

The Criminal Law Regulation of Network Language Violence

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Abstract: A detailed analysis of Article 13 of the criminal law stipulates that only acts with considerable social harm can be punished. At present, the phenomenon of network language violence occurs frequently, abuses freedom of speech, causes harm to others, and has become a new form of crime. From three aspects: 1. the concept and nature of network language violence; 2. The necessity of criminal law regulation of network language violence; 3. Specific ideas of criminal law regulation of network language violence. Referring to the "two Supreme People's congresses" issued the "interpretation on Several Issues concerning the application of law in handling criminal cases such as defamation through information network" and "criminal law amendment 11", this paper analyzes the needs of social governance, social harmfulness and personal danger; It is concluded that "cyber language violence" belongs to "insulting" speech crime, and mental damage should be evaluated as the harmful consequences of "cyber language violence", and the use of criminal law to regulate it has also become a necessary path. Systematically examine the criminal legislation and investigate the normative content of the crime of insult, so as to bring the "network language violence" into the crime of insult.

Keywords: Cyber Language Violence, The Necessity of Sentencing, Specific Assumptions

1. Introduction

On the early morning of January 24, 2022, Liu xuezhou, a boy looking for a family in Hebei, wrote on his microblog: "the sun shines on the sea, and I return to the sea. From here, I end my life and take away the most beautiful scenery in the world", and described his short life of being betrayed by his biological parents, killed his adoptive parents, bullying on campus and being subjected to online language violence because of bride price money. Subsequently, Sanya police confirmed that he had committed suicide. With the continuous development of network technology, while people enjoy all kinds of convenience brought by the network, some people often act recklessly with this tool, resulting in malicious slander and a series of tragic events. [1] Therefore, it has become a necessary measure to clean up the bad environment of the network, regulate the online behavior of netizens and make relevant legal provisions. However, the premise is that we must realize what is the definition of cyber language violence? What is the necessity of it? What is the assumption of its specific punishment?

2. The Concept and Nature of Cyber Language Violence

In recent years, the word "cyber violence" has been constantly appearing in people's vision with the occurrence of various tragic events, such as "Nanjing mother's suicide to pay for the dog's life", "Zhao Wang's fans tearing each other up", "Liu xuezhou's successful family search but suicide", etc. relevant empirical studies show that nearly one-third of Chinese people claim to have experienced cyber violence, Nearly one in five Chinese claim to have committed cyber violence. Among them, "language violence" has caused great harm. At present, there is no clear definition of "network language violence" in criminal law. It is also very different from "violent crime" in the sense of criminology. Therefore, in order to know what is "cyber language violence", we must define the concept of "cyber violence". Now the academic circles have not formed a unified definition, whether in law, politics, communication or sociology.

2.1. The Concept of Cyber Language Violence

In today's world, various countries have not formed a unified

authoritative definition of cyber violence due to different cultural backgrounds. In China, the academic circles often define cyber violence as cyber language violence - individuals or groups consciously spread offensive remarks through the Internet to repeatedly and continuously commit violations against a specific individual or group. The forms of infringement mainly include threat, harassment, insult and social isolation. [2] However, it is worth noting that the keyword of this definition lies in the word "speech", which is mainly a subjective expression and can not cover the behavioral characteristics of "human flesh search". At present, there are mainly two theories: the theory of "moral judgment" and the theory of "freedom of speech", but the description of these two theories is not comprehensive enough, and the generalization of network violence is very one-sided. At present, only the view that "cyber violence is an extension of violence orientation in real society, which is different from violence in the real world" has been widely supported, because it affirms that the greatest common divisor of cognition about cyber violence has the attribute of violence. It also reveals the biggest difference between this kind of violence and the violence that can directly violate citizens' personal rights in the real world - network violence can only indirectly violate these rights, but can directly violate citizens' personality rights and information rights.

The manifestations of cyber violence are mainly divided into human flesh search, language violence and Internet rumors. After the "two Supreme People's courts" issued the "interpretation on several issues of applicable law in handling criminal cases such as defamation through information network", there has been a lot of discussion in academic and practical circles. With the increasing voice of "human flesh search" into the criminal law, the criminal law also gradually pays attention to the protection of the right to privacy. For example, the criminal law amendment (IX) has revised the legislation of the crime of infringing on citizens' personal information, including the typed treatment of behavior and expanding the scope of protection, so as to provide higher criminal law protection for citizens' personal information protection. However, it is regrettable that although online rumors and human flesh search have been included in the regulation scope of criminal law, and online language has the characteristics of "violence" because of the large-scale number of languages, the aggressiveness of language content and the reality of injury consequences, "online language violence" has not been investigated in several legislative amendments.

