

Analysis on the Criminal Management Dilemma of Network Verbal Violence under the Perspective of Execution Connection

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Abstract: The criminal management of network verbal violence is facing the difficult problem of low conversion rate of criminal cases. The reinterpretation of the concept of network verbal violence under the system of criminal regulation is the premise of clarifying the problem and putting forward countermeasures. It should be noted that in addition to targeting individuals, the object of conduct also includes specific groups of non-specific individuals. Taking the connection of execution as the starting point, the criminal management dilemma of network verbal violence is mainly reflected in the physical dilemma of one-sided identification of “serious circumstances” and “social order”, and the procedural dilemma of low efficiency of criminal evidence transformation. In terms of entity, the penalty criteria should be improved, a single number of identification should be abandoned, a multi-dimensional identification method of “field + means + content + frequency” should be adopted, and it should be clear that the order of cyberspace belongs to social order. In terms of procedures, it emphasizes the responsibility of each subject to assist in investigation and evidence collection, and gives the opportunity for victims of cyber violence cases to initiate the investigation procedure.

Keywords: online verbal violence; execution cohesion; circumstances of aggravation; evidence conversion

1. Raise of the Question

The number of Internet users in China reached 1.067 billion by December 2022, with an Internet penetration rate of 75.6 percent, according to *The Statistical Report on China's Internet Development*.^[1] Relying on the Internet platform, public living space has expanded from the real space to the virtual network. At the same time, the virtual network open platform has the soil for network anomie behavior. Based on the attributes of the Internet across the real region and the time limit, network verbal violence gradually presents a growing trend of fast diffusion, wide influence and harmful consequences.

A series of tragic cases, such as “Liu Xuezhou was killed by Internet violence” and “girl with powder hair was raped by Internet violence”, pushed online verbal violence to the public, and entered the public's view and triggered heated discussions. Indeed, few people are punished by the law, and the increasingly rampant and frequent situation of Internet violence has an unavoidable gap from its legal lag. It is urgent to extend the scope of legal regulation of Internet violence to cyberspace, and the discussion about Internet violence is rampant again. In response to such Internet chaos, the Supreme People's Court in the 2022 work report of the two sessions clearly put forward the work requirements of “those who infringe on personal information, incite Internet violence, insult and slander, will be investigated for criminal responsibility in accordance with the law”, focusing on the criminal control of Internet violence.

The governance of online verbal violence cannot be separated from the combination of administrative means and criminal law sanction. At present, the network verbal violence is often managed by administrative means. In the criminal governance of network ecology, although China's current criminal legal norms can crack down on network verbal violence to some extent, there are still some problems of substituting punishment for punishment and low application rate of criminal punishment in practice. In short, the reason for the limited and unsatisfactory criminal governance is that the execution connection path is not smooth. The identity of administrative violation and criminal crime determines the possibility of mutual connection between administrative law enforcement and criminal justice.^[2] Under what circumstances, network violence can realize administrative punishment turn to criminal sanctions, which is related to the connection of execution. The effective path to optimize the criminal governance of online verbal violence depends on the connection of execution, and even it can be called the key to solving the

problem of criminal governance of online verbal violence. Based on this, this paper will explore the criminal governance of Internet speech violence from the perspective of the connection of execution and punishment, focus on analyzing the dilemma and causes of the connection of the two laws in the process of governance, and put forward ideas for improvement, so as to benefit the judicial practice.

2. Reinterpretation of the Concept of Network Verbal Violence

The connotation and extension of online verbal violence are related to the connection boundary between administration and criminal. The elaboration of relevant concepts contributes to the boundary of what is online verbal violence, what is online verbal violence, and when to change from administrative law enforcement to criminal regulation. The concept of network violence and network language violence has been explained in the academic circle and many legislation in China. This paper focuses on its reinterpretation from the perspective of system of criminal law, so as to serve as the basis of dilemma analysis and path construction.

2.1 The Existing Interpretation of the Concept of Network Verbal Violence

The so-called "network violence" is a kind of network anomie relying on the virtual network platform to carry out violence.^[3] Through the typed analysis of network violence, it can be concluded that online verbal violence in recent years is mainly divided into three forms: online verbal violence, offline malignant group sexual behavior and Internet mass hunting. This paper mainly focuses on the form of Internet mass hunting.

