

A Separate Conviction Study on Online Rumors and False Information Dissemination in China

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Abstract: With the rapid development of the Internet in the 21st century, more and more people choose to conduct social and other related activities in the online world, so the spread of online rumors and false information has become more frequent and threatening. In view of these practical factors, this paper mainly uses the method of legal normative analysis to study the separate criminalization of online rumors and false information dissemination in China. How to better face the rampant Internet chaos and the proliferation of criminal behavior. At present, China's criminal law norms have undergone two amendments and two judicial interpretations, but there are still many problems. The victims of personal and property rights that have not been properly protected are increasing with the development of the Internet, and it is all the more necessary to separately criminalize the spread of online rumors and false information. This article argues that it is necessary to add separate crimes to the criminal law to regulate it. This article focuses on the contradiction between China's current technological development and the old regulations. This has led to difficulties such as the criminal law cannot correspond to all online rumor-mongering behaviors, and the interpretation of the regulatory scope of false information is not clear enough. Attempts were made to change the status quo by separate legislation and additional interpretations. At the same time, the question of defining the boundaries of the offence, focusing on separate convictions, illustrates the necessity of such a move. In order to improve the green environment of the Internet, improve the stability of the Criminal Law, and improve laws and regulations.

Keywords: online rumors, false information, separate legislation

1. Introduction

The technology of network information can be said to have attracted much attention in recent years. Correspondingly, the threshold for participating in cyberspace activities has become lower and lower, and cyberspace has shown a completely different situation from before. In such an environment, incidents such as rumor-mongering, disinformation dissemination, and the use of cybercrime are frequent. The first thing to pay attention to in relation to the above is China's current regulations on online rumors, the spread of false information, etc. China's criminal law theorists generally believe that there is no essential difference between cybercrime and traditional crime but the means of crime are different. The use of the current Penal Code can fully solve the problem of new types of crime, such as cybercrime and does not require special legislation. The current doctrine has an opposite comparison of the threshold of criminalization in the "standard theory". Such doctrines consider that

there is no point in creating separate offences. Because the Criminal Law already sets a number of crimes for spreading false and false information, other online rumor-mongering acts that do not target specific individuals should not constitute crimes. Another doctrine is that the “abstract danger theory” should treat “serious disturbance of social order” as the result of abstract danger. Such scholars believe that other crimes can be interpreted in an expanded manner to achieve the effect of expanding their application [1]. Some scholars have proposed three ideas including amending existing laws, separate special legislation, and special chapter legislation, to improve China’s legal system for online rumor governance [2].

The most common and frequently applied law is the crime of fabricating and intentionally disseminating false information in the Criminal Code, which can be broadly divided into the category of violation of national security, such as the crime of inciting separatism, according to the interests of the law. There are also infringements of corporate and individual reputations, such as damage to business reputation, commodity reputation crimes, and defamation crimes. There are also crimes that violate social and public order, such as the crime of fabricating and intentionally disseminating false terrorist information, and the crime of picking quarrels and provoking trouble. The current Criminal Law has the problem of not having uniform crimes and different penalties in regulating the spread of online rumors and false information in cybercrimes. This article will demonstrate how to improve the regulation of online rumors and false information dissemination by proposing a foothold on the necessity of separate legislation.

2. The Dilemma of Regulating the Spread of Online Rumors and False Information

The current legal standards cannot truly match the endless online rumor-mongering crimes [3]. It is difficult to restrict and sanction all online rumors and false information dissemination that have caused major harm. At the same time, it is also difficult to introduce the act of committing crimes through online rumors and false information dissemination into the corresponding and appropriate crimes, and occasionally the controversial issue of the inapplicable crimes arises. The current legislative provisions for online rumors that disrupt public order cannot meet the needs of society [4]. In addition to the above regulatory deficiencies, the current regulation of online rumors in China’s Criminal Law is still before the rapid development of the Internet in the 21st century. The designation standards are controversial, some crimes have loopholes, there is suspicion of subjective attribution for online rumors, false information transmission, and other conduct, and the allocation of punishments for some crimes is unreasonable [5]. Naturally, as the times progress, the old regulations should be updated.

