Research on the Legal Regulation Dilemma and Governance Path of New Network Violence in the Era of Self-media

Mingqi Zhu

Institute of Foreign Languages, Ningbo University, Jinhua, China
zmq985211@163.com

Abstract. In recent years, vicious network violence incidents have emerged in an endless stream so it’s urgent to rectify network violence. The governance of network violence is not only a social problem, but also a legal problem. Based on the three forms and three causes of the new network violence, this paper further analyzes the problems of network violence in criminal law regulation, supervision, publicity of the rule of law, and puts forward corresponding countermeasures. Such as, improving legislation, smoothening the connection between civil law, administrative law and criminal law, clarifying the responsibilities of each subject; improving supervision, forming a multi-party co-governance model; increasing the publicity of the rule of law, improving citizens’ rule of law. Through the collaborative governance of all parties, the butterfly effect of network violence can be controlled from the source, and the green and healthy development of the network environment can be realized.

Keywords: network violence; criminal law regulation; multiple co-governance; legal cohesion

1 Introduction

With the rapid development of network technology, cyberspace has become an extension of real society, and people can use dual or multiple identities to express their opinions in cyberspace. However, the vicious incidents of network violence (hereinafter referred to as NV) occur frequently. For example, in a typical case of NV provided by the Beijing Internet Court, Li insulted Zhao on the social platform. To spread relevant insulting remarks, he formed public opinion pressure on Zhao and set up Li set up a “repost to participate in the raffle” activity. The network security department of Hunan public security organs has also investigated and dealt with a case of NV. In that case, Li, out of jealousy, used PS and other technologies to splice a girl’s photos and animal images, wantonly spread insulting pictures and malicious comments, resulting in large-scale speech attacks on the little girl. In addition to the above cases, there have been a series of new changes in NV in recent years. Such as making and disseminating spoof expression packs of others; the gradually skilled operation of
perpetrators; the frequently used programs such as forwarding, raffles, topics, and voting.

The frequent occurrence of malignant cases and the emergence of new changes have aroused great attention in China. On November 7, 2016, the Standing Committee of the Twelfth National People’s Congress voted to pass the *Network Security Law of the People’s Republic of China*. On December 20, 2019, the National Internet Information Office issued the *Regulations on Ecological Governance of Network Information Content*. On September 23, 2023, the Supreme People’s Court, the Supreme People’s Procuratorate and the Ministry of Public Security jointly issued the *Guiding Opinions on Punishing NV and Crimes according to Law* (hereinafter referred to as GO). The introduction of the above normative documents shows China’s determination and rectification efforts to purify the network environment and maintain network security.

To this end, this essay starts from an overview of NV, deeply analyze the main causes of NV, and then put forward corresponding solutions to deal with this thorny problem.

## 2 Overview of NV

### 2.1 Definition of NV

At present, there is no unified definition of network violence in academic circles. Different scholars have different views on it. On July 7, 2023, the State Internet Information Office issued the *Regulations on the Governance of Network Violence Information* (opinion soliciting draft), which defined NV information for the first time. It proposed that “network violence information refers to illegal and harmful information posted by individuals through the network, such as insults, slanders, defamation, invasion of privacy and moral kidnapping, derogatory discrimination, malicious speculation, which seriously affect physical and mental health".\(^7\) Besides, some scholars believe that NV is the violence of public opinion online. For example, Li Li and other scholars believe that NV is behaviors that a certain scale of network people makes targeted and wanton speech attacks on an object and infringe on the rights of the injured.\(^2\) Some scholars believe that NV is a network tort. For example, Shi Jinghai et al. believe that NV is not equal to “network + violence”, but a group bullying violence in cyberspace, which damages the privacy and reputation of specific objects by inciting cyber groups to carry out speech bullying and inflicts mental torture on the victim.\(^6\)

In my opinion, NV is not only a group violence, but also a network tort. That is, NV is behaviors that most of the network people mainly use words as a tool of violence to launch, guide or follow the trend of a natural person (under normal circumstances), and to carry out language insults, defamation, or human flesh search in a targeted and open way online, thus infringing their legal interests.
2.2 Forms of NV

As a superordinate word, NV has the characteristics of groupment and violence. Its basic forms include language insults, Internet rumors and human flesh search.

