

Research on the Legal Regulation of Internet Speech in China

Zhibo Sun, Xiuli Yu*

School of Marine Law and Humanities, Dalian Ocean University, Dalian, Liaoning, 116000, China

**Corresponding author: yuxiuli@dlou.edu.cn*

Keywords: Network speech, network violence, legal regulation, law enforcement subject

Abstract: With the advent of the Internet era, according to the Statistical Report on the Development of the Internet in China, as of June 2023, the number of Internet users in China has reached 1.079 billion, and the Internet penetration rate has reached 76.4%. Although the development of the Internet has made the digital economy an important engine for stable growth and a strong boost to the economic recovery, it has also brought many legal problems. This paper studies from the Angle of law, firstly introduces the concept of network speech, secondly analyzes the current legislative status and existing problems of the development of network speech in China, and proposes constructive suggestions on the legal regulation of the development of network speech in China by summarizing the characteristics and essence of the legal system of foreign network speech.

1. Introduction

The development of the Internet has brought great convenience to our lives, but more and more problems have also emerged, such as frequent occurrence of Internet violence, Internet infringement, insults and defamation, and the deterioration of the Internet environment is becoming more and more serious. One of the reasons is that our laws and regulations on Internet speech are not strict enough, and the punishment is not strong enough to regulate and restrain people's behavior. This paper mainly analyzes the legal regulation of Internet speech through literature research method and comparative analysis method, and further discusses this issue from the perspective of legal norms. Combined with China's national conditions, this paper puts forward countermeasures and suggestions on the existing problems of the legal development of Internet speech in China, such as incomplete legal system, unclear rights and responsibilities of law enforcement subjects, and weak legal awareness of netizens. It is hoped that China can form a complete legal regulation system of Internet speech as soon as possible, so that the Internet environment can develop in a positive, healthy and benign direction.

2. Concept and legal regulation of internet speech

2.1. The concept of internet speech

Network speech is the expression of citizens' freedom of speech in the Internet space. The

subject of expression of online speech is very broad and free. All netizens with registered accounts can make comments on their own homepage or other people's videos, unless they violate the platform's blocking words, otherwise the content of the speech is not subject to any restrictions. Internet speech is open, Internet users can communicate with netizens around the world on the network platform, narrowing the distance between people in space, and people can receive information from all over the world on the Internet, learn about the humanities and interesting things in different places, learn different views on the same event due to different identities and status, broaden their horizons and broaden their thinking. Network speech is anonymous. Although China has implemented the network real-name system, it can only be seen in the background of network service providers. In fact, netizens still do not know each other's real identities, which leads to some low-quality netizens making unrestrained remarks, violating the legitimate rights and interests of citizens, social public interests and even the interests of the country. The quality of Internet users varies, and there are no conditions for Internet users to register, which makes Internet users mixed, there are high elite talents, but there are also low quality Internet users to destroy the network environment.

2.2. Legal regulation of Internet speech

Compared with developed countries, China's legal regulation of network speech started late and the system is still immature. China's concept of network rule of law governance has undergone a change from "active development, strengthening management, seeking advantages and avoiding disadvantages, and being used by us" to "active utilization, scientific development, legal management, and ensuring security" ^[1], and the change of concept has also made legislation get attention. The governance of the network society is no different from the governance of the real society, which should respect the law of natural development, take smart management and fine management as the basic principles, and maintain the social order with the governance logic of the modern rule of law government. At present, China's legal regulations on Internet speech include the Constitution, the Cybersecurity Law of the People's Republic of China, the Decision of the Standing Committee of the National People's Congress on Safeguarding Internet Security, the Regulations on the Protection of Computer Software, the Measures for the Administration of Internet Information Services, and the Regulations on the Administration of Business Premises of Internet Access Services, etc. ^[2]. Among them, the Network Security Law of the People's Republic of China regulates the freedom of speech on the Internet and strengthens the protection of citizens' personal information, which is of milestone significance for China's network development.

