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Analysis of the Legal Protection of Privacy Rights in China During Public Health Crises

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Abstract. The COVID-19 pandemic has redefined the relationship between state governance and individual privacy, particularly in the context of large-scale data collection through health codes, contact tracing, and testing systems. This study explores the evolution and transformation of privacy rights in China during the pandemic through legal text analysis. The findings show that although China has established a basic legal framework, there are still gaps in actual implementation, legal clarity, and the ratio of public power to individual rights. This study emphasizes the need to establish privacy rights as a basic human right in the constitution, regulate the use of data in emergency situations, and strike a balance between efficiency and dignity. A key limitation of this study is that it relies on text materials and lacks empirical data on law enforcement practices or public opinion. Future research should combine qualitative case studies and stakeholder interviews to more comprehensively evaluate implementation outcomes.

Keywords: Privacy rights, COVID-19, public health emergencies, personal data protection, legal reform

1. Introduction

As a global public health emergency, the COVID-19 pandemic has not only had a profound impact on the medical system and social order, but has also largely changed the boundary between national governance and individual rights. In the process of epidemic prevention and control, government departments and platform companies have collected and processed personal information on a large scale through means such as health codes, itinerary tracking and nucleic acid testing, achieving rapid monitoring and dynamic management of the virus transmission path. However, the types of sensitive data involved in this process are wide and the scope of collection is unprecedented. The public's concerns about privacy leakage, information abuse, and power crossing are becoming increasingly prominent [1]. For example, the publication of the personal whereabouts of asymptomatic infected persons and the reporting of the personal information of infected persons at the press conference clearly exceed the scope of personal information that "should" be collected and published, and can even be said to be an infringement of citizens' personal privacy.

At present, China has initially established a legal framework for personal privacy protection with the China's Personal Information Protection Law and China's Cybersecurity Law as the core, marking the institutionalization process of data governance concepts in the information age [2,3].

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However, in the actual operation during the epidemic, the relevant legal system exposed many problems such as lag, unclear application boundaries, and imperfect regulatory mechanisms, which made it difficult to fully respond to the actual needs of high-frequency and high-intensity data processing under public health emergencies. Based on this, this paper studies the changes in privacy rights in the background of the epidemic, focusing on the analysis of changes in its connotation and boundaries. This study will further evaluate the applicability of China's current legal system in emergency situations through situational and comparative analysis methods, and put forward improvement suggestions through comparison of Chinese and foreign systems, aiming to provide theoretical support and institutional reference for the improvement of personal privacy protection mechanisms in the post-epidemic era.

2. The evolution of the concept of the right to privacy

2.1. The legal definition and institutionalization of privacy rights in China

Prior to the promulgation of the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code), there was no unified or codified legal definition of the right to privacy within Chinese jurisprudence [4]. The Civil Code, which was promulgated in 2020, systematically stipulates the content of the right to privacy for the first time in Article 1032 of the Personal Rights Code, and specifically defines privacy as "the private life of a natural person" and "private space, private activities, and private information that one does not want others to know [4]". The establishment of this clause not only fills a long-standing gap in China's privacy legislation but also signifies a transition in the country's approach to privacy protection, evolving from simple enumeration and recognition to a more substantive legal definition. As a result, China's legal framework for the right to privacy has become more refined, leading to a significant enhancement in the protection of citizens' fundamental rights in both everyday life and the digital environment.

With the rapid development of digital technologies such as big data analytics, privacy has become more vulnerable. Unauthorized collection, dissemination and use of personal data has also become increasingly difficult to control or track. As technology develops, the legal understanding of personal information is also evolving. China's Cybersecurity Law (2016) and the China's Personal Information Protection Law (2021) have gradually expanded the definition of personal information to include sensitive data such as location, biometric identifiers and behavioral patterns [2,3]. At the same time, the Civil Code (2020) clearly defines privacy as four dimensions: quiet private life, private space, private activities and confidential personal information [4]. Notably, the Civil Code also stipulates that the protection of sensitive personal information should follow the principle of privacy rights, thereby confirming the conceptual and legal overlap between personal information and privacy. From a rights-based perspective, both privacy and personal information should be protected as core contents of personality rights, and special attention should be paid to the overlap between the two in legal interpretation and enforcement.

