

The Legal Protection of the Rights of Digitally Vulnerable Groups

Zhe Chen ^a, Meng'en Han ^b

School of Public Affairs, Southwest Jiaotong University, Chengdu 610031, China

^a2713550639@qq.com, ^b1822194526@qq.com

Abstract. The profound advance of digital technology has brought us unprecedented dividends. Nevertheless, numerous individuals have become digitally vulnerable due to obstacles to accessing and using digital information, and the citizens' fundamental rights and the order of social life have suffered significantly because of this substantive inequality. Therefore, this paper aims to promote the legal protection of the rights of digitally disadvantaged groups by establishing the concept of digital human rights, empowering rights, and constructing a three-stage guarantee system from the perspective of emerging rights.

Keywords: Digitally vulnerable groups, Human rights, Digital dilemma, Legal protection.

1. Introduction

The digital society is a historical stage we human are currently in, but whose development remains unclear. The intellectualization and networking of science and technology have brought us unprecedented digital dividends; meanwhile, a dilemma that lots of individuals who fail to adapt to the trend of digitalization are forced to become digitally vulnerable has developed because the acquisition and utilization of information resources will be limited by many factors such as knowledge and skills. This substantial inequality that is supposed to be aggravated with the continuous construction of the information society already poses a serious threat to citizens' fundamental rights and the order of social life. As a result, constructing a protection system for the rights of digitally vulnerable groups at the legal level is of great significance to improving the protection of collective human rights, safeguarding the fundamental human rights of individuals, and advancing modern social governance.

2. The Concept and Classification of Digitally Vulnerable Groups

2.1 The Concept of Digitally Vulnerable Groups

A thorough and deep grasp of human rights must be integrated with specific social contexts. The current social era mainly features the rapid development of digital technology, and the threat to human rights posed by digital technology is accurate and present. Against this backdrop, a new type of vulnerable group has emerged, which is not a conceptual transformation of the vulnerable in the traditional context but is formed by accessing and utilizing information resources.

Digitally vulnerable groups are defined as specific social groups that have no capacity to obtain, comprehend and take advantage of network information in a timely and effective manner due to differences in economic, technological, social status, and learning ability, coupled with the networking and disequilibrium conduction characteristics of digital technology, as well as the virtual and real isomorphism of the information age, and the decentralized new social structure, and then lack resources, insufficient ability, marginalization and even damage to legitimate rights. [1]

Compared with the traditionally vulnerable groups, digitally vulnerable groups have the following characteristics: first, the digital technology will amplify the adverse effects in the traditional context and solidify the disadvantaged position of the congenital vulnerable groups. For instance, the elderly who cannot use smart devices are likelier to have a strong sense of being stripped and lonely in society. Second, the disadvantaged position of a part of the population has been exposed to the rapid advance of the digital society; hence, they have become a new vulnerable group. For example, the algorithmic

discrimination in automated decision-making makes some citizens unable to enjoy the dividends brought by digital technology, so their legitimate rights and interests are impaired.

2.2 The Classification of Digitally Vulnerable Groups

Digitally vulnerable groups have become more and more prominent and cannot be ignored in the process of constructing a digital society. In terms of specific manifestations, digitally vulnerable groups are not an absolute concept but take on different forms in different social contexts due to the characteristics of virtual and real isomorphism in the information age.

According to the differences among social groups in accessing and using the novel digital technology, digitally vulnerable groups can be divided into two categories: explicit digitally vulnerable groups and implicit digitally vulnerable groups. Explicit digitally vulnerable groups refer to the elderly who do not possess or cannot utilize intelligent devices and citizens who cannot enjoy modern information technology services due to economic difficulties or lack of access to the network. However, the reasons for the occurrence of implicit digitally vulnerable groups lie in that although they have equal access to digital information, they lack essential data rights awareness, necessary considerable data information, corresponding computing capacity, and the purpose of implementing management or business decisions rather than technology or equipment. Because of the above reasons, they have no ability to obtain, analyze and use the disclosed data information effectively. [1]

3. The Practical Dilemma of the Rights Protection of Digitally Vulnerable Groups

3.1 The Types of Rights are Challenging to Discern

When the fundamental rights of digitally vulnerable groups are damaged or cannot be guaranteed, attention should be paid to the construction of corresponding rights protection mechanisms. Clarifying the categories of rights of digitally vulnerable groups conduce to achieve an authentic guarantee of the rights of the digitally vulnerable.