Exploring the constituent elements of the crime of fabricating and intentionally disseminating false information, it mainly includes the following points. Firstly, intentionality in subjective behavior, the main point is whether the perpetrator knows that the information disseminated is false information. The second is the determination of whether the information is false, and false information includes two types. That is to say, the perpetrator is completely fabricated, out of unilateral arbitrariness made of information without authenticity or adapted on information with authenticity. The key factor in determining whether it is false here is “substantial change”. The third is the act of deliberately spreading false information, and the implementation of false information without disseminating it will not cause a bad social impact. Therefore, the act of spreading false information to an unspecified number of people through the Internet and various media is considered to constitute the crime of fabricating and deliberately disseminating false information. The fourth is to achieve the consequences of seriously disturbing social order, and the crime of fabricating and deliberately disseminating false information is the result offender. This means that the consequences of spreading false information must cause serious social disorder and cause consequences that can be recognized as crimes in order to be subject to the regulation of this crime.

However, what extent does the consequences qualify as “serious disruption of social order”? In the face of the increasingly developed and rich network platform, even the smallest voice is easy to cause network heat [6]. Although there are provisions on Several Issues Concerning the Application of Law in the Trial of Criminal Cases Involving the Fabrication and Intentional Dissemination of False Terrorist Information (abbreviated as interpretation) as a reference, the interpretation is earlier than before the establishment of the crime of fabrication and intentional dissemination of false information. Therefore, it can only be used as a reference. To sum up, the crime of fabricating and intentionally disseminating false information only regulates online rumors and rumors targeting four types of false information including danger, epidemic, disaster situation, and police situation, while other online rumors and rumors belong to the scope of the crime of picking quarrels and provoking trouble. These measures have made many online rumors and false information spread escape the regulation of the law. The challenge in tackling disinformation is to clarify what constitutes “rumor-mongering” and what constitutes “freedom of speech”, which undoubtedly needs to be explained independently and completely.

The cost of violating online rumors is very low if the creators and propagators of online rumors are identified, they will often not be actually punished, or the punishment is very small, far less than the benefits generated by their rumors [7]. In actual judicial cases, only crimes of using online rumors and false information have been convicted and sentenced as other crimes, and the punishments are different and there is no uniform standard. As a result, a large number of online rumors and false information cannot be solved in time after causing damage. It mainly includes two regulatory problems. The one is the lack of unified crimes, and the other is the failure of punishment.

2.1. Lack of Uniform Charges

It is not difficult to see from the above three classifications that there is a problem of incomplete application. The classification method is relatively simple, that is, it is only treated according to this classification, in fact, it cannot cover all crimes related to online rumors and false information transmission. At the same time, the above crimes are all using online rumors and false information as a channel for committing crimes. However, the final judgment is not based on the specific implementation of online rumors and false information dissemination. This means that China’s current legal provisions do not directly target online rumors and disinformation dissemination itself, but rather use it as a tool for crime and then attribute it to traditional existing laws. This regulatory approach is bound to cause a variety of problems. It is easy to cause controversy in identification, which violates the modesty of criminal law and the principle of criminality. The current regulations can no longer limit the frequent chaos on the Internet, and many online rumors and false information that cause bad consequences are prone to errors in traditional imputation due to the lack of unified crimes. For example, if an online rumor causes serious disorder in public order, it is regarded as the crime of picking quarrels and provoking trouble, which means that the online platform is regarded as a public place. However, the Criminal Law does not have strict interpretation provisions, and it is difficult to judge whether online rumors can infringe on public order. It will not only affect the legitimate rights and interests of the parties, but also infringe on the credibility of judiciary [8]. At the same time, it also highlights the importance of the current crime of spreading online rumors and false information. The purpose of reducing and eliminating the occurrence of controversial crimes is to safeguard the legitimate rights and interests of the parties and ensure the solemnity of the judiciary. The absence of a unified and fixed crime mentioned above will inevitably lead to such acts of using the Internet to spread rumors and false information to be attributed to other crimes, but the applicable crimes are extensive, which is easy to cause the imprecision of the criminal law, that is to say, the severity of the punishment is different.

2.2. The Severity of the Penalty Was Wrong

Under certain circumstances, the serious consequences caused by online rumors and false information dissemination crimes are beyond traditional crimes. The penalty for the crime of fabricating or intentionally disseminating false information under the Criminal Law is imprisonment for a term not exceeding three years, criminal detention or surveillance. It has to be mentioned that this crime is only aimed at false information about dangerous situations, epidemics, disasters, and police situations. Therefore, other serious consequences that are easy to be punished as the crime of picking quarrels and provoking trouble are eight months in prison.

