

A review of life and health protection under the reciprocal adaptability logic between system and governance

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Abstract: As the first human right, the right to life and health has been effectively protected under the active epidemic prevention and control in China. However, in a major pandemic, the protection of the right to life and health will inevitably face conflicts with other ways of realizing human rights. According to the current domestic regulation policy, it examines the life healthy rights and interests of different interests, and summarizes the experience and lessons. Under the logic of mutual agreement of system and governance, four ways to improve the protection of life and right to health in China are put forward: the balance of interests based on the conflict of rights, the priority of life and right to health; equal protection for all types of vulnerable groups and special protection when necessary; coordinating and improving epidemic prevention and control capacity based on the epidemic prevention and control system under the leadership of the CPC, China will coordinate and improve its capacity for epidemic prevention and control. To formulate a policy evaluation system based on the implementation of policies guaranteeing life and right to health. The comprehensive use of the above four improvement paths will ensure the realization of different interest subjects' right to life and health in a more effective way.

Keywords: Life and health protection; Equal protection; Vulnerable groups

1. Introduction

As the first human right in our country, health to life is the basic right of all rights, it is the foundation and core of our constitutional protection. Without the right to life and health, there is no source for the exercise of other rights. Therefore, the right to life and health is indispensable to citizens. At the difficult moment of the epidemic, China introduced corresponding policies in a timely manner and achieved remarkable results in protecting the public's right to life and health. In order to consolidate the hard-won epidemic prevention achievements, this paper analyzes the implementation effects of the policies based on the published policies and from the perspective of human rights law, and proposes improvement measures to further consolidate the hard-won epidemic prevention achievements.

2. The protection of life and health in China

The protection of life and right to health in China is mainly analyzed from the policy text. The data of this text comes from the official website, Peking University Talisman database, Sina News, Xinhua net and other emerging media platforms. Policies during the COVID-19 outbreak are obtained on these platforms. The search type is the key phrase combined with "epidemic", "novel coronavirus" and "policy", and the limited time is from January 2020 to January 2022. The reason for choosing this time period is that the COVID-19 outbreak will be identified and urgently responded to from the end of December 2019 to the beginning of January 2020, and a large number of relevant emergency policies will be introduced. By January 2022, the epidemic has been well controlled in national departments and regions. The national response to the epidemic in accordance with the existing policies has been relatively stable. At the same time, the number of policies in this period is in the period of concentrated growth, which is conducive to the collection and research. A total of 502 relevant policies issued from January 2020 to January 2022 were retrieved and classified according to different groups. The research found that there were mainly two types of subjects: 12 documents on the protection of the rights and interests of medical staff and 21 documents on the protection of the rights and interests of non-medical staff. Among them, 9 are protected for the rights and interests of the elderly, 5 are protected for the rights and interests of severe COVID-19 patients, and 7 are protected for the rights and interests of pregnant women and children. The contents of policy documents involving the above two categories are analyzed, with specific contents as follows:

2.1. Protection of the rights and interests of medical personnel

According to the documents released between 2020 and January 2022, they mainly involve the following four aspects: maintaining good medical order to ensure the personal safety of medical workers, implementing measures to protect and care for medical workers, ensuring the protection of front-line medical workers and their families, and providing care and care for elderly relatives. The policy document addresses not only the health care workers themselves, but also their families to effectively protect the health care workers' worries. However, the protection involved in the regulatory documents is relatively narrow, and there is a lack of specific provisions for the medical staff themselves, and the correlation and matching policies do not match them. Notice of the Leading Group of the CPC Central Committee on Responding to the Novel Coronavirus Pneumonia Epidemic on Comprehensively Implementing Measures to Further Protect and Care for Medical Personnel[1].As an example, the sixth item of the document stipulates: ensure rotation and rest in place, and protect the mental health of medical workers and the right to rest of medical workers. However, in reality, medical workers who take a break from work cannot go to their own homes to take a rest. From the implementation of policies, we can see that there are problems in the coordination between various policies and departments.

