

Practical Dilemmas Facing Criminal Legislation on Network Violence and Ideas for Responding to Them

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Abstract

With the science and technology advance, cybercrime has become a serious threat to society. The lack of effective legal regulation has allowed cybercriminals to operate with impunity, posing a great challenge to law enforcement agencies. This paper intends to explore the challenges and gaps in the existing regulations on the premise of explaining the characteristics, classification of cybercrime, and put forward some suggestions and ideas on how to regulate the network violence by the main means of the criminal law. By examining the current legal framework for combating cybercrime, as well as the typical case, this paper will provide an in-depth analysis of the legal measures needed to effectively combat cybercrime. The findings of this research will contribute to the development of a comprehensive legal framework to address the growing menace of cybercrime.

Keywords: network violence, netizens, criminal law regulation

1. Introduction

1.1 Research Background

Now we are in the network era, the development of the Internet has innovated and expanded the way of information dissemination, which has brought many problems while facilitating people's production and life. Network violence is one of the typical examples. Internet violence in the form of slander, insults, and human flesh searches has emerged one after another. Many parties involved have been harmed by a large amount of cyber violence. Typical examples include the case of Liu Mouzhou, a boy seeking relatives, who was killed by Internet violence, the case of Shanghai women who were rewarded 200 yuan for running errands, and the case of female graduate students who were killed by Internet violence because of their pink hair. It is very urgent to control network violence and purify cyberspace.

1.2 Literature Review

In order to combat and stop online violence, the legislative, judicial and administrative organs of our country have been revising laws and regulations since 2009. However, these provisions are not effective in combating the phenomenon of cyber violence, and the tragedy caused by cyber violence continues to unfold. On September 25, 2023, the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security jointly issued the Guiding Opinions on Punishing Crimes of Cyber Violence According to Law, which provide new guidelines for regulating cyber violence, but only supplement and improve laws from the perspective of interpretation. It can't solve the problem of cyber violence by creating new offences and enacting specific laws. The stipulations are vague, and there are hidden troubles that can easily lead to excessive judicial discretion. Furthermore, a large number of core journals in law have revealed a consensus among the academic community that legislation should address the issue of "cyber violence".

1.3 Problem Statement and Objectives

At present, the main focus of academic circle and practice is what is network violence, how to constitute network violence crime and how to effectively punish network violence crime. This paper intends to discuss the necessity

of the criminal regulation of the network violence on the premise of explaining the concept, characteristics, classification, charge and standard of the crime of the network violence, and put forward some suggestions and ideas on how to regulate the network violence by the main means of the criminal law.

2. Body of Paper

2.1 Characteristics of Network Violence

2.1.1 Fast Spreading Speed

Information on social media can spread to a large number of people in a very short time through the cascading mode of communication. In the traditional way of dissemination, people get information through TV, newspapers and other channels. These reports need a period of time for collection and editing, and eventually spread among the crowd. Social media can spread the information instantly, so that users can get the latest information. In social media, information is spread among users through friends and followers. When a user posts a message, the system pushes the message to the users with whom the user has a friend or follower relationship. When these users receive the pushed message, they can further choose whether to forward it to their friends and followers. Through this cascading broadcasting method, the information on the network can have a great diffusion range in a short time.

The Internet platform has brought users a smooth speech channel and an open public opinion environment, providing a convenient way for the dissemination of information and exchange of ideas, but at the same time, it also allows malicious information to spread rapidly on the Internet. On July 7, 2020, the victim, Wu Yan (a pseudonym, hereinafter referred to as Wu), went to pick up a courier downstairs in a neighborhood in Hangzhou City, Zhejiang Province, and was secretly filmed in the video by Lang Mou, a convenience store owner. Lang and his friend He made up a "young woman cheated on the courier boy" chat content to slander Wu, sent to the WeChat group. With the secretly filmed video and fabricated chat content in the Internet continue to forward, Wu cheating rumors also rapidly fermented on the Internet. 2020 August 7, 10 am, the rumor has been spread to Wu's leadership and colleagues. Since August 8, 2020, a microblog published "This who's wife, your head has been green to glow!" The article, to August 11, 2020 when notarized, the number of hits was 10,000 times. As of September 20, 2020, the total number of views of multiple online posts reached 60,660, and the number of retweets was 217 times. Rumors spread rapidly on the Internet at an alarming rate, bringing the victims endless unwarranted accusations and abuse.

