

On the constitutional protection of network expression freedom in China

Wang Yazhi^{1, a}, Zhou Tao^{1, b, *},

¹School of Law, Northwest University of Political Science and Law, No.300 Chang'an South Road, Xi'an, 710063, China

a.yazhi_170032@163.com, b.zhouzhou_99_0801@gmail.com

***Corresponding Author**

Abstract: With the development and popularization of Internet technology, the network has opened up new avenues for citizens to realize the freedom of expression. This paper explores the basic theory of network expression freedom from a constitutional perspective, focuses on the reasonable boundaries of network expression freedom, and emphasizes the necessity of constitutional protection for network expression rights. By analyzing the legislative status quo of network expression rights protection in China, this paper identifies the existing shortcomings in the current protection of network expression rights in China and explores how to establish and improve the legal protection system for citizens' network expression rights within the framework of the Constitution to maintain and promote the exercise and realization of citizens' network expression freedom.

Keywords: Network Expression Freedom, Reasonable Boundaries, Constitutional Protection

1. Introduction

In today's digital age, the Internet has become an indispensable part of people's lives, profoundly changing their lifestyles, communication patterns, and the ways in which information is disseminated. Network expression freedom, as an emerging form of citizens' rights, has emerged and rapidly developed, providing citizens with an unprecedentedly vast space to freely express their thoughts, opinions, and emotions. It has also significantly expanded the channels and means through which citizens can participate in social affairs. However, network expression freedom is not an absolute freedom. While it realizes citizens' rights, it also faces many challenges and problems, such as conflicts with private and public interests, and how to strike a balance between safeguarding freedom and maintaining order. Therefore, conducting in-depth research on network expression freedom, exploring its reasonable boundaries, and providing effective constitutional protection are not only necessary for theoretical studies but also an inevitable requirement for practical development. This paper will start with the basic theory of network expression freedom, analyze its boundaries with private and public interests, discuss the necessity of constitutional protection for network expression freedom, and based on the current status and deficiencies of constitutional protection for network expression freedom in China, propose suggestions for improving constitutional-level protective measures and establishing a sound legal protection system for network expression freedom, in the hope of providing useful references for the healthy development of network expression freedom in China.

2. General theories of network expression freedom

2.1. Analysis of the basic concept of expression freedom

Defining network expression freedom is the starting point and foundation for exploring how to achieve constitutional protection for the right to network expression and safeguard citizens' network expression rights. Professor Zhen Shu qing from China believes that "expression freedom is one of the basic freedoms of citizens. It refers to the autonomous state of citizens expressing, displaying, or publicly conveying their thoughts, opinions, views, assertions, emotions, or information and knowledge through various media or

means under the provisions or recognition of the law, without interference, restriction, or punishment from others." [1] Wang Shi Jie and Qian Duan sheng, in their renowned work *Comparative Constitutional Law*, argue that "so-called freedom of opinion is merely the freedom to express one's opinions." [2] Taiwanese scholar Lin Ji dong suggests that "expression freedom means the freedom for people to express their intentions without illegal interference." [3] Hong Kong scholar Zhu Guo bin points out that "expression freedom refers to the freedom of citizens to express their intentions without interference from other external factors." [4].

From the views of the above scholars, it is evident that despite different emphases, the connotation of expression freedom mainly includes the following elements: the subject of expression, the legality of expression, the medium of expression, the content of expression, and the non-interference nature of expression. Therefore, we can basically understand the concept of expression freedom as follows: Expression freedom refers to the freedom enjoyed by citizens or other entities to publish and disseminate thoughts, emotions, views, assertions, or other information through various means, without illegal interference, restriction, or infringement from others, provided that it does not violate the provisions of the law.

2.2. The concept and characteristics of network expression freedom

Based on the general understanding of expression freedom and the characteristics of Internet technology, we can define network expression as the freedom to express one's inner thoughts and ideas through Internet-specific means such as text, images, audio, and video, making them publicly accessible without illegal interference or restriction from others.