Nowadays, the development of the times and the concept of rights protection promote the continuous renewal of the existing rights system. From the perspective of the development trajectory of human rights, the fourth generation of human rights with digital human rights as the core has attracted wide attention from both the academic community and the public, and its academic degree has been further deepened. However, without a concrete rights structure, its protection will be difficult to implement and produce practical benefits. Moreover, in the information field formed in the virtual network space, especially coupled with the data logic, the value orientation of data supremacy promotes and strengthens the commodity attribute of personal information; therefore, the legitimate rights of citizens face the absence of legal protection.

Realizing rights protection, not just the pursuit of theoretical progress, is the fundamental purpose of studying digital human rights. Nowadays, countries regard technology as a symbol of social progress while ignoring the comprehensive social impact of technology. Nevertheless, blindly emphasizing the theory of technology omniscience will lead to more social problems.

Digitally vulnerable groups must be conducted by the law to adjust interests and order maintenance, for they will not vanish as technology increasingly develops on its own. In addition, compared with constructing a legal system, enhancing citizens' awareness of rights or encouraging technology companies to strengthen technological innovation with the aim of rights protection is a little passive. In conclusion, protecting the rights of digitally vulnerable groups is still a matter of law, and if abstract digital human rights cannot be transformed into specific types of rights, it will inevitably make no sense.

3.2 The Subject Responsible for Rights Protection is Absent

The subject of responsibility plays a crucial and significant role in remedying damage and misfortune; however, its often absence in real life contributes significantly to the practical dilemma of the rights protection of the digitally vulnerable. The characteristics of the rights protection of digitally vulnerable groups lie in the potential and concealment of rights damage, which has formed specific barriers to the definition of responsible subjects. Apart from that, because of the excessive admiration for techno-supremacy, it is considered that the limitations of the technology are reasons for lack of rights protection, which provides a new reason for the disguised neglect of responsible subjects.

The absence of the responsible subject is mainly embodied in two dimensions. On the one hand, the subject of responsibility remains unclear. Under digital production background, numerous subjects participate in all aspects of technical products, including design, development, production, and sales. As a result, the division of labor is increasingly fragmented, the participation links are more and more complicated, and almost everyone is chasing technological innovation and profit growth, attempting to evade responsibility to the greatest extent for economic gain.

On the other hand, the content of the responsibility is not straightforward, either. AI innovations in digital technology could generate a displacement effect, which means human tasks will be replaced by automated algorithms performing tasks, and these repetitive jobs that are easily replaced are often labor positions for the marginalized and vulnerable groups. [2]

Neither adopting the traditional civil liability model nor applying the legal system of labor rights can solve the dilemma that the responsibility content is unclear. Even if technology companies or authorities have a sense of responsibility to safeguard the rights of the digitally vulnerable, they will be overwhelmed by the lack of universal law provisions. Furthermore, no remedy, no right. The lack of explicit responsibility content will lead to a situation where citizens lack a legal and reasonable basis when seeking remedies for rights and shake the foundation of the rights protection of digitally vulnerable groups. So it is clarifying the content of responsibility that is the critical measure to implement the remedies and guarantees of rights.

3.3 The Legal Protection System still Retains Technical Deficiencies

The time for human beings to enter the digital age is not long ago, and the concept of digital human rights is relatively novel, reflecting that the rights protection of digitally vulnerable groups at the legal level is not yet perfect and needs to be further optimized. Furthermore, it is universal and inevitable that network technology solidifies the disadvantageous position of disadvantaged groups, which requires us to pay more attention to the construction of a legal protection system. Generally speaking, the legal protection model has the following technical shortcomings.

First, based on the basic definition of emerging rights, it is difficult to grasp the boundaries between science and technology and law, which may lead to the dilemma of generalization of rights caused by excessive protection.

Second, a study of typical recent cases, while revealing the use of legal methods related to technology, runs the risk of falling into instrumentalism. The fundamental reason is that the manner of applying law summarized through legal practice is passive in adjusting the technology and lacks substantive guidance.

Finally, from the legal methodology and theory of adjudication, the abstract nature of the law also determines that the provisions should not be too detailed and should be positively stipulated on the bottom line issue and negative on the discretionary issue, following the fundamental laws of the digital society.

