

Research on the Protection of Basic Rights of the Vulnerable Groups in the Digital Divide

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Abstract

Recently, the Hubei face recognition case has aroused widespread concern in the society, and the protection of the basic rights of vulnerable groups in the Digital Divide has once again become a concern of the theoretical and practical circles. The Digital Divide is a phenomenon of social differentiation caused by the development of digital technology to a certain stage. The elderly and other vulnerable groups are limited by their own learning ability and adaptability, and have not been able to integrate into the smart society in time, and the government and enterprises have not paid enough attention to this kind of the additional difficulty of the disadvantaged groups in exercising their rights, so that social contradictions are gradually revealed. Establishing a reasonable social resource allocation mechanism and re-examining the law enforcement process of government departments will play an important role in protecting the basic rights of vulnerable groups in the Digital Divide.

Keywords: digital divide, data, right protection, legal regulation

1. Introduction

1.1 The Connotation of the Vulnerable Groups in the Digital Divide

The vulnerable groups in the Digital Divide arise from specific social contexts. With the development of the Internet and the wide application of electronic data, there is a certain degree of participation in daily activities such as payment and settlement, social services, and social methods, which has widely affected the original production and lifestyle. In the context of the maturity of this macro change, some groups are subject to age, ability or other factors, fail to adapt to the above changes in time or fully, and their participation in various activities in the operation of society has created a certain gap with other members of society, and this difference in participation methods or participation results reflects the weak position of specific groups, which I call the vulnerable groups in the Digital Divide.

The vulnerable groups in the Digital Divide have two main characteristics. First of all, the vulnerable groups in the Digital Divide lack basic knowledge of data use and the nature of data, most people are reluctant to try to contact digital lifestyles, it is difficult to have a more comprehensive understanding of their potential value and implied risks, when passively involved in digital lifestyles, such groups usually do not have the awareness and ability to prevent, so it is easy to be infringed in the Digital Divide. Second, the vulnerable groups in the Digital Divide often fail to adapt to the rapid iteration of socially active patterns and are often marginalized in areas involving data. Such groups often lack digitally skewed protection, which prevents them from participating in some of their daily activities normally, and at the same time, they lack access to up-to-date information, making it difficult for them to exercise their rights normally, even if they are willing to work hard.

In summary, I define the vulnerable groups in the Digital Divide: due to objective differences in individuals' information acquisition, learning ability, social adaptability, etc., in the social life of generalization of information and high digital penetration, it is impossible to obtain information in time or to effectively use digital technology, which leads to lack of resources, reduced status and marginalized specific groups. With the help of related concepts in political economy, the vulnerable groups in the Digital Divide itself can be divided into two types, implicit vulnerable groups refer to groups with corresponding digital technologies or devices, but limited to information processing capabilities or decision-making awareness and fail to make full use of digital lifestyles; explicit vulnerable groups refer to groups that do not have smart devices or network coverage due to economic reasons or age, and thus cannot intervene in the digital society, mainly including the elderly and

citizens in remote areas.

1.2 The Extension of Vulnerable Groups in the Digital Divide

First, the vulnerable groups in the Digital Divide are a new form of traditional vulnerable groups in the digital society, the former on the basis of the latter and with its unique characteristics. First, the vulnerable groups in the Digital Divide overlap greatly with traditionally vulnerable groups. The vulnerable groups in the Digital Divide are usually people who are old, sick, disabled or less educated, and all of the above have the basic characteristics of traditionally vulnerable groups, that is, backwardness in ability and difficulty in protecting rights. Such people are usually in a weak position in social relations, and their range of behavior is limited to their own capabilities and are very limited, but because of the needs of life, they have to face the challenges brought by the era of wisdom, and their wishes are often difficult to achieve and have no way to turn for help in activities that are beyond the scope of their regular activities and involve digital life.

Secondly, the main body of the cases discussed in this article is the above-mentioned dominant vulnerable groups. The Digital Divide itself belongs to the inequality of opportunities brought about by the extensive coverage of digital technology. This inequality of opportunity does not necessarily lead to the lack of protection of the rights of vulnerable groups, and the rights of vulnerable groups are not only caused by the Digital Divide, which reserves space for social and government forces to intervene in adjustment, that is, digital technology is the direct inducement of such vulnerable groups, but economic, cultural, institutional and other social factors also continue or even expand their existing weak position, and the restrictions of these objective conditions also reflect the lack of government intervention and flawed system design.

