convicted of an attempted homicide of a schoolgirl),” *Investigative Committee of the Russian Federation*, September 30, 2020, <https://sledcom.ru/news/item/1504092/>; “Administrators gruppy smerti “More kitov” otpravili v koloniyu-poseleniye (Administrator of the death group “Sea of whales” was sent to a penitentiary settlement),” *Tyumen Regional Court* press-release of July 18, 2017. http://oblsud.tum.sudrf.ru/modules.php?name=press_dep&op=4&did=1025.

⁸⁰ Kozlova, “Travlya pod stat’yei.”

⁸¹ Law of the People's Republic of China on the Protection of Minors (2012 Amendment) [CLI Code] CLI.1.188544(EN), Chapter V, date Issued: 10-26 2012, effective Date: 01-01-2013, available at PKU Law: https://pkulaw.com/en_law/5b242b5a062cc53bbdfb.html.

No organization or individual shall insult, slander, or threaten minors, maliciously damage the image of minors, or conduct other cyber bullying acts against minors through the Internet in the form of text, picture, audio and video, among others.

We can actually derive the first legal definition of cyberbullying from this article: “Cyber bullying is an act of insulting, slandering, or threatening minors, maliciously damaging the image of minors, or conducting other acts against minors through the Internet in the form of text, picture, audio and video, among others, individually or by an organization.” Nevertheless, this is not an official definition, and it is not used in court practice, whether in civil litigation or criminal prosecution. Chinese Criminal Law still does not contain a definition of cyberbullying, however, it penalizes its certain elements – insult and slander. We shall talk about these provisions in the next part of this article.

To sum up, the United States has already incorporated definitions of cyberbullying into the legal systems of all of its 50 states, and New Zealand has codified and criminalized the main behavioral patterns of cyberbullying (e.g., harassment, intimidation, or menacing) without directly mentioning the term ‘cyberbullying.’ Other developed countries, e.g., Australia and Canada, are close to adopting a clear and comprehensive definition of cyberbullying, while Russia and China do not have any specific laws regarding cyberbullying and are only making first steps in this direction. This, however, does not indicate any inferiority or backwardness of Russian and Chinese legal systems. New laws do not necessarily solve new problems. Sometimes they only bring more confusion into the legal practice, while existing laws can be adjusted to mitigate the new challenges.

B. Progress and Gaps in Legal Research

We have previously encountered two different legislative approaches to handling cyberbullying. The first one is to enact new laws and legal definitions. The second one is to amend already existing laws and extend their interpretations. Just like the legislators in the world are divided, so are the scholars. Therefore, we need to review what has already been studied, what positions the scholars hold, and what gaps the body of legal research of cyberbullying reveals.

First, a purely legal research of cyberbullying is rare, if we talk strictly about the term ‘cyberbullying’ and not its substitutes. The field is dominated by psychologists and education methodologists, not lawyers. If we look at the bibliography list of this paper and count the articles with the term ‘cyberbullying’ in their titles, we will find that there are twice as many papers from journals on psychology,⁸² education,⁸³ and childhood,⁸⁴ than the papers from

⁸² El Asam and Samara; Juvonen and Gross, “Extending the School Grounds?”; Kowalski, Toth, and Morgan; Olweus; Rao et al.; Zongkui Zhou et al., “Cyberbullying and Its Risk Factors.”

⁸³ Chen and Chen; Pennell et al.; Wang and Sek-yum Ngai, “The Effects of Anonymity, Invisibility, Asynchrony, and Moral Disengagement”; Young et al., “Cyberbullying and the Role of the Law.”

⁸⁴ Marilyn A. Campbell, “Cyber Bullying.”

legal journals⁸⁵ (among primary scholarly sources the count is 10 vs. 5), without prejudice to papers on other topics of course. Psychological research of cyberbullying is usually more profound and detailed, while legal research is often limited to the review of existing laws in a certain country, and it takes a minor portion of the paper simply to accompany and reinforce the major psychological part of it.

Second, cyberbullying legal research in China and Russia is normally substituted by studying the crime of defamation. Both Chinese Criminal Law and Russian Criminal Code do not contain a legal definition of cyberbullying, so defamation (also translated as slander) is the most similar *corpus delicti*. The Chinese term is 诽谤罪 (fěi bàng zuì), and the Russian – клевета (kleveta).