For another example, Article 2 of the Interpretation stipulates that anyone who uses the Internet to slander others and causes the victim to commit suicide shall be dealt with in accordance with the serious circumstances in the crime of defamation. The statutory maximum penalty for defamation is only three years in prison, which means that the offender who loses the right to life of another person will only be sentenced to three years in prison. It can be seen that there is a clear lack of strength in the punishment. Especially when the identity of the main messenger of online rumors is clear, it is still impossible to obtain a fair sentence for the victim. In summary, the applicable crimes impose too light penalties for some online rumor crimes. Improper application may lead to insufficient legal deterrence, undermine the fairness of the law, and prevent reasonable protection of injured legal interests.

3. In-depth Analysis of the Dilemma

What follows is the need for separate convictions. The first point is the analysis of the need to protect legal interests. In response to the chaos of online rumors, non-criminal law containment methods are obviously insufficient. Therefore, in order to fully protect the relevant interests of citizens and the state and prevent the spread and spread of a large number of online rumors, it is necessary to punish rumor-mongers and rumor-mongers who cause great harm. This is of great significance for the criminal regulation of online rumors. The Internet is anonymous, and even with the rapid development of technology, the virtual nature of the Internet still makes people more relaxed about exercising their rights on the Internet than in real life. Most people are not vigilant and attach great importance to online rumors and false information, and it is easy to achieve the spread of online rumors and false information. Another point is that as far as online expression is concerned, there is no substantial difference between it and the exercise of the right of expression in reality. There are theories that spreading rumors and false information on the Internet will not directly damage people's interests. That's because people won't be forced to accept it, they can choose whether they believe it or not, and there won't be a situation where the public can't access cyberspace for normal online life. Therefore, it is difficult to say that the peaceful and peaceful life of the public has been damaged. This doctrine means that network order and real society are completely different things. This statement is not agreed with in this article. Because even if the masses on the Internet choose to completely ignore online rumors and false information, this objective harm still exists. Although it is a virtual online world, the realistic results of harm are real. Therefore, online speech should follow the same order as reality, and promoting the legal governance of online rumors is an inevitable requirement for strengthening network governance and maintaining network security. The first task of improving the criminal law system for the spread of online rumors and false information is to introduce special legislation. The legislature should adopt separate legislation to ensure the crackdown on online rumor crimes, systematically protect the legitimate rights and interests of citizens, more effectively punish online rumors and crimes, and maintain a green and safe online environment.

Secondly, at present, it is difficult to achieve the legislative purpose of regulating crimes and criminal responsibility through legal interpretation, and this purpose can be better achieved through legislative improvement. The most prominent problem in the current legal interpretation is the lack of definition of “public order” on the Internet. Article 5 of the Interpretation on Handling Criminal Cases of Online Defamation replaces “public order” with “public order”, which is suspected of expanding the interpretation.

The legislature should clarify the elements of the crime that constitute the spread of online rumors and false information. On this basis, absorb all kinds of crimes that are currently rampant on the spread of online rumors and false information, and the organs make a judgment that truly criminalizes the spread of online rumors and false information separately.

In addition, what is to be discussed is the reason for the trouble. It is mainly related to online rumors and the spread of false information itself. The crux of the problem lies in the contradiction that the old regulations of the past do not meet the problems that regulate the progress of modern science and technology. It can be said that before the Internet social activity was so close, the spread of online rumors and false information was far from the number of other crimes. The harm results cannot be compared with other offences regulated by the Criminal Code, so there is no need for separate legislation. However, with the development of the times, more and more cases have proved that the harm of such crimes is far greater than before, and practical deterrence meets the necessity of imputation. For example, the actual damage caused by the dissemination of false panic information will cause the loss of the person and property of an unspecified person. To sum up, whether it is to maintain public order and good customs or the legal and security environment, it is necessary to revise the previous regulations and get out of the current predicament.

4. Improve the Path of Criminal Legislation for the Spread of Online Rumors and False Information

The first is the establishment of separate criminal offences. The crimes discussed in this article should be classified under the crime of obstructing the order of social management, constituting a separate crime of spreading online rumors and false information. Because the constituent characteristics of the crime of obstructing social management order are most consistent with such crimes, the object of infringement by the spread of online rumors and false information is social management order. The social management order is more inclined to the routine, objectively violates the relevant laws and regulations of the state, and undermines the social management order. The basic constituent elements of this crime consist of four points. One of the elements is that the object of infringement is the order of cyberspace activities. Causing riots in the normal order of activities in cyberspace, causing damage to the real social order, and causing serious losses to people, property, and safety. Secondly, the objective aspect is manifested in the spread of rumors and false information in cyberspace, which has caused serious consequences. Thirdly, the subject of the crime is a general subject, that is, a natural person with the capacity for criminal responsibility. The fourth is the subjective aspect manifested as intentionality, that is to say, the perpetrator’s psychological attitude of knowing the serious consequences that may be caused by the communication behavior or the falseness of the information itself, but still allowing the consequences [9].