4. Legal Safeguards for the Rights of Digitally Vulnerable Groups

4.1 Establish the Concept of Digital Human Rights

The history of modern human rights has developed on the basis of personal values. The first generation of human rights carries values of enlightenment, the second generation of human rights reflects the strong demand for democratic politics, and the third generation of human rights embodies the spirit of national liberation and self-determination. The content of the first three generations of human rights is mainly public participation, living standards, and equitable development in the physical world, involving people, property, and behaviors in the physical sense, without concepts of data and information. [3]

The fourth generation of human rights features the protection of digital human rights, which conforms to the basic requirements of contemporary society and is conducive to protecting human rights from the encroachment caused by digital technology. The core of digital technology is algorithms and data, and its essence is to grab, analyze data and finally make decisions. It seems that the automated decision-making of digital technology will affect fundamental civil rights. This influence is not a single but a chain-based comprehensive impact, which also determines that it is gradually becoming an increasingly crucial new carrier and value expression of human rights in the new era. At this time, in order to satisfy the objective needs of the digital society, the establishment and continuous strengthening of the concept of digital human rights seems to be a more effective way to protect the rights of digitally vulnerable groups.

4.2 Empowerment of Rights for Capacity Deficits

Legal empowerment has played a crucial role in protecting the rights of vulnerable groups. Since the 1980s, legal empowerment has become closely linked to the protection of the rights of vulnerable groups, emphasizing the priority of civil society support as the best option for strengthening legal capacity and empowerment. [4] For digitally vulnerable groups, social assistance occupies a secondary position. At the same time, improving individual digital capabilities and constructing a rights relief system should be the focus of empowerment, and the specific empowerment mechanism should highlight the three following aspects.

The first is to change the perception of technology among digitally disadvantaged groups, further enrich their digital experience, and change their lagging values. Aimed to get a comprehensive grasp of the characteristics of digital technology, the digitally disadvantaged should not only improve their proficiency in accessing digital information but also actively enjoy the diversified services provided by new technologies such as emotional communication, skills training, and personality development.

The second is that authorities are supposed to enhance the application of law and improve the ability to protect rights. Empowering the rights of digitally vulnerable groups enables them to grasp various remedies, such as the right to interpret algorithms, which may lay the foundation for building their comprehensive and systematic awareness of digital rights.

Third, differentiate treatment. It is the ability of the elderly, the economically disadvantaged, and other explicitly digitally vulnerable groups to use digital technologies that the focus of empowerment actions ought to be to help them better integrate into the digital society.

4.3 Construct a Three-Stage Rights Protection System

In terms of the protection of the rights of digitally vulnerable groups, the concept of digital human rights provides a new perspective on the analysis of rights and obligations and inclined protection, which must be effectively played through specific legal systems. In the era of big data, the legal benefits of digital human rights have not been finally clarified, which will inevitably lead to a situation where there will be a detachment from reality when the concept of digital human rights is put directly into legislation. At this point, a form of relief that effectively combines legislation and trial is imperative.

Learning from the three-stage protection model of "case-interpretation-legislation" of emerging rights to build a rights protection system seems an excellent way to make the process of shaping the rights of digitally vulnerable groups progressive in potency. The details are as follows.

First, with the aid of the exemplary effect of typical cases, authorities ought to follow the concept of substantive equality, strengthen the inclined protection for vulnerable groups, and protect their digital rights represented by the right to personal information.

Second, rely on legal interpretation to transform adjudication rules and concepts into generalized norms and provide inclined protection for digitally vulnerable groups in specific adjudications through interest balance and value supplementation.

Finally, based on typical cases and legal interpretations, the issue of digital infringement should be brought to legislation, which helps to reconcile the development of intelligent technology and the protection of citizens' rights.

5. Summary

The creation of the concept of rights is an intelligent response to the problem of the times and society in which human beings live. [5] In the context of digitalization, social inequality has manifested itself in new forms. Besides, the vulnerable groups in the new era are far from different from the definition of the original ones, and the protection of the rights of digitally vulnerable groups has become a new research perspective.

It is of great significance to construct and improve the legal protection system for the rights of digitally vulnerable groups to eliminate the concern that the development of science and technology in an intelligent society will damage citizens' rights and to help China win the opportunity in the study of the fourth generation of human rights in theory and practice.

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