

Research on Criminal Regulation of Internet Violence Behavior

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Abstract

In the contemporary society, “violence” is no longer a simple physical injury, with the continuous development of Internet technology, the phenomenon of network violence is becoming more and more intense. For example, netizens encouraged “cat or cat” to commit suicide by drinking pesticide live broadcast, and malicious network blasting caused teachers’ heart attack to tragedy, such as “rice circle human flesh search”, abusive war and so on. These events are different from the physical harm behavior in the real world, but they also fully expose the serious social harm of network violence. Therefore, so as to valid combat online violence, it is necessary to improve the legal system and fully leverage the role of criminal law and legal norms. In order to promote the maturity of the criminal law system of network violence, this paper will discuss the legitimacy of the criminal system of network violence, so as to promote the maturity of the legal system of network violence.

Keywords: network violence behavior, human flesh search, language violence

1. The Legitimacy of the Criminal Legal System of Cyber Violence

With the rapid development of research on electronic information and communication technology, each region in China is gradually beginning to form a fully open-ended digital information society environment that propagates and shares information resources freely and efficiently. Now, when Internet culture is deeply immersed in people’s daily life and social organization structure, we enjoy the convenience of the freedom of information network. However, while the Internet plays a positive role, it also has some negative effects such as network violence. Network violence seriously affects the stable order of cyberspace and the real society, and has become a hot topic

in today’s society.

Criminal law, as one of the most legally effective laws in China and the last line of defense of the legal system, has the characteristic of humility which is many scholars say the criminal law is last and complementary, only when other legal norms is difficult to achieve regulation, to use the criminal law to regulate the behavior. When a behavior is subject to criminal regulations, it must be because it has serious social harm and strong legal interests infringement. Therefore, it is not that network violence should be regulated by criminal law. The general network violence can be regulated by the civil law or the administrative law. However, for some serious violations of social order, serious social harm and legal interests infringement of network

violence. Such as the victim withstand perpetrators speech attacks and slander, choose to end his life to terminate the network violence cases, tort compensation system in the civil law or administrative law of administrative punishment to regulate perpetrators behavior regulation is obvious unreasonable, need to regulate criminal law, penal code basically reduces the occurrence of malicious incidents of internet violence, providing a better development environment for the vigorous development of the internet work, let the Chinese people more comfortable more comfortable to enjoy the convenience of the network society.

2. The Deficiency of the Criminal Punishment System of Network Violence

2.1 The Legal Concept of Cyber Violence Is Unclear

Due to the changing public awareness and tolerance of online violence in China, different people have different understandings of the nature and characteristics of cyber violence under different backgrounds and contexts. Part of the scholars think: "network violence refers to the actor for unconfirmed or confirmed network events, published on the Internet offensive, inflammatory and insulting false remarks, alternatively, in the real life of online privacy, the normal behavior and speech of all parties and their relatives and friends are violated, leading to the infringement of personal rights." And the other part of the scholars think: "network violence should be group, bullying and inflammatory new way of violence, is in the virtual network space, by leading or spontaneously organizing a series of verbal bullying, it damages the privacy and reputation of certain individuals, followed by violent psychological torture." There has not yet been an absolutely uniform legal definition of cyber violence.¹² Therefore, it is difficult to comprehensively and accurately classify the types of online violence, and it is also difficult to impose varying degrees of legal regulation on different types of online violence crimes.

2.2 It Is Difficult to Convicted in Criminal Law

The concept of "human flesh search" is controversial in academia and can be divided into broad and narrow senses. Broadly speaking, "human flesh search" refers to the behavior of the initiator in collecting information in the general environment and others obtain and collect information from different channels after

