Research on the Legal Governance Mechanism of New Cyber Violence in the New Media Era

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Abstract: With the advent of the Internet era, new media software based on the Internet came into being. These new media software make people put themselves in the social media platform based on the network, which not only facilitates people's daily life and work, but also brings some troubles, among which online violence is a very typical one. This paper expounds the concept and current situation of the new type of cyber violence, and discriminates the legal characteristics of the new type of cyber violence in the new media era. This paper focuses on the literature review based on the relevant research at home and abroad, and puts forward the improvement path of the new legal governance mechanism of cyber violence.

Keywords: New Media Era, New Cyber Violence, Literature Review, Legal Governance Path

1. An Overview of the New Type of Cyber Violence in the New Media Era

1.1 Concept of Cyber Violence

The definition of the new type of cyber violence is: it is a unique form of violence in the cyber era, which is implemented by highly secret perpetrators with low violence cost, rapid information dissemination, various violence means and heavy damage. It mainly includes the following types: network language violence, network information violence (picture, video, audio, live broadcast, etc.), network violence games, etc. Whether in real life or in the online world, as long as netizens use the Internet to cause adverse effects on others, things or things, they can be attributed to online violence.

1.2 Causes of Cyber Violence

1.2.1 Anonymity of Network Environment

Due to the openness, freedom and quickness of the Internet, people can browse and download what they want to see at will, and express their views, attitudes or views on all kinds of things, things or people anonymously by changing their names or nicknames. However, due to its anonymity, many netizens ignore its real existence, speak freely in the virtual world provided by the network, vent their emotions at will, and satisfy their curiosity without a bottom line. Even some netizens wantonly attack strangers or spread others' privacy without their consent, But it ignores the morality and law that should be observed and pursued in reality.

1.2.2 Moral Deficiency of Internet Users

The "silent spiral" theory put forward by Neumann, a German sociologist, believes that: "it is very difficult for people to adapt to today's very complex social environment. Contradictions will follow one another. It is not easy to make a clear answer alone, so it is often necessary to pay attention to the opinions and actions of others." When an event occurs, people will acquiesce to the behavior of following the crowd and depend on the opinions or opinions of the majority, that is, the so-called conformity psychology. Sometimes even if it is completely different from their inner opinions, they will choose to change their opinions or silence in order to avoid additional pressure. This psychology reduces the ability of netizens to distinguish right from wrong and loses the mind of independent thinking. Therefore, netizens are often deceived by the superficial phenomenon of information released by the media or individuals, unscrupulously vent their bad emotions, meet their curiosity without bottom line and make wrong judgments.

1.2.3 Lack of Responsibility of Network Media

Social psychologist Lu Yin believes that the information dissemination network is full of gatekeepers. In the Internet, various online media act as "gatekeepers". To a large extent, they control the wind direction of online public opinion and bear the burden of providing correct, timely and effective information to Internet users. However, many media have not taken up their responsibilities. On the contrary, they often attract the attention of netizens through false news, follow the trend hype, infringement and plagiarism, blindly pursue click through rate and attention, and ignore their own ethics and professionalism. In addition, the commercial operation mode of online media operation has emerged, giving birth to a group of new groups - Internet promoters, who contribute to the Internet public opinion and create Internet hotspots according to the interests and hobbies of Internet users, and the "water army" is their executor. As the "water army", Internet users publish some contents such as reversing black and white and abusive language in accordance with the instructions of the Internet promoters to obtain cheap benefits, As a network promoter, we can get huge profits from network violence. In the long run, this behavior of online media will eventually hurt the common interests of Internet users, make the online world become a mess, and then lead to the loss of trust of Internet users in online media.

1.2.4 The Network Public Opinion Supervision and Legal System are not Perfect

Compared with the rapid development of the Internet, the legal construction of China's network lags behind a lot, and there are many loopholes in network supervision. Because the laws related to the Internet are not perfect, they fail to form sufficient binding force and deterrent force on Internet users. In addition, the anonymity of the Internet and the moral anomie of Internet users have disintegrated the sense of responsibility and legal consciousness of Internet users in the real world, dared to indulge their words and deeds, spread rumors, human flesh search, moral kidnapping and a series of network atrocities. However, the network supervision and legal system, which is the most deterrent to network violence, is not perfect, which makes the network lack of effective supervision and management, and it is easy to form highly harmful network violence.

