

On the Legal Regulation of Freedom of Internet Speech

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ABSTRACT. *Freedom of speech refers to the basic right of citizens to freely express their opinions and listen to the opinions expressed by others according to their own wishes, but the personal rights and personal dignity of the participants must be guaranteed. Freedom of speech is a basic human right, and it has always been advertised as one of the most direct and external manifestations of human rights. In today's technological background, computer networks have become a major platform for citizens to exercise their freedom of speech. In order to better protect and restrict the freedom of speech on the Internet, it is necessary to review existing laws and regulations, check for omissions and keep up with the times, better protect citizens' democratic rights and maintain social order.*

KEYWORDS: *Internet freedom of speech, legal regulation, democratic rights*

1. Overview of Internet Freedom of Speech

1.1 The definition of freedom of speech online

Freedom of speech on the Internet is not an independent democratic right. It evolved after the human society entered the computer network era due to changes in the occasions and carriers where people express their opinions. Online freedom of speech is a derivative of the right to freedom of speech in the new era, and an extension of freedom of speech in the online age. Freedom of speech on the Internet means that citizens still enjoy the rights and obligations of prosecution in the context of the Internet, but the carrier of speech is different and is given a new name. Specifically, freedom of speech on the Internet means that citizens have the right to freely express their opinions and listen to opinions on the platform of the Internet, without prejudice to the legitimate rights and interests of others, without other restrictions.

1.2 Features of Freedom of Online Speech

Citizens' exercise of the right to freedom of speech on the computer network platform also gave the ancient freedom of speech a new era. Due to the rapid communication of computer networks, the wide range of information dissemination, and resource sharing, online freedom of speech also has the following new features have been added:

1.2.1 Timeliness

Due to the characteristic of fast communication on the computer network, people can express their opinions or listen to others' opinions on this platform at a much faster rate than other channels. Citizens can publish their own ideas on the Internet as soon as possible. Once your speech is published, others can also see in time on the Internet, the Internet is the most convenient way of communication in human history.

1.2.2 Extensive

The advantages of the Internet are incomparable to traditional paper media. Small things as large as the world structure and national policies to trivial matters will become the focus of discussion on the Internet. On the one hand, as of June 2019, the number of Internet users in my country reached 854 million, and the Internet penetration rate reached 61.2%. One in two people will express opinions or listen to suggestions through the Internet, and the wide range of computer network information dissemination, the number of views after an opinion is published has increased exponentially, such a large number of people is unprecedented; On the one hand, due to the characteristics of computer network resource sharing, with the continuous increase of Internet users, the resources possessed by the Internet have become more abundant. As a result, citizens are more likely to give full play to their freedom of speech.

1.2.3 Interactivity

Since the computer network also carries the function of timely communication, it also allows people to communicate conveniently and quickly on this platform. When a person's remarks are published, someone may immediately refute and praise the remarks. Both parties you can conduct real-time discussions on this platform, be persuaded by others to modify your own remarks or persuade others to accept your own opinions, or do nothing and just listen to others' praise and criticism.

2. Defects in the legal regulation of freedom of speech on the Internet

2.1 The existing laws and regulations are messy

Although our country's constitution also stipulates the right to freedom of speech, it is only a regulation for overall planning, and no specific rules of operation have been stipulated. The current regulations on online speech are only scattered among different laws, regulations, decisions, and methods. There are many repetitions of legal articles and contradictions between them. Although my country has successively promulgated some laws and regulations on regulating the freedom of expression on the Internet, neither the quality of legislation nor the quantity of legislation can meet the actual needs of my country's Internet governance by law [1]

The main reason for this situation is that the formulation of China's network laws and regulations involves nearly 20 departments, mainly including the Standing Committee of the National People's Congress, the State Council, the Internet Information Center, the National Copyright Administration, the Ministry of Culture, the Ministry of Industry and Information Industry, and the State Administration for Industry and Commerce. , General Administration of Press and Publication, National Security Bureau, etc. What's more, some localities have also formulated regulations for network service management through regulations and regulatory documents. When these legislative bodies formulate laws and regulations on Internet speech, their fundamental purpose is to compete for the benefits of their own departments or localities. Therefore, they have failed to form a unified purpose and target during the legislative process, resulting in a chaotic situation. The ultimate result of this phenomenon is that the management of the Internet has multiple management and overlapping management, so that the administrative efficiency is reduced, and even no one is managed.

