

Study on the Judicial Practice Dilemma of "Space Obscene"

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Abstract: With the rapid development of the big data network era, cybercrime has gradually emerged in people's vision. As a new form of crime, it has a high degree of concealment and demonstration. Minors, due to their immature mental development and lack of sufficient judgment, are prone to becoming victims of "sexual harassment". At present, legislation and judicial interpretation are not yet perfect, and there are many disputes in the academic community regarding the application of the law. Resolving these disputes has become an urgent task. The research methods used in this article mainly include literature analysis and case analysis. Firstly, this article provides an in-depth interpretation of the keyword "sexual harassment in the distance" from different perspectives, then it combines this phrase with actual cases in the "China Judgment Document Network" to analyze the judicial practice difficulties and explore the path. Finally, it looks forward to the future of China's rule of law construction.

Keywords: Cybercrime, Indecent assault, Minors, Legal Dilemma, Legal Countermeasures

1. Introduction

In today's big data network era, with the rapid development of technology and the popularity of the Internet, we have entered an era of information explosion. The collection, storage, processing, and analysis of data have become unprecedentedly easy, bringing revolutionary changes to various industries. However, this digital wave has also brought some negative impacts, especially in the field of cybersecurity.

Cybercrime, as a new form of crime, has continuously evolved with the development of network technology, and the means of cybercrime have become more diverse and covert. In October 2022, the report on juvenile prosecution work released by the Supreme People's Procuratorate pointed out that in the past five years, the number of crimes against minors has continued to rise. Among them, cases of "sexual assault" against minors are high and frequent, and minors are very easy to become "online prey" for criminals.

At present, there is significant controversy in the academic community regarding the regulation of "sexual assault in the air" behavior. These controversies mainly include whether "sexual assault in the air" can become a specific provision of the Criminal Law, whether the court can convict it in a "one size fits all" manner, whether minors can promise to block the establishment of the crime of child molestation, and whether the online environment can be recognized as a "public place". With the continuous development of the information age, the proportion of underage victims in cybercrime continues to increase. Due to its concealment, interactivity, and other characteristics, cybercrime

makes the criminal results more influential and demonstrative. Minors are in a critical period of physical and mental development, so solving the above problems has become an urgent task.

2. Interpretation of "Space Obscene"

2.1. Theoretical Definition and Practical Connotation of "Space Obscene"

Space based sexual harassment, as a behavior involving sexual harassment, usually refers to sexual harassment or inappropriate sexual behavior towards others through online media without direct physical contact. This behavior may include sending sexually suggestive messages, pictures, or videos, or making sexually provocative actions in public. The Modern Chinese Dictionary defines "obscenity" as "performing vulgar actions" [1].

In practice, "sexual harassment in isolation" first appeared in the "Reply to Proposal No. 1658 of the Second Session of the 13th National Committee of the Chinese People's Political Consultative Conference" issued by the Supreme People's Procuratorate. The procuratorial organs believe that the Criminal Law does not list specific ways of molesting children and needs to be judged and determined based on actual circumstances. In practice, as long as the perpetrator subjectively acts with the purpose of satisfying sexual stimulation and objectively commits acts of molestation against children, which infringe upon the personal dignity and physical and mental health of specific children, it should be deemed as constituting the crime of molestation against children [2].

The two common expressions in the international community regarding "sexual abuse of children" are "child sexual abuse" and "child sexual exploitation". The UK Department of Education believes that "child sexual exploitation" refers to: "When individuals or groups use the advantage of power imbalance to force, manipulate, or deceive children into engaging in sexual activities in exchange for what the victim needs or wants, or to obtain economic benefits, to elevate the status of the offender or assist the offender, sexual abuse of children occurs. Even if sexual activity is voluntary, the victim may still be sexually exploited. Sexual abuse of children does not always involve physical contact, but can also be achieved through the use of technology such as the internet." In order to effectively combat sexual offenders, Article 15 of the UK Sexual Offences Act 2003 separated the situation of sexual attraction and formed a new charge [3]. However, due to the fact that this charge can only regulate the behavior of online seduction of children and engaging in offline meetings, the Serious Crimes Law of 2015 revised this legal document and added a 15A clause in Article 67 of the Sexual Offences Law of 2003 [4]. It states that "engaging in sexual communication with children" only requires the intention of seducing children and carrying out certain behaviors, and offline meetings causing harm is not a necessary constituent element of this charge [5].