2. Literature Review on Cyber Violence

The new media era has contributed to the rapid development of new types of cyber violence. In the era of new media, information is everywhere, accessible and no one needs it. As a result, the ecology of public opinion, the pattern of media and the mode of communication have undergone profound changes, and the work of news and public opinion is facing new challenges. In the era of new media, if a single low-level event is compared to a beam of light and the network is compared to a prism, the consequences of this event through network transmission are like a spectrum, which subdivides and amplifies a single event and enhances the severity of the consequences. At present, China's communication is in the UGC (user generated content) era, that is, every netizen is not only the recipient of information, but also the disseminator and creator of information. Therefore, an ordinary contradiction event may be amplified by every netizen through online media and become a group violence event that causes serious harm to the psychology, life and even body of the parties concerned by the whole society.

The network algorithm technology based on big data strengthens the information cocoon room. "Cocoon" refers to the phenomenon that people's interest in the cocoon will be shackled by their own information in the field of cocoon life, which is put forward by scholars in the United States. The "spiral theory of silence" put forward by German scholar Elizabeth Noel Neumann holds that the more silent people are, the more others think that a particular view is representative. Professor Yang Rongzhi believes that in the era of network media, the application of algorithm recommendation technology has strengthened the formation of network information cocoon room. The groups gathered under the network are clustered by differentiation, showing the characteristics of homogeneity within the group and heterogeneity between groups. In the network public opinion, when people see that there are many people who agree with a certain point of view, they will more actively participate in it, constantly strengthen this point of view and promote its spread to a wider range, get the support of more people, and promote the homogeneity within the group. In the information cocoon room, people's subjective emotion and independent cognition are constantly strengthened and consolidated, and their prejudice is regarded as the truth, so as to reject the invasion of other reasonable views. This phenomenon will enhance the group heterogeneity of the public and show a strong rejection of the views that the group does not agree with on the network.

The definition of the new type of cyber violence is still unclear. Many scholars have their own unique definitions of cyber violence, and believe that cyber violence is "the behavior deviation of the subject of cyber behavior in the 'virtual electronic cyberspace' in violation of the requirements of social norms and codes of conduct"; It is "an act of achieving one's own purpose with the force that does not conform to the law and moral norms in the network"; It is "the violence of netizens on the Internet and the extension of social violence on the Internet"; It is "the behavior phenomenon of publishing defamatory, defamatory, defamatory and seditious remarks, words, pictures and videos on the Internet, that is, the behavior of personal attacks on others. Generally speaking, it is that Internet users publish offensive or provocative remarks through fierce, emotional or even exaggerated expression, so as to do psychological harm to the victims." However, there is still a large gap in the existing research on the transformation from network violence to new network violence in recent years.

When the existing laws regulate the new type of cyber violence, there is a phenomenon of dislocation and dislocation. The solution to the problem of new-type cyber violence lies in the establishment of a set of mechanisms for pre prevention, in-process control and post remedy. Obviously, the current legislation is not fully competent, and it can play its role in post remedy at most. The core of solving the problem of cyber violence is always that prevention is better than elimination, and "preparing for a rainy day" is better than "mending a lost sheep". Under this idea, we should integrate the existing legislation and formulate new systems and measures. In particular, Professor Zhang Mingkai of Tsinghua University put forward: "in the Internet era, criminal law must be sensitive to various changes in social structure and social life facts." Dr. Fu Yu of Southwest University of political science and law believes that there are five problems in the regulation of China's criminal law on cyber violence: unclear content of personal information protection, imperfect criminal behavior mode regulated by the criminal law, difficult criminalization of human flesh search behavior, incomplete provisions on false information content in China's criminal law regulation, and unreasonable criminalization and identification of online rumors. In addition, in the article of Professor Shi Jinghai and researcher Huang Yarui, it is also mentioned that the relevant civil and administrative legal regulations are not enough to govern cyber violence, and the relevant criminal law regulations are incompatible with the behavioral characteristics of cyber violence.

3. Analysis on the Legal Characteristics of New Network Violence in the New Media Era

Transformation of forms of implementation: the forms of violence have been renovated and the intensity of attacks has been strengthened. Relying on the new media platform and communication mode, the new form of cyber violence has developed from a single language violence in the past to an all-round attack mode such as bullet screen brushing, malicious editing, private letter bombing, spoofing photos, spreading rumors, private letter insult and so on. Some media pointed out that the production of terrorist and bloody paintings is becoming a new form of online violence. Some video producers have deviated from the category of goodwill entertainment and showed a significant trend of personal attack. At the same time, due to the further development of social media platforms and the accelerating dissemination of various information, the behavior of netizens is more likely to rise to online violence, which deepens and speeds up the violation of personal privacy and reputation, and has a more far-reaching and worse impact on the psychological health and real life of the victims of violence.