2.1.2 Difficulty in Pursuing Responsibility

The anonymity of the network and the large number of subjects of network violence make it difficult to pursue responsibility for network violence. Although some online platforms nowadays require users to provide personal information when registering, we are not sure whether the information provided during registration is false or stolen. Since we cannot determine the authenticity of user information, it is difficult to determine the number of participants and the range of people who are the subject of network violence. The consequences of network violence are caused by all the users involved in network violence, so it is not possible in the legal sense to hold individual netizens accountable only. The dispersion of legal responsibility makes it difficult for victims to pursue responsibility when defending their rights. The erroneous idea that "the law is not responsible for the masses" that exists in society has resulted in a dilution of responsibility among the subjects of cyber violence.

As in the case of the Hangzhou woman picking up the courier, the woman encountered many difficulties in collecting evidence, because she was worried that the retweet record and the web post would be deleted, and could not retain the evidence, the woman said openly in her circle of friends and microblogging, "I am the victim of this defamation case myself! If people see the spread of slanderous information, please take a screenshot and send it to me!" Since then, she receives hundreds of screenshots and screenshots from netizens every day, and she saves the information categorized into folders, and some of them have been taken to a notary public to be notarized. The deposition was finally completed with the help of many enthusiastic netizens. Xue Jun, a professor at Peking University Law School, explained several main reasons why it is difficult to defend the rights in this type of case: first, it is difficult to determine the main body, and sometimes it is difficult to specify the aggressor, so it is necessary to have the assistance of the platform; second, it is not easy to fix the evidence of the relevant facts, and the text and video on the network may be deleted; and third, due to the large number of people involved, we all have the illusion that the law is not to be blamed for the people, and believe that it is difficult to pursue the responsibility after the incident. It is important to emphasize that cyberspace is not a place outside the law, and that abusing and defaming others on the Internet is just as legally responsible as in reality, and may constitute a crime and entail criminal liability.

2.1.3 Groupization of Participants

Groups participating in network violence often lack rational thinking and in-depth analysis of online speech, and are easily wrapped up in emotions, blindly following trends and attacking others. Communication research shows that individuals in a group are usually in a state of excitement, which often causes them to lose the ability to rationally distinguish and identify the information around them, and manifests itself in blind gullibility and obedience. A person in a crowd is susceptible to "cues" from his surroundings, and the words, feelings and behaviors of the people around him constitute a strong stimulus for him to align his beliefs, thoughts and behavioral patterns with those of the group in which he lives. When netizens spontaneously form a group as a result of an event, they lose their ability to analyze and judge rationally as independent individuals. They are in the realm of the unconscious, listening at all times to the information disseminated within the group, indifferent to rational views, and leaving behind only extreme behavior. In this way, we can understand the incredible behavior of Internet "mobs."

2.2 *Typification Analysis of Network Violence*

In the context of cyber crime, violence, as a specific type of behavior, has unique hazard characteristics, mainly in the following two aspects: one is a kind of technology abuse, the harm, dangerous state and abstract danger elements all occur in the cyberspace society, usually in the view of the order of cyberspace; second, network violence will also extend from online to offline space, thus derived other types of hazard results in the real physical space society, caused by traditional crime. In this context, we make a typed analysis of the characteristics of the current common network violence phenomenon, and summarize the network violence into the following five types:

2.2.1 The Attack Type

Aggressive network violence usually appears as malicious attacks and slander against individuals or specific groups. The attacker may, for various reasons, such as personal grievances, antisocial tendencies, consciously make insulting, provocative, defamatory and inflammatory remarks, thus causing psychological personality harm to the victim.

2.2.2 The Bullying Type

Bullying refers to the implementation of psychological oppression on the victim through repeated and continuous intimidation, threats and harassment, in order to achieve specific purpose behaviors, and its implementers mostly appear in the form of groups. Through social media online, such as Weibo, wechat, TikTok, Kuaishou and other platforms.

2.2.3 The Rumor-Making Type

Mainly through spreading false information and rumors, personal attacks on the victim, then these information may involve the personal privacy of the victim, directly lead to the false negative information of the victim, and affect the reputation, work and life of the victim.

2.2.4 The Conformity Type

In the network social environment, some sensational, exciting, scary remarks or pictures will spread quickly in a very short period of time. This kind of information often aims at pursuing the short-term click rate. The creators and communicators behind this kind of information may not really understand the authenticity and accuracy of the information, and the herd effect generated by the herd psychology also plays a role of network violence to a certain extent.

