



The Nature of "Human Rights" in the Digital Age and the Path of Guaranteeing the Effectiveness

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Abstract. With the rapid development of emerging industries such as the Internet, big data and artificial intelligence in recent years, the protection and operation mechanism of traditional human rights has changed. However, according to the Marxist discussion on the relationship between economic foundation and superstructure, it is not divorced from the essence of human rights centered on "human", so it is inappropriate to define "fourth generation human rights". There are a series of problems and deficiencies in the protection of human rights in the digital age, so the following measures should be taken: at the international level, the human rights discourse system should be constructed to deal with the information monopoly and human rights attacks of other countries; at the domestic level, we should pay attention to the development of economic and social education, focus on the protection of the marginalized vulnerable groups, and implement the relevant human rights principles, build the emerging system of human rights protection based on the constitution and relevant departmental laws, in order to respond to the rapidly changing digital society.

Keywords: Digital Human Rights; Marginal Groups; Public Power; Personal Information; Privacy Rights.

1 Introduction

A small number of digital human rights theorists believe that digital society is a new social form different from agricultural and industrial society, and "digital human rights" should also become a new concept of independence, namely, "fourth generation human rights". However, some scholars point out that they did not carefully analyze the connotation of these concepts.[1] And from the existing data, this has not become a general view of the academic community. Quite a few scholars mostly use the concepts of "human rights in the digital age", "rights in the digital society" and "human rights in the digital age" when discussing this issue, so this paper will adopt similar concepts rather than "digital human rights". Below, this paper will discuss and define the nature of digital human rights from the perspectives of the historical development of human rights and the class nature of human rights and analyze the protection problem of "human rights" in the digital age and solve the effective path.

2 Defining of the Nature of "Human Rights" in the Digital Age

2.1 The Historical Development of the Concept of "Human Rights"

The concept of "human rights" was born in the bourgeois revolution in the 17th and 18th centuries. The emerging bourgeoisie put forward the concept of "natural human rights" to counter the idea that the rights of medieval people came from the feudal imperial power and the gift of religious power, emphasizing the opposite attributes of human rights and national public power. The reason is that the continuous development of capitalism is contrary to the social environment of feudal autocracy, and the emerging bourgeoisie has the demand to transform the dominant economic dominant position into the political dominant position, so it constructs the value system of passive defense right.[2]

Subsequently, a series of social problems derived from the development of state capitalism under the two industrial revolutions, as well as the vigorous national democratic movement after World War II, were defined by the second and third generation of human rights. Nowadays, admittedly, digital technology to promote the industrial economic production specialization, efficiency oriented and rational control, big data, artificial intelligence, chain block and yuan universe emerging digital intelligence technology and its practice in the blowout and iterative development[3], combined with the world multi-polarization, economic globalization makes the world depth fusion become fate community, human rights expression depends on the carrier, the content of rights, relief focus on is different from the previous generation.

However, according to the Marxist view, "the economic foundation determines the superstructure", and the "human rights" in the digital age is only a new form of expression produced with the change of economic development. The phenomenon is ever-changing and the essence is consistent. "Human rights" has a moral basis, and the most root and essential foothold is "people-oriented". Even in the digital era, the subject of rights is still people themselves, rather than artificial intelligence." The traditional dichotomy between political rights and economic, social and cultural rights will confuse the nature, function and interrelationship of human rights." [4] Therefore, it is questionable to formulate the human rights system in the digital age as the concept of "fourth generation human rights".

2.2 The Marxist Discourse on the Nature of the "Human Rights" Class

Although some scholars point out that human rights are universal rights granted to people by natural law and belongs to the abstract category of natural law [5], human rights are finally put into practice, and should be regulated and constrained by international conventions and national constitution and other departmental laws —— is a part of law.

As far as the essence of law is concerned, it is a contradictory relationship within law itself and an objective process in the subjective. The subjective aspect reflects the state will of the law —— the ruling class will law is the embodiment of the state will; the objective aspect reflects the material constraints of the law, the content of the law

is determined by certain social material conditions. Has class attributes. In the capitalist countries in the digital age, human rights still belong to the bourgeoisie as the ruling class, but they monopolize the new — algorithm, information and data of the means of production, and use the manufacturing of "information difference" to cheat and oppress the ordinary people. Its self-evident hypocrisy is the same as the previous capitalist human rights, so it is inappropriate to divide the independence of human rights in the digital age into "the fourth generation" from the perspective of the essence of human rights.