Network expression freedom is both connected to and distinct from traditional expression freedom. The Internet provides a new platform for people to express their thoughts and speech. More and more people's thoughts, emotions, and interests are being displayed in the online world, and network expression has developed its own unique qualities. First, network expression has equality and openness. The online world is a virtual world where people can enter and express their thoughts, emotions, political views, and engage in online creation on an equal basis. Second, network expression has anonymity. In the online world, the identity and related information of netizens are generally not disclosed to the public. Third, network expression has great convenience. When people want to express their emotions or views, they only need a computer or a mobile phone to complete it. Compared with traditional expression freedom, it has a huge advantage in convenience. Finally, network expression has richness and interactivity. The content of network expression freedom is not only rich and diverse but also provides ample interactive space for netizens. People can fully communicate and interact with each other on the same content at the same time.

2.3. Network expression freedom as a fundamental constitutional right

Freedom of expression, as a fundamental right of citizens, holds an important position in the Constitution. Article 35 of the Constitution of the People's Republic of China clearly stipulates: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration. "Network expression rights, as an extension of the basic right to expression, can also be considered a fundamental right of citizens. Although the concept of network expression freedom has not been explicitly mentioned in China's current laws, it is an important part of citizens' freedom of expression, and Article 35 of the Constitution provides a legal basis for its significant status. Freedom of expression is an important constitutional right, and network expression freedom, as an important form of freedom of expression, is a powerful means for citizens to realize their right to express. It integrates many traditional forms of expression freedom and has advantages that traditional expression freedom cannot compare with. It should be recognized and protected by the Constitution and become a fundamental constitutional right.

3. The reasonable boundaries of network expression freedom

Like other freedoms, network expression freedom is not an absolute, unrestricted liberty but one with certain limitations. As Rousseau said, "Man is born free, and everywhere he is in chains." Justice Holmes argued that restrictions on freedom of speech must meet four conditions: "First, there is a potential danger in the environment in which the speech is made; second, the consequences of the speech will be extremely

serious; third, there must be a reasonable belief that serious harm will occur if it is not restricted; and fourth, the harm has reached a level of imminent occurrence." [5] Network expression freedom should also have its own reasonable boundaries. Generally speaking, the boundaries of network speech freedom mainly consider two aspects: public interest and private interest. To be specific, we can establish the reasonable boundaries of network expression freedom by clarifying the boundaries between network expression freedom and private interests, as well as between network expression freedom and public interests.

3.1. The boundary between network expression freedom and private interests

Private interests, in legal theory, refer to the interests of private legal subjects that do not involve public order, social morality, or national security. In the online realm, conflicts between network expression freedom and private interests are particularly evident in areas such as citizens' rights to reputation, privacy, portrait rights, and copyright.

China's civil law explicitly stipulates that civil subjects must not harm the interests of others when exercising their rights. Whether the exercise of a right infringes upon the interests of others is determined by the four elements of tort law: act, consequence, causation, and fault. These tort law standards provide a concrete basis for delineating the boundary between network expression freedom and private interests. First, it is necessary to define the tortious acts in the online context. The author believes that the actions of the initial poster and those who play a primary role (such as online "influencers") should be considered tortious acts. As for the consequence, in the online environment, the damage often manifests as the dissemination of private information related to civil subjects. Given the nature of the Internet, where content is immediately accessible to a large number of unspecified individuals, the determination of infringement in network expression can be based on whether the content has been or still exists on the Internet. Regarding causation and fault, these share significant similarities with other types of torts and can be judged based on intent and negligence. Of course, in addition to the civil law perspective, the boundary between network expression freedom and private interests should also be measured from a constitutional standpoint. For example, in the "A Bun Caused a Blood Case" online incident, Chinese constitutional scholar Cai Ding Jian argued that freedom of expression holds different value statuses in civil law and constitutional law. At the constitutional level, freedom of expression has a more important social significance than private economic interests and should be given special attention. [6]

3.2. The boundary between network expression freedom and public interests

Public interests refer to those involving national security, domestic order, social morality, and judicial authority. There is a significant area of ambiguity between network expression freedom and public interests. If the boundary between the two cannot be properly defined, it can easily lead to the disguised "hijacking" of network expression freedom by public interests.