2.2.5 Lack of Management Type

There is a negative correlation between the intensity of network supervision and the frequency of network violence phenomenon. If the network platform cannot effectively regulate the user speech, prevent, then network violence will persist, even backfire effect, even after the error information is corrected, the public will still believe that the original error information, preconceived error information will expand the negative influence of network violence.

Having said all of above, there are various characteristics and types of network violence, not only the form of malicious attack, but also the form of indirect injury of network bullying. Therefore, we need to start from multi-dimensional guidance, strengthen network supervision, improve citizens' network literacy, and jointly create a clean and upright network environment.

2.3 *Study of Possible Offences and Criteria for Criminalization*

On September 25, 2023, the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security jointly issued the Guiding Opinions on Punishing the Crimes of Cyber Violence according to Law

(hereinafter referred to as the Guiding Opinions), which stipulate that the crimes of cyber violence may be committed: Defamation, insult, infringement of citizens' personal information, intentional destruction of property, crime of picking quarrels and causing trouble, and refusal to perform the obligation of managing information network security. The detailed analysis of the criminalization and expansion of the above crimes is as follows:

2.3.1 Crimes of Defamation and Insult

Network defamation includes making, spreading rumors, demeaning others' personality, damaging others' reputation, insulting behavior includes wanton abuse, vicious attacks, disclosure of privacy, etc. Both offences are subject to the mandatory requirement of "aggravating circumstances" and are dealt with only with complaint. It is worth noting that those that seriously endanger social order and national interests are excluded. In 2013, the Supreme People's Court, the Supreme People's Procuratorate issued the Interpretation on Several Issues Concerning the Application of the Law in Criminal Cases, including the Use of Information Networks, which sets out in article 2 the criteria for the severity of libel offences. The judgment of the severity of the crime of insult should be the same as that of libel. Article 12 of the Guiding Opinions provides a completely new provision on the methods of determining whether the offence of insult or defamation is a "serious threat to social order", the factors to be considered and the typical situation. According to the provisions of Article 12, paragraph 2, the conduct of online insults or defamation shall be deemed to be "seriously endangering social order" in any of the following circumstances: (1) causing serious consequences such as mental disorder or suicide of the victim and his or her close relatives, and having a bad impact; (2) Randomly targeting the general public as the object of infringement, and relevant information spreads on a large scale on the Internet, causing a large number of vulgar and malicious comments, seriously undermining the order of the Internet, and having a bad influence on society; (3) insulting or slandering a number of people or spreading insulting or slandering information for many times, thereby having a bad influence on society; (4) Organizing or instigating personnel to spread a large amount of insulting and slanderous information on multiple network platforms, thereby having a bad influence on society; (5) Other circumstances seriously endangering social order. It can be seen that any serious circumstances of the object, manner, method and subjective motive of the act can be constituted.

2.3.2 Crime of Infringing on Citizen's Personal Information

A common practice of this sin in real life is "human flesh search". Human flesh search originated from "Chen Ziyao Incident" in 2001. There is no authoritative definition of "human flesh search" in academic circles. The more authoritative version is: "Human flesh search" is a search method in which the search initiator proposes part of the search object information, such as name, photo, part of personal information, related events, etc. in a virtual network community, and then calls on the majority of users to participate in the analysis and answer, and finally obtains the answer. It is an unprompted search. The criminalization of human flesh search involves identifying those who are criminally responsible for these acts. Clearly, it is not possible to criminalize all those associated with the search, which would violate the principle of limiting criminal. The provisions are too narrow and do not serve to combat and suppress crime. If the information disclosed by the party is collected and forwarded, it should not constitute this crime.

2.3.3 Crime of Illegal Use of Information Network

For the purposes of promoting speculation and promoting diversion, those who use the public accounts of Internet users to push and disseminate information about cyber violence and crimes, and comply with the provisions of Article 287-1 of the Criminal Law, shall be convicted and punished as the crime of illegally using information networks; If, according to the provisions of the Criminal Law and judicial interpretations, other crimes are constituted, they shall be convicted and punished in accordance with the provisions on heavier penalties.

