

Legal Regulation and Optimization Paths of Stalking

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Abstract: With the advancement of information technology, stalking harassment has evolved into a hybrid online-offline infringement model. Studies show that the current legal framework has problems such as the absence of specific charges, limited protection of legal interests, and scattered application and liability boundaries of stalking behaviors, therefore the paper suggests constructing a hierarchical intervention system of “warning - penalty-accountability”, and strengthening cross-departmental collaboration and electronic evidence rules to balance privacy protection and law enforcement requirements. In the future, attention should be paid to the trend of technological evolution, and the improvement of systems and multi-party co-governance should be strengthened to safeguard citizens’ rights and interests.

1. Introduction

With the rapid development of information technology, stalking behaviors have evolved from traditional offline intrusions to a new type of infringement mode that interweaves online and offline. According to a 2024 survey by iiMedia Research, 91.03% of mobile phone users in China have received harassing calls, among which 55.93% have received more than 10 calls per day on average. The proportions of fraud calls and sales calls are 55.26% and 67.95% respectively. This high-frequency intrusion not only causes 43.01% of users to waste more than 5 minutes per day on average, but also leads to psychological problems such as anxiety and fear in 36.47% of the victims ^[1]. After the Supreme People’s Court included stalking in the category of domestic violence in 2022, over 30,000 personal safety protection orders have been issued across the country. Among them, the proportion of cases involving stalking has soared from 7% to 41% ^[2]. These data reveal the severity of the problem of stalking and the urgency of its governance, and also highlight the deficiencies of the existing legal framework in terms of behavior definition, evidence collection and technical governance. Based on this, this paper comprehensively reviews the domestic laws and regulations related to stalking, analyzes the existing problems and their causes, and provides theoretical support and practical paths for improving the institutionalized governance of stalking behaviors in China.

2. The current situation of legal regulations related to stalking and harassment in China

2.1 Administrative law

According to the regulatory framework of Article 42 of the Public Security Administration Punishments Law of the People's Republic of China, the legal regulation of stalking and entanglement behavior is mainly reflected in three core provisions: The first is the act of endangering the personal safety of others through threatening letters or threatening means (Paragraph 1); The second is the act of continuously sending obscene, insulting or threatening messages to interfere with the normal life of others (Paragraph 5); The third category involves acts such as peeping, secretly photographing and eavesdropping that infringe upon privacy (Paragraph 6). These three types of behaviors constitute the main penalty basis for stalking and entanglement behavior.

2.2 Civil Law

2.2.1 Relevant provisions of the Civil Code of the People's Republic of China

According to Articles 109 to 111 of the General Provisions of *the Civil Code*, the personal freedom, personal dignity, privacy rights and personal information rights enjoyed by natural persons constitute the core rights category for resisting tracking and entanglement. Among them, the privacy rights and personal information protection provisions (Article 111) directly regulate the tracking and surveillance behaviors carried out through physical or online means. Articles 1032 and 1033 of the Civil Code (Personality Rights Chapter) have made systematic regulations on the protection of privacy rights, clearly including stalking and entanglement behaviors within the scope of tort liability. Article 1032 establishes the legal status of the right to privacy as an independent personal right and prohibits any organization or individual from committing infringement through acts such as prying, harassing, etc. Article 1033, through non-exhaustive enumeration, clearly defines “disturbing others’ private life peace by means of phone calls, text messages, stalking, etc.” as an infringement of privacy, providing a direct regulatory basis for the determination of stalking and entanglement behaviors in judicial practice. For tracking behaviors carried out through network technology (such as location tracking and social platform monitoring), Article 111 of the Civil Code, together with the Personal Information Protection Law, forms the basis of the claim right, prohibiting the illegal collection and use of others’ personal information. This is of particular significance for the infringement determination of digital tracking behaviors.

Compared with the principle-based provisions of the General Provisions of the Civil Law of the People's Republic of China, the breakthroughs of the Civil Code are reflected in three dimensions: First, for the first time, it establishes “peace of life” as the core element of privacy rights at the legal level, enabling the determination of the illegality of stalking and entanglement behaviors to break away from the traditional reliance on personal injury or property damage. Secondly, by categorizing and listing clearly the litigability of tracking behaviors, it compensates for the differences in judgments caused by unclear behavioral patterns in past judicial practices. Thirdly, the Civil Code regulates communication tracking in the digital age (such as text message harassment) on par with traditional physical tracking to achieve legal coverage of new forms of infringement.

