

Research on the Digital Enjoyment Right of the Elderly and Its Legal Guarantee under Smart Pension

Xiaoyuan Zhu

School of Ji Xianlin, Liaocheng University, Liaocheng, China

jiuwo00@qq.com

Abstract. Under the realistic background that the aging and digitalization process are intertwined and influenced each other, the pursuit of integrating into the digital society is the basic interest appeal for the elderly to settle down, realize their self-worth, and gain social recognition in the digital age. In order to realize the legal protection of the digital rights of “digitally vulnerable groups” under the new smart pension mode, it is necessary to establish the guarantee concept of equal protection and inclined protection simultaneously by proving the digital enjoyment rights of the elderly. The present study aims to provide constructive ideas for the legal protection of the rights and interests of the elderly in the digital age.

Keywords: Smart pension; Digital enjoyment right; Legal guarantee.

1. Introduction

The convergence and integration of digitalization and aging have given birth to the digital dividend of smart pension which is enabled by science and technology. However, at the same time, the original digital gap has further widened, and the old people are blocked from the new digital world. They frequently fall into the dilemma of the digital gap and become marginal groups in the digital age. The multi-dimensional risks faced by the digital rights and interests of the old people have become increasingly prominent. According to this, based on the risk orientation, this paper focuses on the multidimensional risks faced by the development of digital rights and interests of middle-aged and old people in the operation of smart pensions.

2. The Phenomenon of “Digitally Vulnerable Groups” Caused by the Reform of Smart Pensions

At present, aging and digitalization have become the two major trends of social development, but the digital dividend of smart pensions has also spawned the “digital divide of silver hair”, and the elderly group has become a vulnerable group in the digital age.

2.1 Technical risks: The Prominence of the Protection of Personal Information

At present, personal information security in China is inadequate, the management of information collection, use, and sharing are lax, and information security problems occur frequently. The elderly are faced with information security problems such as information leakage and fraud based on information asymmetry. The data shows that when using smart products, 90.2% of middle-aged and elderly people are worried about the disclosure of their personal information, and 54.9% of middle-aged and elderly people are worried about being cheated. The information security problem of the elderly is becoming more and more prominent.

2.2 Ethical Risk: The Inability of Meeting the Demands of Multiple Elderly

The technical rationality of pursuing utility and efficiency displayed by smart pension products at the technical level is separated from the value rationality of value goals such as human dignity and spirit emphasized by intelligent aged products under the active aging strategy. Therefore, the possibility of ethical risks will inevitably arise in the process of their integration. According to the book of Rites, Sacrifice for Righteousness, “there are three classes of filial piety. The first-class filial

piety is to make the parents feel honored, the second-class filial piety is not disgracing the parents' reputation, and the third-class filial piety is to nurture the parents.

This reflects the richness of the connotation of traditional elderly care, which not only includes the material upbringing and cultural satisfaction of the elderly but also emphasizes that elderly care must take into account the personal dignity needs of the elderly, which coincides with the development goal of the active aging strategy. However, in practice, the purpose of respecting parents is difficult to achieve. Many large digital enterprises focus on profit-seeking, and their social responsibilities are weakened. They passively implement the government's elderly-oriented guidance and lack the initiative to implement it. From the demand level, the demand for smart pensions at this stage is characterized by multi-level, multi-type, personalization, and so on. However, at the supply level, problems such as the insufficient degree of elderly-oriented and single supply content are prominent. This kind of uncoordinated supply and demand cannot effectively respond to the strategic goal of multiple old-age demands.

2.3 Legal Risk: The Lack of Legal Guarantee Due to Policy Leadership

At present, the market related to smart pensions is basically dominated by policies. The government commands and guides the development of the smart pension industry through policies, and controls the voice and direction of the action of the smart pension industry, which has a strong administrative intervention. China's smart pension industry started late, develop for a short time, and the targeted legal norms have not been fully established. There is a conflict and contradiction between the lag of legal norms and the forward-looking application of technology, which leads to the fact that the existing legal norms cannot fully cover all fields of smart pension, resulting in difficulties in the protection and relief of the rights and interests of the elderly. Considering the weak position of the elderly in society, their rights and interests are more vulnerable to illegal infringement, and they have a more urgent need for the protection of rights and interests, which is in sharp contrast with the absence of the rule of law under the current policy.

3. Theoretical Proof of Digital Enjoyment Right of the Elderly

In view of this, based on the risk orientation, this paper clarifies the basis of the infringement of legal interests from the legal level, and through the certification of the digital enjoyment right of the elderly, it can be guaranteed by the effective rule of law mechanism. The shaping of an emerging right must meet many requirements such as the legitimacy of interest protection, the inclusion of the existing legal system, the possibility of realization, and other conditions such as the legalization elements of human rights. Accordingly, legitimacy, interest, and legal interest are the internal reasons for the emergence of a new right. This paper will prove the digital enjoyment right of the elderly from three dimensions: legitimacy, interest, and legal interest.

