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The Implementation of the Patient's Privacy Regulations in The People's Republic of China

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Abstract

The right to privacy, especially with regard to personal health condition, seems to be an issue in China. Illegal access to personal information and illegal disclosure of personal information to others constitute the infringement of the Personal Privacy Act. Although the privacy right has been governed under the Constitution since the 1980's, however, its implementation has not yet been satisfactory due to some reasons. This paper aims to describe the implementation of the patient's privacy regulations in the People's Republic of China. This normative legal research employing a descriptive-qualitative method. The study shows that the right to privacy for the patients in China needs to get more attention from government, medical personnel and ruling groups..

Keywords: *medical act; patient's privacy regulations; patient's rights; People's Republic of China*

1. Introduction

Officials from the Ministry of Health in People's Republic of China (China) have called for more attention to the protection of the rights to privacy of HIV/AIDS patients, following a court ruling that a hospital damaged a patient's reputation by releasing false HIV-related information about the patient. The Xinzhou Intermediate People's Court of Shanxi Province rejected the appeal of the Xinzhou Prefectural People's Hospital against the original ruling by a district court, in the country's first such case.

Last August, the case was accepted by the Xinfu District Court and the Court ordered the hospital to publicly apologize to the plaintiff, Yu Meifang, and pay her 20,000 yuan (US\$2,400) in compensation for the anguish and humiliation she suffered. Yu, a 41-year-old retailer who sold goods in the Xinzhou Shopping Center, sued the hospital for damaging her reputation by releasing false HIV-related information about her.

In February 2000, Yu went to the orthopedics section of the hospital for treatment. A doctor from the hospital tested her blood and suspected her of being HIV-positive. The hospital separated her from other patients immediately and informed both the Xinzhou Epidemic Prevention Station and the shopping center. Yu went to the Beijing 301 Hospital in March for testing and found out she was in fact HIV-negative. She then took the case to the Xinfu District Court and won a judgment against the hospital.

However, the hospital continued to maintain that it had not damaged the reputation of the plaintiff and appealed to the intermediate court. Finally, the intermediate court affirmed the original judgment of the district court, saying the hospital and the epidemic prevention station had, indeed, spread false information about Yu's HIV/AIDS diagnosis and damaged her reputation.

An official with the district court, Wang Shiping, said the hospital should have kept Yu's medical record a secret even if she had turned out to be HIV-positive.¹ The regulation on supervision and management of HIV/AIDS,² which was issued by the ministry in 1987, also said all people, including doctors, are forbidden to discriminate against HIV/AIDS victims and their relatives. In addition, the intermediate court said the hospital and the station had not respected Yu's privacy. Yu said the shopping center refused to rent counters to her and nearly everybody in Xinzhou thought she was an HIV carrier. The gossip even led her business partner in Taiyuan to cut off relations with her.³

The rights to privacy seems to be an issue in China, and it's actually a big deal that needs to discuss, especially in the Medical matters since basically, the state has set the law regarding its citizens privacy. Illegal access to personal information, illegal providing personal information to others, and personal decision interference all belong to the infringement of Personal Privacy Act.⁴

¹ China Daily. (2019). "Patient's Privacy Rights Become an Issue in China". Available from <http://www.china.org.cn/english/features/aids/113315.htm>. Accessed on Saturday, March 9, 2019, at 7.53 p.m.

² The 1987 Chinese Ministry of Health' First National Plan for the Prevention of HIV/AIDS (the 1987 Plan).

³ China Daily. *op. cit.* Accessed on March 20, 2019, at 9.39 p.m.

⁴ Zhao Hui, and Dong, Haoxin. (2017). "Research on Personal Privacy Protection of China in the Era

The rules and regulations on the privacy rights regulated in their Constitution since the 1980's, however it was not implemented maximally due to the power of government and general reluctance in the past to litigate.⁵ As in line with the times, and to make the law more into force, the legislature sets the privacy rights of the citizens in the Civil and Criminal Code, as well as other legislations.

On October 1, 2017, the General Rules of the Civil Law became effective in which Article 111 states that natural persons' personal data is protected by law. Illegally collecting, using, processing or transferring the personal data of others is not allowed. Criminal Law also set forth offences relating to infringing personal data and privacy, for example, the offence of infringing citizens' personal information in Article 253-(1), the offence of refusing to fulfill the information network security responsibilities in Article 286-(1), and the offence of stealing, purchasing or illegally disclosing other people's credit card information in Article 177-(1). Other than that, the Tort Liability Law, Article 2 provides the rights to privacy as one of the civil rights of citizens, along with the rights to life, rights to death, and so on.⁶

The Standing Committee of its National People's Congress (SC-NPC)⁷ in 2012 released

of Big Data". *Open Journal of Social Sciences*. June 19, 2017. Online ISSN 2327-5960 & Print ISSN 2327-5952. Scientific Research Publishing Inc. p. 140.