Language Insults.

Language insults (hereinafter referred to as LIs) have the purpose of mandatory interference with the victim. A certain scale of netizens stand at the commanding heights of morality and justice, and publicly issue obvious or unobvious insulting, targeted and offensive comments on the network platform, resulting in the reduction of social evaluation of the victim, affecting the daily life and work of the victim, and easily causing serious trauma to the victim’s body and mind. Nowadays, use of network language is becoming more and more popular, so LIs reflect the characteristics of concealment and contextualization. Netizens who commit LIs do not directly use obviously insulting words, and such contents can be posted normally after algorithm analysis. For example, in the incident called “A Wuhan Mother”, the mother had just lost her child, then large-scale netizens maliciously attacked her gorgeous dress from the perspective of sympathy for the child, and finally she committed suicide. Lis are insulting and aggressive to the victims, which can easily cause great torture to their spirit, and ultimately lead to irreparable loss.

Internet Rumors.

The general characteristics of Internet rumors (hereinafter referred to as IRs) are aggressiveness, purposefulness, falseness, high-speed circulation and disruption of social order. From the perspective of network violence, IRs also present new changes in the aspect of fabrication and dissemination. They are generally not completely fabricated out of thin air, but combined with certain objective facts; the words used are confrontational, inflammatory and aggressive. In terms of the dissemination of IRs, its dissemination methods and forms are complex and changeable, such as forwarding and raffling, live “blasting”, hiring water army, buying hot search, etc.; in addition, the spread speed of IRs has reached a new high. IRs can cause damage not only to the victims’ reputation and personality, but to their physical and mental conditions. IRs may even affect their close relatives, work units and other people or things that in social relations with them. IRs of randomly selecting defamation objects will lead to worries of netizens and chaos of social order. In “Liu Xuezhou Incident”, Liu went to his biological mother, but she accused him of “forcibly demanding real estate” in the media. Since then, netizens had begun to speculate maliciously on Liu, and influential online bloggers had posted insults and accusations against him. Finally, Liu chose to suicide. Because of network technology and the rendering of some media, fleetingly-spread IRs can reduce the reputation, personality and moral evaluation of victims within a certain social scope in a very short period of time, and ultimately lead to great physical and mental harm to victims and disruption of social order.
Human Flesh Research.

Human flesh search (hereinafter referred to as HFS) is a typical online violence. Through illegal collection and public release of citizens’ personal information, HFS is often combined with online rumors for furtherly slander the victims. This behavior not only violates the privacy of others, degrades the personality of others but seriously damages the network ecological environment. In 2019, a man bought and used multiple accounts to publish the personal information of a woman anchor and her parents to vent his anger and retaliate against her. He also threatened to kill her online, which reduced her live broadcast income by more than 40,000 yuan and the number of her fans. HFS not only infringes the privacy of the victim, depreciates the personality of the victim, but also often infringes the legitimate rights and interests of people in social relations with him. At the same time, the implementation of HFS can easily spread online atrocities to offline harassment, which can cause great distress to the victim’s real life and work. To a certain extent, HFS also lead to netizens’ distrust of the network ecological environment, thus restricting their freedom of speech online.

The above three basic forms of NV often blend with each other in real cases, so that NV presents the characteristics of “one case with multiple forms”.

3 Causes of NV

3.1 Defectiveness in Lawmaking and Poor Legal Cohesion

It is mainly reflected in the fact that civil law, administrative law, and criminal law have not formed a joint force.

