

# Research on Legal Regulation of Internet-based Behaviours of Picking Quarrels and Provoking Troubles

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## ABSTRACT

China's criminal law has not been able to respond in time to the new behaviors of Picking Quarrels and Provoking Troubles in the current cyberspace. Firstly, the Internet-based behaviors of picking quarrels and provoking troubles are not typified in the crime of picking quarrels and provoking troubles in Article 239 of the Criminal Law. The second point is the traditional crime of picking quarrels and provoking troubles itself, as a "pocket crime", after it enters network, the judicial interpretation of "public order disorder" and "disorder degree" and other issues are controversial. Therefore, the law needs to reasonably regulate the Internet-based behaviors of picking quarrels and provoking troubles. Specifically, to begin with, these online behaviors can be divided into "way violence", "way of online rumors", "way of Internet water army". The classification of this behavior can be more accurate in the judicial practice of conviction and sentencing. Secondly, "causing serious chaos to public order" needs to be reasonably defined. From one point of view, it would not go against the possible prediction of a common person if we interpret "cyberspace" as a "public place". From another point of view, the judgment of "serious chaos" is mainly considered from three aspects including severity of behaviour, the spread and influence of behavior on the network and impact on the victims involved. At present, after reasonable and effective interpretation, criminal law can effectively regulate the Internet-based behaviors of picking quarrels and provoking troubles, so there is no need to set up a new crime alone.

**Keywords:** *Picking Quarrels and Provoking Troubles; Crime; Cyber crime*

## 1. INTRODUCTION

The traditional crime of picking quarrels and provoking troubles in criminal law of China has always been controversial. Chen believed that this crime is a conspicuous crime in criminal law of China and in recent years, the pocket tendency of this crime leads to its own stigmatization [1]. The popularization of Internet brings convenience to people, but also changes the traditional pattern of criminal behavior. In the network space, it is possible to transform the traditional contacted crime into non-contacted crime. Similarly, after the networking of the behaviors of picking quarrels and provoking troubles, scholars have put forward many disputes on a series of legal issues. Zhao regarded that the judicial interpretation issued in 2013 included some acts of online rumor into

the crime of picking quarrels and provoking troubles to regulate, which made the public more worried that freedom of speech would be excessively restricted [2]. Jiang thought that Internet-based picking quarrels and provoking troubles, like the traditional picking quarrels and provoking troubles, both had the characteristics of pocket crime. This "pocket effect" leads to the further loss of standardization and coordination of criminal law, and even makes the results of judicial practice erratic [3]. Zeng believed that it was not only necessary to confirm the degree of "serious chaos" caused by network provocation, but also to clarify theoretically why the order on the network belonged to the order in public places [4]. Zhang regarded that only when the network speech really seriously disturbed the order of the real

public place, could it constitute picking quarrels and provoking trouble [5].

In view of the emergence of the current Internet-based behaviors of picking quarrels and provoking troubles, the law needs a reasonable response. The first part will give the research background, which means it will put forward the problems existing in the ambiguity legal interpretation of the current Internet-based behaviors of picking quarrels and provoking troubles. The second part will analyse the different behavior forms of Internet-based behaviors of picking quarrels and provoking troubles separately. The third part will consider the conviction of Internet-based behaviors of picking quarrels and provoking troubles.

## **2. INTRODUCTION OF QUESTION: AMBIGUITY IN THE INTERPRETATION OF LAW**

Despite the hysteretic nature of the legal system, reflections on legal issues shall be forward [6]. In terms of the crime of picking quarrels and provoking trouble, the popularization of the Internet has provided a new platform for the traditional crime of picking quarrels and provoking trouble, and offered criminals with new opportunities to commit crimes, thus bringing forward the non-contact crimes from traditional contact-based ones which nevertheless are not responded by the Criminal Law in China. The Internet-based crime of picking quarrels and provoking trouble is not a legally normative offence, but the manifestation of the "crime of picking quarrels and provoking trouble" as stipulated in Article 239 of the Criminal Law in the realm of the Internet. Article 239 of the Criminal Law only regulates the traditional contact-based behaviors of picking quarrels and provoking trouble, namely random battery; chasing, intercepting, abusing, and intimidating others; taking property or asking for services by forces; and creating disturbances. No matter how well-established the law is, it is after all a logical system (or quasi-logical system) formed in words and intertwined with concepts and rules, which cannot be naturally aligned with the sophisticated social facts [7]. Therefore, loopholes are inevitably traced in the legislative process, and interpretation of the laws is required to make up for the deficiency where legal rules are challenged. As the Internet has become a new carrier of picking quarrels and provoking troubles, the traditional behaviors of picking quarrels and provoking troubles, such as random battery, chasing and intercepting, and taking property or asking for services by forces, cannot happen in cyberspace, and while the new types of the Internet-based picking quarrels and provoking troubles are not duly addressed by the Criminal Law, and the provisions of the Criminal Law do not suffice to regulate new types of such crimes, it is necessary to interpret the laws to make up and regulate criminal behaviors.