⁵ Du, Yu, and Murphy, Matthew. (2019). "Data Protection and Privacy Issues in China". Available from: <https://www.hg.org/legal-articles/data-protection-and-privacy-issues-in-china-5340>.

Accessed on Sunday, March 10, 2019, at 4.34 p.m.

⁶ Ning, Susan, and Wu, Han. (2019). "Data Protection 2018 China". Available from <https://iclg.com/practice-areas/data-protection-laws-and-regulations/china>. Accessed on Sunday, March 10, 2019, at 5.33 p.m.

⁷ SC-NPC is China's second-highest legislative organ, its decisions effectively constituting legislation.

its Decision on Internet Information Protection (the 2012 SC-NPC Decision). This decision is until today the highest level law in China to deal specifically with data protection issues.⁸ The rules and regulations concerning on the personal data for the citizens, as already seen, are set as ideal as it shall be. Laws are made for the people welfare and goodness sake, yet those various laws on the personal privacy in China are still not implemented optimally in the state. There were still many cases related to the rights to privacy happened, including the issues in medical matters, i.e. the patient's personal data that cannot be kept well by the doctor or the hospital as the patients have their right to privacy.

2. Result and Analysis

2.1. An Overview of the Medical Services in the People's Republic of China

China's health care system was basically developed in three tiers, i.e. village doctors and clinics, township health centers, and general hospitals in rural areas; and community health centers (stations), district hospitals, and tertiary hospitals in urban areas. In addition, there are specialized hospitals, disease control centers, and maternal and child health institutions.⁹ China witnessed a dramatic shift in the health sector from the 1980s when it ventured into the path of economic reforms.

Since the late 1990s and 2000s, the Communist Party of China (CPC) has made attempts to improve access to health services and rectify the problems that emerged from

⁸ Hert, Paul de, and Papakonstantinou, Vagelis. (2015). *The Data Protection Regime in China*. October 2015. European Union. Brussels. Directorate General for International Policies. p. 19.

⁹ Meng, Qingyue, et. al. (2004). *Health Policy and Systems Research in China*. World Health Organization on behalf of the Special Programme for Research and Training in Tropical Diseases. 2004. Switzerland. p. 1.

the initial phase of reforms in the 1980s. China's health service systems face several challenges today which have implications for access and equity, as well as privacy. The challenge it faces demands a need for a larger systemic correction than simply addressing the symptoms.¹⁰

Complaints about unaffordable basic health services, medical impoverishment due to high out-of-pocket health expenditures, and the increasing disparity in health status have gradually increased across China.¹¹ China is in the midst of a paradox. There has been a spectacular upward surge in health indicators, matching the similar increase in economic indicators.¹² It is also a colossal market, with healthcare expenditures reaching \$511.3 billion in 2013.¹³ That is equivalent to 5.6% of GDP. On the other hand, the health system has officially been described as inefficient, and there is a toxic atmosphere between medical staff and patients.

The doctor-patient relationship has therefore been transformed into a dynamic of conflict in the face of exorbitant treatment costs, extremely long waiting times, ever-shorter consultation appointments, and the increasingly widespread practice of bribery. Paying money under the table helps to reduce the waiting time and ensure better medical care for the patient. In recent years, a

¹⁰ Nundy, Madhurima. (2016). *Challenges to Health Service System in China: Institutional and Financial Reforms*. Heidelberg. Springer-Verlag Berlin. p. 9.

¹¹ Li, Ling, and Fu, Hongqiao. (2017). "China's Health Care System Reform: Progress and Prospects", *International Journal of Health Planning and Management*. June 2017. John Wiley & Sons. Ltd. p. 240.

¹² Milcent, Carine. (2016). "Evolution of the Health System: Inefficiency, Violence, and Digital Healthcare". *Open Edition Journals*. December 1. 2016. Online ISSN 1996-4617 & Print ISSN 2070-3449. Centre d'étude Français sur la Chine Contemporaine. p. 39.

¹³ Industry Report. (2014). "Healthcare: China". The Economist Intelligence Unit. August 2014.

number of forms of violence have been witnessed in Chinese hospitals. It might be a comparatively non-aggressive form of blame, such as families displaying the dead body of a loved one outside a hospital; however, it can also take a more active form, ranging from fights and damage to premises to extremely violent acts inflicted on medical personnel, sometimes even involving help from organized gangs.¹⁴

Access to adequate health care is crucial to social and economic development, as healthy human capital fosters productivity and economic growth. Comprehensive reforms and pronounced economic growth have enabled China to improve health outcomes across the country.¹⁵ However, it needed continuous and sustained efforts to make it really happen.