The second is the relevant content of the promulgation of legislative interpretations. In general, the colloquial term “rumor” is used in the legal field as a concept of false information [10]. In fact, Chinese scholars have not reached a unified understanding of the definition of rumor. For example, Jiang Shenghong believed that a rumor is a kind of news with a specific point that has not been confirmed by the relevant subjects, but has been widely disseminated [11]. This article argues that the scope of regulation as “false information” in separate legislation is as follows. The first point is that if the core and substance of the information elements are changed, it is regarded as false

information. Information such as the person, place, and time in the event is not considered false information if it has not been materially tampered with. For example, changing the “four people together” reported in the original news to “three people together” is a subtle error that can be tolerated. It is undeniable that the excessive pursuit of absolute accuracy of information will cause unnecessary waste of resources [12]. The second point is that the content of the message conveyed contains a good warning reminder and should not be regarded as false information. Inaccurate statements due to objective conditions may promote the public interest. Therefore, such fact-based and at the same time positive information needs to be weighed against the pros and cons of its consequences. This article argues that as long as the two are comparable and do not have significantly greater harmful consequences than the interests protected, they should not be regarded as false information. The third point is that suspected false information whose authenticity is temporarily unknown needs to be incitement and instigated, and may cause immediate and imminent danger to the public interest and national interest. It is worth mentioning that the occasional circulating speech on the Internet that denounces and exposes state officials falls within the scope of citizens’ exercise of supervision and freedom of expression. The above-mentioned remarks should not be treated as “false information” to be combated. Because ensuring citizens’ exercise of their right to supervise and promote the lawful administration of state organs is obviously a higher priority than safeguarding the image of state organs and related personnel. The law cannot require citizens’ reports and disclosures to have complete evidence and accuracy, which will inhibit citizens’ right to supervision to a certain extent [13]. The fourth point is that it has serious social harm and criminal illegality. There is an explanation of “online public order”. The first point is that public places should not be limited to physical space, but should emphasize their social attributes, and the Internet has now become an important platform for people’s communication activities, which is an extension of space. Through the combing of practical judgments, it can be found that it is common for false information to cause chaos in online public order. The second point is that cyberspace has the characteristics of a public place, which can realize cluster crime. Online multiplayer live broadcasts, chats, videos, etc. are consistent with the definition of public places in reality, so the network information space is defined as a public place. At the same time, acts that undermine online public order should also be interpreted as acts that undermine actual public order, and recognize that the existence of public order in information cyberspace is a necessity and necessity of criminal policies to combat online rumors.

Finally, there is the issue of determining the crime of spreading online rumors and false information, that is, the boundary between this crime and other similar crimes. It is worth noting here that homicide caused by the spread of online rumors and false information should be recognized as intentional homicide or the crime of spreading online rumors or false information. This article argues that the death of a victim caused by the spread of online rumors or false information should be recognized as the crime of intentional homicide. Because online rumors and false information dissemination are directed at individuals and cause “fatal results”, their behavior has risen to the level of “online violence”. Online violence refers to the repeated use of electronic or digital media by individuals or groups to disseminate aggressive information with the intention of destroying the spirit of others and suppressing the victim’s resistance [14]. This article does not separately discuss the regulation and determination of “online violence”. From the perspective of deterrence alone, it should be counted as intentional homicide, and online violence is even more brutal than simple physical violence [15]. Online Violence can be intentional injury, intentional homicide, and there is a causal relationship with the victim’s death. Accordingly, the crime of spreading online rumors and false information does not regulate the infringement of objects other than social management order that have been expressly stipulated in the Criminal Law.

5. Conclusion

It is undeniable that with the development of information technology, people can participate in online social interaction and express their opinions and opinions almost zero cost, the network platform is a space where many behaviours are more convenient and faster than reality. Meanwhile, it is a space that can be used for criminals. In recent years, the temper in cyberspace has become more and more serious, and many people have been persecuted because of the spread of online rumours and false information, and the results of different degrees of damage have been shown in front of people's eyes. Loopholes in the law undoubtedly need to be held responsible, and as the times progress, the discussion of related issues should also progress, rather than stick to the old. The spread of online rumours and false information discussed in this article is separately criminalized, in order to improve the legislative path, in an attempt to solve the current dilemma of endless chaos in the online environment. In order to put an end to the spread of online rumours and false information, improve the current Internet chaos, help people use the Internet with more peace of mind, and support the benign development of network information technology.

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