1.3 Causes of the Vulnerable Groups in the Digital Divide - Take the Hubei Face Recognition Case as an Example

the vulnerable groups in the Digital Divide is a special product of today's era of wisdom, which is rooted in the limitations of social status and individual ability, supplemented by economic, institutional and other background reasons, and rapidly exposes the suffering and urgency of their rights realization under the opportunity of the rapid development of digital technology. Specifically, the emergence of the vulnerable groups in the Digital Divide can be summarized as follows.

First, the Digital Divide is derived from numbers, and digital technology is an inherent feature of the vulnerable groups in the Digital Divide. The production of the digital age is essentially the result of scientific and technological progress, its operating principle with a strong technical, precise and logical, the promotion of these scientific and technological factors will inevitably make the use of numbers with a certain threshold, usually reflected in the ability to adapt, learning ability, etc., these capabilities in different social groups there are differences, the elderly and other vulnerable groups are difficult to improve their ability to keep up with the pace of digital development, inevitably left at the end of the tide of the times. At the same time, the relevant systems and specific digital operation platforms have more or less ignored such vulnerable groups and have not reserved convenient or simplified operational channels for them. In addition, the digital technology that has widely penetrated into various fields has subversive changes in the original lifestyle and ideology, and the vulnerable groups such as the elderly have a stronger conservatism and delay in the mountain of ideas, and this inherent subjective factor has strengthened the unequal status of the vulnerable groups under the impetus of the above objective factors.

Second, the flaws in the social structure. Although digital technology is the premise of social group differentiation, after differentiation, there is no effective connection and transition between vulnerable groups and other groups, which makes the status of vulnerable groups more solidified or even expanded. The elderly and other vulnerable groups are closed in information, even if they are passively involved in the digital wave, it is extremely difficult to exert their subjective initiative, at this time, if there are effective third-party channels, such as volunteers, social groups, etc. to provide help and explanation, it will inevitably alleviate the transitional differentiation of the social structure to a certain extent, making it possible for vulnerable groups to integrate with the mainstream. In the Hubei face recognition case, the elderly only know how to activate, but do not know how to activate and what kind of operations need to be activated. If there are explanations or tips from streets, communities or even banks in advance, or services such as door-to-door handling for vulnerable groups alone, the negative effects of the elderly as the vulnerable groups in the Digital Divide will be greatly reduced, and their differentiation and opposition to the mainstream lifestyle of society will also be alleviated.

Finally, digital technologies are often designed ahead of schedule, while markets and policies are not up-to-date. The macro operation of digital technology can be roughly summarized as the following process: in order to attract the market to develop advanced technology that is ahead of the existing mainstream level, such

technologies set off a certain wave of heat after facing the market; at this time, the market policy can only cover the original information technology standards, and the law is lagging behind the market changes of continuous innovation; at this time, the leading digital technology has completed the harvest of the first round of digital dividends, and competitors in the same industry will inevitably compete to join the ranks of new technologies, and when the market dividend harvest is exhausted, The lack of residual benefits will inevitably spur a new round of technological iterations, and the aforementioned process will happen again. Based on the subjective expectation of interests and the objective conditions of technology maturity, the recurrence cycle of the above processes is bound to become shorter and shorter, and it is difficult for policies and laws to match the speed of update, so the rupture between the two is more obvious, and the shortcomings of vulnerable groups are more and more fully exposed. It can be argued that in the absence of long-term planning and targeted support, making up for the differences in vulnerable groups in the Digital Divide can be described as a symptom rather than a cure. Today we discuss the problem of the elderly and face recognition, tomorrow we will discuss what we do not know, which depends on the next goal of digital technology to harvest dividends, depending on the new direction of the market under digital guidance. Digital technology is always designed ahead of its time, and if policies and laws can't keep up with their iterations in time, the next vulnerable group lost in the Digital Divide may be ourselves.

2. Possible Ways to Protect the Basic Rights of the Vulnerable Groups

2.1 The Basis for the Claims of the Vulnerable Groups in the Digital Divide

As analyzed above, the reason why the Digital Divide has attracted theoretical and practical attention is mainly because the basic rights of specific groups in the Digital Divide have been damaged due to their weak position, which is also the key to the Digital Divide's rise to legal sociology that distinguishes it from general social issues. The social operation itself has a certain ability to repair and resolve, and the weakness shown by some groups can be alleviated by themselves or external forces; but the special nature of the Digital Divide based on the above analysis, the vulnerable groups caused by it are often unable to get out of the predicament through themselves, and they also lack the attention of third parties or the public, coupled with the serious lack of public power intervention, so that their weakness continues to be amplified, seriously affecting personal life, and even inducing more serious social problems. In order to protect the basic rights of the vulnerable groups in the Digital Divide, analyzing the basis of their claims and clarifying the content of their damaged rights are the prerequisites for their full protection.