2.2. Protection of the rights and interests of non-medical workers

The documents released between 2020 and January 2022 include three types of policy documents for medical workers, in addition to those related to medical workers. The first category involves elderly patients with chronic diseases and elderly people in pension institutions seeking medical treatment and medical and health services. The specific contents are as follows: standardize medical treatment services, optimize health services, and publicize knowledge of the epidemic. From the perspective of the content of the policy, it is conducive to the protection of the elderly's right to seek medical treatment, but the document does not provide detailed provisions on the handling of the conflict between the designated hospital for COVID-19 treatment and the elderly's right to seek medical treatment. Notice on Printing and distributing Guidelines on Providing Medical and Health Services to Elderly Patients with chronic Diseases in Primary medical and Health Institutions during the prevention and control of COVID-19 (trial)[2] for example, the first part of the document, regulating medical services, requires the implementation of a separate inspection system of appointments to ensure the elderly's right to medical treatment. However, there is a conflict between hospital admission and right of medical treatment in practice. The elderly died after hospitals refused to treat patients on the grounds that only COVID-19 patients were admitted. In fact, whether hospitals can refuse admission needs further discussion. This paper mainly reviews the protection of the elderly's right to seek medical treatment. In addition to the lack of clear policies, the inflexible implementation of policies by hospitals is also an obstacle to the elderly's right to seek medical treatment. The second category involves treatment plans and nursing norms for severe COVID-19 patients, which is conducive to safeguarding the life and right to health of severe COVID-19 patients. Take the Notice of the General Office of the National Health Commission on Printing and Distributing Nursing Standards for Severe and Critical COVID-19 Patients[3] as an example, the regulation on nursing manpower allocation is to allocate nursing manpower according to the bed-to-nurse ratio of 1:6. Nurses should have ICU professional background, strong professional ability and high professional quality, which can fully reflect the special protection for patients with severe COVID-19. However, there is only one document involving non-severe COVID-19 patients, which is about treatment plans for patients with mental disorders. During the epidemic, it is necessary to guarantee the life and right to health of severe COVID-19 patients, but it is also necessary to guarantee the life and right to health of non-severe COVID-19 patients. The guarantee of life and right to health is undoubtedly related to the allocation of medical resources, so how to coordinate the allocation of medical resources is also in need of policy guidance. The third category involves the routine protection of life safety and health of women and children and the treatment of diseases and safe midwifery during epidemic prevention and control. The document identifies priority protection groups for pregnant women and children, Notice of the Joint Prevention and Control Mechanism of The State Council on Strengthening Treatment of Diseases and safe Midwifery during the Prevention and control of the Novel Coronavirus Pneumonia Epidemic [4], giving priority to key groups such as pregnant women and children is the core requirement of the document. At the same time, local departments of health administration at all levels have made work plans in light of local conditions, unblocked access to medical services and coordinated the allocation of medical resources to ensure the implementation of all measures. We attach great importance to and give priority to the protection of pregnant children's right to life and health. However, in the process of implementation of the policy, there are cases of infringement of the life and right to health of pregnant women due to health codes or nucleic acid problems.

3. The current protection of life and health is in conflict with the realization of other human rights

3.1. Conflict between equal protection and differential protection in guaranteeing life and health

Equal protection itself has differential protection, and the two are relative. In the understanding of equal protection, we should first understand that there are differences in equality itself, and the existence of such differences is for further targeted protection rather than giving up protection. According to Rawls's concept of equality, differences in the accumulation of family resources lead to disparities in economic and social status, and even the differences in individual natural endowments affect efforts to achieve success to a large extent. But when everyone comes to this world, the most impossible thing for them to choose is the state at birth. Since the state of inequality at birth is out of their control and choices, it is necessary to intervene in this kind of inequality through certain mechanisms, which requires the principle of equality to balance. In the face of the current epidemic, the unequal distribution of public resources has created a contradiction between equal protection and special protection in the protection of life and right to health. Every subject may face the situation of infringement of life and right to health, and the state has the obligation to introduce specific policies and laws.

The protection of life and health is in essence a positive right, and the state has a positive obligation, that is, to provide equal and different protection for different subjects. At a time when the concept of human rights has received widespread attention, equality for all is the goal of the international community. Article 7 of the Universal Declaration of Human Rights is guided by the principle that everyone is equal before the law and that everyone enjoys equal protection under the law without discrimination. Therefore, the public's life and health rights should be equally protected. In other words, except those affected by COVID-19, the rights to life and health of other affected persons are also subject to equal protection, but special protection is required in certain circumstances. For example: pregnant women, children, common severe patients.