Transformation of implementation subject: Cyber violence has gradually moved from the social field to the field of commercial competition, showing the tendency of organized and planned industrial chain. Traditional cyber violence is mostly carried out by individual netizens out of personal emotion and subjective will, while the subject types of new cyber violence are becoming more and more diversified and complex. Under the cover of entity companies, some criminals register and operate a large number of social platforms, promote and drain each other through social platforms, and even look for professional Navy (referring to the hired network writers who publish specific information for specific content in the network) to promote the untrue information content, forcing stakeholders to pay huge post deletion fees; Weibo users who have obtained personal authentication on Weibo platforms such as Sina, Tencent and NetEase have a certain influence. Weibo users with many fans gather their fans through various social media and disrupt the direction of public opinion by planning and encouraging netizens and water army.

In the new type of cyber violence, events are often reversed and repeated many times, and there is a trend of equality between the subject and object of violence. In the traditional network violence, there are obviously the perpetrator and the victim, and the perpetrator generally has the upper hand. Even if

the roles of the two sides will be exchanged in some cases, the boundary between them is relatively clear and there is inequality in status. In the new type of cyber violence, the boundaries of both sides are blurred, and the status of both sides is more equal. There is no clear perpetrator and victim of violence. In some network events, there are often many reversals, and netizens repeatedly follow the trend, resulting in the status exchange of the perpetrator and the victim for many times, and the boundary between the two continues to be blurred.

Transformation of subject object: the specificity of the subject object is weakened and the contingency is enhanced. The objects of traditional cyber violence are mostly the privacy rights of people who are recognized (or mistakenly believed) by netizens and should be condemned by law and morality (especially morality). However, in the new type of cyber violence, participants usually unconsciously or deliberately blur the boundary between law and morality, so they seldom consider or even ignore the rights and interests of the parties. In the new type of cyber violence, for the groups whose subjective fault is light or even missing and used by capital, their personal rights such as privacy and reputation protected by law are more likely to be attacked and infringed.

Transformation of implementation behavior: violent behavior tends to provoke public opinion and create discourse separation between different groups. With the continuous evolution of social media and recommendation algorithms, netizens' opinions on things are more and more vulnerable to be affected or solidified, which leads to the public opinion mood more and more easily being provoked and misled. A major feature of the new type of cyber violence is that it is not a pure direct attack, but disguised as various groups to create a new cyber battlefield. The perpetrator frequently causes trouble on the Internet. In various hot events, he uses unlimited "stem" and curse war to replace normal communication, and provokes misunderstandings between different network groups by deliberately guiding public opinion in reverse, leading to online curse war. Network stigmatization has risen from individuals to groups, and network hostility has increased. The perpetrators of new-type online violence have the trend of creating group antagonism by collecting the early statements of Internet users, deliberately guiding public opinion and deliberately going online. The words and deeds of individuals will rise indefinitely, and teachers, journalists, medical care, police and other groups will continue to become victims of new-type online violence.

Transformation of the nature of behavior: in the old and new types of cyber violence, the subjects are plural, and the implementation behavior belongs to joint tort. The difference is mainly affected by the transformation of the subjects mentioned above. China's legislation has made an interpretation of joint tort: joint tort refers to the damage caused by two or more people's joint intention or joint fault, or the same damage consequence occurs in the direct combination of their infringement acts although there is no joint intention or joint fault, or the same damage consequence occurs in the indirect combination of several acts carried out by two or more people without joint intention or joint fault. This definition provides a legal basis for identifying the tort attribute of new network violence. Therefore, in theory, although many netizens participating in the new type of cyber violence do not pursue the same purpose subjectively in some cases, they may still constitute joint infringement.

