

Constructing the Theoretical System of the Chinese Personality Rights Law

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Personality rights under the fourth chapter of PRC Civil Code are divided into six chapters for regulation. Of these, Chapter 1, General Provisions, serves as the General Principles of the personality rights law, while Chapter 2 deals with right to life, right to body, and right to health, Chapter 3 with right to personal name and right to name, Chapter 4 with portrait rights, Chapter 5 with the right to reputation and right to honor, and Chapter 6 with the right to privacy and protection of personal information. This is exemplary legislation, in which the legislator exemplifies the basic types of personality rights that can be accepted and agreed upon, and then regulates other types of personality rights when subsequent amendments are made. Corresponding to this is the construction of the legal theory system of personality rights. For the construction of the theoretical system of personality rights law, Chinese scholars focus on the classification of personality rights research. In the view of Chinese scholars of personality rights law, as long as the classification of personality rights is clear, the theory system of personality rights can be constructed.

Keywords: personality rights law, biological personality rights, social personality rights, behavioral personality rights

Current Situation of the Legal Theory System of Personality Rights in China

Personality refers to the subject's qualification, which generally corresponds to the capacity for civil rights, while personality right refers to the civil rights enjoyed by civil subjects in view of personality rights. Specifically, personality interests include general personality interests and specific personality interests, the former mainly refers to the personal freedom and personal dignity of natural persons, and the latter includes individual personality interests such as life, health, name, reputation, privacy, and portrait. As personality interests are relatively independent and can be the object of personality rights, personality rights can be defined. These rights refer to the rights of civil subjects to control their personality interests and exclude others from infringement (Wang, 2020). In fact, personality rights can be viewed in two ways, on the one hand personality rights are an encompassing right or interest (Recht od. Interest der Personlichkeit) with the protection of personality as its content, which becomes a general or omnibus personality right (Allgemeines Personlichkeit), and on the other

hand, it refers to individual rights that are legally protected for the purpose of personal interest of the individual (Chen, 1974).

The personality right can be classified into general personality right and individual personality right (or specific personality right) from the perspective of the personality interests protected by personality right, and even can be divided into “material personality right and spiritual personality right” (Wang, 2019).

Abstract personality right and concrete personality right constitute a complete personality right system, which provides comprehensive protection for freedom of will, internal personality and external personality, and can solve the contradiction between concrete personality right and various non-concrete personality right. (Yang & Liu, 2011, p. 81)

The cleanest one is that Professor Zhang Xinbao divides the personality right into three levels from the internal system of China’ personality rights law,

the first level, the general provisions of personality rights (do not call it “general personality rights”, so as not to be confused with the “general personality rights” confirmed by the German Supreme Court), positively proclaiming civil law protection of human dignity, personal freedom and security, and personal equality; at the second level, the list of various specific personality rights, including the right to life, right to body, right to health, right to personal freedom, right to name, right to portrait, right to reputation, right to privacy, and the connotation and extension of these rights are defined; at the third level, certain personal interests that need to be protected (such as the body of the deceased, reputation, privacy, etc.) and the personal interests that may rise to the personality right in the future are provided for “guarantee”, so as to make the law more inclusive and expansive, while leaving the necessary room for judicial interpretation by the Supreme Court. (2003, p. 106)

General versus individual personality right, or general versus specific personality right, or abstract versus concrete personality right seems to be capable of becoming generalizations.

Opinions on the Classification of Personality Rights

According to human sociology, human beings have both biological aspects, such as self-preservation by the law of the jungle, and social aspects, such as abiding by rules to protect others. The history of human social development is the process of evolution from biological human beings to social human beings, and human behaviors play a decisive role, according to the order of the emergence of personality rights. Personality right can be classified into three types: biological personality rights, social personality rights, and behavioral personality rights.

Biological Personality Rights

“Right capacity is a legal order that identifies a ‘biological person’ as a ‘legal person’” (Ma, 2016, p. 186). Human civilization originates from the behavior of protecting the life, health, and other personality interests of others, because “Life is the foundation of why people have personality rights, is the noblest of personality interests, is the premise of the existence of the right to body, health, etc., with irreplaceable, life is not guaranteed, all is lost” (Liu, 2016, p. 113). If injury to another person’ body does not result in death, it does not constitute an infringement of the right to life, but it may infringe the right to health. The right to health requires that a natural person’ own health not be harmed by others, in order to maintain the integrity of the body’ internal functions, and its content includes both physical health, such as the intentional or grossly negligent spread of COVID-19, which constitutes an infringement of the right to health of a single natural person, in addition to jeopardizing

public health and safety; noise pollution, which constitutes an infringement of the right to health in the spirit; and intimidation and other infringements of the right to health in the psyche. Imagine: If a natural person is living in the midst of COVID-19 infection, noise pollution, and intimidation, or if he or she has legs and feet that cannot move freely, a mouth that cannot speak, a brain that cannot think, a body that has physical organs but cannot have sex, cannot have children, cannot form a family, and has a body that has no place to live, how can he or she have any human dignity and value? Acting for the benefit of others is the origin of human civilization, human civilization is originated from the protection of other people' life, health, and other biological personality rights, and therefore, personality rights law originated from the protection of biological personality rights, such as the right to life, health, body rights, freedom of behavior, etc., are not only an instinctive and civilized reflection, but also the result of national interests, which is beneficial to natural person as well as the State; on the contrary, if biological personality right is absent, the biological person is incomplete, and it is difficult for the natural person to become a member of society. Biological personality rights include the rights to life, body, and health provided for in the PRC Civil Code, as well as the rights to human dignity, freedom of behavior, freedom of expression, freedom of belief, sexual autonomy, reproduction, marriage, and family not provided for in the PRC Civil Code, which are inherent rights of the natural person or rights of the prior State, and are only to be elevated by law to individual personality rights.