Therefore, the Supreme People's Court and the Supreme People's Procuratorate published the Interpretation on Several Issues concerning the Specific Application of Law in Handling Defamation through Information Networks and Other Criminal Cases (hereinafter referred to as the "Interpretation") in 2013 whereas Article 5 stipulates the forms of Internet-based picking quarrels and provoking trouble: "If anyone attempts to abuse and intimidate others through the information network and the case is serious, disrupting the social order, he/she may be accused of and convicted with the crime of picking quarrels and provoking trouble in accordance with the provisions of Article 293, paragraph 1 (2) of the Criminal Law; where anyone is found to fabricate false Information, or have the knowledge that the false information is fabricated but instead distribute on the information network, or organize or instruct others to distribute such information on the information network, causing trouble and serious chaos in the public order, he/she may be accused of and convicted with the crime of picking quarrels and provoking trouble in accordance with the provisions of Article 293, Paragraph 1(4) of the Criminal Law." That said, as the crime scene is in virtual cyberspace, it cannot be classified as complete and clear as the crime of picking quarrels and provoking trouble in real life. For example, the crime of picking quarrels and provoking trouble in real life mainly includes, among other things, the battery or chasing, intercepting, abusing, and intimidating others, or taking the property or asking for services by force or vandalizing the public and private property, or making trouble, and the current research on the Internet-based crime of picking quarrels and provoking trouble has not yet come to the conclusion on the similar classification which is based on the types of the crime. Furthermore, many scholars have questioned the infringed object of Internet-based crime. According to the Interpretation, the infringed object not only includes the personal legal interests, but also the "public order". Public order is a physical social order, which is nevertheless difficult to define in network information. Although the Supreme People's Court and the Supreme People's Procuratorate have clarified that cyberspace is a public space, and a broad perspective shall be adopted to understand reasonably when applying the "Interpretation", it fails to clarify whether the use of the Internet as a carrier to cause psychological panic or imbalance of psychological order among other users in cyberspace should also be considered as an infringement of public order. Also, the extent to which public order has been infringed therefrom is controversial. Article 5(2) of the Interpretation stipulates that "causing serious disorder in the public place", what exactly is "serious disorder"? whether it means physical chaos? or is it referring to the psychological disorder in network information? How to define the "serious" as the conviction standard? Regarding the Internet-based crime of picking quarrels and provoking trouble, Article 5 of the Interpretation

does not give specific circumstances like Articles 2 and 3, which leads to the issue of unclear conditions for conviction. Given the time lag between judicial practice and academic theory, new forms of picking quarrels and provoking trouble have emerged in judicial practice which are not always responded to by the academic theory systematically. It requires further consideration on how to solve this phenomenon of dis-alignment between practice and theory.

For the moment, in short, the Internet-based behaviors of picking quarrels and provoking troubles are not classified in the crime of picking quarrels and provoking troubles in Article 239 of the Criminal Law. It is a "pocket crime", and its legal provisions contain wording such as "arbitrary", "random" and "the case is serious" that requires judicial organs to reasonably exercise discretion by adopting the social standards and ethics, bringing certain ambiguities and difficulties to the conviction of this crime. For the emerging Internet-based crime of picking quarrels and provoking troubles, controversy over such issues as vague classification of types, public disorder, and the degree of chaos are found.

### **3. INDIVIDUAL CASE ANALYSIS OF INTERNET-BASED CRIME OF PICKING QUARRELS AND PROVOKING TROUBLES BY DIFFERENT BEHAVIORS**

Cybercrime is a special form of crime in our Criminal Law. With the popularization of computers in our country, cybercrime shows the tendency to spread. The Criminal Law has made special provisions on cybercrime and established relevant charges, which provides a legal basis for punishing cybercrime. From the analysis of criminal law dogmatics, cybercrime can be mainly divided into two types: typical cybercrime and non-typical [8]. Also, the Internet-based crime of picking quarrels and provoking trouble is a non-traditional crime committed by way of computer networks, and based on different criminal acts, it can be further divided into several different types. In judicial practice, the main Internet-based crime of picking quarrels and provoking trouble mainly presents three different types.

