

Research on Criminal Law Regulation of Network Violence

Boqian Zheng

School of Grammar, Inner Mongolia University of Science and Technology, Baotou 014010, China.

2443939676@qq.com

Abstract. Network violence is not a legal concept, in the existing laws and regulations and normative documents, guiding documents lack of connotation and extension of the concept of network violence provisions, also lack of a normative way to list. This paper analyzes the characteristics of network violence, studies the applicable charges and criminal standards, as well as the regulation of criminal law on network violence. First of all, cyber violence has specific characteristics, including anonymity, dissemination and aggression. Secondly, for different types of cyber violence, different charges and criminal standards should be adopted in order to better punish criminal acts. Finally, criminal law can play an important role in regulating cyber violence. Clear legal provisions and corresponding penalties can effectively deter cyber violence. Therefore, this paper puts forward suggestions to further strengthen the regulation of network violence in criminal law. With scientific legislation as the core, it puts forward ideas such as adding the charges of network violence crime, reasonable classification and different sentencing, and including the crime of network violence in public prosecution.

Keywords: specific characteristics; Type analysis; Applicable charges and incriminating standards; Governance dilemma; Path exploration.

1. Introduction

From the "first case of cyber violence" in 2007 to the "Jiangge case" that shocked the country, the problem of cyber violence has become impossible to ignore. Cyber violence can cause depression and even indirectly lead to the victim's suicide, which seriously affects social stability. During the two sessions of the National People's Congress this year, a number of NPC deputies showed an "urgent" attitude towards the control of Internet violence. The Supreme People's Court and the Supreme People's Procuratorate also proposed to "prevent Internet violence from being infringed upon by Internet violence" and "resolutely punish Internet violence 'hurting people by buttons'". Therefore, it is even more urgent that online violence be regulated legally.

2. Specific characteristics of cyber violence

Unlike traditional violence, which directly impinges on people and property by direct violence, cyber violence makes more use of the Internet carrier to directly cause psychological harm to the parties through gratuitous abuse, fabrication of facts, insults and defamation. Cyber violence is a kind of non-specific actors, through text, pictures or videos and other network carriers, in a collective way to the third party (citizens, legal persons or other organizations) to publish insulting, slanderous, false or inflammatory remarks and other illegal torts.

2.1. The group nature of the subject

China Internet Network Information Center (CNNIC) released the 51st Statistical Report on China's Internet Development in Beijing, showing that by December 2022, the number of netizens in China will reach 1.067 billion, the Internet penetration rate will reach 75.6%, the number of netizens in rural areas will reach 308 million, and the proportion of netizens aged 50 and above will increase to 30.8%. In the educational structure, the number of netizens at the secondary education level occupies the main position. Generally speaking, the number of Internet users with low education is spreading, and the quality of Internet users is uneven. [2] The lack of discernment ability of netizens and the offensive and incitement speech of netizens under the guidance of public opinion have

become the tools of network violence. A person's gossip is not enough to pose a threat, but a group's online violence is enough to destroy the psychological defense line of the victim, causing serious consequences and serious infringement on the rights and interests of the victim.

2.2. The spontaneity of cyber violence

We media have "self-" communication characteristics, such as the self-nature of the communication subject, the freedom of the transmission and receiving relationship, the autonomy of the transmission and receiving content, the spontaneity of the communication channel and the spontaneous combustion of the communication process. [3] According to the Research Report on China's Network Audiovisual Development (2023), there are more than 1.012 billion short video users in China, of which the average person can watch short video for 2.5 hours a day. The free publication of short videos and their comment sections is more conducive to the free dissemination of speech, exacerbates the fermentation of online public opinion, and makes online violence more spontaneous.

2.3. The propagation effect is easy to get out of control

The unexpected plot twist of the "Tsinghua Academy of Fine Arts" incident in 2020 has also turned all kinds of attacks on the victim who was originally thought to be delicate and pitiful. From the event itself, the younger sister is really innocent, the older sister from the beginning of the network violence to the object of the network violence, on the surface, it is the dog blood plot of her own evil fruit, but the situation has developed quite serious. The speculator with ulterior motives, under the guise of justice for the younger student, published his own prejudice, and even led public opinion to the confrontation between men and women, and the dispute between Tsinghua colleges and departments. No one thought that a human flesh search launched to let others "social death" would eventually get out of control, and the brunt of violence would be directed at themselves, leading public opinion to a deeper level.