Chinese scholars have written numerous papers on the prosecution of defamation, with most articles written in Chinese and published in domestic journals. Judicial case analysis is a commonly used method, for instance, it can be found in the works of Young⁸⁶ and Huang.⁸⁷ A method of linguistic analysis is also used to determine the admissibility of certain cases.⁸⁸ Ye Wentao believes that conviction and punishment standards for the crime of network defamation in China are slightly inadequate.⁸⁹ Furthermore, Yang,⁹⁰ as well as Ding, Kong, and Zhou⁹¹ suggest to transfer the crime of defamation from private prosecution (when the victim files a complaint on one's own account) to public prosecution (when a government prosecutor initiates the investigation). They believe that such a reform will solve the problem of difficulty for parties in private prosecution cases to obtain evidence, strengthen the governance of online illegal crimes, therefore, it will help to purify the cyberspace.⁹² Jin Honghao proposes to divide defamation into three modes through legislative amendment, namely the crime with no serious circumstance, the crime with serious circumstance and the

⁸⁵ Kathleen Conn, "Cyberbullying and Other Student Technology Misuses"; Paunovic; Rodkin and Fischer; Xu and Trzaskawka; Shaomin Zhang, "From Flaming to Incited Crime: Recognising Cyberbullying on Chinese WeChat Account," *International Journal for the Semiotics of Law* 34 (2021): 1093-1116.

⁸⁶ Yuqing Yang, "From the Perspective of Online Public Opinion, Why the Crime of Defamation Can Be Transferred from Private Prosecution to Public Prosecution," *Guangxi Quality Supervision Guide Periodical* 5 (2021): 221-223.

⁸⁷ Juan Huang, "On the Status Quo of Network Defamation Crimes and Preventive Strategies," *Oriental Enterprise Culture* 19 (2013): 172.

⁸⁸ See Zhang, "Recognising Cyberbullying on Chinese WeChat Account."

⁸⁹ Wentao Ye, "Analysis on the Standards of Conviction and Punishment of Network Defamation Crime," *Legal System and Society* 4 (2021): 187.

⁹⁰ Yang, "From Private Prosecution to Public Prosecution."

⁹¹ Lingmin Ding, Fanyu Kong, and Xingwen Zhou, "Jurisprudence Analysis of "Private Prosecution to Public Prosecution" of Network Defamation Crimes – From the Perspective of Hangzhou Defamation Case," *The Chinese Procurators* 10 (2021): 8-14.

⁹² Ding, Kong, and Zhou, "Jurisprudence Analysis."

crime with especially serious circumstance.⁹³ The first mode will entail no criminal charges, while the third one will be publicly prosecuted. While all the aforementioned Chinese authors urge amending the existing laws, Huang Juan endorses the idea to enact a new cybercrime law, which will be modelled on the relevant provisions of foreign laws and regulations on cyber defamation.⁹⁴

The scholarly research on internet defamation in Russia is less plentiful, there are just a handful of journal and conference papers reviewing the current legal practice. Bezuglaya and Bezuglyi,⁹⁵ as well as Grachev and Barinov observe the contemporary legal basis and distinguish particular difficulties in obtaining evidence of internet defamation and proving guilt.⁹⁶ Aniskina ran a questionnaire of Russian judges regarding their interpretation of the crime of defamation.⁹⁷ Azimov, Gorshkova, and Karasyova observe the court practice in regard to cyberbullying phenomenon as a whole⁹⁸ and not just defamation as a criminal code article. This trio of authors also suggests promulgating a legal definition of cyberbullying and introducing appropriate amendments to the Criminal Code and the Code on Administrative Offenses.⁹⁹

To sum up, legal aspects of cyberbullying are studied irregularly in China and Russia, and there is a lack of unanimity among scholars on the question of necessity of a new law.

III. THE LAWS

In this part, we shall examine the legal basis in China and Russia. We will juxtapose the relevant provisions of constitutional, civil and criminal law, and the definitions of different cyberbullying types elaborated in Part I.

⁹³ Honghao Jin, "On the Scope of Public Prosecution for the Crime of Defamation in the Internet Age," *Political Science and Law* 3 (2021): 149-161.

⁹⁴ Juan Huang, "On the Status Quo of Network Defamation Crimes and Preventive Strategies." *Oriental Enterprise Culture* 19 (2013): 172.

⁹⁵ Anna A. Bezuglaya and Sergei N. Bezuglyi, "Freedom of Speech in Cyberspace: Criminal-law Measures Against Slander," *Nauka i Obrazovaniye* 8 (2021): 89-93.

⁹⁶ Valery S. Grachev and Sergey V. Barinov, "Problems of Criminal Liability for Libel in the Information and Telecommunications Network of the Internet," paper presented at the XXII International Conference "Civilization of Knowledge: Russian Reality": 490-496.

⁹⁷ Evelina G Aniskina, "Cyber-Slander: Problems of Qualification," paper presented at the 2021 Conference "Criminal Law in the Times of Artificial Intelligence and Digitalization": 130-133.

⁹⁸ Azimov, Gorshkova, and Karasyova, "Legal Aspects of Countering Cyberbullying."

⁹⁹ Azimov, Gorshkova, and Karasyova, 88.