Although the problem of online speech violence has been widely concerned, there is no authoritative recognition of its concept in the academic circle, or simply replacing the concept of online speech violence by the way of phenomenon description. Based on the analysis of the existing research results, it is not difficult to find that the concept research of online verbal violence is involved in various disciplines, covering communication, sociology, law, political science and other disciplines. In different disciplines, the concept of network verbal violence is unclear, which can be summed up and can be divided into network anomie behavior and tort behavior.

The theory of network anomie behavior defines network violence as a series of network anomie behavior in which network technology risks and offline social risks overlap through the interactive actions of network actors, and which may damage the personality rights of reputation and privacy of the parties.^[4] In the tort theory, online verbal violence is defined as infringement, which claims that network violence is a mass infringement of the reputation right, privacy right and property right of the parties by means of network technology. Online verbal violence refers to the behavior of insulting, abusing and other personal attacks against a certain event in cyberspace, resulting in damage to the right of reputation and other harmful consequences.^[5] It can be seen that in terms of concept definition, the focus of elaboration is often limited to the subject and behavior pattern, and both default that there are clear and specific individual objects of online verbal violence, but ignore the complete evaluation of the object of violent behavior, leading to one-sided interpretation of online verbal violence. Therefore, in-depth research on online verbal violence requires a broader and comprehensive perspective.

2.2 Reinterpretation of the concept of online verbal violence under Criminal law system

In order to meet the development needs of the Internet era, the verbal anomie in cyberspace has gradually formed a legal system with the *Constitution* as the core and the *Network Security Law* as the center. In the relevant legal norms, the rules of online verbal violence mainly rely on the Law on *Public Security Administration and Punishment*, *Criminal Law* and other basic legal norms as well as legal normative documents in relevant fields. Among them, the Supreme People's Court and the Supreme People's Procuratorate issued the *Interpretation on Several Issues concerning the Application of Law in Handling Criminal Cases such as Defamation through Information Network* (hereinafter referred to as the "Defamation Interpretation"), which detailed the forms of defamation through network in the crime of defamation under the Criminal Law. And the explanation of "serious circumstances" and "serious harm to social order and national interests" is taken as one of the main legal bases for investigating the criminal responsibility of online verbal violence.

In the online verbal violence under the vision of criminal governance, based on the criminal law system, through the "criminal law" and "defamation interpretation" and using the Internet platform for verbal violence behavior related charges systematic comb, you can see related charges include: insult,

defamation, the hero martyrs reputation, honor and stir-up-trouble crime^[6]. Among them, the crimes of violating the reputation and honor of heroes and martyrs and the crimes of picking quarrels and provoking troubles are the crimes of violating social order in the chapter. Moreover, Article 2^[7] of Article 246 of the *Criminal Law* and Article 3 of the *Interpretation of Defamation* both reflects that the objects infringed by online verbal violence should also include social order. Therefore, in addition to private interests, that is, the right of personal reputation, the legal interests of network verbal violence should also include social order, specifically the order of cyberspace. The target of online verbal violence is obviously not limited to specific individuals, but also includes a certain group. For example, occupational groups such as doctors and teachers, vulnerable groups such as the disabled and gay groups. The above behavior causes cyber violence because it involves issues such as occupation, circle, gender, and region. Usually, a person or some people release speech attacks against specific groups, but they do not point to specific individuals. And such remarks will make individuals in specific groups feel violated, and even cause people of different occupations, circles, genders, and regions to tear apart and antagonize, resulting in contradictions and estrangement, causing chaos in cyberspace, and even the impact of some online verbal violence will extend to the real society, resulting in social disorder.

To sum up, the author believes that the concept of online verbal violence should be interpreted under criminal law, so as to make it more compatible with the protection of legal interests: Network verbal violence refers to the behavior that individuals or groups carry out group and irrational discourse attacks, moral trials, rumors and defamation against individuals or similar groups through online platforms, causing personal, property and mental damage or group conflicts, resulting in a significant decline in the evaluation of others within a certain range of social activities, resulting in social disorder. The above concept can not only clarify the scope of “online verbal violence”, but also correspond to the crime of infringing on citizens’ personal rights already stipulated in the *Criminal Law*, which is in line with the existing charges. In addition, only a clear concept can unify the understanding of online verbal violence and realize the convergence of administration and criminal.

