

The Research on Criminal Legislation of Cyber Violence

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Abstract: With the rapid development of the Internet, cyber violence occurs frequently, and the social harm caused by it cannot be ignored. In current practice, cyber violence cases are usually regulated by civil law and administrative law, but its regulatory effect on cyber violence that causes serious consequences is not obvious. In order to effectively control cyber violence, it should be regulated by criminal legislation, which is a more powerful means. This paper uses the research method of normative analysis to explain the dilemma faced by China's current criminal legislation to regulate cyber violence. China's existing criminal law provisions cannot be connected with cyber violence. Meanwhile, China's existing criminal legislation has many deficiencies in the regulation of cyber violence. This paper also analyzes the reasons why cyber violence needs to improve the regulation of criminal legislation. That's because cyber violence has serious harm and other legal regulation means lack of regulation. Meanwhile, China's Current Criminal Regulation of Cyber Violence Started Late and is Difficult to Apply. In order to create a more secure, civilized and orderly cyberspace, this paper puts forward some suggestions for improving the path to solve this problem including the addition of judicial interpretation and the addition of cyber violence crime.

Keywords: cyber violence, cybercrime, criminal legislation

1. Introduction

On March 2, 2023, the 51st 'China Internet Development Statistics Report' released by the China Internet Information Center showed that as of December 2022, the number of Internet users in China reached 1.067 billion, an increase of 3549 million over December 2021. With the rapid development of Internet technology, the network plays a more and more important role in today's society, at the same time, it also leads to the intensification of cyber violence.

Cyber violence does not have a clear definition, different scholars hold different views. Some scholars believe that 'network violence' is not a noun in the law, but a new term agreed by netizens. It refers to the violence of netizens in the network world, which is the extension of violence in real society [1]. Some scholars believe that cyber violence is a tort committed through cyberspace, which violates citizens' privacy, reputation and other rights [2]. Some scholars believe that cyber violent crime refers to a new type of crime committed on the platform of the network. Its motives include endangering national security, public safety or attacking the reputation of citizens' personality, causing losses to the national or public interests, and causing the parties to suffer greatly psychologically and spiritually [3]. The spread speed of the network is getting faster and faster, and

the spread range is getting wider and wider. This makes once the perpetrator implement network violence, it will spread rapidly and widely, and even the perpetrator himself is difficult to control the spread and influence of its behavior. Eventually, the network violence will bring a strong impact penetrate the virtual network space, which leads to physical and psychological damage on victims in the real world, causing serious consequences. Judging from the current actual situation, the regulation effect of morality and other laws on cyber violence is not obvious. The ‘Criminal Law Amendment (IX)’ of the People’s Republic of China (hereinafter referred to ‘Criminal Law Amendment’) and the introduction of relevant criminal judicial interpretations show that China’s criminal legislation has paid attention to cyber violence crimes. However, the relevant provisions still have the problem of “difficult to apply,” which requires further improvement of criminal legislation. Based on the analysis and reflection of the current situation and shortcomings of the criminal legislation of network violence in China, this paper puts forward some suggestions to improve criminal legislation of network violence, hoping promote the effective control of network violence in China.

2. The Dilemma of Regulation of Criminal Law of Network Violence

Judging from the current judicial practice in China, cyber violence mainly includes three modes of behavior, including human flesh search, cyber language violence and cyber defamation. Human flesh search is perpetrators using human flesh search wanton excavation and exposure of the victim’s information, so that the victim’s privacy exposure, by the netizen’s slander and abuse. Cyber language violence refers to the use of the Internet as a medium to create or spread offensive and discriminatory expression about others [4]. Internet rumors refer to fabricating false facts and using the Internet to spread them for the purpose of reducing the victim’s social evaluation or negatively affecting the victim’s reputation. This article discusses human flesh search separately. Meanwhile, it also discusses cyber language violence and cyber defamation together as linguistic cyber violence.