#### ***3.1. Internet-based Crime of Picking Quarrels and Provoking Troubles by way of Soft Violence***

In the Opinions on Several Issues concerning the Handling of Criminal Cases with "Soft Violence", it is stipulated that soft violence refers to illegal means such as the harassment, entanglement, creating a disturbance, and gathering of crowds for the purpose of seeking illegal benefits or forming illegal influences which would suffice to cause fear and panic in others to form psychological coercion, or suffice to affect or restrict personal freedom, endanger personal and property safety,

and affect normal life, work, production, and business operations. In judicial practice, the Internet-based crime of picking quarrels and provoking trouble which is constituted by soft violence is mainly conducted by means of telephone information harassment and online text message bombing. Most of the criminal suspects would, out of the purpose for profits or purely for psychological pleasure, send spam text messages to victims' mobile phones or make phone calls by the information network to affect the normal work and life of victims, making them most vulnerable. Soft violence is not a crime, but is related to the crime of picking quarrels and provoking trouble, and if soft violence is adopted, and it meets the elements of other crimes, different crimes can be convicted, such as the crime of forced trading by soft violence, the crime of illegal detention by means of soft violence, the crime of illegal trespass by means of soft violence, the crime of extortion by means of soft violence. For the crimes of picking quarrels and provoking troubles committed by means of soft violence, the objects they infringe are the social administration order, which objectively is demonstrated as impeding the administration of the social order and jeopardizing the stability of the social order. If one is convicted of the Internet-based crime of picking quarrels and provoking troubles by means of soft violence, the main feature is that the criminal suspect intentionally and with purpose uses mobile phones or computers and other Internet facilities to harass and hound the victims, aiming to cause others to panic or form psychological control but with no other consequences [9]. This is also the key to distinguishing nuisance-type picking quarrels and provoking troubles by telephone information from other criminal acts, such as extortion by means of nuisance and soft violence through telephone information, and if the elements for extortion are met, it should be convicted as the crime of extortion. Compared to the violent means that directly act on the target of crime through tangible physical force, the violent color and intensity of soft violence have been reduced, but it does not mean that its harmfulness is reduced. Soft violence and violent behaviors are homogenous and equal in harm, and the mental damage to the victims is more lasting and more difficult to cure [10].

For example, in the case of Zhao Bo and other 42 people picking quarrels and provoking troubles, since April 2015, the defendant Zhao Bo successively established and controlled a number of Yuanhai Huicheng companies to collect payments for third-party online lending companies. It set up the collection department, the quality inspection department, the recruitment department and other working departments. The Collection Department had more than 30 collection groups based on the debtor's overdue time, employing a total of more than 300 businessmen. The collectors resorted to the "soft violence" methods such as abuse and intimidation to harass the debtors and their emergency

contacts and contacts in their contact book. The above behaviors have had a serious impact on government organs and individuals. Beijing Changping Court held that defendants Zhao Bo and others to resort to harassment, hounding and other "soft violence" methods to threaten and intimidate others through the telecommunications network, which would suffice to cause fear and panic, forming psychological coercion, seriously affecting the normal work and life of others, and jeopardizing the social order, which is serious, their behaviors have constituted the crime of picking quarrels and provoking trouble, and should be punished according to law [11].

### ***3.2. Internet-based Crime of Picking Quarrels and Provoking Troubles by way of Online Rumors***

In the network information society, it is completely possible to achieve "no one on the road", without affecting people's production and life. In other words, making up and spreading rumors on the Internet is also truly possible to jeopardize the coexistence of production and life in the real society [12]. Online rumors refer to the offensive and purposeful words spread through network media (such as Weibo, foreign websites, online forums, social networking sites, chat software, etc.) that have no factual basis [13] and mainly involve emergencies, public health, food and drug safety, political figures, subversion of tradition and deviant contents. Lawbreakers can take advantage of online rumors to control the direction of public opinion so as to obtain benefits or undermine social stability. Article 5, Paragraph 2 of the Interpretation stipulates: "where anyone is found to fabricate false Information, or have the knowledge that the false information is fabricated but instead distribute on the information network, or organize or instruct others to distribute such information on the information network, causing trouble and serious chaos in the public order, he/she may be accused of and convicted with the crime of picking quarrels and provoking trouble in accordance with the provisions of Article 293, Paragraph 1(4) of the Criminal Law". The paragraph provides a clear understanding of the criteria when classifying online rumors.