The boundary between network expression freedom and public interests should be determined by considering the following aspects:

First, the target of the online speech should be taken into account. If the subject of citizens' evaluation is a public figure, especially an official, then the network expression is generally within the scope of freedom and will not harm public interests. This is because officials, due to their special status, should disclose information related to public interests and are obliged to accept public supervision." The personal information of public figures has a social attribute, and the restriction of their right to reputation is generally achieved through the disclosure of their personal information. Such disclosure is to satisfy the public's right to know." [7]

Second, the content and purpose of the network expression should be considered. If the content of citizens' evaluation involves public interests, especially in the form of supervising the government, and the intention is to safeguard their legitimate rights and promote the government's lawful administration, then the network expression is generally within the limits of freedom and will not violate the boundaries of public interests.

Third, the timing of the citizens' network expression should also be taken into account, as it may differ depending on whether it is a period of peace or unrest.

Of course, in addition to the specific criteria mentioned above, given the complexity of social relations and the nature of the Internet itself, we need to establish some principles to provide a macro-level understanding of the boundaries of network expression freedom. These principles can guide the demarcation of the boundaries between network expression interests and other interests. For example, the principle of value hierarchy, the principle of case-by-case balance, and the principle of proportionality.

4. The necessity of constitutional protection for online expression

Freedom of expression holds extremely significant value for any society, playing a crucial role in promoting personal development, enhancing democratic participation, and checking the abuse of power. American constitutional scholar Emerson succinctly summarized the value of freedom of expression in his work. The General Theory of the First Amendment as follows: "Freedom of expression has four values: First, it is a means of ensuring individual self-actualization; second, it is a means of arriving at the truth; third, it is a method of safeguarding democratic decision-making; and fourth, it is a means of maintaining social stability and balance." [8] Chinese scholar Hou Jian summarized the value of freedom of expression into three points: "First, to enhance knowledge and attain truth; second, to maintain and strengthen democratic politics; and third, to protect and promote individual values." [9]

4.1. The constitutional significance of network expression freedom

As an important form of freedom of expression, network expression, given its unique characteristics, holds immense and far-reaching significance for China, which is in a period of transformation and on the path of rule-of-law construction. First, network expression freedom expands the scope and breadth of citizens' political participation, effectively promoting the development of democratic politics. Chinese scholar Zhen Shu qing once concluded that "Without freedom of expression, there can be no democracy, no creation of democratic politics, and certainly no maintenance of democratic politics." [1] Second, network expression freedom broadens the channels for citizens' public supervision and offers greater advantages in the supervision of power. Third, the full exercise of network expression freedom helps convey citizens' various grievances and demands, thereby alleviating pressure on individuals and society as a whole, contributing to social security and stability.

4.2. Effectively promoting the comprehensive and free development of individuals

In a rule-of-law society dominated by a rights-based approach, an important task of law, especially the Constitution, is to confirm and protect human rights and promote the free development of individuals. By freely exercising their right to network expression, people can achieve the exchange and collision of ideas, beliefs, and viewpoints, thereby expressing themselves, supervising power, and fulfilling social responsibilities. This, in turn, effectively fosters citizens' awareness of political rights and social responsibilities and helps achieve independent personality and spiritual autonomy. In this sense, network expression freedom not only drives individuals to realize their own value but also encourages them to care about society and politics, to take on the responsibilities of a social being, and to play the role of a qualified political citizen. To a great extent, it effectively promotes the comprehensive and free development of individuals.