Digital enjoyment right of the elderly mainly refers to the appeal of the elderly to integrate into the digital society. It is the basic interest appeal of the elderly to settle down, realize their self-worth, and gain social recognition in the digital age, and it is the right to obtain balance with other subjects, equal benefits, and special care.

3.1 Legitimacy: The premise of the Generation of the Digital Enjoyment Right of the Elderly

According to the formation history of the concept of rights, the author believes that the legitimacy of the generation of the digital enjoyment right of the elderly should at least include the reality of demand and the rationality of appeal.

First is the reality of demand. According to the survey data, although only about 7.62% of the interviewees have experienced the smart pension service. However, among the interviewees who do not know about smart pension, after detailed explanations and examples, about 6.93% of interviewees are very willing to accept it, and 34.64% of them are willing to accept. This shows that the elderly

are willing to bring convenience to life through digitalization, and they want to learn new technologies to connect with society.

Second is the rationality of the appeal. Reischer once put forward that rationality is centered on providing good reasons: if what I do is under the control of proper good reasons, I am rational. The good reasons for the elderly to pursue digital convenience at least include first, focusing on the rights of the elderly. Aging does not mean the loss of rights. "The premise of all rights lies in always being ready to claim rights." The elderly are claiming their own rights in pursuit of digital convenience. The second is to strengthen the ethical constraints and legal regulations on the development and application of digital science and technology with the power and authority of human rights. Digital technology is widely used in national and social governance. In terms of how to ensure that digital technology is good governance, and how to limit the use of digital scientific and technological achievements to the bottom line of freedom, justice, security, and order, we need to choose or construct a shield. This shield is undoubtedly the lofty digital human rights .

3.2 Profitability: The basis for the Generation of the Digital Enjoyment Right of the Elderly

Whether it is demand or appeal, it represents a pursuit of legal rights to protect interests. According to the legal principle, the interests to be protected at the right level should have the following characteristics: rooted in national life, widely recognized by the whole society, and necessary and feasible to be protected by legislation. The appeal of the digital enjoyment right of the elderly fully possesses the characteristics of interests protected by rights.

First, it has become the consensus of the whole society to ensure the digital enjoyment rights of the elderly. On the basis of clarifying the digital needs of the elderly, it is becoming the consensus of all parties in society to actively help the elderly solve the problems of digital technology applications. "Everything people fight for is related to their interests." Recognizing the right of the elderly to enjoy digital benefits is also an essential requirement derived from "social overall joint and several liabilities". In a joint relationship, one's misfortune will affect others, and one's happiness will also benefit others . Everyone will grow old. Actively helping the elderly at present to integrate into the digital society is also helping us when we grow old in the future. Therefore, refusing to help the elderly actively integrate into the digital society will harm the interests of the whole society.

Second, ensuring that the elderly actually enjoy the rights to digital benefits is conducive to the further improvement of national governance capacity. At present, the policy-led soft law governance measures still have strong political mobilization power, but in the long run, because of its instability and other risks, it is likely that the behavior of the lower level will become the response to the tasks assigned by the higher level, which will not improve the national governance capacity. Compared with soft legal governance measures, hard legal governance can better overcome this drawback because of its normative compulsion . Therefore, legally confirming the digital beneficial rights of the elderly and realizing the transition from soft legal governance to hard legal governance is conducive to the further improvement of national governance capacity.

3.3 Legal Benefits: The Core of the Generation of the Digital Enjoyment Right of the Elderly

In order to prevent generalization and make it a real right, the digital enjoyment rights that the elderly should enjoy must be transformed into specific legal interests. Legal interest is the result of legislative balance and choice, which is also the essential difference between it and the concept of interest. Combined with the logic of emerging rights certification, the legal interests of digital vulnerable groups should be based on equal legal interests in the adjustment of unfair distribution. The digital gap is the product of the development of the times. The reason is formally due to the excessive pursuit of instrumental rationality in the modern technological society, however, in essence, it is the inequality given to the elderly in the distribution of digital resources. For many reasons, the contribution of the elderly to the development of the data factor market and even the whole digital society may not be so great as that of the young and middle-aged groups, but it cannot be taken as a natural reason to sacrifice the right of the elderly to enjoy digital benefits. In reality, as individuals,

because of the differences in their talents, environments, and abilities, if using the same scale to measure people's activities, they will have unequal rights. This argument is also applicable to vulnerable elderly groups. The digital resource is not only an important factor of production but also a living resource. As mentioned above, in the digital age, whether the elderly can integrate into the digital society is closely related to their basic survival. Therefore, the core legal interest of the digital enjoyment right of the elderly should be equal legal interest when the digital resources are unfairly distributed to the elderly in the digital society.