2.2.2 Relevant provisions in the Anti-Domestic Violence Law

According to Article 2 of the Anti-Domestic Violence Law of the People's Republic of China (hereinafter referred to as the “Anti-Domestic Violence Law”), domestic violence not only includes physical violence but also covers mental infringement behaviors, such as “frequent abuse and

intimidation”, etc. Behaviors such as stalking and harassment, due to their persistence and intrusiveness, can be regarded as a form of mental violence. For instance, sending threatening messages through phone calls, text messages, online games or tailing surveillance, etc., may all constitute domestic violence. For relatively minor acts of stalking and harassment, the public security authorities may issue a warning letter, explicitly prohibiting the perpetrator from committing domestic violence. When the victim is faced with the real danger of economic stalking and harassment, they can apply to the court for a personal safety protection order. The court is required to make a ruling within 72 hours (24 hours in emergency situations).

2.3 Criminal Law

2.3.1 The crime of provoking trouble

It is constituted by the elements of “chasing, intercepting, abusing or threatening others, and the circumstances are serious”. If the perpetrator has been following or pestering the victim for a long time, or has committed acts such as blocking or abusing in public places to cause disturbance, it constitutes the crime of provoking trouble. For instance, if the perpetrator has been causing trouble near the victim’s residence for a long time, Posting insulting slogans, or sending threatening messages through the Internet, and such actions fall under circumstances such as “making a disturbance in a public place and causing serious disorder in public order”, they may be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance. Article 293 of the Criminal Law of the People’s Republic of China (hereinafter referred to as the “Criminal Law”), the crime of provoking trouble, may be applied.

2.3.2 The crime of forced indecency and insult

This crime protects citizens’ personal dignity and sexual autonomy, with a sentencing range of no more than five years of fixed-term imprisonment or criminal detention. Those who gather a crowd or commit such acts in public places shall be sentenced to fixed-term imprisonment of not less than five years.

2.3.3 The crime of unlawful detention

The perpetrator restricts the victim’s personal freedom through violence or threats (such as locking the victim at home or prohibiting them from seeking medical treatment outside), which meets the constituent elements of the crime of unlawful detention as stipulated in Article 238 of the Criminal Law. Generally, the offender shall be sentenced to fixed-term imprisonment of not more than three years. If serious injury is caused, the offender shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years. If death is caused, the offender shall be sentenced to fixed-term imprisonment of not less than ten years.

2.3.4 Crime of illegally obtaining citizens’ personal information

Obtaining the privacy information of victims through illegal means may violate Article 253-1 of the Criminal Law. For instance, acts such as installing GPS trackers without authorization or stealing social media accounts, if the circumstances are serious, may be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and may also or solely be fined.

2.3.5 The crime of illegal intrusion into a residence

Long-term stakeout and installation of surveillance equipment at the entrance of a residence

comply with Article 245 of the Criminal Law, which stipulates the crime of illegal intrusion into a residence. The general sentence is fixed-term imprisonment of not more than three years or criminal detention. If there are violent or insulting circumstances, the punishment shall be more severe.

2.3.6 Crime of illegally using specialized equipment for eavesdropping and photography

Using eavesdropping devices, hidden cameras and other equipment to monitor the private life of the victim may constitute the crime stipulated in Article 284 of the Criminal Law. For instance, installing a camera in the bedroom to secretly capture the privacy of the victim can be punished with imprisonment of not more than two years, criminal detention or public surveillance, and a fine.

2.3.7 The crime of collecting illegal debts

Article 293-1 of the Criminal Law clearly criminalizes the act of collecting illegal debts such as usury by means of violence or coercion. For instance, if a perpetrator uses stalking and harassment to collect debts through “soft violence”, they may be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance, and may also or solely be fined.

3. Problems existing in the legal regulation of stalking

The problems existing in the legal regulation of stalking are mainly reflected in three aspects. First, the process of special legislation for stalking is slow. Second, the protected legal interests are still limited. Third, there are also many problems in the specific application.

3.1 Lack of legislation on specific charges for stalking

At present, China has not established specific charges for the legal regulation of stalking behaviors. Limited constraints are imposed by scattered provisions in *the Security Administration Punishment Law*, *the Civil Code*, and *the Anti-Domestic Violence Law*. The current legal framework can be summarized into three levels: First, at the level of public security administration penalties, Article 42 of *the Security Administration Punishments Law* sets 5 to 10 days of detention and fines for acts such as threatening personal safety, secretly taking photos of privacy, or sending harassing messages, but it cannot cover “soft stalking” that poses no direct threat. Secondly, in terms of civil relief, Articles 1032-1033 of *the Civil Code* establish the protection of privacy rights and the right to a peaceful life, allowing victims to claim cessation of infringement or compensation for mental distress, but they need to provide evidence themselves and the threshold for applying for a preventive injunction is relatively high. Thirdly, in terms of special law protection, the personal protection order under *the Anti-Domestic Violence Law* only applies to family members or cohabitation relationships, and lacks application space for stalking behavior in ordinary social relationships.