2.2. Changes in the subject, content, and object of privacy rights during the pandemic

Article 1032 of the Civil Code of the People's Republic of China explicitly affirms privacy as a civil personality right, prohibiting any organization or individual from infringing upon it through means such as prying, disturbance, disclosure, or exposure [4]. While inherently private in nature, the right to privacy has faced normative challenges during the COVID-19 pandemic, where public interest and state authority often necessitated temporary encroachments. In such contexts, the scope and

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content of privacy rights underwent dynamic shifts, especially for confirmed or suspected patients and close contacts, whose personal data were frequently subjected to public disclosure. The following section analyzes these transformations from three perspectives: subjects, content, and protected objects of the right to privacy.

2.2.1. Transformation of privacy right subjects during public health emergencies

During the COVID-19 pandemic, the scope of privacy rights holders has changed significantly. Individuals can be roughly divided into two categories: the general population who are not infected and those who are potentially or actually infected. The latter includes confirmed cases, suspected cases, and close contacts. It is worth noting that personal information is often collected before formal medical diagnosis, including through contact tracing and big data analysis. For example, close contacts are often determined based on the patient's activity data before they realize they have been exposed [5]. This shift means that privacy rights are no longer limited to traditional clinical treatment patients. Therefore, government agencies, public health departments, and even the media involved in collecting or disseminating such data have assumed legal and ethical obligations to protect privacy.

In addition, the epidemic has also made the classification of privacy subjects flexible. Individuals switch between "ordinary" and "sensitive" status depending on the risk of exposure. This dynamic redefinition emphasizes the need to establish a flexible privacy protection framework in emergency situations and recognize the characteristics of data subjects that change over time.

2.2.2. Changes in the object of privacy rights under the COVID-19 pandemic

The COVID-19 pandemic has posed significant challenges to the traditional conceptual boundaries of privacy rights. In the face of urgent societal needs such as disease prevention and the protection of human life, no right, including the right to privacy, can supersede the public interest. This shift represents a fundamental change in the object of privacy rights. The four core dimensions of privacy---the right to control personal information, the right to determine its use, the right to maintain confidentiality, and the right to legal protection---have been substantially weakened during the pandemic [6]. Firstly, the right to control personal information was restricted by mandatory disclosure obligations. According to Article 330 of the Chinese Criminal Law, failure to report one's whereabouts or close contacts may result in criminal liability [7]. Secondly, due to the compulsory nature of epidemic surveillance, individuals' discretionary power to manage or share their private data, that is, autonomy over data disposition, was largely curtailed. Thirdly, as authorities and media were authorized to access, process, and even disclose sensitive information for epidemic prevention and control, established privacy protections were compromised. Finally, avenues for legal recourse became increasingly limited because privacy infringements justified by public health imperatives were generally excused.

2.2.3. Changes in the content of privacy rights under the COVID-19 pandemic

The pandemic also expanded the substantive scope of privacy rights beyond conventional health data. Data collection extended to include individuals' travel histories, mask-wearing behavior, and social contacts. These categories are not traditionally regarded as private but became subject to increasing regulation due to the virus's high transmissibility. While these measures were crucial to controlling the epidemic, they have underscored the pressing need for a more nuanced legal

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framework that balances emergency governance requirements with robust protections for individual privacy.

3. The current situation and problems of legal protection of privacy rights in China

The protection of privacy rights in China's current legal system begins in the field of civil law. The General Provisions of the Civil Law clearly stipulates the legal protection of privacy rights and personal information. However, it is difficult to deal with privacy issues in the exercise of public power with the regulations in the civil law alone. It is still necessary to explore the theoretical basis of privacy rights from the constitutional level. Although the current constitution involves personal freedom, residential security and communication confidentiality protection in several articles, the provisions on privacy rights are scattered and vague. Privacy rights have not yet been established as a basic human right and lack systematic protection. Because the constitution has not yet been judicialized, actual privacy protection mostly relies on departmental laws such as the Civil Code, the Criminal Law, the Infectious Disease Prevention and Control Law, and the Emergency Response Law [8]. The Civil Code not only defines privacy rights for the first time, but also sets tort liability; the Criminal Law Amendment regulates personal information crimes; and the Infectious Disease Prevention and Control Law and the Emergency Response Law provide a legal basis for information collection and reporting during the epidemic to support epidemic prevention and control work [8]. However, the COVID-19 epidemic has exposed the shortcomings of privacy protection in my country. On the one hand, the Civil Code has vague definitions of privacy and personal information, which makes it difficult to distinguish which information should be protected during epidemic prevention and control, which can easily lead to privacy leaks [4]. On the other hand, in order to achieve precise prevention and control, the government collects a large amount of sensitive data including health codes and facial recognition, which poses a risk of excessive collection of personal privacy. In addition, public authorities do not follow standardized procedures and rigorous management when collecting and publishing epidemic-related information, resulting in frequent privacy leaks, and the individuals involved often lack effective rights of defense. Overall, although China's laws have laid the foundation for privacy protection, in the face of public health emergencies, it is still necessary to improve legislation and law enforcement mechanisms, strengthen the systematic protection of privacy rights, and balance public interests.