2.3. Research status of the legal regulation of internet speech

2.3.1. Domestic research status

With the development of the Internet in China and the participation of netizens, the problem of cybercrime has become increasingly prominent. As the Internet is not an illegal outer space, it is also necessary to regulate and restrict the behavior of infringing on the legitimate rights and interests of others through laws and regulations. Chinese scholars have conducted multi-faceted and multi-angle research on this hot issue, including the research on the liability of Internet service providers, the regulation of legal liability for Internet rumors, the research on the rule of law governance of Internet space, the regulation of Internet platform governance, the legal problems existing in the supervision of online public opinion, and the regulation of Internet tort liability. Although the theoretical research is very comprehensive, but there are still many problems in practice, theoretical research and practice are derailed, some theories or measures proposed in

theory in practice is more difficult to achieve, so we should combine the national conditions of China's network development, the experience of reference to China to solve the problems of China's network development.

2.3.2. Foreign research status

Developed countries have an early start in the governance of the cyber environment, a high awareness of protection, a solid foundation for cyber security and a relatively complete legal system. For the development of Internet speech, a comprehensive study has been conducted on the concept, characteristics, legislative principles, law enforcement subjects, regulation of tort liability subjects, judicial review methods, protection methods of Internet speech, Internet real-name system, Internet environment autonomy and other contents of Internet speech, which has good reference value for the rule of law governance of Internet speech in China ^[3].

3. Problems existing in the development of legal regulation of internet speech in China

3.1. The law provides for a low level of validity

As can be seen from the above introduction, in addition to the Network Security Law of the People's Republic of China, China's current legal provisions on network speech are regulations and other normative documents, with low validity level, no universal binding force, cannot be repeatedly applied, and it is difficult to produce effective legal binding force and authority. China has not yet established a complete law-based system. An institutional system supplemented by other regulations ^[4]. In our country, the application of Constitution in judicature is very limited, so the legalization of rights becomes an important way to protect basic rights, and also an important way to regulate rights. As the Internet plays an increasingly important role in social development, the usage rate is increasing, and the contradictions in network development are gradually highlighted. It is no longer able to meet the needs of practical development to regulate and restrict behaviors only through regulations and other normative documents. Moreover, for the content of regulations and normative documents, as a lower law, it must not contradict the provisions of the upper law, and can only make specific interpretations of the provisions of the upper law. As a result, the existing problems of network speech cannot be fully solved in law.

3.2. The legal provisions are principled and not operable

The content of relevant laws and regulations on Internet speech is too principled, and there is no detailed regulation on such issues as what kind of bad behavior occurs in the process of Internet development, what kind of means should be adopted to regulate it, and what kind of punishment should be given accordingly. This is not conducive to guiding the development of Internet speech in a benign direction. When the Internet speech supervision department regulates online public opinion, the regulatory boundaries become blurred due to the abstraction and principle of the content of the regulations. In order to regulate the use order of the platform, each Internet service platform provider will formulate the platform code of conduct according to the content of the regulations. In fact, these guidelines are highly overlapping with relevant laws and regulations. In this way, the platform can attribute the normative restrictions on netizens' speech behavior to compliance with laws and regulations, thereby avoiding its own responsibility. However, due to overly principled provisions, these restrictive provisions cannot be reasonably explained according to laws and regulations, which challenges the authority of relevant legal norms of online speech, and will bring other adverse consequences. Only the establishment of specific norms matching the

development practice of network speech can achieve the legislative purpose and achieve the expected legal effect of legislation.

3.3. The powers and responsibilities of law enforcement bodies are unclear

At present, the main body of Internet speech control in China includes the State Internet Information Office, the Ministry of Public Security, the Information Office of The State Council, the Ministry of Industry and Information Technology and other departments. All departments exercise the management function of network environment security from their respective positions and rights ^[5]. According to relevant laws, in principle, all law enforcement bodies have jurisdiction, but the division of responsibilities between these departments is not clear, in which the Ministry of Internet and Information Technology occupies an important position, and the other departments perform their duties within their terms of reference. It is precisely because of the unclear division of responsibilities that when regulatory disputes occur, the lack of effective communication and consultation leads to confusion in management, and the problem of shifting blame or competing for jurisdiction is easy to occur, which affects the efficiency of problem solving and further expands the damage consequences, and fails to fully realize the due value of the network speech regulation system. For example, for serious violations of the Internet environment security, the public security department will intervene to investigate, but for general violations, the public security department is not mainly responsible for regulating, but due to the unclear powers and responsibilities, other law enforcers will mistakenly believe that the public security department has taken necessary coercive measures against the illegal acts, and ultimately, it is easy to cause the infringer not to receive due legal punishment. The result of infringement is further expanded, the loss cannot be stopped in time, and over time it is easy to lead to the decentralization of law enforcement power, the weakening of law enforcement, and the network environment has become worse.