2.1. The Difficult Connection Between Relevant Criminal Legislation and Cyber Violence

Human flesh search is essentially a violation of citizens’ personal information, so the protection of citizens’ personal information by criminal legislation can be regarded as regulation of human flesh search. However, the crime of infringing citizens’ personal information cannot be connected with human flesh search. Human flesh search includes not only the publication of illegally obtained information about others, causing mass attacks, but also the collection of information that has been published by others, inciting the masses to repost, comment, malicious use and other acts on a large scale [5]. At present, the legislative regulation of the crime of infringing citizens’ personal information in China’s criminal law and its judicial interpretation does not fully include the connotation of human flesh search, and it is not appropriate to define human flesh search behavior as the crime of infringing citizens’ personal information.

From the perspective of the main purpose of establishing the crime, the crime is set up to combat the use of citizens’ personal information for profit, which is different from the purpose of regulating human flesh search to protect citizens’ privacy. From the perspective of the objective aspect of the crime, the crime requires the perpetrator to carry out illegal collection and profit-making behavior. However, the perpetrator of human flesh search may collect information through legal and normal channels, and then summarize and expose it. In addition, from the perspective of the subject of crime, the perpetrator of human flesh search is often a group, not a single individual. The question of who should be held responsible for criminal law is also a problem that cannot be solved by the crime of infringing personal information.

In China’s current criminal legislation, the crimes involving linguistic cyber violence include insult, libel and affray. Among them, the crime of insult and libel cannot be connected with linguistic

cyber violence. According to Article 246 of China's "Criminal Law," the crime of insult and defamation is a serious act of insulting others or fabricating facts to defame others by violence or other methods. The crime emphasizes that insult and slander must be 'blatant', and linguistic cyber violence may occur in a relatively private space, such as abuse and slander through the private letter function of Weibo [6]. In addition, linguistic cyber violence does not need to use insulting words or fabricate false facts in many cases. It only uses some critical or bad-oriented language expressions and uses the power of the public to ferment. It can cause spiritual suffering to the victims and seriously infringe the reputation of the victims.

The 'Explanation on Several Issues Concerning the Application of Law in Criminal Cases such as Defamation through Network' stipulates that the use of networks to abuse, intimidate others, or fabricate false information to spread on the Internet, if the circumstances are serious, the crime of provocation shall be convicted and punished [7]. However, the author believes that the crime of provocation cannot be connected with the linguistic cyber violence. The legal interest violated by the crime of provocation stipulated in China's criminal law is social public order, but in the linguistic cyber violence, it usually violates the legal interests of specific individuals, which is not consistent with the crime of provocation troubles stipulated in China's criminal law. In addition, the interpretation stipulates that Internet rumors will constitute a crime if they are forwarded 500 times or read more than 5000 times. However, with the continuous expansion of the number of Chinese netizens, if the standards in the interpretation are still followed, the standard of conviction may be too low, resulting in a waste of judicial resources. The crime of provocation covers a wide range, which is called 'pocket crime'. The purpose of establishing this crime is to limit the behavior of undermining social public order, and there are differences between real space and cyberspace that cannot be ignored. It is obviously inappropriate to simply include linguistic cyber violence in the scope of the crime of provocation [8].

2.2. A Lack of Criminal Legislation on the Network Platform

The perpetrators of cyber violence usually use the network platform to disseminate relevant information. The network platform undoubtedly provides important technical support for cyber violence. With the continuous modification and improvement of relevant criminal legislation, the network platform has been unable to stand by and stay out of the network-related illegal and criminal activities. The criminal responsibility subject status of the network platform has been established in the 'Criminal Law Amendment (IX)'. The amendment adds the crime of refusing to fulfill the obligation of information network security management, and stipulates that units or individuals as network service providers do not fulfill the information network security management obligations stipulated by laws and administrative regulations. After the supervision department orders to take corrective measures and refuse to correct, there are situations such as 'causing a large number of illegal information to spread', 'causing user information to leak, causing serious consequences', to bear criminal responsibility. This is a major breakthrough in the regulation mode of cybercrime in China's criminal law [9]. The amendment adds the crime of refusing to fulfill the obligation of information network security management, but in practice, there are few judicial precedents on such crimes, which shows that the new provisions are difficult in judicial application and still need to be improved.