There are many views on the definition of "online language violence". For example, Li Caiwei believes that "online language violence refers to the dissemination of harmful and insulting remarks, pictures or videos on the Internet"; Zhang Haibo believes that "language cyber violence occurs between people in online communication. It infringes on others' reputation or deprives others of their right to equal communication in the form of abusive and hegemonic language, resulting in certain violations of the parties' spirit and real life". However, he reached a consensus that "cyber violence belongs to the act of infringing on the right of reputation". [3] General violence can be summarized into two types: network violence; Vent network

language violence. These two types are only different in form. In essence, they are "cathartic malicious attacks, pure vicious attacks that begin with emotional catharsis and network public opinion, also known as network bullying". The language violence in the network is different from the language violence in reality. Due to the wide coverage of the Internet, no geographical restrictions and other factors, the adverse impact caused by the language violence in the network is expanding exponentially, making the victims of the network violence suffer huge mental attacks in a very short time. In short, cyber language violence is a type of cyber violence. It refers to the behavior that unspecified natural persons deprive specific natural persons of their right to speak by means of insult, abuse and hegemony, deliberately infringe on the legitimate rights and interests of others and cause physical or mental damage to others by taking advantage of the virtuality and secrecy of cyberspace.

2.2. The Nature of Cyber Language Violence

Generally speaking, in the network language violence, it is mostly the damage to the basic personal rights of others, such as the right to reputation and privacy. In essence, it is the abuse of the right to freedom of speech. These behaviors are reflected in two levels: Discourse and action, which are also sequential in time and related in content. [4] At the discourse level, it is mainly reflected in irrational abuse and attack. Because the online language is often published anonymously, the moral hazard and legal risk of the publisher are greatly reduced. Originally, it was a simple condemnation of something. Later, it developed into that the focus of people's attention is no longer the moral anomie of the parties, but fiercely attacked the appearance, language and life background of the parties, so as to achieve the purpose of entertaining the public. Once entering this irrational behavior mode, not only the parties and the event itself will be abused and attacked, but also the reputation and privacy rights of many innocent people will be damaged. For example, Faye Wong's parents in the "death blog case" are such victims. At the operational level, as long as the protagonist of the Internet incident is determined by netizens, he will become a "wanted person on the Internet", and many of his original personal privacy information will also be extracted by many powerful netizens through "human flesh search". For example, in the "3377" incident, in addition to the work unit, home address, license plate number The real personal data such as mobile phone number were released, and the data of the man's father, sister and brother-in-law were also picked out one by one, which seriously troubled the daily life of the parties and their relatives. Even more extreme, it not only infringes on the right to reputation and privacy, but also extends the acts of violence to real life, scolding the parties or work units face to face, scribbling slogans, distributing leaflets and making personal threats.

3. The Necessity of Criminal Law Regulation of Network Language Violence

The establishment of the positive view of criminal law and

the functional transformation of rule of law governance indicate that China's criminal law should play a more active role in the construction of network security system. "Cyber language violence" is a new form of violence different from "human flesh search" and "cyber slander", so it is necessary and feasible to criminalize it. [5]

3.1. Meet the Needs of Social Governance

The explosive expansion of network communication leads to the unlimited expansion of the social harm caused by traditional crimes in the network environment. Even a slight harmful behavior will increase sharply after the continuous development of the network. China is in a period of social transformation, so it is bound to produce a lot of social governance problems, the most extreme of which is the rise of crime rate and the rise of citizens' security anxiety. In the face of this situation, China has taken a series of measures in recent amendments to the criminal law, such as continuously increasing the scope of punishment in social governance, increasing the intensity of relevant punishment, and generalizing the provisions of individual crimes, so as to respond to the needs of the society. The prevention and control of social security has become the primary task of the construction of the rule of law in the field of social governance at the current stage. In this process, it will be of significant positive significance for criminal law to participate more in the construction of social security prevention and control system.

3.2. Social Harmfulness Is Still the Key Factor for Illegal Acts to Be Regulated by Criminal Law

According to Article 13 of the criminal law, only behaviors with considerable social harmfulness can be punished. It can be seen from the above that online language has the characteristics of "violence", which also shows that online language violence is socially harmful, mainly reflected in: first, language violence causes serious damage to others' reputation rights, including human dignity, which is an important content of the protection of personal personality rights and an important premise for people to be treated as human beings, Human dignity cannot be trampled upon by others at will; Second, cyber language violence often reduces the social evaluation of victims. No matter in this process, whether the perpetrator fabricated or spread false facts, or may just express his own comments on some unconfirmed events, once spread through the network, the parties will be put under public criticism, It will objectively have a huge and bad impact on the social evaluation of the evaluation object; Third, cyber language violence will cause the loss of other people's personal and property rights. [6] Victims of cyber language violence often have great mental pressure due to continuous and uninterrupted external insults and abuse, affect their daily life, unable to carry out normal social life, get fired from work, miss work, and even commit suicide. This is the actual extension of the harm of network language violence, so it is necessary to put it into punishment.