Based on the above definition of the concept of online verbal violence, from the specific form, compared with traditional verbal violence, online verbal violence has the following characteristics: First, the participants of online verbal violence are larger. Due to the low threshold of access to the Internet and the wide range of information dissemination, everyone can become a publisher, or it is easier to access violent information and become a disseminator. Therefore, the subject of online verbal violence may be a group rather than an individual. Likewise, the number of victims will increase. Secondly, the virtuality of the Internet space reduces the external constraints to a certain extent, and also leads to the reduction of the awareness of self-restraint of netizens. Compared with offline verbal violence, if similar acts occur in the Internet field, the antagonism of the victim is weaker, and the infringement is difficult to stop in time. Both the publisher and the recipient of violent information are likely to be driven by the psychological effect of anonymous participation in the Internet space, which brings no responsibility to the public and spectators to peep, and promote the spread and proliferation of online verbal violence, and aggravate the harmful force of the behavior.

3. The practical dilemma of execution connection

The connected system of execution establishes a bridge between the main body of administrative law enforcement and the main body of criminal justice, and communicates the administrative responsibility system and the criminal responsibility system.^[8] According to the different severity of the circumstances, the current legislation of our country clearly divides the dual regulation of administrative punishment and criminal punishment for the acts of Internet verbal violence. Article 42 of the *Public Security Administration Punishment Law* imposes administrative penalties on acts of publicly insulting and defaming others, which is regarded as one of the main legal bases for regulating acts of verbal violence on the Internet. According to the provisions of Article 2 of the *Law on Public Security Administration Penalties* and Article 246 of the *Criminal Law*, acts that reach “serious circumstances” constitute the crime of insult and defamation, and criminal responsibility shall be investigated according to law. According to the provisions of Article 5 of the *Interpretation of Defamation*, those who use information network platforms to abuse others and disrupt social order shall be convicted and punished for the crime of “picking quarrels and provoking trouble”. It is obvious that how to determine and assign appropriate responsibility to the network verbal violence inevitably involves the issue of the convergence of execution. In order to make the connection mechanism of execution smooth and perfect effectively, the first thing is to grasp the difficulties in the entity and procedure of the connection, and to clarify the boundary between administrative responsibility and criminal responsibility.

3.1 *The physical dilemma of execution connection*

The boundary of the execution legislation is not clear, which cannot reflect the actual harm of verbal violence on the Internet. The key to the difficulty of transferring criminal responsibility lies not in the high threshold of criminalization, but in the unclear boundary of execution legislation. There are dual regulations of the *Criminal Law* and the *Law of Public Security Administration and Punishment* for insulting, libel and other verbal violence through the Internet. Under normal circumstances, the main consideration to distinguish between administrative illegal liability and criminal liability is the harm degree of the act, with “serious circumstances” as the boundary. But “serious circumstances” as a general standard is difficult to directly apply. Only Article 2 of the Interpretation of Defamation can be used as a reference for determining the “serious circumstances” of online verbal violence. However, this article only indirectly reflects the possible scope of influence of online verbal violence by means of data quantification, and takes “clicks, browsing and forwarding times” as a factor to measure whether the “circumstances are serious”, which is ambiguous and inoperable. A single quantitative standard cannot directly reflect the situation and degree of infringement of legal interests in a complete and substantial way, which is unreasonable.