In subsequent years, the government moved to further the goals set by the party in 2006. The Ministry of Health solicited comments from the public on broad implementation guidelines and ultimately received some 30,000 responses between October 14 and November 14, 2008. This process informed the development of “five major targets” included in the health reform action plan. Each of the targets is summarized below:¹⁶

- (1) Expanded medical insurance to cover 90% of the population
- (2) National essential drug system
- (3) “Grassroots level” improvements in medical care and public health service
- (4) Public health promotion, through vaccination and health education
- (5) Pilot reform of public hospitals to re-engineer financial incentives

¹⁴ Milcent, Carine. *op. cit.* pp. 39 – 40.

¹⁵ China Power Team. (2019). “Is China’s Health Care Meeting the Needs of Its People?” taken from <https://chinapower.csis.org/china-health-care-quality/>, accessed on April 1, 2019, at 3.08 p.m.

¹⁶ Brown, Ruth E. et. al. (2012). *Reforming Health Care in China: Historical, Economic and Comparative Perspectives*. April 2012. PUBPOL 716. p. 14.

While the exact extent of public input in the development of these “major targets” is nearly impossible to discern, it remains that the government actively sought public comment and touted the process as a relatively open one. This can be seen as an extension of the “front line” concept, whereby government and party officials were actively encouraged to seek the input of local residents to maintain a feedback loop in China’s relatively undemocratic system of government. In March 2011, the 12th Five Year Guideline (formerly called Five-Year Plans), further enumerated goals relating to health reform. According to private sector analysis of the guidelines, the 12th Five-Year Guidelines includes the following health reform goals:¹⁷

- (1) Improvement of social safety net for all groups, including universal health care coverage for rural residents
- (2) Selection of biotechnology as a strategic emerging industry
- (3) Encouragement of foreign investment in the health care sector.

2.2. Regulations on the Rights to Privacy

2.2.1. Regulations on the Rights to Privacy in Some Countries

The importance of the privacy of someone leads some countries to pay attention to it. Not surprisingly, there have been many countries or group of countries regulate a person’s rights to privacy. The protection of the spreading of personal data is fundamental Human Rights as it essential for human beings to keep their privacy secret. Some countries or group of countries that already have set its regulation on data privacy, among others, European Countries, the U.S., Australia, and Canada.

a. Europe

When it comes to complying with the data protection laws in Europe, we have to be aware of the European Union (EU) laws and

¹⁷ *Ibid.*

the laws of the EU member states. The EU is a union of European States. Each one of them is a sovereign country with its laws. When an EU institution passes a law (regulation or directive), it applies to U level. It means that in each country, both EU laws and domestic laws apply. In case of collision, the EU law applies. That's why EU member states regularly update domestic laws in line with EU laws.

That's also the case with the General Data Protection Regulation (GDPR) of the EU. GDPR, which came into effect on 25 May 2018, is the most extensive personal data protection law to date in the EU. As you'll see from the rest of this article, the rest of the world doesn't have as many requirements about using tools for data collection and processing.¹⁸

b. The U.S.

There is no single law in the United States that provides a comprehensive treatment of data protection or privacy issues. In addition to the constitutional interpretations provided by the courts and the international agreements mentioned above, there have been a number of laws and executive orders dealing specifically with the concept of data protection. The most important and broad based of these laws are the Privacy Act of 1974 and the Computer Matching and Privacy Act. These laws deal exclusively with personal information held by the federal government and do not have any authority over the collection and use of personal information held by other private and public sector entities.¹⁹

¹⁸ Storbaek, Dan. (2019). "A Complete Guide to GDPR, CCPA and International Privacy Laws". Available from <https://secureprivacy.ai/complete-guide-to-international-data-privacy-laws/>. Accessed on Saturday, April 13, 2019, at 4.23 p.m.