First of all, not all individual interests need to be raised to the legal level to be protected, they must reflect the universal and reasonable demands of a certain number of social groups, and it is policy and legislatively feasible to protect them. Digital technology itself is neutral, the emergence of the vulnerable groups in the Digital Divide is not its malicious pursuit of the goal, the group is not the result of statutory infringement, if only because some groups are affected, the public power is overly involved in the adjustment, but will curb the normal digital economy. For rights damage cases represented by The Hubei face recognition case, we should fully consider whether its individualized claims and claims need to be upgraded to universalized legal rights and give legislative protection. From the perspective of universality, with the wide application of big data and artificial intelligence, the momentum of digital technology integration into life is very rapid, has affected social security, banking, medical and other areas that the elderly must have, and as analyzed above, the number of elderly people who can skillfully use digital technology in China today is very small, and it can be considered that the demands faced by the elderly in the Digital Divide have become universal. From a legislative point of view, the vulnerable groups in the Digital Divide have clearly and frequently demonstrated the unequal interests of their data controllers, on the one hand, they cannot fully enjoy the new digital benefits that they should enjoy equally as individual citizens, on the other hand, they cannot obtain the preset conveniences in the digital lifestyle, and even increase the new burden of life because the traditional way of life is gradually abandoned. Second, the basic rights of the vulnerable groups in the Digital Divide should be both urgency and justice. The oblique protection of the vulnerable groups in the Digital Divide should meet the objective needs of society and resolve its inherent contradictions on the basis of respecting the structure and order of society.

2.2 The Main Content of the basic Rights

First, privacy. The unequal position between the vulnerable groups in the Digital Divide and the data controller is rooted in the difference in the perception of the information already available to the two parties, the process of data collection is hidden, and usually does not require the subjective cognition or consent of the information owner; due to the electronic and shared nature of the information itself, regardless of whether the means of collecting the information are legal, it may be spread again to the point of violating the vulnerable groups

privacy in the Digital Divide. In the Hubei face recognition case, it seems to be a legal and reasonable procedure; but I believe that the essential attribute of privacy is personal information that is not yet known to others or is not willing to be known by others in an unreasonable way, and the reasonable expectations of the elderly do not include being held up and recognized as a face, let alone the photo and its personal experience being widely disseminated and discussed by the media.

Second, the right to know. The original intention of the implementation of online operations such as e-government and digital office is to reduce the cost of information transmission and accelerate the efficiency of work; however, combined with the above analysis, it can be seen that the elderly and other groups are limited by many factors such as information blockage and poor learning ability, and it is difficult to know the online operation content that they should complete within a reasonable time. Taking the Hubei face recognition case as an example, the elderly are only told that they need to handle activation business, before the widespread penetration of digital technology, there will often be street workers or agency staff to inform the elderly of the process they need to face and the materials that need to be prepared in advance; in the era of wisdom, official push, electronic retrieval, self-media notification and other ways have replaced the original information transmission path, and the traditional notification method has been abandoned. This is the wrong result of only benefiting the general population and ignoring the vulnerable. Because of the obstacles and untimely information reception, the action efficiency of vulnerable groups has been affected again, which is a concentrated reflection of the infringement of the right to know in the digital age. In the Hubei face recognition case, if the elderly are fully informed of the relevant information, they can be fully prepared to deal with their processes, and even if their nature as the vulnerable groups in the Digital Divide has not changed, the negative impact on the exercise of their rights will be greatly eliminated.

Third, personal information. That is, the right of individuals to possess, dispose of and exclude infringement by others from their information in accordance with the law. In the era of algorithms and big data, data controllers and data operators have a large amount of personal information through business or other means, and this information is stored and transmitted in the form of electronic data, and data leakage problems also arise. According to the big data algorithm, a certain amount of personal information can establish a data portrait, and the more sufficient the data, the more accurate the personal portrait, which is undoubtedly the favorable conditions for advertising, personalized recommendation, and targeted marketing, so personal data has formed a relatively complete gray industrial chain, and due to the limitations of national supervision, this means of profit has a tendency to flood.

2.3 Access to Remedies for the Basic Rights

The basic rights of vulnerable groups in the Digital Divide are a new form of expression of rights, which, as a product of the new era, necessarily lack sufficient legal provisions. Combined with the basis and specific content of the right to the vulnerable groups in the Digital Divide mentioned above, I believe that the remedies for the basic rights of such groups include the following aspects.