In the fragmented information mode of the Internet platform, the frequency standard can not truly reflect the scope of behavioral harm radiation. According to the clustering theory of online insults and defamation, the clustering of online insults and defamation is the clustering of harmful consequences, but it is not a simple sum of numbers, but a superposition of consequences based on the interaction of legal interests and infringements. The substantial harm to the victim is not the formal virtual amount but the substantial legal interest infringement amount.^[9] First of all, in practice, there are a large number of cases in which users unconsciously accept and then choose to skip or close big data after automatic push, and these data will also be included in the count of “serious circumstances”. In addition, it is impossible to rule out the same subject to browse many times, once some groups repeatedly click on the same information, the amount can reach the form of “serious circumstances” after being included in the identification standard, but the actual impact is far less than this. Secondly, the amount of malicious brush reading and clicks of zombie accounts without real name registration cannot substantially increase the influence of online verbal violence, nor can it concretely reflect the real harm. Finally, the adoption of this standard ignores the situation of publishing insulting and defamatory remarks within a limited scope. Assuming that the perpetrator publishes inappropriate remarks within a specific circle of acquaintances, assuming that all 50 friends in the circle accept the information and comment on the victim, although the number of clicks and views is far less than 5,000 times, the impact on the victim can be considered as not meeting the standard of “serious circumstances”. As a crime against personal legal interests, the crime of insulting and defamation is obviously not in line with the original intention of legislation by taking the “number of clicks, browsing and forwarding” as a measurement factor.

In addition, the above standard also has the defect that causality is difficult to define. Based on the principle of self-responsibility, the abuser who posts insulting or defamatory remarks should be held accountable for his actions. In practice, it is also common for the proliferators' behavior to be more vicious than that of the publishers. In this case, the causal power of the proliferation behavior to harm the result is obviously greater than that of the publisher, and the causal relationship between the harmful result and the behavior of the speech publisher is doubtful. Moreover, because there are often a large number of communication subjects, and their identities are difficult to confirm, it is difficult to track down the responsible subjects, so the direct impact of malicious communication is fully attributed to the suspicion that the publisher violates the principle of self-responsibility for crime. Relying only on digital identification of serious circumstances may also lead to the scope of criminal law's crackdown is too large, the threshold of crime is too low, mechanical “click, browse, forwarding” as the “serious circumstances” of the crime as a measure of the principle of proportionality of crime and punishment in the criminal law.

The elements of entity judgment are disputed and the coordination between legal norms is insufficient. There are differences in the use of words between the *Criminal Law* and the relevant judicial interpretation and the *Law of Public Security Administration and Punishment* on the acts of insult and slander. The most typical manifestation is that the *Public Security Administration Punishment Law* positions the tone of lawfulness as disturbing “public order”, while the threshold for the conviction of the crime of picking quarrels and provoking trouble for insulting and defamation acts adopts the standard of “disrupting social order”. The existing legal norms have not answered the question of what is the specific connotation of public order and social order and whether the two can be equivalent. The distinction between the two and how to apply them in judicial practice will affect the object and scope of legal interest protection. Therefore, the inconsistent use of words leads to difficulties when it is

specifically applied to the characterization of verbal violence on the Internet.

In addition, because the insults and slander remarks published and spread by the Internet platform are first the network virtual space, which is different from the entity of the traditional real space, we need to discuss whether the order of the Internet platform can include the public order or the social order. According to the dual social theory, the field of traditional illegal and criminal acts develops from the three-dimensional real physical space to a double-layer like state in parallel between the real physical space and the virtual Internet world.^[10] It is acknowledged that the network behavior is derived from the reflection of reality, and the destruction of the order of the network space by the network verbal violence will be mapped to the real space. However, there is still no normative document to further specify and clarify the extent to which the implementation of cyber verbal violence constitutes the destruction of the cyberspace order, especially in the case that the published content is only visible in a certain range, and the question of whether the object of infringement is personal legal interests or cyberspace order cannot be well answered. Therefore, before the legal attributes of cyberspace order can be confirmed, how to realize the docking of administrative and criminal order protected by law in a specific field of the Internet is still an unsolved problem.

3.2 Procedural dilemma of execution connection

Procedure mechanism is the link of execution linkage mechanism. Only by facing up to the difficulties faced by procedure mechanism can we accurately grasp the pain point of poor linkage and realize the effective operation of the linkage mechanism. The low conversion rate of evidence is the key to the poor connection of execution.