2.2. Analysis of the Causes of "Space Obscene"

2.2.1. Criminals: Taking Advantage of the Concealment and Interactivity of the Internet

In recent years, the incidence of cybercrime has been increasing at an astonishing rate, thanks to the concealment and strong interactivity of the internet. The concealment of the internet provides a difficult environment for criminals to track, allowing them to easily conceal their true identity and geographical location, thus engaging in illegal activities on a global scale without being easily detected. The interactivity of the internet greatly promotes the dissemination and exchange of information, which provides convenience for cybercrime. Criminals can easily find potential victims.

2.2.2. Victims: Children Lack Self-protection Awareness and Safety Prevention Awareness

The particularity of age is regarded by the law as an object that needs special protection. Minors usually maintain a pure mentality and are curious about the world. This innocent and innocent trait often leads them to lack the necessary vigilance when facing potential dangers. Due to limitations in life experience and knowledge, minors often lack mature judgment, and when faced with complex and ever-changing social environments, they are unable to accurately determine whether certain behaviors or situations have potential risks. Their ability to handle problems is also relatively limited. When encountering inappropriate behavior or threats, they may not know how to take the right measures to protect themselves, or they may not know how to seek help after an incident occurs.

2.2.3. Social Aspect: Insufficient Supervision by Parents and Platforms

Children are increasingly exposed to the internet and various electronic devices, and parents may be negligent in their children's education and supervision, leading to children being easily exposed to harmful information, which may include violence, pornography, fraud, and other content, causing potential harm to children's psychological and emotional health, and children are highly likely to become victims of space molestation. As the scene of crime implementation, the Internet platform is difficult to monitor every piece of content in real time due to the limitations of technology and human resources. Although many platforms have reporting mechanisms and filtering systems, these measures often only serve as remedial measures after the fact, making it difficult to fundamentally prevent the spread of harmful information.

3. Judicial Practice Dilemma and Path Exploration of "Space Obscene"

3.1. Analysis of the Judicial Practice Dilemma of "Space Obscene"

The case is as follows: (2018) Chuan 13 Xing Zhong 232, Fan Junxian's child molestation case. From July to December 2017, the defendant Fan Junxian, in order to satisfy his sexual desire, knowingly sent obscene pictures and videos through QQ chat to the victim Chen 1 (female, 11 years old at the time) who was under 14 years old, threatening Chen 1 to imitate the actions of the pictures and videos he posted, and repeatedly demanded photos and videos of his exposed private parts from Chen 1 through inducements, threats, and other means [6].

In this case, the defendant's defense is that the victim voluntarily added their QQ chat and provided nude photos. However, based on the evidence that has been found, after Fan Junxian added QQ friends with Chen, it was Fan Junxian who first requested Chen's nude photos. Chen also stated that the first time he sent nude photos to Fan Junxian was voluntary, and Chen's willingness was also based on being deceived by Fan. Fan Junxian's appeal reasons and defense opinions have no substantive impact on his conviction and sentencing. Secondly, when convicting and sentencing, the court took into account the lenient circumstances of the offender's truthful confession, but did not discuss whether the "online environment" meets the aggravating circumstances of "public places" in Article 237 (2) of the Criminal Law for the crime of child molestation.

3.2. Exploration of the Judicial Practice Path for "Space Obscene"

3.2.1. A minor Promises not to Prevent the Conviction of Child Molestation

The Roman law has the motto that "a promised act is not illegal", and there are also provisions in criminal law that exempt the perpetrator from criminal illegality if the victim makes a valid promise. Currently, there is a view in society that in certain circumstances, commitments made by minors can serve as a legal defense to mitigate or exempt infringers from potential criminal liability.

In the context of sexual harassment, minors may also have normal social desires and physiological expectations [7]. Due to their immature mental development, minors often lack sufficient judgment and self-control when facing various external temptations and challenges. Teenagers in this stage are in a period of rapid physical and mental growth, and their thinking patterns, values, and understanding of the world around them are constantly developing and changing. Therefore, criminal law scholars also believe that "for young girls under the age of fourteen and women with mental illness, because their bodies have not yet developed enough to engage in sexual activity or cannot express their will correctly, the law presumes that they do not have the ability to correctly express their awareness of engaging in sexual behavior, and naturally cannot speak of sexual autonomy".

3.2.2. The Network Environment Should be Considered as a "Public Place"

As an aggravating circumstance of the crime of indecency, "public places" have important reference value in conviction and sentencing. On the one hand, the implementation of indecent behavior in public places may lead to more people witnessing this inappropriate behavior due to the large flow of people, thereby increasing the victim's sense of shame and psychological trauma; On the other hand, indecent behavior in public places may have a negative demonstration effect, leading other potential criminals to mistakenly believe that such behavior can be tolerated in society, thereby promoting the spread of similar criminal behavior.