¹⁹ Stratford, Jean Slemmons, and Stratford. Juri, Fall (1998). "Data Protection and Privacy in the United States and Europe". pp. 17 - 18, available from <https://iassistquarterly.com/pdfs/iqvol223stratford.pdf>

In addition, the US Federal Trade Commission (FTC) has jurisdiction over a wide range of commercial entities under its authority to prevent and protect consumers against unfair or deceptive trade practices, including materially unfair privacy and data security practices. The FTC uses this authority to, among other things, issue regulations, enforce certain privacy laws and take enforcement actions and investigate companies for:²⁰

- (1) Failing to implement reasonable data security measures;
- (2) Making materially inaccurate privacy and security representations including in privacy policies;
- (3) Failing to abide by applicable industry self-regulatory principles;
- (4) Transferring or attempting to transfer personal information to an acquiring entity in a bankruptcy or Mergers and Acquisitions (M&A) transaction, in a manner not expressly disclosed on the applicable consumer privacy policy; and
- (5) Violating consumer privacy rights by collecting, using, sharing or failing to adequately protect consumer information, in violation of the FTC's consumer privacy framework or certain national privacy laws and regulations.

California alone has more than 25 state privacy and data security laws, including the recently enacted California Consumer Privacy Act of 2018 (CCPA), effective January 1, 2020. The CCPA applies cross-sector and introduces sweeping definitions and broad individual rights, and imposes substantial requirements and restrictions on the collection, use and disclosure of personal information. The CCPA defines personal information as any information that identifies, relates to, describes, is capable of being associated with, or could reasonably be

[ord.pdf](#), downloaded on Sunday, April 14, 2019, at 2.48 p.m.

²⁰ Halpert, Jim, et. al. (2017). *Data Protection Laws of the World United States*. United States. DLA Piper. p. 2.

linked, directly or indirectly, with a particular consumer or household.

The definition specifically includes contact information, government IDs, biometrics, genetic data, location data, account numbers, education history, purchase history, online and device IDs, and search and browsing history and other online activities, if such information is linked or linkable with a particular consumer or household. Under the law, a consumer is broadly defined as any resident of California.²¹

c. Australia

It is important to note the limited coverage of Australian Federal privacy law. There is at present no common law right of action in Australia for intrusion upon an individual's seclusion or private affairs or for misuse or disclosure of private information. The Federal Privacy Act 1988 (the Privacy Act) and some State and Territory Acts regulate the use by government agencies and many businesses of personal information as embodied in particular records. The instruments dealing with electronic marketing, interception, monitoring, and surveillance, include the following:²²

- (1) The Spam Act 2003 (Spam Act), which deals with the sending of unsolicited commercial electronic messages, including emails and SMS;
- (2) The Do Not Call Register Act 2006 (DNCR Act), regulates unsolicited commercial calling to telephone numbers listed on the national DNCR and imposes certain conditions as to telemarketing generally, including as to the time of day of calling.
- (3) eMarketing Code of Practice, which contains rules and guidelines for the sending of commercial electronic messages;
- (4) Telecommunications (Interception and Access) Act 1979, which among other

things, regulates the interception of, and access to, stored communications by law enforcement agencies;

- (5) A range of federal, state, and territory statutes governing the use of listening devices and workplace surveillance;
- (6) A more limited range of federal, state, and territory statutes governing the use of unauthorized optical surveillance and tracking devices;
- (7) State and federal criminal law provisions dealing with unauthorized access to computer systems; and
- (8) The Australian Guideline for Third Party Online Behavioral Advertising.

d. Canada

For more than three decades, the Office of the Privacy Commissioner of Canada has been doing its job which is to see that the Government of Canada and many of the private-sector organizations that collect its citizens personal information do so with care and respect for their privacy. There are two federal privacy laws apply in the state, namely; the Privacy Act, which applies to the federal public sector; and the Personal Information Protection and Electronic Documents Act (PIPEDA).²³

The Privacy Act, which came into force in 1983, requires appropriate safeguards for the personal information that is gathered by the federal government. In the intervening decades, several trends have emerged to make the need for such a law ever more acute. The Privacy Act applies to the federal public sector, which includes about 250 departments, agencies and Crown corporations, ranging from Agriculture and Agri-Food Canada to the Yukon Surface Rights Board. Under this jurisdiction, all

²¹ *Ibid.* pp. 2 – 3.

²² Leonard, Peter. (2014). "An Overview of Privacy Law in Australia: Part 2". *Communication Law Bulletin*. Vol. 33 Issue 2. June 2014. p. 4.