First, claim rights against government regulators. As mentioned above, after digital technology enters the market, it needs to be constrained and adjusted by market policies and laws and regulations, but due to the advancement of technology and the lag of the current law, many social problems do not exist for adjustment when exposed, which is the result of the lack of public power intervention. In the Hubei face recognition case, the elderly come to the bank to handle business in order to activate the social security card, and the social security department, as a government regulatory department, has a relatively complete social security information for citizens, but does not give special help or open a green channel for the elderly over a certain age, nor does it explain the process for the elderly through telephone, door-to-door notification, etc., which is an infringement of the elderly's right to know. At the same time, I believe that the government regulatory authorities have not fulfilled their obligations within the scope of their duties. If the vulnerable groups in the Digital Divide have been concerned from the level of government in the difficulty of exercising their rights, and if they can divert the population and divide the groups with different information access capabilities, they will provide additional supplementary explanations to the vulnerable groups with poor information collection capabilities and limited information processing capabilities, so as to ensure that they have a complete understanding of the content of their rights and the way they exercise them, which will greatly reduce the possibility of the rights of vulnerable groups being damaged. It will also effectively save the cost of social operation and avoid friction between social groups. Therefore, the elderly can file administrative lawsuits against the social security bureau or other relevant departments for specific administrative acts, and at the same time file a side review of the relevant implementation regulations, while maintaining their right to know, re-examine the effectiveness of the performance of the duties of government regulatory departments in the Digital Divide. Governments can accept

digital technology to change the original mode of social production, but they should not allow digital technology to isolate special groups in society. The government has the obligation to pay attention to possible problems in advance and avoid the emergence of social problems through institutional design in advance, and should not be too passive to intervene in hindsight when the right to know of vulnerable groups is damaged and the problems are further exposed. The government should take the initiative to allocate the operating mechanism of unfair allocation of data resources, and bring the personal problems of each vulnerable group into the adjustment track of public issues, timely repair the social ethics and social order damaged by digital hegemony, and eliminate the uncertainty brought by technological shortcomings to vulnerable groups.

Second, claim rights against banks. In the Hubei face recognition case, the elderly have faced two problems, one is rejected cash, and the other is to be picked up face recognition. For the refusal to accept cash, RMB is the legal tender of the People's Republic of China, and its normal use and circulation should not be rejected. The elderly in the case are a typical vulnerable group in the field of digital payment, they do not have electronic payment equipment that can be used, and it is difficult to skillfully use electronic payment, but they are accustomed to and completely rely on the traditional cash payment method, and the elderly should give up cash payment itself is a false proposition of harsh obligations. In the Hubei face recognition case, the direct consequence of the refusal to accept cash is that the elderly cannot handle activation normally, and it can be said that the refusal to accept cash is the direct cause of subsequent data-level infringement. For face recognition when it comes to being hugged, I believe that this is an extreme lack of procedural justice. The reason why it is picked up is because the height of the elderly is not enough, in this case, it is only necessary to provide a seat of the right height or a support of the right height on the ground, which can not only enable the elderly to complete the activation procedure without hurrying, but also an acceptable way for a social personality with normal dignity. The bank's approach not only creates a burden for the elderly physiologically, but also psychologically allows the elderly to add a sense of stripping, inferiority, and inferiority that is abandoned by modern lifestyles, and the inferiority of being "watched", and the elderly's actions are watched by the people around them, which is a clear violation of privacy. I believe that there are errors in the way the bank handles it, and it is the root cause of subsequent media exposure and hype, and the elderly can claim rights from the bank. Banks, as archetypes of the use of digital technology, should also revisit their process settings to accommodate the disadvantages of the vulnerable groups in the Digital Divide.

Finally, claim rights against the media. In the Hubei face recognition case, the media is not a major player, and its impact on the elderly mainly involves the wide dissemination of photos of the elderly to the point that there is a possibility of violating their right to privacy. On the one hand, the photos of the elderly involve their personal privacy, and the exposure of facial photos easily corresponds to the personal information of the elderly so as to induce the risk of the gray area of face recognition; on the other hand, the media reports have aroused the attention of the vulnerable groups in the Digital Divide, stimulated the social public opinion to protect their basic rights, and are conducive to accelerating the solution of social problems induced by the Digital Divide.