There are three specific manifestations. First, normative documents such as civil law and administrative law can only punish minor NV behaviors. Second, the definition of NV is not uniform and relatively vague. Third, the criminal law is less involved in most serious NV events. From the Internet Information Service Management Method issued by the State Council in 2000 to the Civil Code voted by the 13th National People’s Congress in 2020, to the Network Violence Information Governance Regulations (Draft for Comments) issued in 2023, such relevant administrative laws, regulations, rules, or normative documents can only regulate and punish minor NV behaviors, lacking deterrence to some extent. In addition, the frequent occurrence of NV, the expansion of atrocities, and the changeable forms make it impossible for relevant normative documents such as civil law and administrative law to govern serious NV. In addition, so far, China’s officially introduced laws and regulations do not have a unified and clear definition of it. Crime and non-crime, this crime and that crime, and the addition and subtraction of legal punishment depend on the definition of NV. The unclear definition of the concept directly leads to the difficulty of identifying NV behavior in judicial practice. It is urgent for the law to make a clear definition.

Relevant normative documents such as civil law and administrative law are difficult to solve the NV problem, and criminal law is needed to intervene. In March 2022, Zhou Qiang, then-President of the Supreme People’s Court, emphasized in the “Work Report of the Supreme People’s Court” that criminal liability should be pursued ac-
According to law for perpetrators who violate personal information and incite NV to insult and defame. In 2023, the Supreme People’s Procuratorate issued the *Opinions on Strengthening the Network Rule of Law Work of Procuratorial Organs in the New Era* and the GO which once again emphasized the need to investigate the “criminal responsibility” of the perpetrators of NV according to law. All the above reflect that there is a large room for improvement in the current criminal law’s intervention in cyberbullying. At present, the criminal law has shown a certain governance effect on the phenomenon of NV. In the conviction of NV behaviors, it can be divided into the crime of insult, the crime of defamation, the crime of illegal collection of personal information, the crime of provocation and other crimes according to the nature of specific behavior. However, not all acts of NV can be classified into these crimes. At present, there are some problems in the use of criminal law, such as insufficient regulation, unclear intervention conditions, unclear use of charges and so on.

Lastly, the criminal law is less involved in most serious NV events, and basically not be held criminally responsible. Such as “Zheng Linghua Incident” and “Liu Xuezhou Incident” etc. [3]

### 3.2 Loose Supervision of NV

There are two main aspects of lax supervision. On the one hand, the departments of government and judiciary do not strictly supervise the network platform and platform users. On the other hand, the supervision of the network platform itself is not in place. NV cases cannot be solved by one department. Also, the joint action of multiple departments cannot effectively control NV initially, resulting in low effectiveness of NV punishment. [4] The governance of NV is a process that requires multi-party co-governance and multi-point efforts. The law enforcement of government department should be efficient, the supervision of the network platform should pay attention to efficiency and effect, and the judicial organs should seriously investigate the responsibility of the perpetrators. In addition, the network platform is the main battlefield of NV.

As the operators and managers of network services, network platforms should fulfill the obligations of network service operation and management. However, at present, the phenomenon of lax control of NV information by network platforms still exists. *Chinese Civil Code Tort Liability* stipulates that Internet platforms have supervision and management obligations, but it lacks a clear explanation of the scope of supervision. In real life, to pursue interests, some network platforms have not taken management measures to stop even if they have monitored some behaviors that disrupt the network order in the platform, allowing the spread of bad information to form public opinion to attract the public and damage the rights and interests of victims. At present, the phenomenon that the network platform does not strictly control the NV information still exists.
3.3 Insufficient publicity of the rule of law

Since 2000, China has successively introduced relevant laws, regulations, and opinions on the purification of cyberspace. However, in June 2023, the Rule of Law Weekend and the Social Survey Center of China Youth Daily jointly conducted an online questionnaire survey of 1,000 young people on NV. The results showed that ‘65.3 % of the respondents said that they or others around them had experienced cyber violence’ and ‘71.9 % of the respondents felt that NV was becoming more and more frequent’. [9]