3.3. The Perpetrator of "Cyber Language Violence" Has Serious Personal Danger

According to the principle of "unity of subjectivity and objectivity" in China's criminal law, if the perpetrator is only socially harmful but not personally dangerous, he cannot be convicted. "Cyber language violence" is often expressed as a group speech attack, "the group will expose a person's original desire - even if he is still a person dominated by his instinctive consciousness, he still behaves involuntarily, brutally and fanatically." Personal dangerousness in Criminal Law refers to the possibility of the perpetrator committing a crime again. The personal dangerousness of the perpetrator of network language violence is mainly reflected in the following aspects: first, the number of times of "network language violence" is implemented, such as the "language offensive" of insulting and abusing others on the network platform for many times. Generally speaking, Such people are prone to verbal violence against others again; Second, not all "cyber language violence" is based on moral criticism. There are also "booing" cyber language violence and "profit-making" cyber language violence. These two kinds of actors are also prone to secondary crime. Therefore, the regulation of criminal law on the perpetrators of "network language violence" with high personal danger is consistent with the spirit of the times of the structural transformation of criminal law function in China.

4. Specific Ideas of Criminal Law Regulation of Network Language Violence

It is necessary to regulate cyber language violence in criminal law, but from the perspective of criminalization, the criminalization of "cyber language violence" is full of questions. From the theory of criminal law, the act of execution is the core of the constituent elements, and each act of execution infringes on the legal interests of social protection. A certain act can be defined as a crime only when it is actually dangerous to legal interests. Therefore, the stereotyping of "cyber language violence" in criminal law should start from determining the types of infringement of legal interests, and then determine the types of behavior. [7]

4.1. "Cyber Language Violence" Belongs to "Insulting" Speech Crime

Cyber language violence is a kind of speech crime. According to the standardization of speech content, the difference between freedom of speech and language violence can be measured. According to the nature of the speech content of "network language violence", firstly, the behavior of "network language violence" is defined as the behavior of "infringing on the reputation right of others", and then compared with the similar criminal constitution in the criminal law. Because: first, the legal interest directly infringed by the behavior of "network language violence" is "infringing on the reputation right of others". "Network language violence" has

great social harm. It can infringe on citizens' reputation rights, personal rights, property rights and so on. Among these damaged rights and interests, only the right of reputation is the direct legal interest it infringes. Moreover, "cyber language violence" does not necessarily infringe on citizens' personal rights and property rights. [8] Although the determination of its "social harmfulness" is finally determined according to the personal injury and property loss, these two are often only the expansion of the damage to the right of reputation. Second, the expression form of "cyber language violence" is "comments on insulting, abusing and other personal attacks against the relevant personnel of an event on a large scale and intensively in cyberspace". Speech and speech content are two sides of speech behavior. Network speech crime is often easy to ignore the content of "network speech" as a component of network speech crime. [9] From the point of view of publication behavior, the law should safeguard the right of the media or the public to publish facts or comment on specific people on an event. Cyber verbal violence is illegal because its speech contains a lot of insulting, abusive and other personal attacks on others. Therefore, only when the network language has the content of insulting and abusing others' personality, its behavior can have "language violence". Third, on the Internet, the damage to the reputation right of others caused by fabricating facts and spreading rumors is not consistent with "network language violence". From the behavioral connotation, the core of "cyber language violence" is the behavior of insulting, abusing and personal attack on specific people through speech, which is determined by the content of their speech, such as including aggressive words, pictures and even audio and video recordings such as discrimination, ridicule, threat and humiliation. Moreover, whether the relevant personnel make statements based on real or false facts is in line with the "network language violence" itself. Because "language violence" makes others suffer psychological and spiritual pain and harm through evaluative speech, even if it is based on real facts to spread comments on the Internet, it can also infringe on others' reputation rights. [10] Therefore, we should distinguish between "defamatory" speech act and "insulting" speech act.

In short, "cyber language violence" is an act of making illegal remarks in cyberspace and causing damage to others. It meets the constitutive requirements of cyber speech crime. Its illegality is because its speech content is insulting, not the untruthfulness of its freedom of speech. Therefore, the behavior of "network language violence" should be classified into "insulting" network speech crime. [11]