3 New Dilemma of "Human Rights" in the Digital Era

3.1 Digital Marginalization of the Vulnerable Groups

Changes in the way the economy operates in the digital age will affect the deconstruction of the entire social model. Domestic scholars will digital vulnerable groups are defined as "in the acquisition, understand and use the corresponding information and enjoy digital dividend at a disadvantage of social groups", or not timely and effective access to and understanding and use of network data information, leading to self resources, marginalized and legitimate rights damaged specific social groups.

In my opinion, "digital vulnerable groups" mainly includes three aspects: "the elderly and the children", "personnel groups in economically underdeveloped areas", and "professional vulnerable groups of non-network information professionals". Children's mental development is not mature, easy to be restricted in the use and contact with digital[6], the elderly to adapt to or resist the digital age, so it is difficult to change; the infrastructure construction, the popularization of digital technology; although the Internet has become common, computer language, artificial intelligence control and "block-chain", "universe" has strong professional barriers relative to ordinary people, not easy to understand and master by people. All of these have brought about the "digital divide" and "digital exclusion" phenomenon of some people.

3.2 It is Difficult to Unify the "International Human Rights Standards" in the Digital Age

In the digital information age, the construction of the global Internet promotes the connectivity at the international level, which provides a broader space for the internationalization of "human rights". Even the issues of sovereignty and internal affairs of a country will be quickly exposed to other countries in a short period of time, which is easy to attract international attention and discussion. This provides countries with ulterior motives with more possibilities to interfere in other countries internal affairs on the grounds of "human rights". In essence, this concept is excessive and diplomatic and instrumentalized. This is the same as some scholars: "The integration of code language and the expression of power creates the digitalization, privatization and automation of the force of new power politics." [7]

The universally recognized values such as "equality" and "freedom" in the history of thousands of years of human civilization will not change with the advent of the digital age. The international conventions we have joined and ratified also mean that we should abide by them in good faith, but this is not the same as blindly adopting international human rights standards. After all, it is difficult for international human rights standards to reach consensus in the short term, and blindly following it is even easy to become a window for western countries to "peaceful evolution" to infiltrate and export cultural values in the digital age. Moreover, the relationship between the two should be the universality and particularity of the contradiction, and the "international human rights standards" are sometimes too abstract and vague, or uncomfortable with the national conditions. Therefore, in the digital era, China should further continue the transformed legislative mode of national human rights protection, dialectically absorb "international law" into the content of "domestic law" and improve the operability of human rights protection and relief.

4 The Effective Guarantee Path of the "Human Rights" in the Digital Era

4.1 Disclosure of Government Information

In the digital information age, one of the important reasons why state organs have absolute advantages over ordinary citizens lies in the control of information and data. The law gives the power to the administrative authority, but also gives it the obligations and responsibilities, do not perform its statutory duties of "inaction" or illegal and unreasonable "disorderly act" should bear the corresponding legal responsibility —— This is the principle of unity of power and responsibility.

The implementation of this principle inevitably requires the supervision of the public power, while —— the power that is not subject to supervision will inevitably bring corruption. The reasonable information disclosure in the digital information age provides the basis and premise for the "the power is running in the sunshine". The administrative organ shall improve the mechanism of government information release and shall disclose the government information voluntarily disclosed through government bulletins, government websites or other Internet government media, press conferences, newspapers, periodicals, radio, television and other channels. This is the inevitable requirement of the principle of unification of power and responsibility in the digital age. Places for government information inspection shall be set up in government service sites, and corresponding facilities and equipment shall be provided to facilitate the access of government information. The disclosure should be disclosed voluntarily, and the parties shall follow the relevant procedures to provide convenience for the parties.

4.2 Education Guarantees the Awareness of "Human Rights" in the Digital Age

Digital age of new human rights education system and practice indispensable significance is that it can make the digital age people realize that individuals should enjoy or are enjoy the entity and procedural rights, and, for example, "privacy" "right to know" rights is violated, especially represented by the government of the state organ manufacturing information monopoly private subject rights have consciousness, namely in the digital age to promote the new form of "national law". To this end, the development of universal education and professional education publicity for all members of society, the dissemination of "human rights" information in the digital age, and the understanding of the basic freedom of all aspects, are the due meaning of the obligation of countries to actively protect human rights in the digital age.

4.3 The Constitution Guarantees the Potential and Space of the Expansion of Basic Rights

The Relationship between the "Basic Rights of Citizens" and the "Human Rights". Originally, human rights refer to the "due rights" of people, that is, the rights as a person; legal human rights refer to the use of law to legalized and standardize due human rights; actual human rights refer to the human rights that people actually enjoy and exercise, which is the state of realization of human rights. It can be seen that legal human rights build a bridge from due human rights to real human rights, promotes its transformation from theory to practice, and provides effective guarantee for its realization. The progress of human rights is the process of transforming due human rights into legal human rights and then into real human rights.