A. Laws of the People's Republic of China

The Constitution of the People's Republic of China (PRC)¹⁰⁰ grants its citizens' freedom of speech (Article 35), protects their personal dignity and prohibits to "use any means to insult, libel or falsely accuse citizens" (Article 38) thus manifesting a fundamental legal principle, "a person's freedom ends where another person's freedom begins." Certain forms of cyberbullying, especially cyber-harassment and trolling, can surely be interpreted as "insult, libel, or false accusations," which deems this behavior unconstitutional. It is also important to note that while many other countries' constitutions use the wording "the rights of human and the citizen,"¹⁰¹ which applies to nationals of all countries and even stateless persons, Chinese Constitution only lists the rights of the PRC citizens.

Civil Code of the PRC (2020)¹⁰² elaborates some of those rights, also prohibiting certain types of malicious cyber-behavior and obliging the network provider to cooperate in good faith. Worthy of note, Civil Law of the PRC uses the term 'natural person' and not 'citizen,' which means that all people enjoy those rights and are entitled to legal protection regardless of their nationality. Article 990 endorses, among others, the person's rights of reputation, honor, and privacy, as well as personal dignity. Article 1032 grants a natural person a right to privacy, which it defines as "the tranquility of the private life of a natural person, and the private space, private activities, and private information that he is unwilling to be known to others." Personal information, which includes electronically recorded information, is also protected by the new 2021 Personal Information Protection Law of the PRC, Articles 2 and 4 specifically defining such information and its status under the law.¹⁰³ If personal information of a citizen has been sold to a third party, and the circumstances are serious, the offender can be punished under Article 253(I) of the PRC Criminal Law and serve up to seven years of imprisonment.

Article 1033 of the Chinese Civil Code provides a list of activities which infringe upon a person's right to privacy:

¹⁰⁰ Constitution of the People's Republic of China, *the National People's Congress of the People's Republic of China*,

<http://www.npc.gov.cn/englishnpc/constitution2019/201911/1f65146fb6104dd3a2793875d19b5b29.shtml>.

¹⁰¹ For example, Chapter 2 of the Russian Constitution is titled "Rights and Freedoms of Human and the Citizen," France's Constitution of the Fifth Republic also uses the term "Rights of Man and the Citizen." See: Constitution of the Russian Federation (with 2020 Amendments), *The State Duma of the Federal Assembly of the Russian Federation*, <http://duma.gov.ru/news/48953/>; France's Constitution of 1958 with Amendments Through 2008: 31, 33, 34, available at: https://www.constituteproject.org/constitution/France_2008.pdf?lang=en.

¹⁰² Civil Code of the People's Republic of China. [CLI Code] CLI.1.342411(EN). Date Issued: 05-28-2020. Effective Date: 01-01-2021. Available at PKU Law: https://pkulaw.com/en_law/aa00daaeb5a4fe4ebdfb.html.

¹⁰³ Personal Information Protection Law of the People's Republic of China. [CLI Code] CLI.1.5055321(EN). Date Issued: 08-20-2021. Effective Date: 11-01-2021. Available at PKU Law: https://pkulaw.com/en_law/d653ed619d0961c0bdfb.html.

- (1) Invading the tranquility of the private life of any other by phone calls, SMS, instant messaging tools, emails, leaflets, or any other means.
- (2) Entering, photographing, or peeping at any other's residence, hotel room, or any other private space.
- (3) Photographing, peeping at, eavesdropping on, or disclosing to the public the private activities of any other.
- (4) Photographing or peeping at any private part of any other's body.
- (5) Handling the private information of any other.
- (6) Infringing upon the right of privacy of any other by other means.

In this article's list of violations, no. 1 can apply to *cyber-harassment*, no. 3 and 4 can relate to *sexting*, no. 5 – to *catfishing* and *trickery*, while no. 6 reserves the possibility to adjudicate other types of cyber-offenses if they violate the right to privacy.

According to Article 1194 of the Civil Code, “a network user or network service provider who infringes upon the civil right or interest of another person through network shall assume the tort liability, unless otherwise provided by law.” This means that in civil litigation, a cyberbully will have to compensate the victim for any damage inflicted by one's actions.

The Criminal Law of the PRC (2020 Amendment)¹⁰⁴ deals with cybercrimes of the most serious circumstances. Article 246 is the most relevant for the prosecution of cyberbullying since it deals with the crimes of defamation, slander, and insult.

Article 246 Those openly insulting others using force or other methods or those fabricating stories to slander others, if the case is serious, are to be sentenced to three years or fewer in prison, put under limited incarceration or surveillance, or deprived of their political rights.

Those committing crimes mentioned above are to be investigated only if they are sued, with the exception of cases that seriously undermine social order or the state's interests.

Where the victim files a complaint with the people's court on the commission of the conduct as provided for in paragraph 1 through the information network, but it is indeed

¹⁰⁴ Criminal Law of the People's Republic of China (2020 Amendment). [CLI Code] CLI.1.349391(EN). Date Issued: 12-26-2020. Effective Date: 03-01-2021. Available at PKU Law: https://pkulaw.com/en_law/39c1b78830b970eabdfb.html.

difficult to provide evidence, the people's court may require the public security authority to provide assistance.