Talking about the transformation of administrative lawlessness to criminal responsibility, it is inevitable to discuss the transformation of the evidence collected in the process of administrative law enforcement to criminal evidence in our country. On the issue of evidence transformation, the first thing is no different from the collection and fixation of evidence. Based on the anonymity of the subject of cyber violence crime and the timeliness of the behavior, large-scale cyber violence is often anonymous Internet users and Internet violence information such as insults and defamation that erupts and disappears in a short period of time. It is difficult to collect and fix evidence, and it is difficult to lock the perpetrators, which has become a major obstacle to the criminal governance of cyber violence. In reality, the perpetrators of network violence may delete and remove the relevant Internet violence statements and videos immediately after the incident, and cancel the relevant accounts, which makes the preservation of evidence more difficult again. Looking further, some online verbal violence carried out by the Internet corresponds to the crime of insult and defamation that is dealt with only by telling, and in principle, the burden of proof should be borne by the private prosecutor. Article 246, paragraph 3, of the *Criminal Law* stipulates that if an insult or defamation is committed through an Internet platform, the victim may bring a lawsuit to the people's court through private prosecution, and the public security organ may provide assistance for evidence that is difficult to collect. In this case, the public security organs can only choose to re-collect evidence if the evidence obtained in the process of administrative law enforcement cannot be directly used as criminal evidence. In this case, the public security organs can only choose to re-collect evidence if the evidence obtained in the process of administrative law enforcement cannot be directly used as criminal evidence. In view of the openness and timeliness of the Internet, it will lead to the problem that the evidence is not timely, the evidence is destroyed after the fact, the loss of the best opportunity for criminal evidence, and the incomplete evidence has become a practical obstacle to the transformation of evidence in the connection of the two laws. Therefore, in order to realize the transformation of administrative lawfulness into criminal sanction, the governance of network verbal violence is faced with a great objective convergence dilemma.

4. The concrete construction of the perfect path of execution connection

The improvement of relevant laws and regulations through top-level design is the practical need of controlling the Internet verbal violence at the source, and it is also the core of effectively realizing the smooth connection of execution. At the same time, we should improve the system of evidence collection and transformation, and build a sound procedural cohesion mechanism.

4.1 Clarify the criteria for criminalization

In the connection mechanism of execution, an act can drift from the administrative law field to the

criminal law field, which shows that this act must have the special attribute of double illegality.^[11] This special attribute often represents a higher reprehensibility of the behavior. Therefore, in actual operation, the primary problem is to formulate a new quantitative standard to evaluate the harm results of online verbal violence acts and provide a more clear identification standard for “serious circumstances”. In terms of specific requirements, first of all, the formulation of new standards must take into account the modesty of criminal law and the function of crime prevention. When judging whether an act is punished, the legal interest infringement of online verbal violence is taken as the primary criterion, and whether it can be regulated by other measures other than penalty is considered, that is, the necessity of using penalty. The identification of network verbal violence should focus on the actual harm results, and avoid replacing the actual harm consequences with formal harm. This requires that the determination of “serious circumstances” cannot be determined only by the number of reads and clicks. In addition to the traditional quantitative standards, multiple factors should be taken into account, and attention should be paid to the behaviors that cause danger enough to harm the personality rights and interests of others, so as to achieve a comprehensive evaluation of different effects of online verbal violence. In conclusion, it is necessary to comprehensively consider the substantive impact of the behavior and the subjective malignancy and danger of the perpetrator according to the field and spread of the verbal violence on the Internet, the number of participants, the specific means, the information content and the frequency of the behavior. The comprehensive identification method of “field + means + content + frequency” need to be adopted. To a certain extent, this helps to clarify the specific criteria for criminalization of Internet violence, and at the same time has the function of easing the tension between the objective need for criminal responsibility and the subjective need for protection of the right to freedom of speech.

Secondly, Internet verbal violence spreads fast and radiates widely, which has incomparable harm to traditional insults and defamation. If we continue to use the same “serious circumstances” identification standard as ordinary insults and defamation crimes, there will obviously be consequences that crime and punishment do not meet. However, the specific performance and identification of such more severe consequences still need to be further clarified by legislation. The “double-layer society” constructed by reality and network society is gradually taking shape, resulting in the extension and application of the traditional crime system to the network space has become a topic that is difficult to avoid in justice and theory. It is necessary to make a clear explanation and explanation of the application of traditional insults and libel charges to cyberspace through relevant judicial interpretation to regulate online verbal violence.