For example, in Peng's case, since December 2011, the defendant, Peng, has been the supervisor of a bank in Shandong, which was merged with other units to form a commercial bank in Jinan. Dissatisfied as he was not elected into the leadership team, Peng sought his own interests through petitions in the form of letters and visits many times, and relevant units investigated or responded to his petitions but Peng was still not contented. In June 2019, the defendant Peng handed over the hearsay and subjective speculation to Wang for fabrication and as Peng agreed, Peng and Wang published over 50 rumor articles. The above-mentioned articles were forwarded

and reported by more than 10 online media including Sina, Sohu, PhoenixNet, Tencent and NetEase, which triggered a large number of clicks, reposts and comments by netizens, and the clicks exceeded 10 million times, which seriously disturbed the public order. The public prosecution organ prosecuted Peng for the crime of picking quarrels and provoking trouble. The court sentenced the defendant Peng to four years in prison for the crime of picking quarrels and provoking trouble [14].

### ***3.3. Internet-based Crime of Picking Quarrels and Provoking Troubles by way of Internet Water Army***

In terms of the "Internet water army", it can be understood from the broad and narrow perspective. In the broad sense, "Internet water army" refers to members who are responsible for tasks such as the planning, copywriting, information release, and reposting and commenting, namely the general term for members who carry out a series of behaviors in this chain of interests after being entrusted with the task. In the narrow sense, "Internet water army" only refers to those who exist in the network promotion chain such as posting, reposting, and commenting, and who are directly active in cyberspace [15]. As a new marketing model in the network society, the Internet water army can easily attract a large number of people through organized operations to speculate the brands, characters or participate in social hotspot events, creating and manipulating false public opinion and hotspot events, confusing and kidnapping the public opinion to achieve the social and economic effects required by the employer [16]. They can control and manipulate the direction of a certain event through bumping and posting, which causes extremely huge social harm. From the perspective of judicial practice, if the Internet water army can be convicted for the crime of picking quarrels and provoking trouble, the employer and the "Internet water army" would, in general, be responsible for the criminal liabilities.

For example, in the case of Liu, Ma, and Chen picking quarrels and provoking troubles, Liu, one student's parent, believed that his daughter was subject to physical punishment at school, and successively fabricated false information through Sina Weibo, such as her daughter was physically punished by the teacher and the teacher asked for care fees. At the same time, in order to hype and attract the attention on the Internet, Liu paid 760 yuan to Ma to purchase the Internet water army services such as increasing fans, likes, and reposting, who subcontracted the business to an illegal online platform operated by Chen. Under the influence of the Internet water army, the post was reposted more than 1.4 million times, and the Weibo hot search of "A primary student with asthma in Guangzhou was physically punished and hospitalized" was read 540 million times and discussed 196,000 times by netizens, triggering the public opinion

on the Internet. The People's Court of Baiyun District, Guangzhou City held that the defendants Liu, Ma, and Chen were sentenced to one year and six months in prison, six months in prison and six months in prison respectively for spreading false information on the Internet, disturbing and causing serious public disorder [17].

#### **4. CONSIDERATIONS ON CONVICTION OF INTERNET-BASED BEHAVIORS OF PICKING QUARRELS AND PROVOKING TROUBLES**

The traditional behavior of picking quarrels and provoking troubles itself has the nature of "pocket crime", therefore there is a great controversy in academic circles about the circumstances under which the crime can be applied. Internet-based behaviors of picking quarrels and provoking troubles as a new type of illegal behavior, the conditions of criminalization need to be carefully considered. In one aspect, it is necessary to reasonably identify the behavior, including the reasonable identification of "public order" and "causing serious chaos to public order". In another aspect, the criminal law can effectively regulate this kind of behavior through reasonable interpretation, which means it is not necessary to establish a new charge separately.

##### ***4.1. Reasonable Identification of Internet-based Behaviors of Picking Quarrels and Provoking Troubles***

There are still two controversial points in judicial interpretation of the identification of the Internet-based behaviors of picking quarrels and provoking troubles. One is how to determine "public order", the other is how to determine "causing serious chaos to public order".

###### ***4.1.1. Reasonable identification of "public order"***

According to the provisions of Article 293(4) of the Criminal Law, only those who disturb in a public place causing serious chaos in the "order of the public place" meet the constituent elements of the crime of picking quarrels and provoking trouble. The Interpretation stipulates that "Causing trouble and serious chaos in the public order, he/she may be accused of and convicted with the crime of picking quarrels and provoking trouble in accordance with the provisions of Article 293, Paragraph 1(4) of the Criminal Law."