4. Analysis of privacy protection models in foreign jurisdictions

4.1. Examination of privacy rights in international contexts

Globally, the privacy protection models of different countries vary according to their national conditions. As representative countries of privacy protection, the legislative concepts and practices of the United States and Germany are particularly noteworthy. In the United States, federal common law has recognized the protection of privacy rights, and now some form of common law privacy protection has been recognized by all states in the United States. Since the 1965 "State Contraception Ban Case" (Griswold v. Connecticut), the constitutional protection of privacy rights has been established, and the then Supreme Court Judge Douglas proposed the "Penumbra" theory, which developed the privacy right into the "right to self-determination". In 1973, the "Abortion Ban Case" (Roe v. Wade) further deepened the constitutional protection of privacy rights, expanding the scope of privacy rights from personal choice to personal decision, and emphasizing that personal freedom is the core concept of constitutional protection of privacy rights. The American concept of

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privacy rights is rooted in the constitutional spirit of individual liberalism, emphasizing the protection of citizens' private life secrets, personal information, and freedom rights [9].

Different from the concept of constitutional protection of privacy rights in the United States, Germany, as one of the European countries, naturally has the concept of constitutional protection of privacy rights as personal dignity. As early as the end of the 19th century, Germans regarded personal privacy as part of the realization of human dignity. In the 1880s, the German judicial practice regarded the protection of privacy rights as part of the right to honor, and protected it in combination with the anti-insult law and artistic property rights. The compilation of the German Civil Code in 1900 laid the legal foundation for the protection of personal rights and laid a solid foundation for the constitutional protection of privacy rights. After the end of World War II, the German Basic Law established "respect for personal dignity" as a basic principle, making personal dignity the core concept of the German Constitution, and realizing the constitutional protection of privacy rights through this concept [9].

4.2. Legislative lessons from foreign privacy laws and their implications for China

Although the United States and Germany belong to the common law system and the continental law system respectively, they share the same concept of privacy rights as part of human rights. Such a concept can better balance the public's right to know and even the right to life and health with the right to personal privacy, and help to quickly respond to public health emergencies such as the COVID-19 pandemic. The scope of privacy rights can set up dynamic change intervals in special periods, but it does not mean that the protection value of privacy rights is greater than public rights, but it is necessary to find a balance between the two. It can be said that respecting human rights is the foundation that a modern country under the rule of law should do. It is crucial to regard privacy rights as the protection of personal rights, let relevant state organs apply the principle of proportionality to make judgments in emergencies, follow the rules to carry out legal law enforcement and administration, and punish violations of privacy rights in accordance with the law.

5. Suggestions

Based on the many deficiencies of the current legal system in terms of privacy protection, this article also puts forward some suggestions for improving the legal protection of national privacy rights. First, the state should promptly amend and update relevant laws and regulations, clearly incorporate the right to privacy as a basic human right into relevant laws and regulations, and respond to new problems brought about by technological development. At the same time, serious privacy infringements should be included in the criminal liability system. Secondly, the government should further improve the law enforcement level of administrative law enforcement agencies in public emergencies. Administrative agencies should exercise their powers in accordance with the law and strengthen supervision and accountability for illegal and irregular behaviors, ensure that privacy violations are punished appropriately, and maintain the credibility of administrative agencies. Finally, privacy protection requires a unified legal framework that clearly defines rights and responsibilities. The Constitution should regard privacy as a basic human right, administrative law should regulate public power, and civil law and criminal law should constitute a supplementary support system.

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6. Conclusion

In conclusion, this study examines the evolution of privacy rights in China during the COVID-19 pandemic, explains the changes in privacy rights in China during the pandemic, and provides relevant recommendations. The results show that although China has taken important steps to build a legal framework for privacy rights, it still faces many challenges in practice. The pandemic has exposed legal ambiguity, inconsistent enforcement, and conflicts between individual rights and collective interests. Comparative analysis with the United States and Germany further shows that it is important to recognize the right to privacy as a basic human right and to strike a balance between emergency governance and appropriate protection of personal data.

However, the limitation of this study is that it relies on public legal texts and cases and lacks empirical data on enforcement outcomes or public perceptions. Future research should further explore the effectiveness of privacy protection during public health emergencies through empirical case studies, including interviews with affected individuals and practitioners.

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