According to Article 18 of the Opinions on Handling Criminal Cases of Sexual Infringement against Minors, if rape or indecent assault is committed against minors in public places such as campuses, swimming pools, children's playgrounds, and student dormitories, as long as there are multiple other people present, regardless of whether the person present actually saw it or not, it can be recognized as "publicly" rape or indecent assault in public places in accordance with the provisions of Article 236 (3) and Article 237 of the Criminal Law [8]. The above Opinion indicates that the recognition of public places is based on whether there is a possibility of being seen by others. Therefore, the author believes that the online environment has extremely high visibility, and every click, comment, and sharing we make may be seen by other netizens, even infinitely enlarged and disseminated. We must recognize that the online environment is no longer a private space, but a public place.

3.2.3. Courts Cannot Make a "One-size-fits-all" Conviction

The Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Rape and Indecency of Minors uniformly defines eligible acts of sexual harassment in the air as crimes of child molestation and forced molestation. However, in actual cases, there are multiple subjective purposes for the infringer. Most infringers aim to satisfy their sexual desires or pursue sexual stimulation, while some infringers aim to produce, copy, publish, sell, and disseminate obscene materials for the purpose of obtaining benefits. Although the legal interests of the two infringements are the same, there is a significant difference in potential impact. Relatively speaking, the latter not only causes physical and mental harm to the victim, but also is more likely to cause adverse social impact.

In response to this situation, the author believes that the crime type of "cross space obscenity" should be categorized, and the specific provisions of the crime of obscenity should be applied to the infringer for the purpose of satisfying sexual desire or pursuing stimulation. If the purpose is to satisfy property interests, the crime of producing, selling, and disseminating obscene materials should be applied. The personal harm caused to the victim during the behavior process should be regarded as an aggravating circumstance. By refining the charges, the nature and severity of criminal behavior

can be more accurately defined, so that legal sanctions can match the actual harm of criminal behavior, avoid unfair judgments caused by vague charges, and reduce unnecessary judicial disputes.

3.2.4. "Space Obscene" Should become the Specific Provisions of the Criminal Law

The consequences of online indecency are serious, but there is a lack of appropriate charge regulation. The judicial authorities can only incriminate it through the expansion of the concept of indecency and even analogical interpretation [9]. The academic community still has a dispute about whether "space indecency" can become a specific provision of the Criminal Law. The supporting scholars believe that "space indecency" is defined as a specific charge, which conforms to the development of the Internet era. Having a certain level of foresight is necessary to meet the requirements of social change and development [10]. Scholars who oppose it believe that in the current Article 44 of the Public Security Administration Punishment Law, there are specific provisions on indecent behavior. If further provisions are made in the Criminal Law, it would undermine the modesty of the Criminal Law. The Criminal Law should pay more attention to interpretation rather than relying solely on legislation. If the law is updated too quickly, it will only weaken its authority, and judicial organs should not use the name of interpretation to create the truth of the law [11].

The author believes that based on the seriousness of the consequences of the crime of "air harassment", it is undeniable that it has become a specific provision of the Criminal Law. In recent years, the frequent occurrence of "air harassment" has attracted widespread attention from all sectors of society. Relying solely on the "Public Security Management Punishment Law" and the existing "Criminal Law Judicial Interpretation" is far from enough. The provision of "sexual assault through the air" as a specific provision of the Criminal Law not only reflects the understanding of emerging forms of crime, but also demonstrates the forward-looking thinking of legislators on possible future issues. This legal update and improvement is a positive adaptation to social changes and development requirements, ensuring that the law can keep up with the times and provide citizens with more comprehensive and effective protection.

4. Conclusion

With the rapid development of China's tertiary industry, cybercrime has shown an exponential growth trend. While enjoying the convenience provided by the convenient online world, people are constantly facing various potential risks. As a new form of obscene crime, "cross space obscenity" has caused significant harm to minors. In this context, the difficulties in judicial relief should be solved as soon as possible.

The author believes that the formulation of laws should be forward-looking, and "sexual assault in the air" will also appear as a specific charge in the Criminal Law. In the conviction and sentencing process, more specific provisions will be introduced, and the public will better understand and abide by the law. More people will recognize the respect and protection of human rights by the state, thereby enhancing people's confidence in the construction of the rule of law in the country.

As for the current situation of judicial practice, due to the lack of necessary judicial practice precedents, Chinese courts should have stricter requirements for the subjective initiative of judges when handling such cases. This article attempts to explore the controversy and path exploration caused by this phenomenon, but due to the author's lack of academic level, coupled with time and resource constraints, this article is inevitably prone to omissions and errors.

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