3. Suggestions for Addressing the Challenge of Protecting the Basic Rights of the Vulnerable Groups in the Digital Divide

3.1 Clearly Stipulate That Pension Institutions Shall Provide Training and Auxiliary Services for Intelligent Technology

Elderly care facilities are an important part of the life security of the elderly, and the elderly are a major component of the vulnerable groups in the Digital Divide. The old-age care institution itself is equipped with staff, the staff and the elderly spend a long time together, and understand the way of thinking and personal differences of the elderly, and can provide intelligent technology training and auxiliary services for the elderly in a way that adapts to them. It is recommended that pension institutions include the training and auxiliary services of intelligent technology into the scope of assessment, clarify the training methods and contents, and hire experts to carry out technical design and review of training methods and degrees to help the elderly have the ability to adapt to digital life.

3.2 Force Civil Affairs Service Areas to Continue to Retain Manual and Face-to-Face Service Methods

As mentioned above, the elderly and other vulnerable groups have a greater dependence on traditional business handling methods and payment methods, and the office window in the field of civil affairs should fully consider such needs to ensure that the elderly can handle related business even if they cannot use smart devices, avoid all the transformation to digital office and e-government, and make civil affairs services according to human feelings.

3.3 Establish a Balanced Mechanism for the Distribution of Rights and Obligations

In the digital age, the role of the government, enterprises, and individuals in the operation of digital technology is very different, and the degree and way of grasping information make the antagonism of the three more and more obvious, in the design of the system, we should uphold the principle of consistency of rights and responsibilities and the coexistence of individuality, while affirming the differences in their respective social roles, balance the distribution of forces between the three parties, is the right, power, obligation, responsibility on a reasonable track to check each other, mutual support. It is recommended to strengthen the government's regulatory and auxiliary obligations, on the one hand, to accept the operation of digital technology and supervise its orderly development through public power; on the other hand, to actively consider the suffering faced by the vulnerable groups in the Digital Divide in various fields, and to provide guarantees for the normal exercise of their basic rights through the rescue of public power. Abandon the original over-affirmation of technology neutrality, so as to ignore the market's pursuit of dividends may bring about the situation of neutrality, reasonable adjustment of enterprises to the data market, to ensure the rationality of resource allocation, to reserve the vulnerable groups in the Digital Divide transition space. When there is a data dispute between enterprises and individuals, we should fully consider the difference in the status of the two, and provide more convenient evidence and relief methods for individuals with a more stringent burden of proof and attribution principles for enterprises, so as to protect the vulnerable groups in the Digital Divide in terms of both entity and procedure.

3.4 Highlight the Important Role of Legal Empowerment

Legal empowerment is closely linked to the relief of the vulnerable groups in the Digital Divide, which emphasizes the primacy of civil society support as the best option for strengthening legal capacity and empowerment. In the protection of the basic rights of the vulnerable groups in the Digital Divide, we should fully consider the reasons for the formation and manifestation of the Digital Divide, and reflect the role of legal empowerment from the following aspects. First, change the stereotype of the vulnerable groups in the Digital Divide, objectively evaluate its state and disadvantages in social life, and avoid prejudice and discrimination in old ideas; second, improve the efficiency of the use of digital technology, not only introduce it into related fields, but also establish and improve its operating mechanism, improve its operational efficiency and sense of use, so that digital technology can truly play the advantages that are difficult to replace by traditional humans. Third, break the static model of lagging laws and enhance the awareness of the authority of law enforcement departments. The protection of rights in the field of data is a new issue, legislation and law enforcement are lagging behind, China is already preparing for future data legislation, but before the introduction of targeted laws, law enforcement departments should make full use of existing laws, keep up with the pace of development of digital rights protection in a timely manner, improve the relief capabilities for the vulnerable groups in the Digital Divide basic rights, accurately judge the infringement of their basic rights and make timely and fair treatment, Avoid digital technology becoming a law enforcement problem that is out of the scope of legal regulation.

4. Conclusion

The vulnerable groups in the Digital Divide are the products of the development of digital technology to a certain stage, involving institutional design, social production, economic and cultural reasons, complex causes lead to their basic rights are more vulnerable to infringement, and the difficulty of rights protection increases; but the risk of basic rights infringement also exists in the general group, individual rights are not guaranteed, the development of digital technology will inevitably be reverse inhibition, and social contradictions will be stimulated. Therefore, it is not only possible to focus on individual cases, but to regulate them from the level of the operation of society as a whole. We should fully clarify the basis for the emergence of the rights of the vulnerable groups in the Digital Divide, make targeted institutional responses, and strengthen the awareness of the rights protection of various executive departments and enterprises, and fully protect the basic rights of vulnerable groups.

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