The rule of law propaganda is a major cause. It is manifested in the weak awareness of residents of the rule of law. The consciousness of rule of law is a kind of legal culture of concept. It refers to the inner position, concept, and belief of citizens in understanding, identifying, trusting, supporting, and defending the rule of law based on the correct cognition of the function, principle and value of the rule of law by participating in the practice of the rule of law and accepting the education of the rule of law under the specific social and historical conditions. [10] Indeed, cyberspace gives people the channels and places to express their ideas and opinions publicly.

However, due to the low legal quality of netizens, there is a lack of information discrimination ability and independent thinking ability, which leads to the fact that they are easily convinced of the speech on the network, forming an overwhelming public opinion on the victim unilaterally. Besides, the weak legal consciousness of the actors promotes their moral indifference. [3] This makes actors easy to become perpetrators, ignoring the legitimate rights and interests of others such as privacy and right to life, inciting opposition, and wanton expression of malice.

After investigation, it is found that in many cases of malignant NV, the main force of NV is the netizens who don’t know the truth. They don’t understand the harm of NV. Many of them are not even aware that their behaviors are illegal when they are committing NV.

For the victims, the weak legal consciousness disables them to take up legal weapons to defend their rights, or to struggle in the process of legal rights protection. The anonymity of the network subject and the large number of participants in an NV event will make the victim feel isolated and helpless and think that it is difficult to be held accountable afterwards. Also, there are still many victims who don’t know the ways and procedures of safeguarding their rights and choose to bear them alone.

4 The Multi-dimensional Governance Path of NV

4.1 Improve the Legislation, Transform the Systemic Rule of Law Model

Smoothen the Legal Cohesion Between Civil Law, Administrative Law, and Criminal Law.

The governance of NV involves three substantive laws (3 laws): civil law, administrative law, and criminal law. A person acting NV behaviors may bear civil liability, administrative liability, and criminal liability at the same time. Therefore, to govern
NV according to law, it is necessary to smoothen the connection of the “3 laws” and improve the transition of civil liability, administrative liability and criminal liability.

First, adhere to the principle that civil law should be positive and criminal law modest and restrained, expand the scope of civil law protection, weaken the criminal law sanctions. For example, the scope of infringement of personal information rights and privacy rights should be appropriately expanded in civil law. The fact that the scale of Internet users is huge infers us that it is improper for citizens to be disturbed in their private lives in cyberspace or to use and disseminate personal public private information arbitrarily. Therefore, the personal information that citizens have disclosed in cyberspace should also be regarded as ‘personal information’, and the peace of their private life in cyberspace should also be protected by civil law. In addition, expand the scope of civil compensation for cyber rioters. In many NV incidents, there are numerous examples of victims are diagnosed of mental illness. Many perpetrators believe that the victim’s serious mental damage is the result of the victim’s poor psychological endurance. By expanding the scope of civil compensation for NV, it may be possible to correct the perpetrator’s concept to a certain extent. In addition, in many NV incidents, the victim himself may give a positive response. Therefore, whether he or she is suffering from ‘serious mental damage’ should not only be judged according to the results of psychological examination reports of him or her, but also should be investigated for the scope, degree, and time of NV in which case people will generally get mental damage. As the last line of defense, criminal law should maintain modesty and take whether to infringe on substantive legal interests as the standard of whether criminal law intervention is needed. In Germany, the Federal Constitutional Court believes that: “Criminal law norms are reflected as ‘last resort’ to some extent. According to the principle of proportionality, this method can only be used cautiously and moderately. However, if other means cannot achieve effective life protection, this last resort must be used.” In China, the essence of crime is the infringement of legal interests, and the purpose of criminal law is to protect substantive legal interests.