4.3. Protecting online expression freedom from public power infringement

In terms of the nature of rights, a right is the freedom to be free from interference and restriction by others. One of the greatest threats to the acquisition and exercise of rights is the infringement by public power, and the right to network expression is no exception. Western scholar Mieke John, based on the content of the right to expression, divides expression into "public speech" and "private speech." The former mainly involves political speech related to public interests and public issues, which reflects the political essence of protecting freedom of expression. The latter, on the other hand, is unrelated to citizens' political interests and only involves private benefits in civil rights. [9] At present, citizens in China are actively participating in politics and exercising their right to supervision. More and more citizens dare and are good at exercising their right to "public speech" to reflect their status as masters of the country. Currently, China's network expression freedom is facing unprecedented opportunities and challenges. Strengthening and

establishing a constitutional protection system for the right to network expression, and defending against the infringement of network expression rights by public power under a legal protection system centered on the Constitution, is undoubtedly of great significance.

4.4. Building a constitution-centered legal protection system for online expression freedom

Looking at the current status of legal regulations on freedom of expression and protection of network expression rights in China, although there are provisions at different levels from the Constitution to ordinary laws, regulations, and administrative rules, overall, the legal foundation and social environment for the protection of freedom of expression, especially network expression rights, are still quite weak. Legislation has not paid enough attention to this area, and there is a lack of a systematic, scientific, and effective protection system. There are inevitable defects and loopholes in the protection of the right to expression. In China, general rules on freedom of expression alone are not sufficient to build a legal protection system for network expression rights. The continuous development of network technology and the particularity of network expression rights have made it an international trend to protect network expression rights through a sound legal system.

5. Enhancing constitutional protection of online expression in China

5.1. Constitutional protection for online expression freedom in China: status and gaps

Firstly, regarding the constitutional provisions themselves, Articles 35, 41, and 47 of China's Constitution provide principled regulations on citizens' freedom of expression. However, these provisions have significant shortcomings. First, they are too vague and simplistic, with unclear definitions. The Constitution merely stipulates that citizens enjoy freedom of speech but does not provide clear regulations on the content, scope, and means of exercising this freedom of speech. Second, there are no corresponding protective provisions for freedom of speech. While the Constitution stipulates the right to freedom of speech for citizens, it does not address protective measures for this right, which is, of course, detrimental to its protection. Third, there is a lack of specific restrictive provisions on the exercise of freedom of speech.

Secondly, looking at the legal regulatory system beyond the Constitution, the main deficiencies are as follows. First, in terms of legislative purpose, there is a deviation from the constitutional spirit of human rights protection, with an overemphasis on regulating the Internet and neglect of protecting freedom of network expression. Second, in terms of legislative system, there is a chaotic legislative body and a low legal hierarchy, and a comprehensive network legal system has not yet been formed. Third, from the perspective of legislative procedures, there is a lack of public participation. Fourth, in terms of rights remedies, there is a lack of effective remedies for the right to network expression. Most laws and regulations rarely provide or completely fail to provide remedial measures for citizens' right to network expression. "For China's Internet industry to develop, it must move towards the track of rule of law. Not only is it necessary to legislate for the Internet, but also to establish a complete network legal system to meet the new challenges posed by the constantly developing Internet to the law." [10]

5.2. Enhancing constitutional-level protection for online expression freedom

In terms of the Constitution, efforts should be made in the following areas. First, the wording of the articles should be improved as much as possible to provide clearer definitions of the scope, types, and limitations of citizens' freedom of speech. Network expression rights should be formally included within the scope of freedom of expression, thereby granting network expression rights their due constitutional status. Second, it is necessary to add substantive provisions for the protection of network expression freedom while also providing more specific restrictive regulations to clarify its boundaries. For example, basic principles for balancing the relationship between freedom of expression and other fundamental rights, as well as the relationship between citizens' freedom of expression and other legal interests, could be introduced. Third, procedural clauses for safeguarding freedom of expression should be added. According to the general basic theories of constitutional development, to establish a rule-of-law state and achieve substantive justice in society, it is essential to have institutions and procedures that uphold justice. Chinese constitutional scholar Mo Jie Hong believes that it is necessary to "introduce constitutional issues on the Internet into the field of