2.4. Being easily guided by public opinion is seditious

In 2021, CCTV host Cheng Lei made a public statement with a trumpet that "China wants to abandon the people of Wuhan", which panicked people for a time and almost caused serious social panic. Little did they know that Cheng Lei turned out to be a foreign spy, spreading rumors to deliberately smear China, misinterpreting the lockdown policy, and exacerbating the panic caused by the epidemic. Foreign media followed suit and hyped the lockdown of Wuhan as a "violation of human rights", further causing chaos and smearing China. Some unsuspecting netizens were influenced by Cheng to attack the Chinese government and the people of Wuhan online, but they did not realize that they played into the hands of foreign media and became a tool to smear the Chinese government. Under the deliberate guidance of public opinion, the truth is blurred, and emotions and self-feelings become the basis of value judgment. The guidance of Internet public opinion is faced with severe challenges. The mainstream values of the public are diluted, psychological anxiety is increased, emotional spontaneous behaviors are increased, and group behaviors incited and guided by public opinion are easy to evolve into Internet violence.

3. Type analysis of network violence

This paper makes a type of analysis of the recent cyber violence incidents, which are summarized as verbal violence, privacy invasion violence, group attack violence, malicious slander violence, and false information dissemination violence. It is conducive to further targeted research on criminal law regulation.

3.1. Verbal Violence

Internet verbal violence refers to the Posting of hurtful and insulting remarks, pictures and videos on the Internet. [5] Language violence is usually simple, vulgar, highly insulting, low cost, and easy to generate, causing a strong insult to the victim's personality and psychological shadow. Although some network mechanisms can shield some vulgar language, but some symbols and letters can also make people feel the same meaning, insulting is not reduced at the same time also adds a hint of fun, elegant without losing irony, but also brings the interest in learning and copying, accelerate and expand the spread of network language violence.

3.2. Violence against privacy

Invasion of privacy violence refers to the act of forcibly exposing an individual's privacy to the public through the Internet without his or her consent. "Human flesh search" is a typical means of violence to invade privacy in recent years. Different from previous acts such as candid photography and tracking, "human flesh search" uses network sharing and "public participation" to dig deeply into the real information of the victim (including but not limited to personal information and family information), which seriously infringes on the privacy of the victim. Searchers assign themselves the role of network detectives and treat "human flesh search" as a game, establishing their own happiness on the pain of victims.

3.3. Malicious slander and violence

Malicious defamation violence refers to the objective manifestation of malicious fabrication and dissemination of fictitious facts, subjectively and intentionally, in order to demean the personality of others and destroy the reputation of others. Creating something out of thin air, distorting facts, spreading rumors, and maliciously defaming network rumors is a major public hazard on the Internet. The violence of malicious slander is more reflected in the commercial level. Some gateway companies accept benefits from others or to achieve their own purposes, fabricate and spread fictional facts under the banner of breaking the news, attack a certain target, and reduce its business value and competitiveness. Uninformed netizens directly forward without verification, expand the influence, even if the target clarifies the facts, delete the original post, it is difficult to restore the reputation, resulting in unpredictable losses.

3.4. Group attack violence

According to the survey, the target of cyber violence is not only an individual, but also a group, especially in recent years, the frequent occurrence of cyber violence against groups. Cyber violence has expanded from insults and abuse to individuals, malicious derogation, privacy invasion, etc., to provoke group contradictions and ethnic antagonism, and the victims have gradually expanded from definite individuals to "abstract victims". [6] The abstract victim is no longer limited to a specific natural person, but gradually evolves into a group or ethnic group with the continuous expansion of the scope and forms of network violence. Group attack violence is mainly reflected in the relationship between men and women, region, ethnicity, religion, race, occupation and other groups with differences, the perpetrator often expand personal behavior, rise to the group or ethnic group, which is easy to stimulate group conflicts.

4. The crime and criminalization standards of network violence are applicable

4.1. Crime of insult

According to Article 246 of the Criminal Law of the People's Republic of China (hereinafter referred to as the Criminal Law), the crime of insulting refers to acts that use violence or other means to publicly derogate another person's personality or destroy his reputation, and the circumstances are serious. Cyber violence is also a form of violence, and the use of the Internet to spread it is a serious

infringement on the victim's personal dignity and right of reputation. Publicly insulting others can only be filed if they file a lawsuit and can be a crime if the circumstances are serious. The so-called serious circumstances mainly mean that the means are bad, and the consequences are serious. Although there are circumstances of openly insulting others but cannot reach the serious circumstances can only be classified as general tort.

