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On the Deficiency and Perfection of China's Personality Right

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Abstract: Personality right is one of the most basic rights of citizens. To safeguard personality right is an important manifestation of safeguarding the legitimate rights and interests of citizens and the fairness of our country's justice. However, on the content of personality right China's current legal system is still inadequate, and it should be timely improved so as to promote the progress of China's law. Therefore, this paper will study the lack and perfection of personality right. Through unscrambling the connotation of personality right, development history and the significance of perfecting personality right we can draw the shortcomings of personality rights in China, and give advice for the progress of China's legal system.

Keywords: Personality right; Deficiency; Perfection

1. Introduction

Personality right is one of the most important rights of citizens. Safeguarding personality right is in essence to protect the legitimate rights and interests of citizens, safeguard judicial justice and perfect the legal system of our country. This article will talk about the shortcomings existed in China's personality rights and how to perfect it.

2. The Connotation of Personality Right

2.1. The concept of the personality right

Personality right refers to the various personal rights shared by civil subjects, which are inherent to civil subjects. From this we can see that personality right has the following characteristics. First of all, personality right is a kind of non-property right, and there is a certain difference between it and the property right. Second, personality right is a dominant group, which has the effect of exclusivity. Furthermore, personality right is an absolute right, and therefore no one may prevent its exercise. Finally, personality right has a special attribute, and no one else may exercise it on his behalf. Its main basis is Article 33, Article 37 and Article 38 of the Constitution of the People's Republic of China, which clearly define the inviolability of the personality right. Personality right is the most basic right. Protecting the citizen's personality right reflect the basic spirit of respect for the personality right.

3. The Development History of China's Personality Right

The development history of personality right in our country is rather tortuous. In ancient feudal society, we have always believed in the natural economic form of self-sufficiency. The basic state policy of long-term heavy

agriculture and business control makes people set on the farmland, in a closed and non-communication state in a long time. Under this circumstance, the feudal ruling class adopted the despotic system and used the feudal hierarchy to grade the people, so as to achieve the purpose of rule. For a long time, the feudal hierarchy adopted makes our country's civil relations developed ineffectively, and the civil laws and systems are not perfect enough. Under the condition of feudal natural economy, the consciousness of the rights of the people of our country is obviously weak, which makes the relevant laws cannot be implemented effectively in safeguarding the personality of the individual. And under the strict feudal hierarchy, personality right is paid little attention. The law is only to deal with the civil relations, and does not attach importance to the respect for the personality rights.

In modern times, China's civil law has finally got effective development. Especially since the Opium War, rescue and survival movement in China gradually emerged. It forced the corrupt Qing government to learn the Western legal system. On April 6, 1902, the emperor has to learn the laws of various countries to reform the laws of our country. A legal code has been established to amend the law, which specializes in the codification of the law. The first draft civil law was completed in 1911, in which a section on the protection of personality was specifically established. After the Revolution of 1911, the National Government in Beijing make a draft of civil law, which finished in 1925. On the personality right, there was no significant change in the structure and content of the draft and the first amended draft, but only additions or subtract to the provisions. Because of the internal conflicts of the Republic of China, the meeting will eventually be dissolved, so that the draft ultimately failed to get legal pas-

sage. After the establishment of the Nanjing government, the Legal Bureau was set up to begin the codification work. In 1930, the whole drafting work was completed, and Articles 17, 18 and 29 of them all provided for personality right to a certain extent, which involved the right to freedom, name and other important personality rights. With the founding of the Nationalist Party of the People's Republic of China in 1949, the civil law of the Kuomintang applied only in Taiwan. After the founding of New China, China's General Principles of Civil Law broke the original legislative system of the mainland and set up a separate chapter on civil rights. Our country has made a detailed description and provision of personality rights. Our country's personality right is enjoyed equally by civil subjects, recognized by law, taken personality interests as the object. As the subject of civil rights, it should have the basic rights, which contains the specific personality and general personality, including the right to life, health, name and a series of rights. It can be said that China's personality rights system reflects the civil subject of all the human dignity of full respect.

4. The Deficiency of the Current Personality Right

4.1. The right of paternity does not belong to the category of personality right

First of all, there is a certain conflict between the Supreme Court's interpretation of personality right and the general principle of civil law. The right of honor also comes down to the category of personality right, so it makes a distinction between personal right, unified to the concept of personality right.

4.1.1. The right of honor does not belong to the category of the personality right

First of all, we should understand that the honor of natural persons does not belong to the scope of civil law adjustment. As far as the title of personal honor, it is the title acquired by an individual. In fact, it does not constitute the ultimate consequence of civil infringement, and there is no such case in a particular case. The right of honor is generally awarded by the authorized subject (organization or institution) and so on, in strict sense it does not belong to the scope of adjustment of civil law. If one person insults another person and says his honorary title was obtained by illegal means. That will be unrealistic. The infringement constituted by this situation is an infringement of the civil subject's right to reputation. Except that, it is difficult to find other forms of civil cases caused by the infringement of the right to reputation. Personality right is a kind of right of each person as a civil subject. It is actually a relatively complete concept, which has the wholeness. After born, right of personality is equal and complete. As a whole existence, it cannot be