2.3.4 The Crime of Refusing to Perform the Obligations of Information Network Security Management

Network violence spreads through the network, so to punish network violence, the role of network service provider is indispensable. According to the Guiding Opinions, network service providers fail to perform their information network security management obligations in accordance with the law for information about cyber violence and crimes. After being ordered by the regulatory authorities to take corrective measures, they refuse to correct the information, resulting in the massive dissemination of illegal information or other serious circumstances. Those who comply with the provisions of Article 286 of the Criminal Law shall be convicted and punished for the crime of refusing to perform the information network security management obligations; If, according to the provisions of the Criminal Law and judicial interpretations, other crimes are constituted, they shall be convicted and punished in accordance with the provisions on heavier penalties. This provision, the network service provider put forward higher requirements, how to distinguish sharp criticism from malicious slander, not only a legal problem, but also a cognitive problem. The implementation effect still needs time and cases to be tested.

2.3.5 Cyber Violence Turned into Real Violence: Intentional Injury, Intentional Destruction of Property, Provocation and Trouble, etc

At the same time, we should realize that in real life, the network violence may change from online to offline, and direct personal attacks on the victims. The offline behavior is not only besieged and intercepted, abused and destroyed property, but also may have serious acts of violence such as intentional injury. Offline violence, according to the behavior and damage to legal interests, identify different charges. For online organizations and those implemented offline, they can be punished according to the theory of accomplices and instigators, and online behavior can be punished according to the charges constituted by offline violent behavior.

2.3.6 Non-Criminal Issues

According to the "Guiding Opinions", the implementation of cyber insults, libel and other cyber violence, but not constitute a crime, in line with the public security administration penalties Law and other provisions, administrative penalties shall be imposed in accordance with the law. In addition, through the information network to report, expose other people's crimes or illegal and disciplinary acts, as long as it is not intentionally fabricated facts or knowingly fabricated facts and deliberately spread, should not be identified as libel crimes. Commenting on or criticizing the words and deeds of others, even if the views are biased or the remarks are excessive, as long as they are not wantonly abused or maliciously slandered, they should not be regarded as insulting crimes.

2.4 Legislative Arrangements for Regulating Cyber Violence

2.4.1 It Is Necessary to Establish New Crime of Cyber Violence and the Relevant System must Be Continuously Improved

Nowadays, the network violence problem still faces some difficulties, such as the application of traditional charges is far-fetched, the traditional procedural setting makes it difficult for the victims to defend their rights. There are limited crimes related to cyber violence, and the legal boundary is not clear in judicial application, which leads to a crime that includes too broad a scope of legal interests and is easy to become a "pocket crime". It makes the criminal law norm vague, lacks the boundary, loses the certainty, makes the judiciary become arbitrary, and runs counter to the value requirement of the principle of legality. Network violence has its uniqueness, often aimed at strangers, usually manifested in the use of typing, voice and other ways to abuse and slander strangers, the implementation of simple, with the conformity, non-real name, and most of the temporary intention, reckless. The victims have practical difficulties in finding and confirming the infringer and collecting evidence, and the cost of protecting their rights is extremely high. In the judicial practice, one of the main reasons that the crime of network violence is punished less is the difficulty of obtaining evidence. The network abusers rely on the protection of cyberspace to be wanton and rampant.

According to the implementation mode and social harm of network violence, the article of network violence crime can be expressed as follows: "Whoever, in cyberspace, uses words, words, pictures, videos or other forms of verbal abuse, intimidation, slander or other acts against individuals or groups to disrupt order in cyberspace, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights." If serious consequences are caused, he shall be sentenced to not less than three years of fixed-term imprisonment. If a unit commits the crime mentioned in the preceding paragraph, the unit shall be fined, and the persons directly in charge and other persons directly responsible for the crime shall be punished in accordance with the provisions of the first paragraph. "From the elements of crime, the actor of network violence crime has subjective intention; In objective aspect, there are various ways of behavior. The object of infringement involves legal interests of individuals, society, countries and cyberspace order. Two points are noteworthy. First, the target of network violence is not limited to individuals, units, nationalities and countries. For example, the Measures for the Administration of Security Protection of Computer Information Networks and Internet Networks and Measures for the Administration of Internet Information Services clearly stipulate the following: No unit or individual shall, through the Internet, commit acts of violence such as inciting subversion of state power, inciting separatism, inciting ethnic hatred, fabricating or distorting facts, spreading rumors, insulting others, or damaging the credibility of state organs. Thus, the object of network violence is plural. Second, the unit crime cannot be ignored in the network violence crime, the unit is also one of the main implementers of network violence. Starting from April 10, 2023, public security organs nationwide launched a 100-day special campaign to crack down on online rumors. They investigated and handled more than 2,300 cases. Nearly 8,000 Internet platform companies were remediated. They shut down more than 21,000 illegal accounts according to law. Cleared over 705,000 pieces of network rumor information.