This article tells us several important points about the criminal prosecution. First, victims of defamation should file a lawsuit themselves if they believe their right of reputation has been seriously damaged. Unlike the crimes of physical violence, crimes of insult and defamation are generally not subject to public prosecution, unless there is a threat to social order or the state's interests. Jin Honghao believes that paragraph 2 of Article 246 poses a risk of abuse of power by public prosecution. Any insult of a government official can be interpreted as undermining state's interests, which creates inequality in legal protection between local government officials and ordinary citizens.¹⁰⁵ Second, paragraph 3 provides extra assistance to those citizens who are not technologically savvy and struggle to collect evidence of cybercrimes. This is important, since we know that retaining evidence is one of the hardest tasks when combating cyberbullying. Third, there is a notion of a 'serious case,' sometimes also translated from Chinese into English as 'serious circumstances.' Before 2013, the court would determine the seriousness of the case at its own discretion, until the Supreme People's Court and the Supreme People's Procuratorate stepped in and clarified this issue. Article 2 of the Interpretation on Several Issues concerning the Specific Application of Law in the Handling of Defamation through Information Networks and Other Criminal Cases (The Interpretation), provides that:

Any of the following circumstances of defaming another person through an information network shall be deemed as a serious circumstance as mentioned in paragraph 1, Article 246 of the Criminal Law:

- (1) The same defamatory information is actually clicked or browsed for more than 5,000 times or is forwarded for more than 500 times;*
- (2) causing derangement, self-mutilation, suicide or any other serious consequence to the victim or his or her close relative;*
- (3) defaming another person after being subject to administrative punishment due to defamation within two years; or*
- (4) any other serious circumstance.¹⁰⁶*

From this point on, the courts had a clear and quantifiable standard of the case seriousness: 5000 views, or 500 reposts, speaking in the internet language. The "Two Highs

¹⁰⁵ Honghao Jin, "On the Scope of Public Prosecution," 149.

¹⁰⁶ Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Specific Application of Law in the Handling of Defamation Through Information Networks and Other Criminal Cases. [CLI Code] CLI.3.209618(EN). Date Issued: 09-06-2013. Effective Date: 09-10-2013. Available at PKU Law: https://pkulaw.com/en_law/885545890beddb64bdfb.html.

Interpretation” was welcomed by Chinese legal scholars as a measure that would “help to improve the fairness and accuracy of judicial organs.”¹⁰⁷

B. Laws of the Russian Federation

The Constitution of the Russian Federation¹⁰⁸ guarantees freedom of speech to all people (Article 29) regardless of their nationality. It also protects personal dignity and prohibits “torture, violence and other cruel or humiliating treatment or punishment” (Article 21). In essence, both Russian and Chinese constitutions utilize the same ‘golden rule’: a person is allowed to say or write anything as long as it does not affect the rights of others. It is also highly possible that cyberbullying can be interpreted as ‘humiliating treatment,’ which consequently deems it unconstitutional within the Russian legal field.

In Russia, a natural person may rely on civil, administrative, and criminal law to protect one’s rights and lawful interests in court. First, Article 150(1) of the Civil Code of the Russian Federation¹⁰⁹ defines life, health, personal dignity and integrity, honor and good name, business reputation, inviolability of private life, inviolability of home, individual and family privacy and several other values as ‘intangible benefits,’ which belong to the person naturally or *ipso jure*, inalienable and untransferable. Article 150(2), referring to Article 12 of the Civil Code, enables a person to sue for judicial protection of these intangible benefits, so the court can recognize the fact of violation, issue an order to stop the violation, and restore the damages or *status quo ante*. Any person can file a civil lawsuit directly to the court. This makes civil litigation a more convenient procedure than criminal prosecution, which can only be launched by the Investigative Committee.

Insult and defamation are offenses often confused in Russian legal practice.¹¹⁰ They both can be elements of cyberbullying, but they are defined and prosecuted differently. An insult is defined and punished in accordance with Article 5.61 of the Code of the Russian Federation on Administrative Offenses (CoAO).¹¹¹ An insult is a “humiliation of honor and dignity of another person expressed in an obscene form or in another way contrary to the established norms of morality and ethics.” The penalty for a physical person can range between 3000 and 5000 Russian rubles (app. 40 to 70 USD). Defamation is a more serious offense as it

¹⁰⁷ Chen Chen and Jiang Ying, “On the Alteration of Crime Threshold of Cyber Defamation: Tendency and Significance,” *Journal of Railway Police Academy* 25, no. 1 (2015): 91-95.

¹⁰⁸ Constitution of the Russian Federation.

¹⁰⁹ Civil Code of the Russian Federation, 30 November 1994 N 51-FZ, available at ConsultantPlus: https://www.consultant.ru/document/cons_doc_LAW_5142/.

¹¹⁰ Grachev and Barinov, “Problems of Criminal Liability,” 493.