litigation...and establish specific legal dispute resolution systems for addressing constitutional issues based on the technical characteristics of the Internet in order to make Internet regulations more effective"[10]. Establishing rational, comprehensive, and legitimate procedures provides a concrete institutional guarantee for the realization of relevant rights and is an important method to ensure their full implementation. Therefore, adding procedural safeguards for freedom of expression is entirely necessary.

5.3. Building a solid legal system for online expression freedom based on the constitution

First, in terms of legislative hierarchy, the legislative level of regulations on network expression should be gradually elevated. The low efficacy level of network legislation is a prominent issue in China's current network legislation, which significantly undermines the effectiveness of the network legal system. Therefore, the efficacy level of Internet legislation should be raised.

Second, in terms of legislative procedures, public participation should be actively incorporated, and public opinions should be solicited to achieve democratic and scientific legislation. From the perspective of the rule of law, an important criterion for distinguishing good laws from bad laws is whether the procedures are legitimate, and an essential indicator of legitimate procedures is public participation.

Third, in terms of legal content, the focus should be on improving the remedial system for the right to network expression. In China's network legislation, there are many provisions that restrict certain rights of citizens, but very few that provide remedies for these rights. Without remedies, there are no real rights. To improve the protection system for network expression freedom within the framework of the Constitution, network legislation must consider remedial mechanisms for the right to network expression. Specific laws should include mechanisms for remedying violations of network expression rights, clearly defining the scope of violations, the avenues for relief, and the methods of redress. Only in this way can the right to network expression be given full legal protection.

6. Conclusion

Through a theoretical analysis of network expression freedom, we can see that the right to network expression, as an emerging fundamental right of citizens, possesses the basic characteristics of the right to expression while also incorporating the unique features of the Internet age. The right to network expression has unparalleled advantages in promoting the comprehensive development of individuals, advancing the construction of democratic rule of law, fostering the prosperity of social culture, and effectively supervising the operation of public power. As the constitutional value of network expression freedom becomes increasingly prominent, how to establish and improve a legal protection system for network expression freedom within the framework of the Constitution presents us with a new challenge.

7. References

- [1] Zhen Shu qing. On Freedom of Expression[M]. Beijing: Social Sciences Documentation Publishing House,2000.
- [2] Wang Shi Jie, Qian Duan sheng. Comparative Constitutional Law[M]. Beijing: China University of Political Science and Law Press,1997.
- [3] Lin Ji dong. Comparative Constitutional Law (Volume I) [M]. Taipei: Taiwan Wunan Book Publishing Company,1998.
- [4] Zhu Guo bin. Chinese Constitution and Political System[M]. Beijing: Law Press,1997.
- [5] Huang Bingrong, Lu Yi. Exploring the Legal Boundaries of Online Freedom of Speech[J]. Theory and Practice,2012, (23).
- [6] Cai Ding Jian. "Bun Blood Case" and Freedom of Expression[J]. Zhe jiang People's Congress,2006, (5).
- [7] Ouyang Jian. Legal Reflections on the Limitation of Public Figures 'Right to Reputation[J]. Journal of Shao yang University,2005, (1).
- [8] Du Cheng ming, Wu Jia qing, et al. Social Transformation and the Improvement of China's Constitutional Rights System[M]. Beijing: Peking University Press,2005.
- [9] Hou Jian. Freedom of Speech and Its Limits[J]. Peking University Law Review,2000, (2).
- [10] Mo Jie Hong. Constitution and the Internet[J]. Democracy and Rule of Law,2007, (17).