divided or dispersed out. Incomplete personality cannot be called personality. Therefore, divided the right of honor out is not in line with the definition of personality. And the definition of personality right first needs to pay attention to its equality. Every civil subject should enjoy equal personality rights. If the personality right is not equal then the legal department related to personality right loses the important foundation of existence. So, after the birth China's civil law take the right of honor to the scope of personality rights. It violates the equal status of citizens in the right of personality, resulting in the personality inequality. In this regard, it is not necessary to put the right of honor to the scope of the personality right. Secondly, from the legal point of view, the legal right of honor belongs to the intangible assets of legal person, which exists as a direct form of property. The infringement of the legal person's right of honor is in essence a kind of infringement on its intangible assets. Although the personality of capital does exist in law, the personality of capital does not represent the personality of capital. It only shows that capital exists in some aspects of personality characteristics and basic elements. Therefore, we can see that the right of honor comes down to the category of personality right, which is in fact extremely unreasonable.

4.1.2. The freedom right of marriage is in fact a political right

The freedom right of marriage is actually a right of personal liberty, and more important aspect focus on the political sense. It mainly refers to the state and government should not infringe and interfere with the marriage autonomy as individuals, as well as protect citizens' marriage autonomy from other people and organizations. The right of marriage autonomy is protected by the penalty and administrative law, and there is no civil action in civil judicial cases because of the infringement of the freedom right of marriage. Therefore, it is very unscientific to regard the civilization of the marriage freedom right case as the category of personality right.

4.1.3. Rights relating to property content based on the right of marriage or family relations, which belong to the rights of kinship and inheritance

The right of identity arising from husband and wife, family relations, determines the legal results of maintenance, inheritance and so on. It is actually a kind of property relationship carried out by law, which is directly related to the content of property. In essence, it belongs to the right of kinship and inheritance rather than personality right. For example, although abandoned by the family, a person is legally entitled to a complete personality and still enjoys a complete right of personality. Therefore, for those who have been abandoned by their families, their rights in the areas of maintenance, inheritance and so on

have been infringed. It cannot be defined as the civil rights of personality infringement. If a person is subjected to a family member, the civil consequences of which are mainly damaged to the spirit and health of the family member. The rest of the general sense of personal assault is essentially no difference. There is no need to define the violation of the right to personality. And if family members suffer abuse and violence, it is maintained by our country's criminal law, so it is completely unnecessary for the civil law to define it as the violation of civil personality rights.

From this, we can see that the definition of paternity right as personality right is completely unscientific and unnecessary, and it does not belong to the category of personality right.

4.2. Unscientific definition of the personality right

First of all, the concept of personality right in our country's civil law is not really defined. There is no substantive connotation on the interpretation of personality right in the general principles of civil law in our country. The interpretation of personality right in the general principles of civil law only achieves the evidence of difference sesame from other types of civil law such as creditor's rights and real rights. Because civil law has no substantive connotation on the concept of personality going there, so our country's civil law can only use simple enumeration method to define personality right. But because personality right itself is a complex concept, which makes it possible to deal with the reality of personality right using simple enumeration. This is due to the lack of the provisions of the civil law of our country on personality right and the limitations caused.

Secondly, the concept of judicial interpretation of personality right in our country is confused. First, the separation of the right to life and health is actually connected. It is actually a very unscientific point. The second is to civilize the political rights of citizens, and there are many contents of the personality right of citizens, such as the above-mentioned right of honor.

All in all, the definition of personality right in our country's civil law is unscientific and needs to be further perfected.

5. How to Perfect China's Personality Right

5.1. Determining the category between the personality right and other legal rights

Because the connotation of personality interests is not the same, the different personality interests of the form of infringement are also different. Therefore, different protection methods should be adopted for different personality rights, and the constituent elements of the events are different, so the types of interests should be classified for

different events and the personality rights should be better protected. It is necessary to determine the specific scope of personality right, the specific scope of personality right, and avoid confusion with other concepts of rights. The definition of the scope of personality right should not only stay in the text of judicial interpretation, but should do more investigation, clarify the difference between personality right and other laws, and avoid confusion with other legal concepts. According to the judicial example and the scientific understanding of personality right, the specific scope of personality right should be determined and to avoid confusion.

5.2. The conceptual definition of the personality right

In order to better protect the personality right of civil subject, first of all, we must have a useful and clear understanding of the concept of personality right. To define personality right in law, we should clearly distinguish personality right from other concepts, and do a good job in defining the concept of personality right. Civil law should have a more detailed and substantive interpretation of personality right. The definition of personality right should be more specific. The content of personality right and its specific connotation should be explained in detail. The specific behavior type of infringement of personality right should be determined so as to define the concept of personality right substantively. In order to avoid confusion with other concepts, we should pay special attention to the indivisibility of personality right, not to look at it one-side but to look at the concept of personality right in a holistic light.

6. Conclusion

There are certain shortcomings in the personality right of our country. The most important thing is to clarify the concept of personality right, and constantly improve the personality right in our country in judicial practice. Only by constantly improving personality right can we provide better judicial protection for citizens and be more conducive to the perfection of our legal system.

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