Social Personality Rights

Communication makes people smarter, while trade makes people richer. Human beings have evolved from a self-sufficient society of small farmers to a market economy and globalization featuring social and cultural exchanges and commodity exchange. With more frequent social interactions, human beings have generated personality interests such as name, portrait, privacy, reputation, etc., and have a strong need for protection. The State must protect these social personality rights, which, of course, are neither existent nor meaningless without social interaction. From this point of view, the personality right is the birthright of natural persons and has an inseparable relationship with human existence or personality. It should only refer to biological personality rights such as life, body, and health, while other social personality rights such as name, portrait, reputation, honor, credit, virginity, and privacy vary from person to person, rather than having an inseparable relationship with the survival of natural persons (Yao, 1992). For example, the right of reputation, which is called second life, refers to the right that should be respected or valued in the society in accordance with its status. Another example, the right to name, this is to reflect the personality, easy to remember and distinguish the symbol, does not have the actual or social significance; as a social individual, every natural person can be freely named, today can be named Zhang A, tomorrow can give up Zhang A name and call Zhang AB, and even several people can have the same name; this right to use the name in social interaction is the right to name. Another example, portrait, is a natural person' likeness, which can be copying, engraving, photography, etc.; this right in social interaction to the interests of their own portraits as content is the right of portrait. As for the right to credit, it is based on the interests of economic evaluation of people in the society. If there is no social communication, there will be no social personality right. Therefore, social personality right is the right generated by people' participation in social activities and social communication with people. Social personality rights include the rights to name, portrait, reputation, honor, and privacy as stipulated in the Civil Code, as well as the rights to human dignity, equality of

personality, residence, good living, peace of life, and credit, which are not included in the law (Chen, 2018, pp. 226-314).

On the aspect of infringement of personality right, the concept of infringement of social personality right is not exactly the same as that of traditional civil law damage. The standard of impairment of existing interests or loss of earned interests is sometimes not applicable in the compensation of tort damages of social personality right. The most obvious example is the unlawful use of names or likenesses. The infringement of social personality rights, such as the right to a name, the right to a likeness, the right to privacy, etc., is not necessarily a diminution of the evaluation of the victim by others; on the contrary, sometimes it will increase the personality interest or market interest of the right holder. It is undeniable that the emergence of fame and the rise of social evaluation are sometimes not entirely the result of personal ethics and hard work, but the result of luck and scandal (Madow, 1993, p. 178). For the infringement of the right to name or portrait, the result of the infringement is the use of another person's name or portrait, the form of expression is the use of another person's name or portrait without the consent of the personality right holder, and the judgment criteria are whether the consent of the right holder is obtained. For the infringement of the right of reputation, the result of damage is the reduction of social evaluation, the manifestation of stigmatization behavior, and the judgment standard is the reduction of external evaluation. For the infringement of the right to privacy, the damage result is the improper disclosure of other people's personality interest information, resulting in spiritual pain of the personality right person, the form of expression is the improper disclosure of other people's personality interest information, and the judgment standard is the disclosure of personality interest information in the non-"self-determined" situation.¹ In some cases, it is difficult to make an anti-social, anti-value judgment of illegality as to whether or not a personality right has been violated. For example, many admirers and fans of celebrities often set up websites for their favorite idols and upload photos of the celebrities. Usually, the idea is only to express their personal admiration for the celebrities, or to organize fans of the same interest for communication and other non-commercial purposes. They also organize donations in the name of the celebrities and send the donations to the recipients. Does it infringe upon the personality rights of celebrities such as the right to name or reputation? In particular, Internet communication has a global spread effect beyond the geographical space limit, which is obviously for the celebrity advertising, or marketing, or increasing popularity, and even though celebrities become famous, celebrities are clearly the beneficiaries; if the entity property rights are examined, celebrities are the biggest beneficiaries of infringement, but because these websites are set up by others in the name of celebrities. As a nominal moderator, the celebrity cannot control, and the behavior in the name of others will naturally have adverse effects on the "others". How to evaluate the behavior? It's worth thinking about. In fact, in the infringement of social personality rights, the victim cannot "self-determine" personality interests because of the behavior of others, and has a feeling in his heart that his personality has been denied or has not got the minimum respected. This is the damage of social personality rights, which is obviously different from the damage of substantive property rights.