The network platform has the obligation to monitor and manage the speech and related behaviors published by users on its platform. Therefore, criminal legislation should clarify the responsibility of the network platform in the criminal law regulation of cyber violence., it can promote the network platform to strengthen supervision and management, and give full play to the role of the network platform in the prevention of network violence. Meanwhile, it can increase the punishment of cyber violent crimes and play a deterrent role for social members.

3. The Reasons for Perfecting the Criminal Legislation of Cyber Violence

3.1. Cyber Violence Has Serious Harm

The harm of cyber violence is not limited to cyberspace. Its powerful impact will penetrate the network platform, violate the privacy and reputation of the victims in real life, cause serious mental damage to the victims, and also affect the physical health of the victims to a certain extent. It may even lead to the suicide of the victims.

The virtuality of cyberspace can be said to be a ‘ cloak ’ for the perpetrator. The herd mentality and lucky mind of netizens make it easier to commit crimes than in real life. Besides, the criminal cost of cyber violence is low. As long as people who use the Internet, they may become the perpetrators of cyber violence. The frequent occurrence of such low-cost cyber violence will lead to the reduction of the moral bottom line of netizens and make them despise the law. This is not conducive to the governance of cyberspace, nor to the promotion of the strategy of ruling by law. In addition, China’s Internet users generally show a trend of younger age. If such network violence is allowed to develop, minors participating in the network society will be poisoned by bad culture, which is not conducive to the establishment of their sense of value, and will eventually have a bad social impact [10]. The serious harm of cyber violence is obvious, and it infringes the legal interests protected by criminal law, which is completely punishable in the sense of criminal law.

3.2. The Late Starting and Difficult Applying of China’s Current Criminal Regulation of Cyber Violence

In 2000, the Standing Committee of the National People’s Congress issued the ‘ Decision on Safeguarding Internet Security ’ , which clarified the crimes related to cybercrime, in which the second, fourth and fifth clause all involved the criminal regulation of language cyber violence. However, this regulation does not fully pay attention to the substantive characteristics of cyber violence, and only regards the network as a new platform for the implementation of traditional crimes. After the release of the “ Criminal Law Amendment (7) ” in 2009, China’s criminal law started actually to shift the focus of cybercrime from the computer system to the network [11]. From now on, the cyber violent crime began to have the possibility of being regulated. However, until 2015, when the ‘ Criminal Law Amendment (IX) ’ was issued, it did not pay attention to the unique characteristics of cyber violence and did not distinguish cyber violence from real violence. It can be seen that the regulation of cyber violence in China’s criminal law is still in an important initial stage, there is a large area of blank, and there is insufficient response to the increasingly fierce cyber violence in practice.

In the current judicial practice, few cases are criminally prosecuted for cyber violence. ‘ Practice is the only criterion for testing truth ’ , and the situation in judicial practice shows that China’s existing criminal regulating cyber violence has the problem of ‘ difficulty in application ’ . Meanwhile, it is still unable to achieve the purpose of effectively prosecuting and punishing cyber violence, which still needs further legislative improvement.

3.3. The Lack of Effect on Other Legal Regulation Means

At present, most of the incidents of cyber violence in China are regulated by civil law. Victims often file civil lawsuits based on the Civil Code and require the perpetrator to bear civil tort liability. In addition, according to China’s “ Public Security Administration Punishment Law, ” the public security organs can impose administrative penalties on those who disseminate privacy, abuse, slander, and intimidate others. However, from the current judicial practice, in the case of cyber violence, it is mainly to file a civil tort lawsuit to solve, and the trial results are mostly to stop the infringement,

apology and appropriate mental compensation [12]. This is only suitable for the regulation of cyber violence with minor consequences, and the regulatory effect on cyber violence with serious consequences is very limited. At present, network violence is mainly handled through civil tort litigation, but the trial results are mostly to stop the infringement, apologize, and appropriate mental compensation.