4.2. Crime of fabricating and intentionally spreading false information

The Supplementary Provisions on the Enforcement of the Criminal Law of the People's Republic of China to Determine the Charges (VI) have added the crime of fabricating and intentionally spreading false information, and new provisions have been added to Article 291 of the Criminal Law Amendment (IX). Those who fabricate false danger, epidemic or police information, or knowingly spread the above false information on the information network or other media, seriously disturbing social order, will be punished with severe consequences. If the circumstances are serious, those who intentionally make up false information to gain attention will face criminal sanctions rather than public security penalties.

4.3. Crime of infringing citizens' personal information

According to Article 253 of the Criminal Law, the crime of infringing on citizens' personal information refers to serious acts of selling or providing citizens' personal information to others or acts of selling or providing citizens' personal information obtained in performing duties or providing services to others. Violating the crime of infringing on citizens' personal information can be summarized into several conditions, one of which can be punished: another person uses the personal information provided or sold to commit a crime; Illegally obtaining a certain amount of citizens' personal information; Having illegal gains of 5,000 yuan or more; Selling or providing to others citizens' personal information obtained while performing their duties or providing services; Receive the same criminal punishment or administrative punishment within two years.

4.4. Crime of libel

According to the second paragraph of Article 246 of the Criminal Law, the crime of defamation refers to the act of deliberately fabricating and spreading fictitious facts that are sufficient to demean another person's personality or destroy his reputation, and the circumstances are serious. The Interpretation on Several Issues Concerning the Application of the Law to Criminal Cases Involving the Use of Information Networks for Defamation points out several serious circumstances. From the interpretation and the provisions of the Criminal Law, it can be seen that the use of information network to slander to meet the criteria for criminalization needs to conform to subjective intent, objectively cause actual damage and the circumstances are bad. The unwitting netizens who repost comments, though committing defamation, are also victims of deception and are used as tools to commit online violence and will not be punished by law.

Through the analysis of the above charges and crime standards, it is not difficult to find that to meet the crime standards, network violence needs to meet the following conditions: meet the objective facts that are subjective and intentional and cause serious circumstances; Or has been punished by the relevant laws of the repeat offense; And the specific conditions that a particular law requires.

5. Address the dilemma of cyber violence

From the increasingly fierce reality of cyber violence, it can be clearly seen that cyber violence has been Mired in governance difficulties. In recent years, there have been frequent incidents of cyber violence, but according to incomplete investigation, less than 10% of the cyber violence incidents have been filed, and few of them have been raised to criminal law cases. Who is responsible for the people who are depressed or even commit suicide because of Internet violence? From Leslie Cheung jumping off a building in 2003 to Liu Xuezhou committing Internet violence in 2022, we all know

that the real culprit who led to their death is the keyboard player who carried out Internet violence, but how to use the current law to get justice for the victims has become a great problem.

Take the case of Liu Xuezhou as an example, Liu Xuezhou's death has been a year and a half, the lawyer filed a lawsuit against the two Internet violence "big V" with the infringement of Internet disputes, and the trial has been more than half a year. Can the result of the trial really make us satisfied? Obviously no, even if the maximum sentence of Internet dispute infringement is reached, people are indignant. A few not light and heavy civil administrative laws and regulations punishment can let a lost life rest in peace. Ordinary and minor cyber violence can indeed obtain compensation and safeguard rights and interests through civil. infringement, but severe cyber violence and even death have obviously exceeded the scope of civil law and are highly "punishable". The frequent and serious consequences of cyber violence in practice mean that relevant civil administrative laws and regulations are not enough to control the phenomenon [7] of cyber violence. Only the deterrent of criminal law can exert a restraining effect on serious cyber violence.

Obviously, the applicable charges of network violence discussed in this paper cannot fully. match today's serious network violence acts, let alone show the essence of network violence crimes. At this time, the rights and interests we should protect are not only the right to privacy and reputation, but also the life, health and safety of people. If the network violence is solved according to the existing laws and regulations, then how to Sue the death of the victim, how to determine the charges, how to obtain evidence of network violence, how to sanction the group network violence one by one, and how to determine the responsibility.....? Liu Xuezhou's lawsuit on the case of death caused by network violence can not help but make us start to think whether the administrative regulations of civil law have played a role, whether the criminal law is backward and out of place, how to improve the legal mechanism, how to use the law to regulate network violence to curb the emergence of network violence? The problem of network violence is imminent, victims of network violence need the protection of criminal law regulation, only by advancing with The Times, adhering to "scientific legislation" from the fundamental "knife" of criminal law can achieve results, so that network violence gradually disappear in criminal law regulation.