2.2 Unclear responsibilities for violations of law and poor operability

At present, most of my country's legal regulations on online freedom of speech are programmatic documents. In my country's "Cyber Security Law", "Decision on Maintaining Internet Security" and other legal norms, most of the contents of the regulations related to online speech are regulated. This shows that my country's legislation on online speech is more inclined to take the security and order of cyberspace as the value, focusing on the supervision and control of Internet information. [2]

Regulations on some issues lack elements of responsibility for violations and poor operability. For example, Article 12 of the Cybersecurity Law of the People's Republic of China guarantees and restricts citizens' freedom of speech on the Internet, but once there is a violation of the regulations , We can't find a remedy in this article, and we don't see the legal liability of Article 12 in the entire Chapter VI of legal liability. The only remedy method is to seek civil law relief in accordance with Article 74 of the law. . In addition, there are no clear regulations on how the

law should be applied when the illegal act can be dealt with several subjects at the same time. This has also resulted in the continuous emergence of laws and regulations on online freedom of speech in my country, but the operability is not strong.

2.3 Focuses on the provisions of responsibilities and obligations, lack of measures to protect rights

In China, the legal regulation of online speech pays more attention to government management. The content is mainly about the supervision and management of network practitioners or the obligations of netizens. It emphasizes the related responsibilities of network operators or users for violating the provisions of this law, such as fines or suspension of business, cancellation of articles. The penalties for publication or attachments, rarely have provisions on the rights of Internet practitioners to protect Internet users. There are even a few clauses that severely restrict citizens' right to freedom of speech. For example, the "Internet Electronic Announcement Service Management Regulations" provides for the approval system. If you want to run electronic forums, online chat rooms, and message boards, in addition to operating licenses, you should also Special application or special filing by the telecommunications management agency of a province, autonomous region, or municipality directly under the Central Government or the Ministry of Information Industry.

3. Suggestions on strengthening the legal regulation of freedom of speech on the Internet in my country

3.1 Legislative level

In response to the aforementioned deficiencies and problems in the regulation and legislation of online freedom of speech, the author hereby proposes the following suggestions for reference

3.1.1 Clarify the subject of legislation and the application of law

In the relevant laws and regulations of publishing, radio and television management, and audio-visual products management, the provisions on the restriction of freedom of speech are similar, and there is no obvious distinction. [3] Scientifically and rationally reduce the existing legal regulation and legislative body of online freedom of speech, reduce the legislative body of the administrative department, make the legislative body more professional and standardized, reduce the low-level regulations in the form of departmental regulations, and increase High-level laws in legal form. Systemically integrate the existing laws, regulations, and departmental rules, formulate a law that coordinates the management of the network platform, and use this as the core to issue judicial interpretations of relevant laws

and regulations, clarify the application of laws in various departments and reduce legal conflicts.

3.1.2 Clarify and increase liability for violations

When formulating the central law, we should see that computer network platforms have become a high-incidence area for various crimes, and illegal activities related to online freedom of speech are emerging in endlessly. Therefore, when making legislation, we should combine the development of the computer network world and the future development direction, clarify the illegal responsibilities of infringement of citizens' rights to free speech on the Internet and violating the obligation of free speech on the Internet, and increase the punishment under the premise that the crime and punishment are compatible. It is necessary to clarify the detailed rules of infringement, and strengthen the accountability of infringement of citizens' privacy, reputation and other personal rights. [4]

3.1.3 Formulate laws based on my country's actual conditions to prohibit "convictions by public opinion"

First of all, we must not deprive the public of the right to speak because of discrepancies between the public's speech and the punishment provided by the law; secondly, we must not change the rules of the law to cater to public opinion because of the huge social effect. In order to avoid the occurrence of these two situations, we should learn from foreign practical experience and establish a principle in the form of legislation-if there is a "conviction of public opinion" before the court hearing, we should consider that the judgment of the case is due to the "conviction of public opinion" The influence of the judge cannot be eliminated in a short time. If the trial of this case continues, the legal rights of the criminal suspect will inevitably be violated. At this time, in order to protect the greater interests, the case should be suspended indefinitely. Trial. At the same time, in order to better punish crimes and maintain social stability, it is necessary to clarify the circumstances of "convictions by public opinion" in accordance with the corresponding judicial interpretation of the legal system, and increase punishments for criminal suspects who want to use this principle to escape legal sanctions.