2.4.2 Promote the Inclusion of Cyber Violence Crimes in the Scope of Public Prosecution

In the network violence, the victim often suffers from abuse, intimidation and threats that cause great mental injury, serious self-mutilation, suicide, personal rights are greatly violated. In addition, network violence also destroys the stable network order and good social atmosphere. If the case of cyber violence is dealt with only after private prosecution, it is not enough to deter the perpetrator, and it is inconsistent with the character that the perpetrator often damages the public interest. In the above-mentioned Hangzhou woman was rumored derailed courier case, Hangzhou Yuhang District Procuratorate will be the case as a public prosecution case to the court. After hearing the trial, the court held that the criminal acts of the two defendants had not only affected the victim Gu, but that the randomness of their choice of targets had caused unspecified public panic, reduced the sense of social security and order, and libelous information had been widely circulated on the Internet, triggering a large number of obscene and vulgar comments. The public prosecution department has brought a public prosecution against the two defendants for libel, which is the embodiment of exercising its functions and powers according to law.

The Guiding Opinion also contains a tendency: Public prosecution procedure should be applied more widely in cyber violence cases. According to the "guiding opinions," in accordance with the provisions of paragraph 2 of article 246 of the criminal law, those who commit crimes of insult or libel and seriously endanger social order and state interests shall be prosecuted in accordance with law. However, the Guiding Opinions only supplement and perfect the law from the perspective of interpretation, but they cannot solve the problem of network violence by adding new charges. Such a provision is ambiguous and tends to lead to excessive judicial discretion, making it difficult to distinguish clearly which cases are "other serious threats to the social order" and thus apply different procedures. Therefore, when the new "cyber violence crime" is established, it is necessary to set up the prosecution of cyber violence crime as a public prosecution procedure. That is, once a certain behavior is recognized as a crime of network violence, it is directly involved by the public prosecution. This can solve the problem of fuzzy rules applicable to public prosecution procedure.

2.4.3 The Enactment of the Law against Cyber Violence Is Also Necessary

Nowadays, the distribution of legal norms regulating cyber violence is scattered, involving civil law, administrative law, criminal law, etc., and the lack of the division of powers and responsibilities in detail brings difficulties to the relevant authorities in dealing with such cases and the rights of victims. Therefore, it is necessary for China to formulate special laws against cyber violence. The Anti-Network Violence Law should clarify the legislative purpose, establish a specific legislative system, and specify the specific contents of the whole chain closed-loop governance process. In addition, the civil, administrative and criminal liability of perpetrators of cyber violence should be clearly defined, and specific articulation provisions should be set up, so that cases that harm substantive legal interests should be dealt with by the criminal law through established articulation channels.

3. Conclusion

The purpose of this study is to add the crime of "cyber violence" by reviewing the cases of cyber violence in previous years, referring to academic literature, the Guiding Opinions, using criminal law rulings as the main means and formulate the Anti Cyber Violence Law to regulate cyber violence, clarifying the legislative content of the "cyber violence crime", and effectively connecting the judiciary and other state organs to ensure that the criminal responsibility is implemented, the punishment is implemented, and the cyberspace is purified.

In the course of our research, we found that cyber violent crimes have too much discretion in the judiciary, and convictions are vague and difficult, in large part because it is difficult to collect evidence for cyber violent crimes, cyber abusers rely on the protection of cyber virtual space to run rampant, and some cases are not convicted or the culpability is relatively light, so that cyber abusers can taste the sweet fruit and continue to exploit the loopholes of the law. With the accumulation of cases and the experience of expert academic research in recent years, the crime of "cyber violence" has been added to allow cyber perpetrators to stop the precipice in a timely manner.

The findings of this study clearly show that the addition of the crime of "cyber violence" is particularly important, and its overall significance is to improve judicial legislation, reasonably restrain netizens' online behavior, purify cyberspace, and reduce the tragedy caused by cyber violence in society.

The limitations of this study lie in the fact that due to the limited sample, the case retrieval is not comprehensive, the theoretical and practical conditions required for the addition of "cyber violence" are insufficient, and the determination of "cyber violence" involves a wide range of parties, which requires multi-party cooperation, and the follow-up implementation and continuous improvement of the new crimes is a large and time-consuming work, which is a long-term work.

The setting of traditional litigation procedures makes it difficult to safeguard the rights of victims of online violence, and the addition of the crime of "cyber violence" is not accomplished overnight, and it is difficult to boost it on our own.

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