

Research on the Regulation Approach for Criminal Law on Mental Violence

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Mental violence refers to the intentional or unintentional psychological harm to the victim, which causes the victim to bear mental pressure and leads to adverse consequences. Under certain circumstances, mental violence is no less harmful than physical violence, thus it should be effectively regulated by the criminal law. In the process, it is necessary to clarify the approach of behavior regulation and result regulation firstly, then to accurately identify mental violence. Meanwhile, a crime system for regulating mental violence is supposed to be built in the criminal law, so that the existing related crimes can effectively play a role in mental violence regulation.

Keywords: mental violence, construction of crime system, criminal constitution, crime of abuse

Mental Violence Is a Harmful Behavior Worthy of Criminal Law Legislation

Concept Analysis of Mental Violence

When it comes to mental violence, academic research is mostly focused on domestic violence and campus violence. For example, some scholars describe family mental violence as a long-term behavior between family members with subjective intentions that may cause mental damage to each other. While some scholars (Zhang, 2015) describe campus mental violence as teachers' behavior of using their dominant position to harm students' psychology and spirit, and then lead to the students' bursting into negative emotions and even morbid mental illness (Song, 2007). However, mental violence is by no means limited to the two scenarios of school and family—even between strangers who have never met, it is possible to use mental attacks to hurt others. In the Russian “Blue Whale” death game that shocked the world in 2015, the game designer used the game as a cloak and used mind control methods to design a complete plan to instigate the victim to commit suicide. A large number of victims chose to end their lives painfully because of their participations in the game (Wu, 2018).

Even if it is admitted that the occurrence of mental violence is not limited by the place and environment, the author still extracts the core characteristics of mental violence from the perspective of concentrated researches about campus and domestic mental violence. Comparing with the previous groups of concepts on mental violence, the following issues must be illustrated. First, mental violence is not confined to deliberate acts. That's to say, it is not required that the perpetrator subjectively has the intention to cause psychological discomfort to others. Negligently hurting the psychology of others also belongs to mental violence (but whether

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it constitutes a crime depends on the criminal constitution of criminal charges). For instance, in the study of mental violence on campus, it is generally believed that educators' abuse, neglect, and corporal punishment will easily cause students' psychological discomfort. However, it must be admitted that a number of educators who implement the above-mentioned behaviors may not have the intention to make students feel psychologically uncomfortable subjectively. Second, the behavior of mental violence can be verbal or other forms (such as physical violence, which may also create mental violence at the same time); third, mental violence must cause the victim to bear psychological pressure and feel psychological discomfort. In other words, even if the perpetrator intentionally insults and ridicules the victim based on the subjective intention of hurting others mentally, if the victim is cheerful and doesn't care about these insulting words at all, this kind of mocking behavior cannot be called mental violence (at least it does not belong to the target behavior of mental violence regulated by Criminal law). Therefore, the author believes that mental violence refers to the behavior of psychologically harming the victim based on intention or negligence, which in turn causes the victim to bear psychological pressure.

Justification of the Social Harm of Mental Violence

The harmfulness of physical violence is self-evident, by contrast, that of mental violence still needs to be proved. If the consequence of mental violence is simply to make the victim "feel unhappy", then there is absolutely no need to use criminal law to regulate this kind of behavior.

On the contrary, serious mental violence is just as harmful as physical violence, for it can also directly take the life of the victim. For example, in the Russian Blue Whale game mentioned above, a psychological control method that is almost equivalent to "hypnosis" was applied to make the victim feel desperate and disgusted with life, and finally choose to commit suicide. Different from the general instigation of suicide, a crueler method was adopted—instigating others to give up their lives while tormenting their psychology. For another example, Mou Linhan, a student at Peking University, has been exerting mental violence against his girlfriend for a long time. Her girlfriend couldn't bear the disturbance and ultimately chose to commit suicide in 2019. On June 15, 2023, the People's Court of Haidian District, Beijing sentenced Mou Linhan to three years in prison for torture. This is a typical case of mental violence being regulated by criminal law (Huang, 2023). For the harm of domestic mental violence, American clinical forensic psychologist Lenore Walker proposed the concept of "battered woman syndrome". This concept has been widely applied in criminal proceedings in North America (Kai, 2020). Although the trigger for this concept is mainly domestic violence based on physical violence, it's clear that battered woman syndrome is a mental illness. Although it's by physical means, domestic violence at this level, is with the attribute of psychological violence.