The regulation of "basic rights of citizens" has become the consensus of almost all national constitutions, which should belong to the category of "legal human rights" and constitute a direct constraint on the exercise of state power. From the perspective of the universal understanding of the word "human rights", it refers to the rights that people should enjoy, and it is a moral right derived from natural law, which belongs to the category of "due human rights" mentioned above. The basic rights of citizens are the legalization and embodiment of human rights, and human rights are the political basis of citizenship. The meaning of "due human rights" has been constantly enriched and developed in nowadays, and "basic rights of citizens", namely "legal human rights", provides a specific path for the realization of "due human rights".

The Effectiveness of the Human Rights Protection Clause of Our Constitution in the Digital Age. The clause "The state respects and protects human rights" has been included in the Constitution in the form of a constitutional amendment, reflecting the tolerance of the "human rights" of the broad masses of the people. This clause provides a constitutional basis for the legislation of human rights protection in the digital age and is conducive to adjusting the rapidly changing social relations in the digital age.

The "Respect for and Protection of human rights" clause also contains a substantial expansion of the "basic rights of citizens". The provisions of Chinas Constitution on

the basic rights of citizens are general rather than enumerative. The rapid change and development of the economy and society in the digital era will inevitably make it appear in the future. In addition to the basic rights explicitly listed, there are also other rights that are not explicitly listed. The nature of the fundamental law of the Constitution determines that it must maintain stability in the countries' political and social life and should not be regularly reformed. The rapid economic development under the industrial revolution in the digital era has brought about the rapid social changes in the whole society. And the law inevitably has a lag — "once the law is promulgated is behind the social reality". Internet virtual, interactive and real-time, makes the future we cannot predict the specific rights, but this clause may appear and gain recognized emerging rights to clear protection, relief of the judicial practice provides the constitutional basis, eliminate the lower department law when setting specific rights "whether unconstitutional" confusion and obstacles.

4.4 "Privacy Right" —The Disadvantages of Illegal Access to Personal Information

Privacy right refers to the right of personality enjoyed by a natural person to control his or her own personal privacy and exclude illegal interference from others. Privacy refers to the private space, private activities and private information of a natural person with a peaceful private life and that is unwilling to be known to others. In a broad sense, this is also one of the important embodiment of citizens personal freedom.

With artificial intelligence, cloud computing, the development of big data collection and processing technology, personal information has become an indispensable resources in economic construction and social development, it has a higher intrinsic value than money, sensitive personal information is once leaked or because easy to damage the natural person dignity, or personal property safety hazards. Therefore, responding to the normative needs of the information society and the era of big data, Article 101 of the Civil Code provides legal protection for the personal information of natural persons. No organization or individual may illegally collect, use, process or transmit other personal information, or illegally trade, provide, or publicly provide or disclose any other persons' personal information.[8][9]

It is worth noting that the development of the Internet and big data makes the invasion of personal information become hidden. For example, some software, before normal use with "allow access to photo album, address book" private space permission format terms, and in most cases not agree shall not be used, users suffer from this but have to check to get the normal use of application software, over time gradually ignore the legal loopholes and realistic risk, privacy and personal information in invisible was violated many times. For another example, some software implant big data into user accounts, collect user browsing data, and determine users' general preferences through algorithms to "kill", that is, push content according to user preferences to attract traffic or induce customers to consume. The construction of this "information cocoon room" also causes damage to users right to obtain information according to their own wishes to a certain extent. Some scholars even pointed out that the information cocoon will "make people form cognitive bias and cognitive emotion, thus strengthening individual

differences and diversity, and to some extent, will disintegrate social consensus and cause social contradictions and differentiation. " [10]

5 Conclusions

The tide of the digital network era is unstoppable, but the appeal for "human rights" in the digital age has never stopped. We should pay attention to the international human rights standards, and at the same time, we should build a human rights discourse system in the digital information age.

One side, the government makes better use of digital information to improve administrative efficiency to better serve the public interest. And do not use the big data information to create "information difference" monopoly, to infringe on the citizens right to know; on the other hand, for the positive beneficial rights, countries should provide special care for the marginalized and vulnerable groups in the digital age to help them quickly adapt to the online information environment, And avoid the damage to their legitimate rights and interests due to their inability to protect their rights. At the same time, we should limit the excessive abuse of private subject rights at the departmental law level, thus, from the overall social level, the privacy of all citizens in the digital age should be focused on and guaranteed. At present, there is still a long way to go to explore the mechanism of "human rights" in the digital age.

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