4. The Perfect Path of Criminal Legislation on Cyber Violence

Under the background of the “ double-layer society ” constructed by the real society and the network society, the extension of the traditional criminal law system to the cyberspace has become an unavoidable topic in judicial and theoretical circles. In order to effectively rectify cybercrime, the most direct way is to issue relevant judicial interpretations and add new charges for the parts that cannot be explained [13].

4.1. The Priority of Judicial Interpretation

When the judicial interpretation of the existing criminal law provisions can solve the regulation of cyber violence, the means of adding judicial interpretation should be given priority. As mentioned above, human flesh search is essentially a violation of citizens ‘ personal information, which can add an expansive judicial interpretation to the crime of infringing citizens ‘ personal information in Article 251 of the Criminal Law. Through the judicial interpretation, it is clear that excessive mining of citizens ‘ personal information and malicious exposure through the network platform, resulting in serious consequences, can be identified as the crime of infringing citizens ‘ personal information and severely punished. Making the human flesh search can be connected with the crime of infringing citizens ‘ personal information, and China can regulate the human flesh search through the crime of infringing citizens ‘ personal information.

In addition, the crime of insult and defamation interest protected by the crime of insult and libel is the personal dignity and reputation of others. Linguistic cyber violence can be defined as an insulting speech crime, and its behavior will infringe on the reputation of others. Therefore, linguistic cyber violence can be identified as an insult in criminal law [14]. Through the judicial interpretation of the crime of insult and defamation in Article 246 of the ‘ Criminal Law ’, the use of bad-oriented language on the network platform to attack others and cause mental damage to others is legislated, and mental damage is affirmed as a harmful consequence of the crime of insult and defamation. In the crime of insult and defamation, it is not scientific to use a simple numerical standard to determine ‘ serious circumstances ’, which cannot actually reflect the social harm of cyber violence. When adding judicial interpretation, the legislature should also take into account the criteria for judging the seriousness of the case. On the basis of the digital standard, the legislature should adhere to the unity of subjective and objective to carry out comprehensive measurement.

4.2. Add Cyber Violence Charges

Firstly, in the Internet age, new content has been added, and the extension has changed traditional legal interests. The second is the traditional legal interests that have encountered new infringement in the Internet age [15]. Cyber violence has its unique characteristics. In the case that judicial interpretation cannot effectively regulate it, corresponding charges can be established.

For linguistic cyber violence that cannot be effectively regulated through judicial interpretation, the legislature can add a crime of cyber violence after the crime of insult and defamation in the fourth chapter of ‘ Criminal Law ’, which infringes on citizens ‘ personal rights and democratic rights. By setting up special charges, the legislature can draw a ‘ red line ’ that cannot be touched for freedom of speech on the Internet, and express the determination of the state to govern cyberspace and strive

to create an orderly and healthy cyberspace. The establishment of this special charge can also enable the judicial organs to “ have laws to follow ” in the trial of related cases, so as to make more fair judgments and reduce the situation of “ different judgments in the same case.

5. Conclusion

With the development of the Internet, cyber violence is becoming more and more intense, and the social harm it brings is becoming more and more significant. The cyber violence that causes serious consequences cannot be ignored. It is an urgent need to regulate cyber violence with criminal law. However, China’s criminal law regulation of cyber violence started late, and the characteristics of cyberspace make it difficult to regulate cyber violence. There is still a long way to go to effectively and strongly regulate cyber violence through criminal law. The legislature should improve the criminal legislation, so that victims of cyber violence crimes can use the criminal law as a powerful legal weapon to safeguard their rights. Meanwhile, the judicial authorities are able to ‘ have the law to follow ’ and reduce the phenomenon of different judgments in the same case due to unclear legal provisions. It also can make the perpetrators of serious cyber violence subject to severe sanctions of the criminal law, creating an orderly cyberspace. However, if citizens want to reduce the occurrence of cyber violence from the root, they need the joint efforts of law and society to improve the quality and legal awareness of netizens, enhance the judgment ability of netizens, strengthen the publicity and education of good order in cyberspace, and start from netizens themselves to build a civilized cyberspace.

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