4.2. Mental Damage Should Be Evaluated as the Harmful Consequence of "Network Language Violence"

Another difficulty in criminalizing "cyber language violence" lies in the doubt about the reality of its harmful consequences. The reason for this suspicion is that compared with the actual violent crime, the attribute of "violence" of speech behavior is not so prominent. There are 35 explicit references to "violence" in China's criminal law, and there are 26 specific criminal provisions stipulating "violence" as a

means of crime, including both crimes targeting persons and crimes targeting property. Some scholars believe that the "violence" referred to in specific crimes refers to the infringing power that infringes or destroys people's body or specific property. [12] Violence against finance needs tangible force to achieve the factual effect of financial damage, but there is no doubt that personal rights, especially the "violence" against human dignity, must be tangible force. The identification of the "violence" characteristics of "network language violence" is mainly carried out from the following aspects: first, the "violence" attribute of network language is first reflected in the deprivation of others' right to speech and expression. This is mainly due to the abuse of individual freedom of speech. When an individual makes his speech, he often does not go through careful thinking and deliberation, which leads to his conclusion being extremely one-sided or even incorrect. The discourse generated in a specific context has dominance over both sides, but the power of dominance can be divided into large and small. The discourse power of the weak side is often severely crushed, which is why the comment discourse in cyberspace can be transformed into language violence. It is precisely because of the unbalanced distribution of rights between the perpetrator and the victim that cyber language violence often includes teasing, bullying, ridicule and so on. Second, the violent attribute of network language violence has an accidental rather than inevitable connection with the motivation and form of speech. The motive of speech is moral criticism or malicious slander; Language form is a statement of fact. It is not the decisive factor of "violence" in language, but one of the measurement elements of the nature of "network language violence". As long as they are in society, everyone has a certain evaluation, so anyone may become the object of attack. The perpetrators of cyber language violence think they are a moral party, so they fiercely attack the phenomenon that they regard themselves as immoral and unfair. However, with the gradual development of the situation, they will go beyond the event itself and then make personal attacks on the image, speech, life style and other aspects of the parties. Even the original legitimate expression of opinions will turn into "verbal violence" against the rights and interests of others. Third, cyber language violence can be expressed in many ways. Among these ways, the most common is the public opinion offensive caused by netizens' comments on a network event. People often say that the scale of online language violence refers to the large number of speeches, rather than the number of netizens involved. Even if the same online account constantly insults and abuses another online account, it should also be regarded as online language violence. This is also the difference from the group characteristics of "cyber violence", that is, cyber language violence is not only a group polarization behavior in cyberspace, but also an individual tort. Fourth, judging whether it constitutes cyber language violence has nothing to do with the authenticity of the incident. Public opinion is often formed not long after the event is revealed, and the truth of the event has not been confirmed at this time. Therefore, whether the relevant events are confirmed or not does not affect the identification of "online language violence". Even if it is a truly reported event, it

is also "language violence" as long as the relevant personnel carry out acts that do not conform to the public's moral concepts and damage the reputation of others. [13] Through this point, we can also distinguish between "language violence" and "network rumors". In the hermeneutics of criminal law, there is little difference in the understanding of rumors and false information, while "network language violence" can be aimed at both false and untrue information and formal reported information.

"Cyber language violence" is a kind of "insulting" cyber speech crime. The consequences of insulting behavior mainly include the reduction of the victim's social evaluation and mental damage. Reputation right refers to the right to enjoy reputation, which is a kind of personality right; Human dignity is a right with ethical character and social attribute. [14] It is the unity of the citizen subject as a social person, respecting himself and being respected by others in society. It is the most basic social status that the social citizen subject should enjoy as a person and be respected by others and society. Especially in the network society, people communicate with others through the network and often lack intuitive understanding of others. They all know a person through the relevant information on the network, which makes personal social evaluation extremely important. To judge the derogation of a citizen's personal dignity, we should not only consider the individual's subjective feelings, but also consider whether the evaluation of the citizen is reduced in the social scope from an objective point of view. [15] At the same time, as an "insulting" speech crime, "cyber language violence" is not necessary to reduce the social evaluation of others, but the content of speech itself can prove the existence of insult. The need for the insulted person to be protected by the criminal law is not because of the damage to his reputation, but because of the mental pain caused by the insult. When a person's reputation is infringed and others' social evaluation of him or her is reduced or may be reduced, the mental state of the victim will be greatly affected, showing feelings of boredom, anxiety, shame and even insomnia, memory decline, neuroticism and other symptoms, which may seriously cause long-term mental disorders or diseases. The damage to the reputation of others will eventually turn into spiritual damage to others. Therefore, mental injury should be recognized as one of the main harmful consequences of "network language violence".

5. Conclusion

The era of network informatization and digitization in China has come and entered the period of rapid development. Regulating network derived crimes as soon as possible is not only a major topic in the new era, but also a key problem in the new era. The harm of cyber language violence is extremely serious. However, the current relevant legislation is still very scarce. Therefore, in order to meet the needs of the development of our society and safeguard the collective and personal interests of the society, we should define "cyber language violence" as an "insulting" speech crime, that is, the

basic crime choice for the punishment of "cyber language violence" - insulting crime. On this basis, we should also systematically examine the criminal legislation and the normative content of the crime of insult, so as to bring the "network language violence" into the crime of insult.

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