4.2 Clarify the Attributes of the Order in Cyberspace, and Realize the Docking of Concepts

In view of the connection between the traditional social order and the concept of the cyberspace order protected by the criminal law, it should first be made clear that the cyberspace order belongs to the social order protected by the criminal law. Because the direct consequence caused by network speech is the destruction of network order, whether this order can be directly understood as social order, and whether the destruction of network order will inevitably lead to the chaos of social order. In the absence of explicit regulation by legislation, it is suspected that the two are directly equated with the principle of statutory punishment. Therefore, in the process of regulating network verbal violence, it is first and foremost clear that the order of cyberspace should belong to the social order protected by criminal law. Secondly, after the emergence of cybercrimes, it is urgent to solve the problem of docking between cybercrimes and traditional crimes. Judicial interpretation can build a bridge between traditional charges and new cybercrimes, and help to establish a systematic regulation system of cyber violent crimes. With the development of social network, it is necessary to give more network definitions to traditional crimes in order to extend them to new cybercrimes. In the process of specific interpretation, the high incidence of cyber violence in judicial practice can be specified by enumeration, and the deterrent role of the Criminal Law can be fully brought into play. In addition, to improve the expression of crimes of existing traditional crimes by means of criminal law amendment, to increase the expression of the use of network platforms to implement constitutive acts, or to clarify the docking of network speech violence with traditional speech crimes in the form of judicial interpretation, and then to explicitly include network speech violence within the scope of criminal law regulation through explicit provisions. It also provides easy-to-follow guidelines for law enforcement and justice.

4.3 Procedural improvement of the connection between the two laws

In view of the low conversion rate of evidence in the execution process, the main direction of solving the problem is to facilitate the collection and fixation of evidence. First of all, the implementation of the responsibility of network service providers to assist in investigation and collection of evidence, while

relaxing the threshold of Internet platforms to assist in providing evidence, information related to network violence crimes, evidence network service providers and platforms should be timely fixed and saved, and actively assist the relevant victims, public security organs to collect and obtain relevant evidence. Network information service providers should provide users with functions such as one-key evidence collection for network violence information to improve the convenience of evidence collection. Second, pay attention to the function of collaborative governance, administrative law enforcement agencies should work with the Internet and information department or other relevant departments to establish and improve the working mechanism of information sharing, consultation and notification, evidence collection and investigation, case supervision, etc., to jointly carry out the governance of online verbal violence. In addition, the high threshold of public prosecution of network violence as a major cause of the arrest of execution cohesion should also be rationalized. Through the form of legislation, the cyber violence acts that can be handled as public prosecution cases will be clarified in the form of legal provisions, and major cyber violence cases will be handled as public prosecution cases, lowering the threshold of public prosecution cases. In view of the above cases that can be handled as public prosecution cases, the law should also limit the time limit for the handling of public prosecution cases to prevent excessive delay resulting in the loss of evidence. At the same time, the responsibility of investigation and collection of evidence for such special cases of network violence is stipulated, such as the provision of victims after suffering online insults, slander to the people's court to file a private prosecution, if the evidence collection, investigation is difficult, the people's court should inform the public security organs to start the investigation procedure for network violence cases. After the investigation by the public security organs, the people's procuratorate shall initiate a public prosecution if they meet the conditions for public prosecution according to law. For online violence cases that are not suitable to be handled as public prosecution cases, the evidence collected in the investigation process shall be handed over to the victim. In this way, it can not only solve the problem of difficult personal evidence collection, but also prevent the start of criminal cases from being affected by the inability to collect evidence in time.

5. Conclusion

Due to the high cost of rights protection and the difficulty of obtaining evidence, victims are at a loss when they are assaulted online, and perpetrators are increasingly unscrupulous. Online verbal violence incidents are repeatedly banned, and perpetrators are rarely punished, which makes online verbal violence gradually escalates from the infringement of personal rights and interests to the impact on the order and value of cyberspace. Therefore, improving the Internet violence legislation provides for the connection of the two laws in the criminal management of Internet violence from the source, and constructing a perfect criminal management system of Internet violence crimes reflects the urgency and expectation of people, which has practical significance for combating Internet violence crimes and creating a clean Internet ecology.

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