3.4. Netizens have weak legal awareness

Judging from the development of the current network environment, freedom of speech on the Internet is actually a double-edged sword. For those who can properly use the Internet, online speech enables them to receive different viewpoints and learn knowledge beyond their major, which is undoubtedly an excellent way to expand their thinking and enrich their knowledge system. However, for those whose quality needs to be improved, granting them the right to freedom of speech on the Internet will not only infringe on the legitimate rights and interests of others, but also affect the overall network environment, destroy social order, and even endanger national security. Most of these netizens use the exercise of the right of freedom of speech as a shield for their own infringement, and make inappropriate remarks arbitrarily guided by their own values. As a result, Internet rumors, Internet violence, and Internet infringement incidents frequently occur, and some victims are just exercising their freedom of speech but are collectively abused because they disagree with others. On the one hand, the infringer has a weak legal awareness and does not know that his behavior has violated the legitimate rights and interests of others, which is an infringement; on the other hand, the victim has a weak legal awareness. Do not know that you have been infringed, or do not know how to protect your rights through the law.

4. Legal regulation and enlightenment of foreign internet speech

4.1. American internet speech regulation model

The United States started its research on network speech security early, and the Internet has

developed rapidly with the help of the United States. Therefore, the United States has formed a complete system of legal norms, and its distinctive place is that it has formed a network speech system dominated by judicial review and relief mode. Judicial review activities are mainly reflected in the following two aspects: one is the review of the legislation of the National Assembly, and the other is the review of individual cases. The US government adopts the principle of absolute guarantee to regulate the right of freedom of speech on the Internet. Both the US government and citizens pay special attention to the protection of freedom of speech, and the restriction of freedom of speech requires many games ^[6].

4.2. Characteristics of Internet speech regulation in Germany

The protection of freedom of speech in Germany adopts the principle of relative guarantee, which protects citizens' freedom of speech on the basis of not harming other basic rights. In terms of system, Germany mainly restricts the freedom of speech on the Internet. Therefore, Germany is generally recognized as the most unfriendly country to Internet speech ^[7]. Germany mainly adopts Basic Law and special law to regulate and manage Internet speech. Its protection methods include: leaning more responsibility of Internet regulation to Internet service platform, requiring it to regulate Internet civilized language; Arrange network supervisors and network patrol officers to conduct real-time supervision of online speech and public opinion; Pay attention to the protection of minors and pay attention to the mental health development of minors.

4.3. South Korea's online real-name system

Due to the serious human flesh search and network violence in South Korea, which seriously affected the stability of social order, South Korea has implemented the network real name system. When the real-name system was first implemented, the network chaos was indeed managed, and the incidents of network violence were greatly reduced, but it also brought new problems. The network platform had a large number of citizens' personal information, and after the website was hacked, the citizens' information was also leaked, bringing huge security risks. Finally, South Korea gradually abolished the network real-name system. At present, China is implementing the network real-name system, which undoubtedly gives us a wake-up call ^[8].

4.4. Enlightenment to our country

In addition to the above-mentioned Internet speech regulation models in the United States, Germany and South Korea, the Japanese model of combining legislation with industry self-discipline and the British model of guiding industry associations through the government are also worthy of our reference. In comparison, there are still many areas to be improved in the legal regulation of Internet speech in China. Through the introduction of the above foreign legal regulation of Internet speech, we have the following inspirations: we should improve the legal regulation system of Internet speech in our country as soon as possible, improve the legislative effectiveness, enhance the operability of the law, and form a complete legislative system; The rule of law and rule by virtue are combined to control and restrict the behavior of netizens. Clarify the powers and obligations of law enforcement bodies, and clarify the scope of powers and responsibilities; It is necessary to exercise the online real-name system prudently, recognize the advantages of the system and the potential dangers it may bring, and take preventive and countermeasures measures in advance by analyzing the experience and lessons of South Korea's failure. Strengthen the protection and supervision of citizens' personal information, and provide support to online service platforms in terms of policies, technologies and funds; Government

regulation and industry autonomy coexist, and at the same time strengthen the restrictions on government power, lock power into the cage of the system, and prevent the abuse of power.