¹¹¹ Code of the Russian Federation on Administrative Offenses dated 30.12.2001 N 195-FZ (01.07.2021 edition, as amended of 09.11.2021) (as additionally amended and going into effect on 01.12.2021). Available at ConsultantPlus: https://www.consultant.ru/document/cons_doc_LAW_34661/.

comes under Article 128.1 of the Criminal Code of the Russian Federation (CC RF).¹¹² Defamation means “spreading false facts, which make an imputation against another person’s honor and dignity or derogating his reputation.” Paragraph 2 of Article 128.1 actually provides for a more severe punishment for defamation if it was committed “publicly using information and communication networks, including “Internet” network.” As we remember, Chinese criminal law defines serious circumstances sufficient for the criminal prosecution of defamation as 5000 views or 500 acts of forwarding of the same defamatory information. By contrast, Russian criminal law keeps a much lower threshold. In 2005, Plenum of the Supreme Court of the Russian Federation determined that “spreading false facts” means transferring the information containing such facts to at least one person. Therefore, a malicious message published on the Internet and clicked, viewed, or forwarded at least once will already count as an act of defamation under Russian criminal law. The maximum penalty can be three years of imprisonment or 2,000,000 rubles of penalty (app. 27,000 USD).

CC RF also contains other *corpus delicti* which can be possibly associated with cyberbullying. For instance, incitement to suicide (Article 110), insulting a public official (Article 319), defamation of a judge, prosecutor, investigator, or bailiff (Article 298). Worthy of note, the instigators of the ‘Blue Whale’ suicide game were convicted of an attempted murder of a minor (Article 105(2) of CC RF).¹¹³

IV. LEGAL CASES AND DISCUSSION

In this part we will review one significant case from each of the two countries, China and Russia respectively. Each case will undergo a four-step analysis: facts, issues, judgment, and rationale. After that, we will examine opinions of jurists and references to other relevant cases in order to further explain the logic of the major case and reveal the established court practice.

A. Tan’s Case of Insulting and Slandering (China)¹¹⁴

1. Facts

This is a private prosecution case brought up by Jiang Moumou (private prosecutor, hereinafter – Jiang) against Tan Mou (defendant, hereinafter – Tan) in Shanghai Putuo District

¹¹² Criminal Code of the Russian Federation dated 13.06.1996 N 63-FZ (01.07.2021 edition) (as amended and additionally, going into effect on 01.12.2021). Available at ConsultantPlus: https://www.consultant.ru/document/cons_doc_LAW_10699/.

¹¹³ Investigative Committee of the Russian Federation, September 30, 2020, <https://sledcom.ru/news/item/1504092/>.

¹¹⁴ Tan’s case of insulting and slandering - the criminal law regulation of insulting and slandering the deceased and his mother on the Internet (Chinese 谭某侮辱、诽谤案——在网络上侮辱、诽谤死者及其母亲的刑法规制). Jiang Moumou v. Tan Mou, 02672 People's Justice: cases, No. 8, 2021 19-22 (Shanghai Second Intermediate People's Court 2020).

People's Court, with an appeal later handled by Shanghai Second Intermediate People's Court. This case was distinguished as a 'classic case' by China's major legal portal PKU Law, meaning that it is of great importance for understanding the prosecution of network defamation in China.

Jiang had a daughter named Jiang Mou who was a student in Japan and lived with her roommate Liu. On November 3, 2016, Jiang's daughter was killed by Chen Shifeng, Liu's ex-boyfriend, while she was trying to protect Liu against Chen. Both Tokyo local magistrate and Chinese Embassy in Japan later confirmed that Chen's target was Liu, not Jiang Mou. The latter did not have any previous conflict with Chen, so her murder was accidental, not intentional. The incident attracted great attention and extensive comments on the Internet from the people of both China and Japan. Jiang started a fund-raising campaign on her microblog in order to alleviate her family's difficulties.

Tan started to insult Jiang on February 25, 2018, when he first published a series of comics entitled "sweetheart Miss award @ b! TCH" on Sina Weibo account "Posh-Bin" depicting Jiang with an ugly image and exposing clothes. Further posts contained statements like "Jiang MouMou killed her daughter and can't blame anyone" and "you deserve to die," as well as allegations that Jiang's daughter was Chen's rival, and that Jiang's fund-raising was a fraud. From February 18, 2018 to March 17, 2019, Tan published at least 28 essays, articles, and microblog posts, continuously abusing Jiang, both verbally and graphically. This information has been notarized by Chengyang Notary Office of Qingdao City, Shandong Province, and Beijing Dongfang Notary Office. According to the investigation of Sina Weibo company, netizens have visited Tan's posts for more than 340,000 times. Moreover, Tan's behavior has caused great psychological trauma to Jiang, causing her to suffer from severe depression and have a high tendency to commit suicide.