The judicial interpretation here quietly replaces "the order of the public place" in criminal legislation with "public order", which virtually expands the scope of application of the crime [18]. "The order of the public place" and "public order" are two different concepts that need to be further clarified. From a conceptual point of

view, "public order" covers a wider range, including market order, health order, transaction order, and other orders related to public affairs. The "order of the public place" defines the place which may better regulate crime from the perspective of the crime scene. For the general public, the Internet has long been a venue for learning, communication, and even meetings and classes, and it would not go against the possible prediction of a common person if we interpret "cyberspace" as a "public place". Furthermore, in the era of the popularization of the Internet, crimes are increasingly committed in cyberspace. If we insist on interpreting "public places" as physical spaces, it will lead to loopholes in the criminal law. From the perspective of judicial practice in our country, "public places" have been extended to cyberspace. For example, naked chatting on the Internet is defined as the crime of forcibly molesting women and molesting children, and online gambling also constitutes the crime of gambling or the crime of opening a casino.

###### ***4.1.2. Reasonable Identification of "Causing Serious Chaos to Public Order"***

Apart from the "public order", the behaviors of abuse, intimidation, fabrication of false information as stipulated in the Interpretation are clearly clarified to some extent, without further controversy. However, it will require us to ponder on how to reasonably identify the "causing serious chaos in the public order". The main difference between the Internet-based and traditional picking quarrels and provoking troubles that "cause serious chaos in the public order" lies in the place of crime. According to the traditional crime, it is located in the chapter of the crime of obstructing the administration of social order, so the legal interest it protects is "the public order" or "the social order". That said, the public order and social order are very abstract concepts, and the abstraction of legal protection will inevitably lead to the lack of substantial restrictions on the interpretation of the constituent elements, thus dis-functioning the constituent elements. "Causing serious chaos in the public order" needs to be judged based on practices. Firstly, it needs to determine whether the behavior is serious. For example, spreading rumors involving people's livelihood is more severe than the act of fabricating facts and spreading rumors about others. Secondly, it needs to determine the degree of dissemination and influence of the behavior on the Internet. The behaviors that cause large-scale dissemination with "serious circumstances" can be identified as "causing serious chaos in public order". Thirdly, it needs to determine the impact on the victims involved, such as the psychological harm of the abused person by the abuse, and the panic of the recipient generated from the dissemination of false information.

#### **4.2 Considerations on Adding the Internet-based Crime of Picking Quarrels and Provoking Troubles**

Criminal law originated in the era where Internet has no presence, neither in the stage when the modern criminal legislation and criminal law theory came into being. The specific concepts of criminal law had nothing to do with the Internet, and it is difficult to apply many specific concepts to cybercrime. Criminal law must respond sensitively to the changes in the Internet era. When facing new types of crimes in the Internet era, it will not resort to criminal legislation if the interpretation of criminal law can be adopted to deal with such crimes [19]. At present, the Criminal Law in our country has not directly reflected the Internet-based crime of picking quarrels and provoking trouble. The Internet-based behaviors of picking quarrels and provoking trouble have been commonly seen in judicial practice, however, due to its nature of a pocket crime, it will need further discussion on whether it can be separately convicted. From a pragmatic perspective, the Internet-based behaviors of picking quarrels and provoking troubles are destructive and not conducive to maintaining the stability of the network order, the consequences of which will eventually radiate into real social life, and will also jeopardize the stable social and public order. Considering the social harm, it is proposed to add Internet-based picking quarrels and provoking troubles into the scope of criminal law but no need to add new charges. In terms of the specific practices, it can be regarded as a type of crime under Article 293 of the Criminal Law, that is, adding the fifth type of Internet-based behavior to the existing four types of "picking quarrels and provoking trouble, which will help the judicial organs to solve the dilemma that such cases can only be qualitative but not fully justified.

#### **5. CONCLUSION**

In view of the problems existing in the legal interpretation of the current Internet-based behavior of picking quarrels and provoking troubles, the law needs to make a reasonable response. Firstly, it is necessary to classify this behavior into different types, so as to accurately determine the conviction and sentencing in judicial practice. According to the existing judgment cases, Internet-based behavior of picking quarrels and provoking troubles can be divided into "way of soft violence", "way of online rumors" and "way of Internet water army". Secondly, it is necessary to consider how to criminalize this behavior reasonably. It would not go against the possible prediction of a common person if we interpret "cyberspace" as a "public place". "Causing serious chaos to public order" needs to be considered from three different aspects. In conclusion, if the judicial interpretation is further improved, the current criminal law can reasonably regulate the Internet-based picking quarrels and provoking troubles, which means there is no

need to set up a separate new charge. Furthermore, as a new product after the popularization of the Internet, the law cannot respond quickly to the online belligerence, so scholars need to conduct further research on the legal issues of this behavior.

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