6. Take "scientific legislation" as the core to explore the governance path

The law is materially restricted and fundamentally depends on the material living conditions, so it should adapt to the development of productive forces and changes in social relations. With the development of the Internet, cyber violence has become more frequent, more diverse, more serious in nature, and more harmful to individuals and society. When civil law and administrative laws and regulations are unable to limit cyber violence, criminal law should be used to deter sanctions in a timely manner. However, the current Criminal Law cannot fully cover the expression of cyber violence, and no crime can perfectly match the act of cyber violence. The amendments and supplements to the Criminal Law and judicial interpretations of cyber violence have not achieved obvious results, still condoning the perpetrators of cyber violence to go unpunished, and the growing momentum of cyber violence has not been contained. Therefore, keeping pace with The Times, pioneering and innovating, we should take "scientific legislation" as the fundamental idea of governing network violence. The following are my thoughts:

6.1. Add the crime of network violence

Adding this crime and criminalizing cyber violence as a crime can not only show the legislature's great attention to and positive response to hot social issues, but also show the state's great attention to cyber violence. It is not only a legal basis for the people in their daily lives, but also a tangible deterrent to "criminals". Law enforcement agencies can strictly enforce the law according to the perfect laws and regulations, and the judicial organs have the law as the basis for judgment, can be impartial justice, and solve the problem that the Internet violence cases with heavy behavior can not be relied on in the judgment process.

6.2. Reasonable classification and differential sentencing

This article divides cyber violence into four types: verbal violence, invasion of privacy violence, malicious slander violence and group attack violence. Although the forms of cyber violence are different, the rights and interests harmed ultimately point to personal rights. Before classifying it in criminal law, we have to discuss the following cases of light cyber violence. Light cyber violence is less damaging to rights and interests, less harmful and less consequential, and can still be dealt with by other laws and regulations under the application of civil law or other laws. In this way, it not only follows the principle of modesty of criminal law, better protects human rights, but also saves criminal law resources. The division of charges is more reasonable. In the additional charges, the types of cyber violence should be divided in more detail, and the ultimate damage to rights and interests should be taken as the fundamental standard for sentencing. At the same time, we should fully consider the subjective level of criminal intent, the network violence planners, instigators, main performers, unaware blind followers to distinguish and divide responsibility, network violence is an unspecified group behavior, how to divide group responsibility to be fair and just, clear punishment is a worthy of in-depth exploration of the issue.

6.3. Cases involving cyber violence should be included in public prosecution

The crimes that may be involved in the cyber violence discussed in this paper are all self-litigation cases, and the investigation and research show that the rate of self-litigation by the victims is very low, the extremely humiliating nature makes it difficult for the victims to speak up, the group attack is difficult to prosecute, the individual is difficult to obtain evidence, and the trust in the success of such cases is insufficient. If network violence cases are included in public prosecution, it is easier for network management departments to monitor, investigate and collect evidence, and stop losses in time to avoid more serious consequences. Public prosecution is easier to guide public opinion to the judgment result, similar to the official statement to prove the innocence of victims and seek justice. The followers of network violence will also know the truth and stop following suit. Can quell the Internet violence in the fastest way, the greatest protection of the rights and interests of victims, reduce losses.

References

- [1] Jiang Jun. Definition of Cyber Violence and Criminal law Regulation [J]. *Cyberspace Security*, 2022, 13(05): p.20-25. (In Chinese)
- [2] Chen Xuanhua, Kou Jie, GAO Panyi. Analysis under the perspective of social network violence subject analysis [J]. *Journal of Hunan school of administration*, 2019 (4): p.73-78. The DOI: 10.16480/j.carol carroll nki cn43-1326 / c. 2019.04.009.
- [3] Sun Shuaimi. Research on Cultivating College Students' civic spirit -- Based on the background of We-Media era [J]. *Know and row*, 2017 (4): p. 98-103. DOI: 10.19309 / j.carol carroll nki zyx. 2017.04.028.
- [4] Ding Yanan. On the identification of "post-truth" in Network Public Opinion Guidance [J]. *Journal of Sichuan Administration University*, 2020(04): p.86-94.
- [5] Xu Caiqi. On Criminal Law Regulation of Network Violence [J]. *Application of Law*, 2016(03): p.102-108.
- [6] BAI Jing. Constructing dense legal protection Network to Prevent Cyber violence [J]. *People's Forum*, 2020 (11): p.98-100.
- [7] Shi Jinghai, Huang Yarui. Situation analysis and way to explore the network violence criminal. law [J]. *Journal of anhui university (philosophy and social sciences edition)*, 2020, 44 (4): p.78-89. The DOI: 10.13796 / j.carol carroll nki. 1001-5019.2020.04.011.