²³ Office of the Privacy Commissioner of Canada. (2015). *A Guide for Individuals Protecting Your Privacy An Overview of the Office of the Privacy Commissioner of Canada and Federal Privacy Legislation*. December 2015. ISBN 978-1-100-23365-9. Canada. p. 1.

provinces and territories have similar laws governing their own public sectors.²⁴

While the Personal Information Protection and Electronic Documents Act (PIPEDA), sets the ground rules for handling personal information in the course of commercial activities. It applies equally to small and big businesses, whether they operate out of an actual building or only online. PIPEDA applies to private enterprises across Canada, except in provinces that have adopted substantially similar privacy legislation, namely Québec, British Columbia, and Alberta. However, even in those provinces with substantially similar legislation, and elsewhere in Canada, PIPEDA continues to apply to personal information collected, used or disclosed by all federally regulated organizations such as radio and television stations, airports and airlines, railways and telecommunication companies.²⁵

Those countries have set forth the law related to privacy. Furthermore, the law enforcement in the countries are good enough. We may hear a few cases on the violations of the rights to privacy happened. Besides, the coordination and participation from all aspects, involving government, society, and ruling groups, is extremely great there. Moving to one of the Asian countries, China, the protection of the rights to privacy is less of support, especially from the government. Yet, China has made its national law regarding the privacy, and this law must be obeyed by the entire people of China.

2.2.2. Regulations in the People's Republic of China

Unlike other developed countries that already have a series of regulations regarding privacy law, if we discuss the privacy protection system in China, there is a unique thing that China does not have a special law of privacy protection laws before. Instead, a

series of sectorial laws have been introduced over the past years, each one of varying legal statuses, none of which exclusively within data protection subject-matter but rather including some data protection-specific provisions in their texts.²⁶ Overall this legal entity can be stacked to form a "cumulative" data protection effect. In addition, privacy is protected indirectly, as part of human dignity, in the Chinese constitution, and in its basic civil law. For the reasons described above, none of these data protection lines and similar can be considered as forming a data protection regime.²⁷ However, each of them will be explained in the following analysis based on secondary sources in order to be able to assess the cumulative effects discussed in relation to data protection in China. Such as:

a. The 1982 China Constitution

Privacy rights are available to Chinese citizens under the Constitution and other legal regulations since the 1980s. However, due to the size and strength of the government, as well as the general reluctance of the past to fight for the law, the law has not been tested. The Legislature is in the process of developing wider privacy rights under the Civil Code. These new rights have the potential to shift the power of privacy to the public for the first time since the founding of the Chinese Communist Party.²⁸ The personal dignity of citizens of the People's Republic of China is recognized and protected under Article 38 of the Constitution. Furthermore, freedom and privacy of the correspondence of citizens of the People's Republic of China are protected. But Article 40 provides significant limitations on these rights, where state secrets or criminal investigations are involved, police and other authorities can tap communications as needed. The broad

²⁴ *ibid.* p. 4.

²⁵ *ibid.* p. 9.

²⁶ Hert, Paul de and Papakonstantinou. *Vagelis. op. cit.*, p. 16.

²⁷ *Ibid.*

²⁸ Du, Yu, and Murphy. *Matthew. op. cit.*

concept of “state secrets” gave the government the highest power in reviewing and monitoring communications as needed.²⁹

b. The Criminal Code

According to Article 253(a) of Criminal Law stated that “Where any staff member of a state organ or an entity in such a field as finance, telecommunications, transportation, education or medical treatment, in violation of the state provisions, sells or illegally provides personal information on citizens, which is obtained during the organ’s or entity’s performance of duties or provision of services, to others shall, if the circumstances are serious, be sentenced to fixed-term imprisonment not more than three years or criminal detention, and/or be fined. Whoever illegally obtains the aforesaid information by stealing or any other means shall, if the circumstances are serious, be punished under the preceding paragraph. Where any entity commits either of the crimes as described in the preceding two paragraphs, it shall be fined, and the directly liable person in charge and other directly liable persons shall be punished under the applicable paragraph.”³⁰ The IX Amendment to the Criminal Law, 5 which came into force on November 1st, 2015, has amended Article 253, and has expanded the scope of violations of personal related information and increased legal responsibility. The Supreme Court and the Attorney General’s Office also announced Interpretations by the Supreme Court and the Attorney General’s Office on Issues Regarding the Application of Law in Dealing with Criminal Cases concerning Violations of Citizens’ Personal Information and typical relevant cases, effective from 1 June 2017, giving further details about how Article 253 must be interpreted and implemented.³¹

²⁹ *Ibid.*

³⁰ Unofficial translation from the UN Office on Drugs and Crime, taken from https://www.unodc.org/tldb/pdf/ChineseLegislation/China_Criminal_Law_Amendment_VII_EN.pdf. downloaded on May 15th, 2019, at 4.46 a.m.