In recent years, legislative practice has shown the characteristics of gradual exploration. At the local level, Zhejiang Province’s “Anti-Domestic Violence Regulations” in 2021 detailed “mental assault” into behaviors such as stalking and harassment, and granted grassroots women’s federations the authority to assist in evidence collection^[3]; At the national level, the “Revised Draft of the Public Security Administration Punishments Law” in 2023 plans to separately impose penalties on “repeatedly sending insulting or threatening messages”, indicating an escalation of attention to digital harassment behavior. In existing judicial practice, public security organs can quickly deal with explicit threatening behaviors (such as sending threatening messages) in accordance with the Public Security Administration Punishments Law, but for continuous non-violent stalking (such as long-term tailgating), they mostly adopt flexible measures such as

verbal warnings.

3.2 The hindered legislative process

In the legislative process of criminalizing stalking in our country, there are certain differences in social consensus and institutional risks. On the one hand, conflicts of industry rights have become explicit. If the legal boundaries between stalking and such legitimate behaviors as journalists' investigations and workers' rights protection are not clearly distinguished through the "List of Immunity for Legitimate Purposes", it will trigger resistance from powerful interest groups. On the other hand, the substitution effect of existing laws weakens the legislative impetus. Article 42 of the current *Security Administration Punishments Law* of our country has set administrative detention for acts such as threats and secret photography. Judicial authorities handle most cases through expanded interpretation, resulting in 73% of the follow-up cases from 2018 to 2022 being concluded through administrative penalties. As a result, the public's special legislative demands have weakened.

3.3 The limitations of protected legal interests

The current regulatory system of stalking centered on punishing result-oriented offenders has three structural limitations: first, the lagging evaluation of legal interests leads to the fact that in most cases, administrative penalties can only be initiated due to the lack of material damage, making it difficult to mitigate the risk of behavioral escalation; Moreover, the lack of behavioral typification leads to contradictions in the application of law. When a large number of cases are handled relying on the clause of the provocation crime, they face conflicts in the hierarchy of legal interests between the peace of personal life and the protection of public order. In judicial practice, some cases are forced to be downgraded due to the inability to prove "disruption of public order". Finally, the absence of quantitative standards leads to inconsistent law enforcement measures, and there are significant differences in the frequency determination and evidence requirements for "repeated entanglement" among regions.

3.4 Problems in specific application

The core predicament of fragmented legal application in the regulation of stalking behaviors in China lies in the lack of independence charges, which has led to the judicial practice being forced to "shell" indirect provisions, causing the standards to be fragmented and the judgments to be chaotic. The stalking behavior has been split and embedded into charges such as provoking trouble and collecting illegal debts, but due to the misalignment of the constituent elements, there are differences in the characterization of similar behaviors.

In addition, there is a prominent problem of insufficient law enforcement intensity in the pre-intervention mechanism. The current judicial practice shows that before the perpetrator commits serious violent acts, the public security organs often adopt three limited handling methods. Firstly, based on the inertia of dealing with "result-oriented crimes", passive measures are taken against stalking behaviors that have not yet caused significant harmful consequences. Secondly, adopt non-coercive measures that combine admonition and education with civil mediation. Thirdly, immediate on-site intervention was implemented but there was a lack of continuous restraint measures.

Furthermore, the structural flaws in the post-event relief mechanism have led to the low effectiveness of victims' rights protection. The current civil legal framework presents a double predicament in regulating stalking behaviors: At the level of substantive rights and interests

determination, non-property damages such as psychological trauma and security expenses are often classified as “indirect losses”, which are difficult to be compensated for. Relevant cases generally face problems such as excessively high thresholds for presenting evidence in private prosecution and passive acceptance by courts.

4. The optimization path for legal regulation of stalking

4.1 Promoting the transformation of traditional legal interests to emerging ones in the New Era

The optimization path of legal regulation for stalking behaviors should be centered on modernization of legal interests protection. Firstly, we should move forward the stage of legal interest protection and adopt the abstract dangerous offense model, taking “the continuous intrusion into private life itself” as an independent hazard, which breaks through the traditional reliance on actual harm results. Secondly, the types of legal interests should be expanded to establish the “right of private life to be free from intrusion” as a new independent legal interest, including behaviors such as physical tailing, digital surveillance, and information bombardment. Quantitative tools such as psychological trauma assessment have been constructed, and “impaired social functions” can be incorporated into sentencing references ^[4].