Transformation of responsibility undertaking: the complexity of responsibility identification and undertaking has increased, and the difficulty coefficient has increased. On the whole, traditional cyber violence is mostly typical events and involves other types of tort or crime, so it can often be clearly attributed and held accountable; the new types of cyber violence are more diverse, and the behavior of the perpetrator may not involve the responsibility boundary stipulated by the existing law. Therefore, in the field of responsibility, it is inevitable to reflect the characteristics of fuzzy responsibility boundary and light responsibility. In the field of criminal justice, there are relatively few new cases of cyber violence. There are differences between what is and what should be in legislation and judicial practice. The "crime of defamation" and "crime of provocation" constructed in the legislative system do not form an effective deterrent and governance to the new type of network violence. Only when there are vicious events of death caused by network violence and great social influence, can network violence be criminalized in the criminal field. At this time, irreparable consequences have often occurred, so that the function of legislation in the criminal field in the governance of cyber violence remains too much in the afterwards imputation and punishment; In the field of civil justice, cyber violence is numerous and concentrated. Cyber violence is often recognized as an infringement of citizens' right to privacy and reputation. In terms of responsibility, most of them apologize, eliminate the impact and bear a low amount of compensation, which has the characteristics of vague content of responsibility and less punishment; In the field of administrative justice, there are relatively few administrative cases entering the litigation stage, and most of the results are to reject the prosecution, not punish or impose a fine of less than 500 yuan. It has the characteristics of high litigation standards and small punishment.

4. Improvement Path of New Legal Governance Mechanism of Cyber Violence

There are three stages from the emergence to the outbreak of cyber violence: the first stage is the trigger stage of online speech. Usually, an irrational netizen initiates a topic discussion in cyberspace, which is generally manifested in uploading a photo, a video or a speech on the Internet to attract people's attention. The second stage is the formation stage of network public opinion. Netizens will pay attention to a certain network topic one after another, and carry out various discussions on the topic, or approve or criticize, so as to produce network public opinion. The third stage is the implementation stage of cyber violence. After netizens gradually gathered, the previous rational discussion sessions were gradually replaced by irrational emotional catharsis. Some people began to abuse and attack the parties or participants of the incident on the Internet, and exposed the privacy information of relevant people by means of human flesh search, so that they felt the pressure of public opinion.

Based on the mechanism of cyber violence, the governance of cyber violence should also conform to the characteristics of the above three stages, including prevention and control in the first stage, monitoring and guidance in the second stage, and attribution and disposal in the third stage, that is, the governance mechanism of pre prevention, in-process control and post rescue. Based on the results of the above inductive analysis and the comparison with the current situation of legislation and judicature, through the loopholes of the governance mechanism found in the above exploration, feed back the legislative design, judicial suggestions, government management and social governance with the existing difficulties, so as to provide reference for scientific legislation and proper judicature. According to the relevant factors and their influence, the corresponding improvement suggestions for the construction of legal governance mechanism are as follows:

Pre prevention stage: build a multi-party collaborative prevention and control system. From the perspective of the generation mechanism of network violence, there are not only the irrational expression of Internet users, but also the fuel of network media; There are not only the lack of management of government departments, but also the improper connivance of the current society, so the governance of cyber violence needs to build a collaborative governance system with the participation of multiple subjects. Especially in the stage of network violence prevention, it is necessary for all parties to actively give full play to their own advantages to find the signs of network violence, reduce the language of network violence and prevent the formation of violent public opinion. In the prevention stage, netizens need to consciously abide by the network order and try to restrain extreme emotions. If they find improper remarks on the network, they should report to the network management platform in time. Internet enterprises should also take the initiative to shoulder the responsibility of network management and take effective measures to prevent the rampant and spread of network violent speech. The competent government departments should actively build the network management order. Participate in the formulation of network language norms, establish an information sharing mechanism with the network management platform, understand the dynamics of network public opinion in real time, and formulate network emergency response plans.

In the process control stage: strengthen the monitoring and early warning of network public opinion. Network violence often evolves from network public opinion. The monitoring and guidance of network public opinion has become an important means of network social governance. The so-called network public opinion monitoring is to effectively identify and analyze network information by using emerging technologies such as big data. The focus of the debate should be the focus of the network, especially the dynamic events that occur on the network. If the network public opinion tends to evolve into network violence, we should actively take measures for reasonable intervention and appropriate guidance to prevent the convergence of public opinion information to the violent end. In addition, relevant departments should also timely release early warning information to Internet users and network platforms according to the monitoring results, remind network participants to pay attention to their online words and deeds, and inform them of the legal responsibilities of online violence.

Post remedy stage: play the disciplinary role of the law. As far as the disposal stage of cyber violence is concerned, first, we should strengthen the administrative law enforcement force, strengthen the effective control of network enterprises, clarify the supervision responsibilities of network enterprises, rectify market chaos and establish a network credit investigation system; Second, we should make rational use of civil legal means, strengthen the protection of the rights of victims, and implement the civil liability for compensation. Third, we should standardize the application of criminal legal measures, not only let the Internet mobs receive due criminal punishment, but also pay attention to the protection of human rights, and we should not artificially reduce the threshold for the application of criminal law.

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