It can be seen that the damage caused by physical violence might also be caused by mental violence, and even take the life of another person. Based on the possible harm of mental violence, there is no reason for criminal law to take a laissez-faire attitude towards mental violence while regulating physical violence. Of course, criminal law is the last resort of social governance, and the application of criminal law should be cautious. Most acts of mental violence are not worthy of regulation by criminal law. However, if the mental violence is serious to a certain extent, resulting in the same harmfulness as physical violence for intentional injury and homicide, the criminal law should be executed actively for its social governance function.

Approach to the Regulation of Criminal Law on the Behavior of Mental Violence

High-Injury Mental Violence Is Difficult to Define

As mentioned above, only the mental violence with great social harm should be regulated by criminal law. However, what kind of behavior is “significantly harmful to society”? It seems not difficult if we evaluate the social harmfulness of physical violence from a realistic and physical level. Like killing people with a knife is realistic, with assessable harm and experiential evil deeds. However, if the perpetrator uses mental violence to harm others, the social harm of the behavior will become elusive. For instance, if the perpetrator is a psychological expert, and the depressed patient who seeks psychological counseling is overweight and on the verge of collapse. Based on experience, the psychological expert is keenly aware that the words “you are fat” are enough to cause mental breakdown for a depressed patient. But he still said it, which leads to the patient’s self-mutilation and suicide attempts. The question is: if a psychologist says “you are fat” to a depressed patient, should it be considered a crime?

The criminal law follows the principle of a legally prescribed punishment for a specified crime, which requires that the rules of the criminal law must be clear. If a rule is ambiguous at the level of literal or practical operation, then this rule is not suitable to be a regulation of criminal law (Gao, 2020). For it would make punishment unpredictable. Hence, “concrete analysis of specific issues” is not feasible in the field of criminal legislation. It can be deduced that for the criminal law separate regulations cannot be formulated to punish the “bad behavior” mentioned above. Although in individual cases, saying “you are fat” to others does break the other person’s mood. But for the words being said by/to different people in different situations and tones, the effects will be completely different. Thus, it is impossible to use uniform norms to restrict this kind of behavior. Certainly, if the perpetrator foresees that this sentence will cause the victim to have a heart attack, then it is not controversial that saying this sentence is an act of intentional homicide.

General Rules for Determining the Illegality of Mental Violence Acts

Since mental violence can be carried out in a seemingly legitimate way—treating a specific person with the artificially legitimate behavior of ordinary people in society may cause mental damage to the person, which may be exploited by people with professional knowledge in psychology—whether these “seemingly justified actions” should be punished by criminal law? The author believes that the answer is yes. However, the means of punishment must be to endow the behavior with illegality through existing crimes, rather than to define some normal behaviors recognized by the public as criminal behaviors.

Usually, we can use criminal law theory and rules of evidence to assign illegality to these seemingly legitimate behaviors and carry out punishment. As an example, A hopes B to die, so he persuades B to take a plane, secretly expecting that there will be an accident with B’s plane. As a result, things happened as A’s expectation. In this case, A’s conduct is clearly not a criminal act. Because persuading others to fly is a common daily behavior, which will not cause any social harm. It is impossible for the laws of any country to specifically define “persuading others to fly” as a crime. However, if there is evidence to prove that A knows that there is a bomb on a certain flight, he still persuades B to take this flight. Then A’s behavior is obviously an act of intentional homicide. In this case, the widely believed normal behavior was not defined as a criminal act by the criminal law. But through the rules of evidence, A’s persuasion behavior after he knew that the flight accident was about to happen was identified as an illegal intentional homicide.

In fact, this rule can also be learnt for the determination of mental violence cases. Daily behaviors recognized by the public shouldn't be defined as crimes by the criminal law, even if such behaviors may cause mental harm to specific people. However, if the evidence in the case shows that the perpetrator knows that a certain daily behavior will cause mental harm to others, and still uses it against a specific person—just like the psychological expert mentioned above said to a depressed patient who is about to collapse “You are fat”—then this “everyday behavior” will be given the illegality of a specific crime (here it may be the crime of intentional injury). This rule ensures that the criminal law does not overly restrict the perpetrator's daily behavior while trying to regulate mental violence.