receiving the problem, and feed it back to the initiator. Narrowly defined "human flesh search" refers to the behavior of different users using the Internet to collect and publicly disclose a person's information. Cui Xinxin: "Legal Discussion" includes "Legal Responsibility for Human Meat Search". This article studies the narrow concept of "Human Meat Search". As a way of network violence, human flesh search, if allowed to develop and uncontrolled, it will cause serious infringement on citizens' personal rights of privacy, reputation and other rights, and even force the parties to the "cliff", resulting in serious consequences such as suicide and death of the victims. For example, in 2013, the owner of a clothing store in Guangdong province suspected that the customer was stealing clothes, so he posted the surveillance video of the store on Weibo. When the girl under the surveillance was searched for serious human flesh, and her home address, school and life photos were exposed on the Internet. In the end, the girl committed suicide due to unbearable public pressure. After being searched by human flesh, the burden of suicide death is not a few, enough to see the human flesh search social harm. During the drafting process of the 2009 Criminal Law Amendment (7), there was a strong call for comprehensive punishment of "human flesh search" behavior but it was shelved because the legislature believed that the "human flesh search" behavior was complex and involved many aspects.³ Due to improper information collection methods, some human flesh searches will be regulated by the criminal law's "crime of illegally obtaining citizen information". But some human flesh search is difficult to be regulated by the criminal law. From flesh search, for example, the victims may be in Weibo, TikTok social platform inadvertently released their life, home address and other personal information, and Weibo, TikTok platform dynamic in a as can be not specific people to view a state, the information as long as is a little together can fully investigate the real privacy, want to "human flesh search" people do not need to through illegal collection, trading and illegal channels. The cost of such human flesh search means is very low, but it also has serious social harm, so it is unreasonable to regulate it with the help of criminal law.

2.3 Network Language Violence Is Difficult to Apply to Insult and Defamation

Network violence is different from physical

violence in real life, and most of it is a kind of verbal violence. But the tongue, boneless, can hurt; no words, every word kills heart. Although the network language violence can not cause physical injury to the victim, but its psychological trauma to the victim is sometimes more serious and bad. Due to the virtualization and anonymity of the online world, the moral and legal responsibilities of most netizens are weaker compared with the real world. They insult and abuse others on the Internet, seriously damaging others' personal rights such as reputation and privacy, and even "forcing the victims to the end". For example, the case of Liu Xuezhou, a boy who was killed online, the case of a woman taking express delivery, the suicide in Nanjing, Jiangsu province to kill the dog, etc. These cases of online language violence occurred frequently, bringing great harm to the parties and the society. Online language violence can be regulated according to the liability for damages in civil law, but it is obviously unreasonable to stipulate the liability for damages in cases where the victim's behavior is extremely bad, the victim's death, and other serious consequences are caused. Some scientists claim that according to Article 246 of the Criminal Law, the crime of defamation should be unified. However, Article 246 of the Criminal Law states that "those who insult others through violence or other means, fabricate facts to slander others, and if the circumstances are serious, those who are sentenced to imprisonment, detention, public surveillance, or deprivation of political rights for not more than three years". Defamation refers to the fact that the content of defamation is purely defamatory. If the dissemination is not fabricated out of thin air, but an objective fact, even if it damages the personality or reputation of others, it does not constitute this crime. Article 246 of the Criminal Law of the People's Republic of China revised in 2020 the court's judicial interpretation power and the judge's discretion to apply the original law. Obviously can not meet the needs of judicial practice.⁴ And with the deepening of network language violence, it is completely possible to transform into a special intentional homicide behavior. If the crime of "insult and defamation" is still regulated at this time, it will encourage network language violence, which is tantamount to aiding torture.

2.4 Most Cybercrime Cases Are Private Prosecution Cases, and Evidence Collection Is Difficult

Network crimes are all crimes carried out with the help of the Internet, so they are born with the characteristics of concealment, which brings many difficulties to the evidence collection link in judicial practice. And infringement of the victim's privacy, insult, defamation, and other reputation traditions are "notification and handling" cases stipulated in the Criminal Procedure Law. In private prosecution cases, the perpetrator brings a lawsuit to the people's court only the criminal facts clear, sufficient evidence at the same time, the court will accept the case. However, in real life, most of the victims of cyber crimes do not have professional electronic information network technology, and it is difficult to retain relevant evidence after suffering from cyber violence. In addition, with the rapidly changing cyberspace, many evidence of cyber crimes is fleeting, which adds a difficulty to retain the evidence for the victims. Due to various reasons in the appeal, many victims find it difficult to use the law to protect their legitimate rights and interests, and ultimately can only stabilize. The impotence of the victims also contributes to the arrogance of cyber violence.