Thirdly, in terms of the connection between administrative law and criminal law, administrative prepositional elements can be set up in criminal law charges. Administrative prepositional elements allow us to follow the punishment logic of “administrative control first, criminal sanction later”, effectively avoid double evaluation, and build a cooperative relationship between criminal law and administrative law. At present, neither the crime of insult nor the crime of defamation has set up administrative prepositional elements at the level of judicial interpretation. At the legislative level, the Prohibition of Network Violence should be added. Once the perpetrator re-implements the NV within the specified time, it is directly an illegal act, and must bear the corresponding criminal responsibility and be subject to an aggravated statutory sentence. For example, the actor’s violation of the prohibition can be deemed as “serious” in the judicial interpretation.

Fill the Legislative Gap.

At present, the more dispersed charges such as insult and libel cannot fully fit the new types of behaviors in NV crimes. Therefore, it is necessary to modify the relevant

[1]
charges according to the types of behaviors and the degree of infringement of legal interests in serious cyber violence incidents.

**Make the Crime of Picking Quarrels and Provoking Troubles Detailed.**

Although the crime of picking quarrels and provoking troubles can punish some serious NV, it has the problems of vague charges and selective judicial enforcement, which is counterproductive. Therefore, we should first clearly explain that “public order” includes “cyberspace order”. Some scholars believe that, to prevent the crime from becoming a pocket crime, cyberspace should be excluded from “public places”. However, cyberspace is the second society of citizens’ life. In public cyberspace (such as network platforms), the perpetrators abuse, intimidate the victims, and even randomly choose the target of violence, which will lead to the situation that everyone is in danger. Excessive malicious comments will lead to high cost of platform control, which will easily affect the network public order and even the real public order. In addition, clearly stipulate the responsibilities of law enforcement agencies, network platforms and other parties, and formulate clear ways for victims to protect their rights. Finally, the plot determination of “serious disruption of public order” should be clarified. More criteria should be considered to alleviate the situation of selective justice. Such as the amount of forwarding and comments, the degree of infringement of the victim’s daily work, life and psychological situation and the cost of network platform control.

**Modify the Conviction Standard of the Crime of Infringing Citizens’ Personal Information.**

In view of serious HFS, China’s judiciary often convicts the crime of infringing citizens’ personal information. At present, the normative documents do not directly stipulate that it is illegal to use and disseminate personal information, posted on the Internet by citizens, units, etc. themselves, to carry out cyber violence, so that the perpetrators cannot be convicted. Therefore, it is necessary to add a major situation to the crime of infringement of citizens’ personal information. That is, “without permission or with refusal, he wantonly publishes, disseminates other people’s public personal information, causing serious distress to the victim. In addition, the scope of personal information should be clearly defined in Article 253 of the Criminal Law of the People’s Republic of China. At present, Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Laws in Handling Criminal Cases of Infringement of Citizens Personal Information and Personal Information Protection Law of the People’s Republic of China are different in scope, which can easily cause public doubt.

**Expand the Incrimination standard of Insult and Defamation.**

On the one hand, it is necessary to identify serious online LIs as a situation of “blatantly insulting others in other ways” in the crime of insult. The degree of infringement of the substantive legal interests of the victim’s personality and reputation by serious online Lis is no less than or even higher than that of offline violence, and the psychological torture of the victim is even worse than that of offline violence, which
is in line with the current judicial determination of “blatantly insulting others in other ways”. On the other hand, the act of wanton dissemination of information obtained after partial fabrication or out of context based on a certain fact has serious consequences is identified as “fabricating facts to slander others”. At present, the word “fabrication” in the crime of defamation is generally believed to refer only to the specific facts that are born out of nothing and create false facts. From the perspective of protecting people’s legal interests, whether it is partially fabricated or completely fabricated, and the widely-disseminated relevant information is very easy to cause serious damage to the personality and reputation of others. Therefore, the act of partially fabricating facts and spreading relevant facts should be judged as defamation.