³¹ Dong, Marissa (Xiao). (2018). *The Privacy, Data Protection and Cybersecurity Law Review*. London.

c. The Civil Law

The Tort Responsibility Act, because it explicitly refers to rights, is the latest addition to China’s data protection regime (or, better, privacy protection). For privacy in a protected list of “civil rights and interests”. Article 2 stated “those who violate their rights and interests must experience torture in accordance with this Law”. “Civil rights and interests”, the right to life, the right to health, the right to name, the right to reputation, the right to respect, the right to self-image, the right to privacy, marriage autonomy, guardianship, ownership, use rights, security interests, copyright, patent rights, exclusive rights to use trademarks, rights to inventions, equity, succession rights, and other personal and property rights and interests”. Separate mention is reserved in the same law’s text to medical institutions and their patients’ “privacy” (in Article 62A).³² However, in Tort is Liability Law there is no definition of “privacy rights” that can be found. While the short period since its release means that no time for significant case law has been available, it has been found that “examples of the very few known actions under article 2 of the TLL indicate that it is primarily being used to resolve disputes between individuals, rather than against corporations”.³³

d. The Regional and Provincial Laws

The complicated Chinese legal system allows provinces, regions and even cities to introduce special laws that only apply to their jurisdiction. In this context, many of them have chosen to enact relevant laws with specific data protection,

e. The 2007 General Data Protection Bill.

A comprehensive draft of the Personal Information Protection Act appeared to be considered in China in 2007 but had never succeeded through the law-making process. If it is adopted, it will provide China with

Law Business Research Ltd. ISBN 978-1-912228-62-1. p. 125.

³² Hert, Paul de and Papakonstantinou. Vagelis. *op. cit.*, p. 19.

³³ *Ibid.*

actual data protection principles, although not independent data protection authorities as well.³⁴ However, the draft bill was never successful in becoming a law in China and its relevance today is only seen through a comparison of ambitious approaches and what has actually been applied in China since then.

On June 1st, 2018 the Law of China's new Cybersecurity has been effective and the law was adopted at 12th People's Republic of China National People's Congress. This new law was inspired by European General Data Protection Regulation (GDPR).³⁵ This new law integrating security cyber, data and privacy protection in the various industry, for example: Banking Law, Practitioner Lawyers, Medical Practitioners Law, Commercial Law and the Provisions on Protecting Personal Information Telecommunications and Internet users. Enforcement of the new legislation may prove arbitrary in some cases because the vast wisdom invested in the authority by law is broadly defined. The application and interpretation of the law in the future requires close monitoring by all entities that maintain a presence in the country or serve Chinese people.

2.3. The Implementation of the Regulations on the Rights to Privacy in for the Patients

A nation or a state is a body politic, or a society of men united together for the purpose of promoting their mutual safety and advantage by their combined strength. From the very design that induces a number of men to form a society which has its common

interests, and which is to act in concert, it is necessary that there should be established a Public Authority, to order and direct what is to be done by each in relation to the end of the association. This political authority is the Sovereignty; and he or they who are invested with it are the Sovereign.³⁶

It is evident, that, by the very act of the civil or political association, each citizen subjects himself to the authority of the entire body, in everything that relates to the common welfare. The authority of all over each member, therefore, essentially belongs to the body politic, or state; but the exercise of that authority may be placed in different hands, as the society may have ordained. Moreover, every nation that governs itself without dependence on any foreign power is a Sovereign State.

The Sovereign State, its rights are naturally the same as those of any other state. Such are the moral persons who live together in a natural society, subject to the law of nations. To give a nation a right to make an immediate figure in this grand society, it is sufficient that it be really sovereign and independent, that it governs itself by its own authority and laws.³⁷ The existence of law is to limit the power of ruling groups.

On the other hand, law is actually a tool to deal with societal challenges and to organize stability and prosperity.³⁸ Law may simply be understood as an instrument of individual or societal change.³⁹ Law needs society to run it, and society needs law to provide guidance. As the most populated

³⁴ G, Greenleaf. (2008). *China's Proposed personal Information Protection Act*. Privacy Law and Business International Report. p. 208.

³⁵ Magee, Tamlin. (2018). "China's data privacy law came into effect this May - and it was inspired by GDPR". Available from <https://www.networksasia.net/article/chinas-data-privacy-law-came-effect-may-and-it-was-inspired-gdpr.1529296999>. Accessed on Saturday, May 11, 2019, at 12.26 p.m.

³⁶ Vattel, Monsieur de. (1844). *The Law of the Nations; or Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*. Philadelphia. Merriam and Cooke. p. 1.

³⁷ *ibid.* pp. 1 - 2.

³⁸ Muller, Sam, et. al. (2012). *The Law of the Future and the Future of Law: Volume II*. The Hague. Torkel Opsahl Academic Epublisher. p. 2.