2. Issues

Jiang claimed that:

1. Tan derogated personality and damaged reputation of Jiang and her daughter.
2. Tan fabricated lies about Jiang Mou's rivalry with Chen and Jiang Moumou's fund-raising fraud.
3. The circumstances are serious. Tan should be punished for several crimes and sentenced to a fixed-term imprisonment.

Tan claimed that:

1. The comics were not original, and most of the articles and comments were copied, pasted and forwarded.
2. The deceased have no right of reputation.
3. The amount and expenditure of the self-raised money was not provided with evidence.
4. Jiang must withdraw the case.

3. Judgment

Shanghai Putuo District People's Court held that Tan openly belittled others' personality and damaged others' reputation through microblog, cartoon and text, which constitutes a crime of insult under serious circumstances. He also deliberately used the information network to fabricate facts to slander others. With a total number of 340,000 views, the circumstances are serious and his behavior has constituted the crime of defamation. However, the Court did not find sufficient evidence to disprove Tan's allegations about fund-raising fraud. In the end, Tan was sentenced to a fixed-term imprisonment of one year and six months. After the first instance of judgment, Jiang and Tan appealed. Shanghai Second Intermediate People's Court ruled to reject the appeals of Jiang and Tan and upheld the original judgment.

4. Rationale

This decision has been interpreted by Shen Yan and Zhu Yinping of Shanghai Second Intermediate People's Court.¹¹⁵ They justified the use of criminal law because the civil law could not provide sufficient relief for private rights in this case. Shen and Zhu also pointed out that there are not many cases of internet language violence due to several reasons.

First, it is difficult to determine the subject of responsibility. Second, it is difficult for an individual to protect one's rights in criminal cases. The crimes of insult and defamation generally belong to private prosecution cases, and private prosecutors need to bring a lawsuit to a People's Court in time. Third, it is difficult to obtain and retain evidence. It must be notarized in time. Finally, the law might be lenient on cyber offenses, but their violation of other people's rights and interests may be actually deeper, the consequences more serious, and the impact wider with the help of the function of the network magnifying glass. Shen and Zhu also pointed out that "Internet users behind the screen have the psychological protection that the law is not responsible for the public, and the ideas that they dare not or cannot express in reality will appear."¹¹⁶ The opinion of Shen and Zhu converges with the moral disengagement model developed by Wang and Sek-yum Ngai and based on a social study of 1103 participants. According to their findings, anonymity, invisibility and asynchrony of cyberspace cause moral disengagement, which in turn leads to the perpetration of cyberbullying.¹¹⁷

Obtaining and retaining evidence can be a key factor in successful prosecution of cyber-offenses. A remarkable case is *Tuniu v. Tongcheng*,¹¹⁸ even though the target of cyberbullying

¹¹⁵ Yan Shen and Yinping Zhu, "Criminal Regulations for Insulting and Slandering the Deceased and Her Mother on the Internet," *People's Justice (Cases)* 8 (2021): 19.

¹¹⁶ Shen and Zhu, "Criminal Regulations," 19.

¹¹⁷ Wang and Sek-yum Ngai, "The Effects of Anonymity, Invisibility, Asynchrony, and Moral Disengagement," 1-9.

¹¹⁸ Nanjing Tuniu Technology Co., Ltd. v. Tongcheng Network Technology Co., Ltd., 13 ning zhi min chu zi (Nanjing Intermediate People's Court of Jiangsu Province 2016).

was not a natural person, but a company, Nanjing Tuniu Technology. In order to defend the company's reputation, the representatives of Tuniu notarized all the messages where their competitor, Tongcheng, verbally insulted, defamed and belittled them. As a result, Tuniu won the case and a 2,000,000 RMB (app. 314,000 USD) compensation from Tongcheng.

On the other hand, if the plaintiff only provides his own copies of evidence, sometimes incomplete and not properly verified, he may fail. This happened in *Luo Guihua v. Chen Guohua* case.¹¹⁹ The plaintiff and the defendant lived in the same residential compound and had a verbal dispute about a new equipment installations in a WeChat group with 374 observers. Luo claimed that Chen had insulted him. He tried to prove some instances with his own screenshots, and others – with a testimony of two witnesses. However, the court found Luo's evidence insufficient and dismissed the case.

B. *Ivus v. Voronov* Case (Russia)¹²⁰

1. Facts

Irina A. Ivus (hereinafter – Ivus) served as a head investigator of the police department in the urban settlement of Smidovich, which is located in Russia's Far East. She was also engaged in a private law practice. The information about her service was published in a WhatsApp messenger group to which Andrey A. Voronov (hereinafter – Voronov) was also a member. Between April 19, 2020 and April 28, 2020, Voronov published several statements in the group calling Ivus “former mediocre investigator and even a more mediocre head investigator of Nikolayevskoye police department comrade Ivus,” “brat,” “stinky snitch” and accusing her of fabricating a criminal case. This caused a moral damage to Ivus manifested in declining health and emotional stress. Furthermore, one of Ivus's clients terminated a lawyer's contract with her after reading Voronov's statement. Ivus filed a complaint to the local police office, but the police commissioner did not find sufficient grounds to launch a criminal investigation. Thus, Ivus filed a civil lawsuit against Voronov.