3.2 Judicial level

I have already made my own suggestions from the legislative level on the improvement of the legal regulation of online freedom of speech. In view of my country's current judicial practice, here are the following suggestions:

3.2.1 Inversion of burden of proof in online speech infringement cases

Internet speech infringement cases often occur. In infringement cases where there is a counterparty, the victim's ability to collect evidence is often weak and can only prove that he has been infringed, but other issues need to be proved by public security agencies or other state agencies. Investigations have also made the victims often reluctant to act aggressively to defend their rights and interests, which has contributed to the occurrence of online speech infringements. If the burden of proof is reversed and the infringer proves that his actions do not constitute infringement or the infringement is not his own conduct, this will not only better protect the legitimate rights and interests of the victim, but also combat the arrogance of online speech infringement, but also save social resources, Making the case trial more efficient and convenient.

3.2.2 Implement the principle of legally prescribed crimes and punishments

The previous article has already given suggestions on the management and control of "public opinion convictions" at the legislative level. In judicial practice, we cannot control public speech from a legislative perspective before a judgment is made after a case is heard. This problem has fallen to the judicial system. In practice, the legal principle that everyone is equal before the law should give it a new meaning in today's society, and give it the brand of the times, that is, regardless of the social evaluation of citizens, they should all be equal when adapting to the law. In the eyes of the public, a good person has committed a crime and he is given a lighter punishment, not to mention that a bad person in the eyes of the public has committed a crime. Therefore, although the huge social effect will be one of the reference indicators for judges to decide a case, After all, public opinion and the law have their own arenas. Public opinion can express resentment, vent its dissatisfaction, and raise its arms. The judiciary should firmly grasp the criminal facts and their judicial interpretations—this should have nothing to do with money power and the size of public anger.

3.3 Implement real-name system

Although my country has established the foundation of my country's network real-name system through the "Interim Provisions on the Management of Instant Messaging Tool Services", it has inherent problems such as narrow coverage, unclear responsibilities for violations, and low-level legal basis. The principle of "voluntary front desk, real name backstage" also prevents the public from knowing the status of the person corresponding to the ID under normal circumstances. Therefore, the author proposes a method of implementing a real name system to protect and restrict citizens' freedom of online speech. The specific suggestions are as follows:

First, modify the principle of "voluntary front desk and real-name backstage". On the basis of retaining the existing principles, it has great social significance for

some academically significant, legal promotion significance, and responsibilities for government work supervision. Computer network platforms such as social influence forums and software implement the "front desk real name" policy. User registered accounts must be verified by real names, and after successful account registration, some personal information will be displayed on the user's personal homepage, such as name, gender, work unit, etc. Users speak to reduce the possibility of improper speech posting. And the public who want to speak on such platforms and read user personal information must register their real-name accounts.

Second, list the principle of "voluntary at the front desk and real-name at the back office" from the existing administrative regulations and protect it in legal form, and expand the scope of application of this principle from existing instant messaging tools to all computers with interactive functions network platform.

Third, clarify responsibilities for violations of the law, and include the deliberate use of false personal information to register an account, fraudulent use of other people's information to register an account, and the use of other people's accounts to make inappropriate comments into the field of criminal offences for sanctions.

4. Conclusion

This article analyzes the practical problems of online freedom of speech and finds out the flaws in my country's current legal regulation of online freedom of speech. At the end of the article, it puts forward a series of suggestions and opinions on the improvement of my country's online freedom of speech legal regulation. As stated in the article, the author believes that the most important thing to solve the various problems that currently exist in China's online freedom of speech is to reform at the legislative level, clarify the main body of legislation, increase the responsibility for violations, and formulate complete laws; At the level, we have a clear understanding of social public opinion generated by online freedom of speech, adhering to the principle of statutory crimes and punishments, and reducing the influence of public opinion on judgments; finally, the real-name system is used to protect and restrict online freedom of speech.

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