4.2 Institutionalized legislation on stalking

Institutionalized legislation on stalking should be centered on the protection of victims and balance behavioral regulation and rights protection through a hierarchical intervention mechanism. By combining international experience with local practice, the specific paths are as follows:

We should strengthen the hierarchical design of the criminal penalty system. For non-contact harassment for the purpose of affection (such as text messaging and online tracking), non-custodial penalties such as control and criminal detention can be applied, and a restraining order can be attached to limit the scope of contact. For malicious acts such as armed stalking and direct threats, a prison term of less than three years should be imposed to reflect the principle of proportionality between crime, responsibility and punishment. The sentencing range can refer to Article 238 of the German Penal Code (up to three years of free sentence) and the Model Anti-Stalking Act of the United States (up to seven years in prison), and in combination with related crimes in China’s Criminal Law (such as the crime of provoking trouble, up to five years in prison), it is suggested that the base sentence be set at up to two years of fixed-term imprisonment, and a recidivism aggravation clause be set. China’s “Amendment Draft of the Law on Public Security Administration Punishments” has listed “repeatedly sending insulting messages” as a separate penalty, but the legislation of independent charges still needs to be carefully evaluated.

4.3 Enhancing mutual cooperation among relevant departments

Institutionalized legislation on stalking should take victim protection as the core and build a full-chain prevention and control system through cross-departmental collaboration mechanisms and technical governance measures. At the level of cross-departmental collaboration, China can draw on Japan’s “police + local public organizations + non-governmental institutions” linkage model to establish a four-level response mechanism featuring early warning from police stations, mediation by women’s federations, protection orders from courts, and follow-up by communities.

In terms of the victim protection mechanism, an integrated system of “emergency intervention—long-term assistance” should be established. At the technical governance level, it is

necessary to strengthen the balance between the validity of electronic evidence and privacy protection. An anti-tracking APP can be developed to integrate real-time location sharing, emergency contact call and other functions. At the same time, the scope of data that public power can access is strictly limited to cases that have been filed.

At the technical governance level, it is necessary to strengthen the balance between the validity of electronic evidence and privacy protection. An anti-tracking APP can be developed to integrate real-time location sharing, emergency contact call and other functions. At the same time, the scope of data that public power can access is strictly limited to cases that have been filed. For example, the Fujian Communications Administration has achieved call type reminders covering nearly 20 million users through the “Enterprise Business Card” service. In addition, it is necessary to establish evidence collection norms for digital traces such as communication records and location data to prevent excessive erosion of privacy rights. For instance, the political and legal system in Shenyang has clearly defined the boundaries for the compliant circulation of data in intellectual property protection.

At present, China is in the stage of improving its system. The “Revised Draft of the Public Security Administration Punishments Law” in 2023 has separately listed penalties for “repeatedly sending insulting messages”, but cross-departmental collaboration still needs to break through the information silos. It is suggested that the “multi-institution joint meeting + psychological intervention specialist” model be promoted in pilot regions such as Zhejiang and Heilongjiang in the early stage, and a replicable national governance experience be gradually formed.

5. Conclusion

The legal regulation of stalking behavior is an important issue in social governance in the digital age. This article, by analyzing the current legal framework in our country, reveals core issues such as the absence of special charges, the scattered application of laws, and the limited scope of protection. Studies show that the current system has insufficient preventive intervention for persistent intrusive behaviors, difficulties in providing evidence for civil relief, and relies on traditional criminal charges for criminal regulation, resulting in inconsistent law enforcement standards and low effectiveness of rights protection.

It is suggested to optimize the path from three aspects: First, promote independent legislation to clarify the behavioral requirements and liability boundaries of stalking; Second, establish a hierarchical intervention system of “warning - punishment – accountability” to enhance the ability of pre-event prevention and control; Third, improve the rules for electronic evidence and the data sharing mechanism to balance privacy protection and law enforcement requirements.

In the future, attention should be paid to the behavioral evolution in scenarios such as artificial intelligence and the metaverse, judicial case studies should be deepened, and the collaborative path of technological governance and legal regulation should be explored. Only through institutional improvement, multi-party collaboration and social co-governance can we safeguard citizens’ rights and interests while maintaining the order and tranquility of the digital society.

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