2. Issues

Ivus claimed:

1. Voronov spread false facts about her, which damaged her honor, dignity, and business reputation.
2. Voronov must publicly disprove these false facts before those individuals who previously read his messages.

¹¹⁹ Luo Guihua v. Chen Guohua, Shanghai 0115 Minchu 16424 (People's Court of Shanghai Pudong New Area 2020).

¹²⁰ *Ivus v. Voronov*, 23892020 (Smidovich District Court of Jewish Autonomous Region 2020).

3. A moral damage compensation of 50,000 rubles must be paid, as well as a compensation of notary fees and legal expenses (9,295.1 rubles), total amount 59,295.1 rubles (app. 800 USD).

Voronov claimed:

1. A WhatsApp group is not a public space, it is not open to all Internet users, and it is not a mass media.
2. He did not spread false facts.
3. The account from which the facts were spread is not registered with his mobile phone number.

3. Judgment

Smidovich District Court of Jewish Autonomous Region ruled that Voronov was the one spreading messages about Ivus in WhatsApp group. Voronov's messages contained false facts, and Voronov must disprove these facts by posting the court's judgment in the same WhatsApp group within ten days after the judgment was pronounced. The Court partially satisfied Ivus's compensation claim and ruled that Voronov must pay her 30,000 rubles of moral damage and 9,295.1 rubles of other costs.

The Court also found that Voronov's actions contained elements essential to the crime of defamation (Article 128.1 CC RF). Nevertheless, the Court did not launch a criminal investigation.

4. Rationale

The court recognized plaintiff's rights of honor, dignity and reputation. It has thoroughly examined the notarized copies of electronic correspondence, questioned the witnesses from the same WhatsApp group, and sent an inquiry to the network provider in order to verify that the mobile number indeed belonged to the defendant. The court's ruling ensured the restoration of *status quo ante*, and the compensation amount was decided on a fair and equitable basis. Even though the defendant's actions qualified for criminal charges, the court did not press them in order to give him a chance to repair the damage and deserve a redemption.

It is important to understand that even if the court detects certain elements of the crime of defamation, it may still declare an absence of *corpus delicti*.¹²¹ Apparently, the court estimates the gravity of the offense and dismisses the cases without a substantial threat to the person or society. Another important factor is the judge's evaluation of the defendant's statements. There was a judicial precedent when a judge found the statement "I wish you to die

¹²¹ Azimov, Gorshkova, and Karasyova, 88.

soon” to be in no violation of the established norms of behavior and morality.¹²² Consequently, the judge dismissed the plaintiff’s appeal.

C. Discussion

We have examined the judicial decisions in insult and defamation cases from China and Russia. The offenses prosecuted in Tan’s defamation case and *Ivus v. Voronov* case were not legally classified as ‘cyberbullying,’ but they meet all four essential elements of cyberbullying. First, there was a use of electronic communication means – Sina Weibo network and WhatsApp group. Second the actions of the offenders intended to harm the plaintiffs. Third, the offenses were repeated over a period of time. Fourth, there was an imbalance of power between the aggressor and the victim, since the aggressor had the wherewithal to induce multiple observers against the victim (e.g. termination of Ivus’s contract). Therefore, we can conclude that in principle cyberbullying cases can be determined as either civil torts or criminal offenses in both Chinese and Russian legal systems.

We must also admit that there are certain procedural barriers to the effective prosecution of cyberbullying. First, there is a threshold to a criminal case initiation. In China, it is clearly defined and quantified (5000 views or 500 reposts) while in Russia the courts still have a leeway in determining the admissibility of the case. Both approaches have their advantages and disadvantages. On the one hand, clearly defined standards make the adjudication a fair and precise mechanism. On the other hand, the true purpose of justice is protection and correction, not punishment. It will be beneficial for the accused person and the society at large if one still has a chance to repent, restore the damage and change one’s behavior without suffering a criminal record. It is especially important to understand that criminalization of children (in cases when they are the perpetrators of cyberbullying) will significantly and negatively affect their future.¹²³

Second, the costs of obtaining and retaining evidence of cyberbullying may be high in terms of both time and monetary expenses. We have seen that a victory in court heavily depends on notarizing the evidence from the electronic sources. In China, public security authorities can provide assistance with collecting evidence,¹²⁴ but in Russia the victims need to collect and present the evidence by themselves, and the evidence must meet certain admissibility criteria, ideally – it must be notarized. This process may take up to five stages. First, the victim identifies the malicious content. Second, he/she applies for notarization service (usually a notary is a private practitioner). Third, the notary needs to draft a protocol of inspection, but they usually do not have sufficient technical expertise to do that, so they outsource this task to a specialized company. Fourth, the notary gets the protocol back from the company, signs it, and hands it back to the client. A notarized protocol has a higher evidential value in courts and it is also not

¹²² Judgment of the Supreme Court of Republic of Altai in case № 21-81/2017, November 30, 2017.