4. Legal Guarantee of the Digital Enjoyment Right of the Elderly

4.1 The Protection Concept of the Digital Enjoyment Right of the Elderly

The legislative purpose and regulatory focus of the traditional social security legal system lie in the basic living security and the maintenance of the stable development of society, showing a certain degree of deviation from regulatory purpose. The pension security is related to the second and third redistribution of national income, so it is of great significance for the system itself to realize social equity and protect the socially vulnerable groups. Efforts should be made to protect the interests of the weak from the basic rights of citizens, and respond to social changes through oblique and targeted institutional changes. In terms of legislative value, diversified legal thinking needs to be based on the pluralistic needs of the elderly, and respond to the strategic goal of diversified demands of the elderly.

The principle of equal protection and inclined protection should be established simultaneously. The equality here means that the elderly cannot be given excessive privileged protection to avoid reverse discrimination. At the same time, because the government and scientific and technological enterprises have formed an absolutely dominant position in the absolute concentration of data and resources in social clusters, the rights, and obligations of the elderly, who are digitally vulnerable groups, are always in an unbalanced state. It is necessary to give inclined protection measures through legal empowerment and make up for the weakness of the elderly in resource endowment and social construction through asymmetric rights and obligations.

4.2 The Guarantee Mechanism of Digital Enjoyment Right of the Elderly under the Rule of Law

Due to the instability, administration, and complexity of the policy itself, the digital enjoyment right of the elderly cannot be effectively guaranteed. Therefore, it is inevitable to realize the normative system that changes from policy-led to rule of law-led. On the one hand, the rule of law is the prerequisite for the government to play its role. "Only by establishing a government ruled by law can we really put power into the cage of the system". The transformation from policy-led to rule of law-led is essentially de-administration of social governance. Some scholars have pointed out that the essence of de-administration is the realization of rule of law, and the two concepts are interrelated. Ruling by law is a prerequisite for building a government ruled by law, urging the government to play an active regulatory role in the smart pension industry, and it plays an important role in preventing market risks and rule of law risks among social risks. On the other hand, the rule of law is the inevitable demand of the smart pension industry for the normative system. There is a certain degree of contradiction between the limitations of the policy and the characteristics of the smart pension industry. For example, the policy has distinct regional characteristics, and each local government is the executor of regional governance, and its policy proposal must be based on the local development, so the regional differences are large. However, the intelligent elderly service industry tends to collect data across regions, open up markets, and provide services across regions. The regionality of policies will inevitably have unnecessary influence and interference. However, the rule of law norms reflects a distinct unity and coordinated value orientation, which is more conducive to the standardized operation of the intelligent old-age service industry.

In a word, in the issue of smart pensions, the imperfections of the traditional policy-oriented old-age care regulation system are becoming more and more prominent. It is necessary to realize the

transformation from the traditional policy-oriented elderly care regulation mechanism to the legal-oriented one, so as to overcome the rule of law risk in regulating the intelligent elderly care relationship, enhance the stability and unity in the field of old-age care, and effectively protect the digital rights and interests of the elderly. In terms of this, in order to protect the rights in an all-round way, drawing on the “three-stage” theory of emerging rights, that is, the gradual protection mode of “case-interpretation-legislation”, this study aims to construct the legal protection mechanism for the digital enjoyment rights of the elderly . First of all, through the guiding case, the elderly digital enjoyment right is relieved. It is an important practice path to realize good law and governance by issuing guiding cases, establishing and perfecting the case guidance system, ensuring the fairness and justice of cases, and promoting the unification of law application . Secondly, through authoritative judicial interpretation, the main points and reasons of judgment in guiding cases are transformed into universal judicial norms. Judicial interpretation is an institutional arrangement with Chinese characteristics, even called “quasi-legislation” [10]. As China is a typical statutory country, the main points and reasons of judgment in individual cases cannot automatically generate universal judicial norms that can be applied repeatedly in subsequent cases. According to this, in the legal framework of our country, it is often only by the judicial interpretation of the Supreme Court that the standard of case adjudication in the field of trial can be upgraded to a judicial standard of general significance. Finally, due to the need of respecting, protecting, and realizing the digital enjoyment right of the elderly, the state should confirm this right of the elderly in legislation, and explore the formulation of professional legislation to regulate the elderly care service.

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