4.2 Enhance Supervision, Form a Multi-subject Co-governance Model

Government Departments and the Judiciary to Increase Supervision.

As the main governance department, the national network information department should timely summarize the previous special governance actions of network violence, deeply analyze the trend and characteristics of network violence events, and find out the difficulties in the process of governance actions. In addition, in terms of technology, the network information department can jointly develop technology with universities and social organizations to improve the speed of identification, processing and interception of network violence information, realize the normalization monitoring of account users who publish violence information and do not correct it, and can remind and warn users who publish bad information at the first time. For example, information tracking technology and violent speech recognition technology. In addition, to reduce the cost of governance manpower, open regulatory channels, and actively advocate netizens to report online violence information on their own. To avoid the expansion of NV, while establishing an early warning mechanism, Law Enforcement Departments should implement electronic administration, allocate special personnel to monitor public opinion, collect public opinion, strengthen communication with netizens, and make timely processing and feedback on netizens’ questions, complaints, and suggestions.

Network Platform to Strengthen Self-regulation.

The platform should set up a NV early warning and prevention mechanism. To realize the early warning function of NV, the platform needs to insert supervision procedures in each topic and comment area to review the published content. If insulting remarks, personal identity cards and other privacy information are found, the interception process should be started in the first time. When the platform is audited, it should first perform word cloud analysis on the relevant content to determine whether the content is not obviously insulting. In addition, the platform should remind netizens to pay attention to screening information to prevent indirect cyberbullying. In terms of prevention and control, the platform should verify the facts in time in the early stage of the NV storm, and do a good job in collecting and archiving relevant information.
4.3 Increase the Propaganda of the Rule of Law

To control the chaos of NV, we must increase the publicity of the rule of law, and enhance citizens’ awareness of the rule of law.

Conduct Legal Lectures Related to NV.

To carry out lectures on the popularization of law related to cyber violence, so that the public can understand the relevant laws and regulations and their harm, and encourage the public to learn, publicize relevant laws and regulations, and actively report cyber violence speech. Governments and public security organs at all levels can first train the grid members of major communities in various places on the relevant provisions of NV and carry out legal publicity on the grid as a unit, paying attention to the vividness of the content and conforming to the acceptance of the public. The local network information security departments and the technical departments of public security organs can invite the people within the scope to participate in the propaganda activities according to the IP address density of the NV information.

Offer Lessons About NV Information and Its Harm.

Local departments can jointly launch relevant learning videos, expand the scope of publicity through the official public number, video number and other self-media, go deep into the daily entertainment life of the people, and make them master the skills of identifying online violence speech. Localities can also hold “Network Violence Harm” theme speech or propaganda contest, to enhance public understanding of the harm of NV.

5 Conclusions

Recently, vicious incidents of NV have occurred frequently, and the suppression of public opinion formed by it will infringe on the victim’s personality, reputation and even the right to life. The three forms of network violence have also undergone new changes. These remind us that it is urgent to rectify the chaos of NV. In terms of the concept of the rule of law, the governance of NV should be based on grasping the law and trend of the development of NV, forming a “pluralistic co-governance” governance model and shaping a good network ecology. In terms of the rule of law governance model, we should promote the transformation of NV governance to a systematic rule of law model, give full play to the synergy of civil law, administrative law, criminal law and other departmental laws, and construct a systematic NV governance system. This paper considers the new forms of NV at the present stage, analyzes the reasons of NV in three aspects: legislation, supervision, and rule of law propaganda, and puts forward suggestions on how to control NV in the aspects of criminal law regulation, legal cohesion, multiple co-governance and rule of law propaganda. It is hoped that all parties will form a joint governance force in the governance of NV to support the healthy and orderly development of cyberspace, protect the legitimate rights and interests of the public, and maintain the peace and stability of social order.
References


Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (http://creativecommons.org/licenses/by-nc/4.0/), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.