¹²³ El Asam and Samara, 138.

¹²⁴ Criminal Law of the People’s Republic of China (2020 Amendment), Article 246(3).

subject to expiration.¹²⁵ The victim can also take the fifth step and hire an expert linguist who will analyze and interpret the statements of the offender. This step is not a necessary one, as the court can run a linguistic expertise on its own account, but as we know, in this scenario even a blatant insult can be dismissed as inadmissible (remember the case when the phrase “I wish you to die soon” was interpreted as harmless¹²⁶). The evidence obtaining process in Russia is evidently long and cumbersome. It is also quite expensive, just one page of the protocol of inspection costs 3,000 rubles (app. 40 USD).¹²⁷ In cases when cyberbullying has been perpetrated repeatedly over a long period of time, and there are dozens (or even hundreds) of pages of electronic content, the sheer amount of evidence to be notarized may cause the litigation costs to soar.

Third, neither Chinese nor Russian cases mentioned the offense duration. As we know, cyberbullying is a repeated offense, but for the law and the court it actually makes no difference whether it took place over a long period of time or just within one day. A questionnaire of Russian judges showed that 93.3% of them narrowly interpret defamation as an act of publishing false facts on the Internet, while only 6.7% take into account the continued spreading of these facts through the network after the initial publication.¹²⁸

The aforementioned barriers and uncertainties can be overcome by further amendments to the existing civil and criminal laws. First, Russia will need to simplify its procedure on obtaining evidence of cyber offences. Most importantly, the notarization of all pieces of evidence should not be seen as a compulsory precondition to the litigation process, and it should be waived when possible. It also makes sense to simplify the notarization process and make it more affordable, e.g. notarize only key samples of the electronic materials, and not all the related pages. Second, both Russia and China need to introduce a legal definition of ‘offense duration.’ It is absolutely necessary to establish a clear distinction between singular and repeated cyber offences, because one of the core features of cyberbullying is its repetition.

CONCLUSION

We found that both China and Russia do not need a new cyberbullying law. Substantial work has already been done to amend and interpret the existing civil, administrative, and criminal laws in order to adequately address the offenses committed in cyberspace. The real work needs to be done not in lawmaking, but in removing the procedural barriers to litigation and prosecution. These barriers, such as the costly and cumbersome notarization process, or

¹²⁵ “Obespecheniye dokazatel’stv – zashchita ot travli v seti (Obtaining evidence – protection from cyberbullying),” *Federal Notary Chamber*. March 19, 2020. Available at: <https://notariat.ru/ru-ru/news/obespechenie-dokazatelstv-zashita-ot-travli-v-seti>.

¹²⁶ Judgment of the Supreme Court of Republic of Altai in case № 21-81/2017, November 30, 2017.

¹²⁷ Osmotr saitov i internet-stranits notariusom (Inspection of websites and internet pages by a notary), *Igor V. Kolganov, Notary of the City of Moscow*, available at: <https://notkolganov.ru/notarialnye-deystviya/obespechenie-dokazatelstv/osmotr-saytov-i-zaverenie-internet-stranits/>.

¹²⁸ Aniskina, “Cyber-Slander,” 132.

the private character of the prosecution of defamation, prevent many victims of cyberbullying from restoring their lawful rights and holding their offenders accountable. These barriers can be alleviated by further amendments and the extension of interpretation of the existing laws.

Researchers from Australia were also asking a question of whether or not their country needed a new cyberbullying law.¹²⁹ They came to a similar conclusion with us. Pennell et al. and Young et. al. ran questionnaires among education system executives, school leaders, teachers, parents, and students, asking them a question whether or not Australia needed a new cyberbullying law. The answers were divided, but those who insisted on enacting such a law were usually less aware of the existing legal remedies. Therefore, a conclusion was made that a new cyberbullying-specific law was not wanted since it would only increase litigiousness.¹³⁰ Rather than that, it would be more fruitful to raise public awareness of the existing laws, as well as “digital wisdom” of the elder generation.¹³¹

Legal research on cyberbullying in China and Russia surely needs to be continued. Further progress can be achieved in analyzing a greater number of judicial cases, interviewing judges and victims, as well as looking more closely at some particular aspects of cyberbullying.

¹²⁹ See Pennell et al.; Young et al.

¹³⁰ Pennell et al., 14-15.

¹³¹ Young et al., 99.

List of Abbreviations

CN	Mainland China
CC RF	Criminal Code of the Russian Federation
CoAO	Code of the Russian Federation on Administrative Offenses
HK	Hong Kong
ICT	Information and Communication Technology
NPC	National People's Congress
NSW	New South Wales
PRC	People's Republic of China
RMB	Renminbi, Chinese yuan
TW	Taiwan
UK	United Kingdom
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
US	United States
USD	United States Dollar