Another obvious situation is that the behavior of the perpetrator cannot be evaluated as a daily behavior under the perception of the public. In other words, the perpetrator's behavior may be concerned with the attribute of mental violence generally recognized by society. For instance, in order to retaliate against L, Z deliberately made up and published L's privacy on the Internet, then organized a public relations company to carry out cyber violence against L, which caused L to fall into depression and self-mutilation. In this case, Z's behavior is with a relatively obvious attribute of mental violence. The illegality of such behavior can be directly determined without resorting to criminal law theory and evidence rules. For sure, such illegality must come from the criminal constitution of a certain case (such as the crime of intentional injury, intentional homicide, negligently causing serious injury, abuse, insult, defamation, etc.).

Approach to the Regulation of Criminal Law on the Results of Mental Violence

The Result of Injury Is an Important Criterion for Judging the Existence of Mental Violence

Injury results also play a pivotal role in determining mental injury. The importance of the result can be understood from two aspects. On the one hand, the objectivity of result is conducive to the judiciary's evaluation of the behavior. The harmful result caused by mental violence is either similar to the intuitive harm such as serious injury or death, or it can be recognized by judicial appraisal institutions as mental symptoms or mental illnesses scientifically. On the other hand, the result is a necessary element for the determination of mental violence. As mentioned above, no matter how many seemingly abominable acts of mental violence the perpetrator has committed, it cannot be identified as mental violence if there is no result of mental harm. Actually, in current judicial practice of China, mental violence crimes in specific fields (abuse, abuse of wards, caregivers, etc.) are mainly measured by “bad behavior” (like swearing and beating) plus result of mental harm.

However, while acknowledging the importance of results for the identification of mental violence, it is necessary to guard against the identification falling into the vicious circle of consequentialism. It cannot be assumed that once the result of mental harm occurs, there is an attempt to admit the existence of mental violence. Because the result of mental harm may come from mental violence, or simply from negative life events or natural or social disasters (Liu, Wang, & Jing, 2003). Even if the perpetrator ridiculed the victim to a certain extent, resulting in mental harm to the victim, the severity of the ridicule must be analyzed. If a kind of “sarcasm” acceptable to ordinary people in society (the term used in joking among acquaintances) accidentally causes mental damage, unless there is sufficient evidence to prove that the perpetrator intentionally uses this method to carry out mental attacks, it is difficult to identify such behaviors as mental violence. Or to say the least, even if it is recognized as a negligent mental violence, such negligent behaviors may not be punished by the criminal law.

For the crime in the criminal law is based on the principle of intention and the exception of negligence, the social harmfulness of this behavior is not enough to make it a crime in the criminal law.

The Result of Injury Is an Essential Element of the Crime of Mental Violence

Just because the result of mental injury plays a pivotal role in the judgment of mental violence, those crimes in criminal law should exist in the form of consequential crimes. That's to say, in the process of criminalizing mental violence, the result of the crime (mainly referring to the result of mental violence injury in this article) should be one of the necessary and insufficient conditions for constituting a crime. By observing the crimes in the current criminal law that may have the function of regulating mental violence crimes, it can be found that these crimes happen to be resultant crimes.

Nevertheless, it cannot be considered that legislators have taken into account the significance of criminal outcomes in determining mental violence when establishing these charges. In fact, the crimes (crime of abuse, abuse of wards, caregivers, intentional injury, intentional homicide, insult, defamation) just happen to be used to regulate crimes of mental violence. In China's criminal justice practice, there are not many situations where mental violence crimes are identified and the perpetrators are convicted and punished. Relatively speaking, in criminal judicial practice, it is more common to identify mental violence in the trial of abuse cases. But mental violence of the perpetrator against family members is usually confirmed while identifying physical violence. On account of this, Mou Linhan's mental abuse of his girlfriend mentioned above was identified as a crime of abuse, which is a milestone in China's criminal justice practice—a kind of mental violence that is not based on physical violence can also be identified for a crime. Whereas, if this opportunity is not taken by China's criminal justice theory to develop the criminal theory of mental violence, then other similar cases may not be properly handled.