³⁹ Funk, David A. (1972). "Major Functions of Law in Modern Society Featured". *Case Western Reserve Law Review*. Vol. 23 Issue 2. 1972. School of Law, Case Western Reserve University. p. 264.

country in the world,⁴⁰ China must consider about its society rights protection. The Chinese law is expected to present the guidelines to do or not to do for the Citizens. Furthermore, it has to govern all aspects of life in order to maintain social justice and social welfare. The law is indeed important for the state as the law has some functions needed for the state.

Some legal scholars have discussed and concluded their thoughts about the functions of law. There are at least 7 (seven) major functions of law, namely to legitimate; to allocate power; to order society; to control individuals; to adjust conflicts; to dispense justice; to change society or individuals.⁴¹

(1) To Legitimate

The first major function of law is to legitimize governmental institutions. This function has been described as “the arrangement of procedures which legitimize action as being authoritative” and the conferring of political legitimacy. To take the most obvious example, a primary function of constitutional law is to confer legitimacy on the acts of the law-makers.

(2) To Allocate Power

This allocating governmental power in society has been described as allocating “the say”, which is another way of characterizing the distribution of power. Whereas the legitimizing function confers the character of lawfulness on the acts of those exercising governmental power, the power allocating function of law actually designates which individuals or groups in society may exercise which governmental powers.

(3) To Order Society

⁴⁰ China ranked 1 as the most populated country in the world with 1,389,618,778 people living in a country in 2019. The 2019 World Population showed the top 5 of most populated countries in the world, as follows: China, India, United States, Indonesia, and Pakistan. Updated from <https://www.bluemarblecitizen.com/world-population/2019>

⁴¹ *ibid.*, pp. 278 – 288.

This function is done by providing a framework or model for social and individual interaction. Here relatively little coercion is required as the structural pattern itself provides the categories within which interaction occurs.

(4) To Control Individuals

The fourth major function of law is to control members of society by coercion and threats of coercion so as to maintain peace and order. Whereas the ordering function provides a framework for interaction at relatively low social cost, the control function insures actual order.

(5) To Adjusts Conflicts

With respect to conflict adjustment, the control function of law is merely preventive. The fifth function of law is to adjust actual conflicts once they have broken out. Here the goal is to restore the peace and order of the ordering framework rather than to maintain it, and the social cost is even higher than that resulting from the control function.

(6) To Dispense Justice

Since function has been defined in terms of social utility, analysis of the function of dispensing justice deals with the social utility of the justice dispensing process. The level of analysis of the justice dispensing process has been limited to the social system level by the limitation of the inquiry to social utility.

(7) To Change Society or Individuals

In analyzing processes of change, it is helpful at the outset to clearly identify the various persons involved. In order for law to be used as an instrument of conscious social change, some individual, individuals, or group must desire the change and use law as an instrument to affect that change.

Those functions of law are absolutely necessary for every state including China. The Communist Party of China’s commitment to build a “harmonious socialist society” relies in major part in strengthening the rule of law. By 2020, the party aims to further improve the socialist democratic and legal system, the administration of the

country according to law, and the guarantee of and respect for the people's rights and interests.

Today, however, China does not much resemble a "rule of law" society. Corruption scandals are common, as are increasingly violent and widespread social unrest over unpaid wages, environmental degradation, and irregular takings of land and housing, and the harsh and arbitrary criminal justice system is still plagued by the use of torture. Outspoken academics, activist lawyers, investigative journalists, and other champions of the disadvantaged and unfortunate are arrested, intimidated, and restrained. Entrepreneurs struggle to build successful businesses only to have them expropriated by local governments in what seems to be a clear violation of the recently added constitutional guarantee to protect private property. For redress of grievances, citizens are likely to bypass the weak, politically submissive judiciary in favor of an archaic, extra-judicial petitioning process.⁴²

As the time flies, the lawlessness cases also increase. The violation of the laws in China is not just in the field of business, contract, administrative, criminal or civil only, it is now penetrating into the world of health. As discussed above, the medical field in China is now facing the issue of breaking the patients' privacy rights done by the medical personnel, due to the lack of the protection of the rights to privacy for its citizens. Who should be blamed in this matter?

China was basically a pioneer in primary care and public health, and more recently in universal insurance coverage. The introduction of barefoot doctors, community or workplace health insurance, and ambitious

public health campaigns drove improvements combined with higher incomes, lower poverty and better living standards (sanitation and water quality, education, nutrition and housing), resulted in a significant decline in mortality and an unprecedented increase in life expectancy.⁴³ However, these actions are not in accordance with the protection of the rights of healthcare consumers. They need to be protected by law, and the law itself must guarantee that their rights will be protected. But, their personal privacies in many cases are not kept well by the healthcare providers.