3.2. The conflict between the protection of the right to life and health and the realization of the right to personal freedom

The contradiction between the protection of the right to life and health and the realization of the right to personal freedom is mainly reflected in the restriction of the personal freedom of the general public in the affected areas. In the case of public health emergencies, the restriction of the patient's right to personal freedom is embodied as health, while the immediate restriction is mainly applied in the field of public health. In the case of major infectious diseases, influenza or other public health emergencies, the legal body will restrict some patients to a specific place of living, and restrict their activities or carry out medical observation and treatment until the transmission of the disease is reduced Exposure to risk factors. Health immediate coercion is an effective means for the government to contain and reduce the epidemic of infectious diseases with the intervention of public power. As the epidemic is a public health emergency, immediate restrictions are legitimate epidemic prevention measures. That is, restrictive measures are implemented in accordance with the provisions of the Public Health Law and are legally enforceable. However, due to the unclear, inaccurate and opaque epidemic prevention policies in various regions, the scope of the population and the duration of the restrictions are unclear, and the enforcement personnel cannot accurately identify those who need to be quarantined. As a result, the situation of "indiscriminate quarantine" and "one-size-fits-all" has resulted in the inability of ordinary people to carry out normal and orderly work and life. The right to life and health is in conflict with the realization of the right to personal freedom.

3.3. The guarantee of the right to life and health conflicts with the realization of the right to an adequate standard of living

The right to an adequate standard of living refers to the right of human beings to be free from poverty and to maintain a satisfactory and decent standard of living based on human dignity. From the perspective of international law, The right to an adequate standard of living is set out in article 25, paragraph 1, of the Universal Declaration of Human Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights, article 27 of the Convention on the Rights of the Child, and general comments Nos. 4, 7, 12 and 15 of the Committee on Economic, Social and Cultural Rights[5]. Although the specific form of the right to an adequate standard of living is not clearly defined in relevant international human rights texts, there is agreement on the core content of the right to an adequate standard of living. That includes the right to food, clothing and housing, as well as adequate access to care. In conclusion, the

right to an adequate standard of living requires States to use available resources to maintain the minimum human right to subsistence - adequate food, clothing and housing. Specifically, it includes two aspects: it should not only meet the basic needs of life, but also enable people to live with dignity.

Therefore, during the outbreak of the epidemic, the right to an adequate standard of living, which is the basic right of the public and the right to maintain the right to life and health, should be guaranteed on the premise of adequate supply of daily necessities and coordinated allocation of resources, so as to protect people's decent life. However, under the conditions of COVID-19, the scope of the right to an adequate standard of living will shrink if it does not increase, that is, the economy cannot be normalized and the public cannot meet the basic living conditions due to the limitation of economic rights. The supply and demand of daily necessities are broken, leading to the difficulty of keeping up with the supply of a large number of daily necessities, and the situation of "expensive vegetable bags" and daily necessities depend on snatching. If the basic needs of the public are not guaranteed, the right to life and health will also be difficult to achieve.

4. The way to improve the protection of life and right to health in China under the logic of mutual consultation of system and governance

Mutual Agreement of System and Governance refers to the fit state between the specific system and the goal of good governance and its rationalization[6]. Under the current epidemic prevention and control, China has made great achievements by taking advantage of the socialist system and adopting targeted epidemic prevention policies. By analyzing the current policies and evaluating the protection of life and health rights of different interest groups, this paper puts forward the improvement path from the perspective of good governance.

4.1. Based on the balance of interests in the conflict of rights, priority should be given to life and health

As human life changes with each passing day, the enactment of legal norms will have inordinate delay and lag, and the conflict of basic rights is inevitable, as is the exercise of basic rights. The conflict of fundamental rights refers to the situation where there are multiple subjects of fundamental rights who are in opposition due to the same or different basic rights they enjoy[7]. In short, the main body the exercise of basic rights will produce certain effect to exercise the rights of others. In this paper, the interest balance of the conflict of rights is solved by means of value ranking.

First of all, before judging the value order of rights, we should clarify the connotation of conflict rights. According to Ma Yuan's point of view, according to the developmentalist human rights theory, any talk about the right to subsistence without the right to development is accurate enough. If it is necessary to accurately grasp the scope of the connotation of the right to life, it should be placed in the relative relation with the right to development. "As a fundamental right for the realization of the right to development, the right to subsistence should include not only the right to freedom from arbitrary, deprivation and threats to life, such as the right to life, personal security and peaceful life, but also the relevant rights to the basic conditions necessary for the continuation of life. Including the right to a basic standard of living, the right to basic medical and public health services, the right to social security, the right to enjoy a healthy living environment, etc [8]." Therefore, according to the expression of the conflict of rights discussed above, the connotation of the conflict still belongs to the category of the right to existence. Secondly, the relationship between the connotation of conflicting rights is clarified, and then the essence of the conflict of rights is judged, namely, the balance of different interests within the right to existence. Under the severe epidemic situation, the solution to the internal interest balance of the right to survival fundamentally lies in the scope of the core rights. The core of the right to life lies in human survival, and human survival is embodied in the protection of life and health. Only when the right to life and health is guaranteed can other rights and interests within the right to subsistence be exercised. Therefore, the right to life and health is the core value of the right to life. To sum up, the internal balance of the right to subsistence gives priority to the protection of the core value of the right to subsistence, namely, the right to life and health.