5. Suggestions on the legal system of Internet speech in China

5.1. We will raise the level of legislation and improve the system of legal norms

In order to fundamentally improve the network environment and solve the problem of network speech, it is necessary to strengthen legislation and perfect the legal norm system. At present, China's legal provisions on network speech are concentrated in regulations and other normative documents, so we should raise the legislative level and use laws to regulate network speech. This kind of improvement is not to simply and directly raise the provisions in regulations and normative documents into laws through legislative procedures, but to formulate legal, reasonable and strict legal norms for Internet speech in accordance with the principle of legal reservation. It is necessary to integrate the legal norms of low terraces, streamline and delete repeated and redundant laws, and retain important principled provisions. In order to deal with various complex situations in reality, it plays the role of supplementary explanation in the case of unclear interpretation of rules or loopholes in rules. It is necessary to combine the current development situation of Internet speech in China, integrate the relevant normative documents existing at the present stage, fully collect and listen to the opinions and suggestions of the public, improve the legislative procedure, scientific legislation, democratic legislation, legislation according to law, and establish a complete legal norm system of Internet speech.

5.2. Enhance the feasibility of the legislation

Firstly, the feasibility of the law is reflected in whether the content of the legal provisions is clear. In order to achieve the connection between principles and rules, theory and practice, the regulatory content of online speech should be clearly defined, the boundary between administrative violations and criminal offenses should be clarified, and the law enforcement subject and corresponding powers and jurisdiction should be clarified. The subordinate law in the legal system should make the principle provisions of the superior law more specific, without violating the superior law, and make detailed and clear provisions to improve the operability and feasibility of legislation, in order to prevent ambiguous provisions from undermining the original intention and purpose of legislation. At the same time, corresponding judicial interpretations can be issued for the formulated implementation rules, and more clear provisions should be made for frontline network law enforcement personnel. Secondly, the feasibility of the law is reflected in the accuracy of its provisions. The law itself has unavoidable limitations, and legal provisions cannot be unpredictable or trivial. Therefore, China advocates the joint regulation of public behavior through morality, law, party rules and discipline, public order and good customs. Therefore, we need to give judges a certain degree of discretion, but at the same time, in order to avoid the abuse of judge's power and lack of reliance, we should provide accurate explanations, clear distinctions, and establish unified standards for some conceptual terms.

5.3. Clarify the powers and responsibilities of law enforcement bodies

Scattered and diversified law enforcement bodies make the legal norms of Internet speech lose their value, deviate from the original legislative purpose, and the law enforcement bodies do not give full play to their roles, resulting in many problems in China's Internet environment, the Internet environment is smoky, and the experience is greatly reduced compared with before. At present, in

most countries in the world, the mainstream practice in the field of network environment administration is to establish special administrative agencies, such as the Federal Communications Commission in the United States, the Office of Communications in the United Kingdom, and the Internet Security Commission in Korea ^[9], which are all beneficial attempts of various countries to regulate network speech, and this model is worth learning from. In order to improve China's Internet environment as soon as possible and minimize the harm, law enforcement bodies in China should, first, reorganize and optimize the law enforcement resources of various departments as soon as possible, integrate the resources of law enforcement bodies, form an integrated law enforcement structure, give full play to the role of law enforcement bodies, make the Internet speech regulation system more complete and efficient, and make up for the loopholes and unreasonable places in law enforcement. Second, it is necessary to clarify the rights and responsibilities of law enforcement subjects, clarify the scope of responsibilities, and clarify the power boundaries and jurisdiction of law enforcement subjects. It is necessary to promote mutual restraint and mutual supervision among law enforcement subjects, so that law enforcement officers cannot exceed their power to enforce the law or evade their responsibilities, and to enable law enforcement subjects to cooperate with each other and cooperate in division of labor, so as to truly establish an efficient and strict system of Internet speech rule of law.