3. Suggestions on Improving the Criminal Regulations of Cyber Violence

3.1 The Prosecution of Cyber Violent Crimes by Means of Public Prosecution

As mentioned above, the cyber crime has the characteristics of concealment, which adds many difficulties to the evidence collection link. As a public prosecution organ in China, the People's Procuratorate's ability to collect evidence and file charges is far more than the vast majority of victims. Based on this research group suggests that the prosecution of cyber violence crimes should be realized in the way of public prosecution. On the other hand, let the People's Procuratorate represent the country in cracking down on cyber violent crimes and file a public prosecution with the People's Court more able to say state punish network violence crime and purify the determination of cyberspace, at the same time to the whole society cyberspace is not "lawless" information, to potential criminal deterrent and warning. On the other hand, through the intervention of the People's Procuratorate, the effectiveness of punishment far exceeds the legal sanctions imposed on violent criminal networks and the law enforcement based on values to protect the legitimate rights and interests of victims. The

establishment of Chinese socialism can also reveal more criminal penalties, with the aim of protecting the people. Therefore, in order to standardize online violent crimes, it is necessary to improve the prosecution mode, achieve online violent crime prosecution through public prosecution, and conservancy the legitimate rights and interests of victims.

3.2 Introduce Corresponding Judicial Interpretations to Build the Connection Between the Current Criminal Law and Cyber Violent Crimes

Network violent crime is a new type of network crime emerging with the continuous development of the Internet. The moderation and maintenance of the criminal law itself make it difficult to adapt to the social development. Nevertheless the active Criminal Law of the People's Republic of China was promulgated in March 1997, therefore, there is inevitably a certain lag and displeasure in using the current criminal law to regulate new cyber violent crimes. Take libel, for example, some theorists through the nearly 10 years network sensation of 100 typical case research found that network defamation in the behavior subject, behavior object, release carrier, transmission route and case start program are different from the traditional defamation of new characteristics, triggered the judicial practice as and inaction, reputation and freedom of speech conflict.⁵ It is urgent to introduce the judicial interpretation to improve it. In the case of loopholes in legal norms, the introduction of judicial interpretation can play a role in filling legal loopholes. Therefore, the introduction of the corresponding judicial interpretation to construct the connection between the criminal law and the new network violent crimes can solve the above problems to a certain extent.

3.3 Strengthen the Supervision of Cyberspace and Promote the Development of the Online Real-Name System

One of the main reasons why cyber violence is so rampant is that cyberspace is virtual. Most netizens walk around the Internet world in an anonymous way, believing that anonymity and virtualization will cause great resistance to judicial evidence collection and accountability, so that they can easily avoid legal sanctions. And the network real-name system can effectively affect the negative impact of virtual sex. On the other hand, the online real name system combines virtual network behavior with

real people, this will help determine the future responsible persons and play a positive role in protecting the legitimate rights and interests of victims. On the other hand, the network real-name system can urge netizens to speak carefully, curb the occurrence of network violence to some extent, and facilitate the construction of a harmonious and comfortable network space. At the same time, the relevant departments should strengthen the supervision of cyberspace, and timely remind and warn the online names who publish insulting and defamatory words in cyberspace. The actors who still ignore the repeated reminders and warnings can take measures such as permanent prohibition and ban.

4. Conclusion

In this article, the concept of online violence refers to the analysis, definition and characteristics of online violence. As Dickens said, "This is the best and worst time." In the age of the rapid development of the Internet, we enjoy the profits of the Internet. But also pain in the tragedy under its double-sided blade. The research group believes that the existing criminal law lacks effective regulation, and the victims of online violence are still difficult to protect their legitimate rights and interests. Therefore, the establishment of network violence crime can help to make up for the current lack of regulation. However, the law has a lag, and the Internet is developing with each passing day, the criminal law on the regulation of network violence will inevitably appear new deficiencies, there is a long way to go in the rectification of network violence chaos. Group thinks, should be in the current, under the premise of protecting the people's basic rights, associated with their own actual situation, and draw lessons from foreign management measures and relevant laws, let citizens in the face of network violence can have stronger self-protection ability, in order to build a clean, civilized, beautiful network world.

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