If it is admitted that a crime involving mental violence must be a resultant crime, it is necessary to confirm the facts that can be identified as the result of mental violence through judicial interpretation. An example is that, the statutory result of the crime of intentional injury is minor injury in the field of physical violence. The standards for minor injuries are specifically stipulated in the "Appraisal Standards for the Degree of Human Injury". In the crime of defamation, as a necessary element for constituting a crime, the interpretation of "serious circumstances" also appeared in the "Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Criminal Cases of Defamation Using Information Networks"¹. Nonetheless, only physical injury is considered in the "Standards for Appraisal of the Degree of Human Injury". When the Supreme People's Court made judicial interpretations of the crime of defamation, they did not consider the victim's mental damage as the standard for the "serious circumstances" of the crime (This has indirectly led to the fact that in the current Chinese criminal justice practice, it is difficult for the crime of defamation to regulate the behavior of inflicting mental violence on others through cyber violence, unless these behaviors happen to meet the special circumstances listed in the notes on last page). In all the existing criminal

¹ In Article 2 of the "Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Criminal Cases of Defamation Using Information Networks", it's stipulated that under any of the following circumstances, the "serious circumstances" in the crime of criminal defamation shall be determined: (1) The same defamatory information is actually clicked, browsed more than 5,000 times, or forwarded more than 500 times; (2) causing serious consequences including mental disorder, self-harm, and suicide to the victim or their close relatives; (3) has been subject to administrative punishment for defamation within two years, and has defamed others; (4) other serious circumstances.

laws and regulations in China, there is no standard for determining the result of mental injury. The legislative department and the judicial interpretation department should take active actions to issue relevant criminal legal norms (including laws or legal interpretations) for determining the results of mental damage, and improve the identification procedures for the results of mental damage (Sun, 2013). Only when it's confirmed by criminal legal norms that the result of mental damage can be used as the criterion for judging a certain consequential crime, can this crime truly possess the judicial vitality of regulating mental violence.

Construction of Crime System for Mental Violence Regulated by Criminal Law

After determining the behavior and result approach of criminal law to regulate mental violence, it is also necessary to construct the crime system. The construction of the crime system usually refers to the establishment of several crimes to regulate it for a specific type of criminal behavior, and the study of the differences and connections between related crimes. According to current criminal trial practice in China, the option of mental violence is only applied for the crimes of maltreatment and maltreating guardians and caregivers. These two charges are not enough to achieve universal coverage of mental violence, which reflects the necessity of crime system construction.

Based on the present criminal law norms, violations of personal rights are mainly stipulated in chapter four of the Criminal Law (crimes against citizens' personal rights and democratic rights). In the text, besides the crime of maltreatment and the maltreating the guardian and care receiver, the crime of intentional homicide and intentional injury should also be listed in the regulatory system of mental violence. Because the crimes of intentional homicide and intentional injury are both miscellaneous clauses for personal injury. If mental injury is considered to be applied to the above-mentioned crimes, the most general and extensive protection can be provided for mental injury. In the meantime, as the domestic legal theory and practice circles pay more attention to cyber violence, the crimes of insult and defamation should also be added into the system. The reason is that insults and slander are the most common behaviors in cyber violence, and the mental harm caused by such behaviors to others is direct and serious.

Using the above-mentioned crimes, a system of criminal law crimes regulating mental violence can be constructed. Among them, the crimes of intentional homicide and intentional injury are general miscellaneous clauses. The victim is required to be a family member of the perpetrator in criminal constitution of the crime of abuse, which is mainly related to regulation of domestic mental violence. For mental violence that occurs in campuses, nursing homes, and other places where guardianship and caretaker relationships exist, the crimes of maltreating guardian and care receiver are effectual on the governance. The crimes of insult and defamation play a regulatory role in the mental violence associated with cyberbullying.

However, in order for these crimes to take effect in the field of punishing mental violence, it is necessary to refine the rules for determining the behavior and results of mental violence under the crimes based on the approach identified above. As an example, through legislation or judicial interpretation, the result of the crime of insult and defamation causing serious mental illness to others is interpreted as "serious circumstances" in the composition of the crime. Only by utilizing the accurate behavior regulation approach and result regulation approach to improve the elements of crime and related judicial interpretations, can these crimes be really effective in regulating the frequent mental violence appearing in society.

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