5.4. Strengthen publicity and education for netizens

The netizen is the initiator of the network speech, the quality of the netizen determines the quality of the network environment, and the legal consciousness of the netizen determines the security of the network environment. For those Internet infringers, we should strengthen publicity and education, tell them what acts are illegal and what responsibilities they should bear. For those victims of the Internet, increasing the publicity of the law is to better protect their rights and interests, tell them how to protect their rights and interests through the law. Therefore, for the content of law popularization, it is necessary to guide netizens to re-understand network speech, establish correct values, and make netizens psychologically aware of the importance of correctly exercising the freedom of network speech. As for the way of law popularization, the media with large page views, high usage rate and strong influence should be fully used to carry out all-round publicity. For example, the Internet platforms such as Weibo, Kuaishou and Douyin should set up law popularization education and publicity columns in the top position of the home page of these platforms ^[10], so that netizens can enjoy the promotion of law every time they enter these platforms. The first thing you can see is the laws and regulations related to online speech, and you can set the browsing time, such as three minutes or five minutes of compulsory learning, before you can enter the entertainment browsing page of the platform; Or organize a platform test every month to check the learning effect of everyone, and make corresponding decisions and adjustments according to the test results. In this way, netizens can unconsciously deepen their understanding of the law of network speech and improve their legal awareness ^[11]. Practice determines knowledge, and knowledge guides practice. Only by allowing netizens to consciously establish the awareness of correctly exercising the right of online speech and build a legal defense line in psychology and behavior can we maintain the safe development of network order.

6. Conclusion

In view of the current development speed of the Internet and the problems of network development, the legal regulation of online speech has become imminent. Now the younger and younger netizens are becoming more and more serious. If we do not timely regulate online behaviors through laws and carry out legal publicity and education for netizens, we cannot imagine

how much bad information minors will receive in the process of growing up. How much incalculable harm will this bring to their growth, and how terrible the impact will be on their future development. Therefore, we should attach great importance to network speech, establish a complete legislative system, and timely pass laws to regulate network speech. I hope that in the future we can all enjoy surfing in a safe, comfortable, positive and healthy Internet environment.

References

- [1] Wang Yingbei. *On the legal regulation mode of Internet freedom of speech in China* [J]. *Western Journal*, 2023, (16):62-66.DOI:10.16721/j.cnki.cn61-1487/c.2023.16.009.
- [2] Duan Zheyuan. *Value coordination and mode selection of the legal regulation of online freedom of speech* [D]. *Shanxi University*, 2023.DOI:10.27284/d.cnki.gsxii.2023.001961.
- [3] LI Huiqin. *Analysis on the legal regulation of Freedom of Speech on the Internet* [J]. *Cultural Journal*, 2023, (01): 124-127.
- [4] Guo Hongwei. *On the right to tranquility of online private life and its Protection limit* [J]. *Journal of East China University of Political Science and Law*, 2022, 25 (06): 82-95.
- [5] Liu Shengjie. *Research on the legal regulation of the abuse of free speech on the Internet* [D]. *And Yantai University*, 2022.DOI:10.27437/d.cnki.gytdu.2022.000361.
- [6] Li Yanfeng. *Public Law Regulation of network Platform Content Governance* [J]. *Journal of Gansu University of Political Science and Law*, 2022,(02):50-63.
- [7] Lin Hua. *The improvement of the legal system of network rumor governance* [J]. *Research in Administrative Law*, 2021, (04): 69-81.
- [8] Zhou Zhenchao, Zhang Liang. *Legal interpretation and practical trend of the legal governance of Internet rumors* [J]. *Theory Monthly*, 2021,(01):124-135.DOI:10.14180/j.cnki.1004-0544.2021.01.017.
- [9] Liu Guobin. *Research on multiple governance of Internet speech violence in China* [D]. *Xiangtan University*, 2020.DOI:10.27426/d.cnki.gxtdu.2020.001428.
- [10] Zhang Yiwen. *Research on the problems existing in online public opinion supervision and legal response mechanism* [D]. *And Jilin University*, 2020.DOI:10.27162/d.cnki.gjlin.2020.006893.
- [11] Dong J. *Civil Rights Protection in "Human Flesh Search": From the perspective of the Conflict between privacy and freedom of speech* [J]. *Journal of yancheng institute of technology (social science edition)*, 2019, 32 (4): 31-35 DOI: 10.16018 / j.carol carroll nki cn32-1499 / c. 201904007.