Behavioral Personality Rights

Cultural and artistic exchanges are also an important aspect of human exchanges, which not only concerns cultural development, but also touches on sensitive economic, political, and even religious issues. With the

¹ See *Charles Reed v. Real Detective Publishing Company, Inc., et al.*, 162 P.2d 138 (Sup. Ct. Ariz. 1945).

emergence, development, and improvement of printing technology, “the calf belongs to the cow, and the copy belongs to the book”. In 1709, the world’s first copyright law “Statute of Anne” was born, which encouraged human literature, art, and technology creation, and the copyright law expanded to protect creative behavior. The creative act embodies the author’s unique personality value such as thought and emotion in the work, and the literary personality right arises from the creative act. The intellectual property personality right arising from the natural person’s invention or creative act is behavioral personality right. The behavioral personality right is not born by natural person, let alone enjoyed by anyone. Without the act of creation, there is no such behavioral personality right as the right of authorship, the right of publication, the right of modification, the right to protect the integrity of the work, etc., under Chinese law. The common law system does not even recognize these as personal rights or human rights or natural rights, but spiritual rights or moral rights formed by the spiritual pleasure brought to them by the creative act. Only when others use the work, the author can enjoy this spiritual right after knowing the social evaluation; otherwise, no one cares about the work; not only cannot produce spiritual pleasure, but psychological pain! Based on convention, it is still called personality right that does not emphasize its spiritual rights, that is, a personality right created through the act of creation, rather than the right that is not separated from personality or accompanied by personality.

The right of personality in common law copyright includes the right to protect the integrity of the work, according to which the author can prevent others from altering his work; the right of attribution or paternity, the right of the author to give the author’s name on the work in an appropriate manner in order to let others know that he is the creator of the work; the right of disclosure, or the right of disclosure, whereby an author may refuse to make his or her work available to the public until he or she considers it satisfactory; the right of retraction or withdrawal or the right of estoppel, whereby an author may withdraw a work even after it has left him. Most countries that recognize these rights consider them to be more or less inalienable (Hansmann & Santilli, 1997, pp. 95-96). Among them, the premise of protecting the integrity of the work is usually to minimize the interference or interference of others in the content or form of the work after the completion of the creation, thus causing damage to the author’s reputation or reputation. The right of authorship requires the identification of authors, protects anonymous authors, and prevents false attribution of authors. The right of publication, also known as the right of exposure, allows authors to control the first publication of their work. The authors can also use the right of retraction to withdraw their ideas, but only if they compensate the copyright owner for the damages suffered as a result of the withdrawal; if the copyright owner changes his mind, the author can also resell the work to the original copyright owner under the old terms (Masiyakurima, 2005, p. 412).

Right to Protect the Personality Interests of Legal Persons and Unincorporated Organizations

Strictly speaking, only natural persons can enjoy personality rights. Virtual legal persons or unincorporated organizations cannot have the ability of expression of meaning enjoyed by talents because they do not have the emotional value of personality. However, based on the transaction and promotion of human production activities, the law simulates a certain range of groups as legal subjects and confers personality, which is the right of protection of personality interests of legal persons and unincorporated organizations. The content of these rights is exclusive to this category of subjects, which do not enjoy the personality rights of natural persons.

Rights to Protect the Personal Interests of Natural Persons

However, Article 22 of Copyright Law of PRC stipulates that “The period of protection of right of authorship, right of revision, right to preserve the integrity of work of an author shall not be subject to restriction”. According to Copyright Law of PRC, the author’ personality right is protected even after the author’ death, which breaks through the traditional basic view of civil law that “natural person’ personality right begins at birth and ends at death”. It can be concluded from this that, in principle, “personality rights begin at birth and end at death”, with the exception that they may survive. Of course, it mainly refers to the behavioral personality right mentioned in this article, corresponding to the natural person’ personality interest protection right.

When a person dies, certain relatives or living people within the scope of society have feelings of remembrance and admiration for the deceased. If someone derogates from the personality rights enjoyed by the deceased who is being memorialized and admired while alive, these admirers will have mental pain. In order to protect the personality interests of these living people, the law gives the right to protect the personal interests of the deceased which is the protection right of the deceased person’ personality interests mentioned in this paper.

China’ Legal Theory System of Personality Rights

After the classification of personality rights, we can construct the theoretical system of Chinese personality rights law, including Chapter 1 General Provisions, which is equivalent to the general principles or basic principles of personality right law. Chapter 2 Biological Personality Rights includes the right to life, health, freedom of conduct, freedom of expression, freedom of belief, physical rights, sexual autonomy, reproductive rights, marriage and family rights, the right to a better life, and the right to a peaceful life. Chapter 3 Social Personality Rights includes the right of personal dignity, the right of personal equality, the right to portrait, the right to privacy, the right to personal name, the right to credit, the right to reputation, the right to honor. Chapter 4 Rights of Protection of personality interests of legal person and unincorporated organization includes equal market opportunity right, fair trade right, fair competition right, name right. Chapter 5 Rights to protect the personal interests of natural persons includes the right to protect the personality interests of the deceased, the right to protect the personality interests of national heroes and martyrs. Chapter 6 Supplementary Provisions.

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