Individuals have long had the desire but little ability to control the dissemination of information about their health. Law has been a weak instrument for such control, given the articulate and powerful interests that insist upon maintaining and enhancing access to others' personal information, with access to sensitive medical data proving only a sporadic exception.⁴⁴ As the cases mentioned in the previous topic, the implementation of the privacy for the patients in China is going worse, especially on the protection or the rights to privacy for patients. This might happen because of several reasons; the lack of information about the law from the medical personnel, the lack of participation from the government and legal experts, or the enforcement of law in the country is not running well. All those things could be the underlying reasons why many cases on the violation of the rights to privacy occurred.

Top lawmakers and political advisers are pushing for improved legislation on personal data protection, urging at the same time for the need to maintain a healthy and

⁴² Horsley, Jamie P. (2019). "The Rule of Law in China: Incremental Progress". Available from https://law.yale.edu/system/files/china-law-documents/2007_china_balance_sheet_publ_rol_paper_090212_05rule_of_law.pdf, downloaded on Sunday, May 12, 2019, at 00.15 a.m., p. 93.

⁴³ World Bank Group, et. al. (2016). *Healthy China: Deepening Health Reform in China, Building High-Quality and Value-Based Service Delivery*. Policy Summary. China Joint Study Partnership. p. 1.

⁴⁴ Zittrain, Jonathan. (2000). *What the Publisher Can Teach the Patient: Intellectual Property and Privacy in an Era of Trusted Privication*. 52 Stan. L. Rev. 1201, 1202.

robust development of the digital sector.⁴⁵ Moreover, In China, there was a pressing need to establish the Chinese Health Inspection Authority (HIA),⁴⁶ a relatively independent organization functioning at each administrative level (provincial, municipal, and county), was mandated to conduct 11 health inspection functions to maintain efficient public health and medical services.

Those functions include issuing health permit, conducting health supervision and inspection, health testing and evaluation, case investigation, complaint handling, managing public health crisis, monitoring and safeguarding public health at major public events, enforcing supervision and inspection compliance, public health education, information management, and team training and management. The Health Inspection Authority (HIA) is a specific governmental organization within the Health Inspection Institution (HII) that was established to meet and enforce mandated health inspection functions.

The health inspectors of the HIA and other organizations or individual contractors authorized by laws and regulations, are responsible for all of the activities of health inspection. Their authorization derives from a series of laws and regulations such as Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases, Law of the People's Republic of China on Prevention and Control of Occupational Diseases, Law of the People's Republic of China on Medical Practitioners, Law of the People's Republic of China on Blood Donation, Regulation on Hygienic Management in Public Venues, and Regulation on Medical Institutions. When specific laws and regulations are violated, or when there are threats to people's health that

originate from public health activities, these officials and staff investigate matters of legal liability.⁴⁷ If we see the functions of the HIA, we will come out with the question, why does the medical personnel in China still violate the patients' privacy rights?

At the end, all the discussions above showed that the idea of law in China is not in line with reality. The law that is expected to protect the citizens is far from the goals, the society still suffers. This indeed becomes the challenges for China to resolve the issues which has been publicly spreaded. Whether strengthening the law enforcement agencies, making a new single law related to the medical field, or increasing the qualifications for the medical personnel to open the practice. If the medical law in China is reaching the perfect form and is enforceable for the whole citizens, it will not be surprised if China becomes the role model in at least Asia, since it is the biggest and the most populated country in the world.

3. Conclusion

China was basically a pioneer in primary care and public health, and more recently in universal insurance coverage. The introduction of barefoot doctors, community or workplace health insurance, and ambitious public health campaigns drove improvements combined with higher incomes, lower poverty, and better living standards, resulted in a significant decline in mortality and an unprecedented increase in life expectancy. However, these actions are not in accordance with the protection of the rights of healthcare consumers. They need to be protected by law, and the law itself must guarantee that their rights will be protected.

⁴⁵ Lawmakers, political advisers focus on personal data protection, 2019 WLNR 8745242.

⁴⁶ HIA is a governmental agency to oversee the organizations that provide public health and medical services in China.

⁴⁷ Ma, Sha, et. al. (2019). "Aspects of the Health Inspection Authority in the People's Republic of China", taken from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4449968/>. Accessed on Sunday, May 12, 2019, at 8.31 p.m.

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The right to privacy for the patients in China needs to get more attention from all aspects, involving government, ruling groups, medical personnel, and society. Furthermore, the application of privacy laws in the medical services in the state should be enforced effectively since it has become an issue that must be settled. In the end, the authorized bodies have to evaluate the works of the related laws, either making it into one special legislation or giving harder punishments to those who breached the law.

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