4.2. Equal protection for all types of vulnerable groups and special protection when necessary

They are classified into four vulnerable groups according to their health status, occupation and epidemic environment, the extent to which they are affected or threatened by the epidemic, and the

strength of the epidemic prevention and control measures: front-line medical workers, COVID-19 patients, the elderly, pregnant women and children. The above four types of vulnerable groups should not only be guaranteed equal rights, but also not be discriminated against or differentiated. As the goal of ensuring the right to life and health in the prevention and control of the epidemic, equal protection of all vulnerable groups should be carefully considered and implemented.

For front-line medical workers, in addition to providing them with basic medical protective equipment and daily necessities, regular psychological guidance and assistance should be provided. For those infected with COVID-19, designated hospitals will be arranged to receive timely treatment and focus on treatment. For the elderly with long-term illness, regular community inquiry on drug needs should be arranged based on prevention, and channels for purchasing drugs should be set up. For pregnant women and children to develop a specific management plan to go out to prevent emergencies. For the daily examination of pregnant women, the online appointment way and the green channel of hospital visit are provided. In addition to the above specific categories, not all vulnerable groups can be exhausted. Under certain circumstances, everyone is likely to become a vulnerable group within a certain range. Therefore, in the process of epidemic prevention and control, it is necessary to provide effective and timely protection for vulnerable groups based on specific and objective conditions.

4.3. Coordinating and improving epidemic prevention and control capacity based on the epidemic prevention and control system under the leadership of the CPC

We will adhere to the overall leadership of the Party and formulate specific epidemic prevention policies in accordance with the objective laws of epidemic prevention. In the prevention and treatment of epidemics, the right to life and health is fully protected. First of all, in terms of resource allocation, when medical resources are restricted by actual conditions, the government can reasonably dispatch national resources and make reasonable dispatch and supply to key epidemic areas. At the same time, the government can give full consideration to the actual situation of disease prevention and control in non-epidemic areas, so as to improve the protection of people's life and right to health in non-epidemic areas. Secondly, in the field of epidemic prevention and control at the grassroots level, we should build an effective and sensitive government organization and guidance system to improve the capacity of epidemic prevention and control at the grassroots level. Basic epidemic prevention policies should be strictly implemented in the course of regular epidemic management. We will continue to learn from the experience of effective epidemic prevention areas, draw lessons, and improve the capacity of local community control. At the same time, attention should be paid to guiding economic development and stability. In the strict management of the epidemic, lenient and lenient policies will be implemented according to the circumstances, so as to ensure the effective effect of epidemic prevention while taking into account the regional economic normalization. Finally, publicity work on epidemic prevention and control should be strengthened. In order to contain the spread of the disease, the public strictly followed the epidemic prevention management, and implemented mass prevention and treatment to effectively prevent and treat people's lives and health rights. Grassroots organizations implement accurate and humanized community management, provide psychological guidance and feedback on the needs of every family member, and more effectively safeguard the rights and interests of the people.

With the help of big data technology, precise epidemic prevention. In epidemic prevention and control, the most obvious auxiliary tool is health code. Health code is an app embedded in the "government platform" that uses algorithms to grade people's risks based on real personal information. It identifies people at risk, identification information, health certificate, behavior tracking and other epidemic prevention functions. In essence, health code and its extended application belong to the technological governance innovation of digital society. Technology governance is not only the basic mode of digital government reform, but also "the basic trend of the continuous promotion and deepening of contemporary social governance" [9]. In conclusion, it fully demonstrates that technology has brought full convenience to social governance and epidemic prevention and control. At the same time, we should also be careful of health code abuse or "layer on layer" lazy political behavior. At the grass-roots level, health codes and big data travel codes are used to determine whether individuals belong to the quarantined population. Relying solely on technology and forgetting technology is an inevitable loophole behavior; If the health code system breaks down, there will be a failure of the health code system and the appearance of a one-size-fits-all government administration. Therefore, in order to avoid the above situation, we should establish the corresponding preparatory mechanism and formulate specific emergency plans. We will continue to implement specific epidemic prevention policies, with technical tools as a supplement, and further enhance the government's governance capacity.

4.4. Formulate a policy evaluation system based on the implementation of policies guaranteeing life and right to health

In order to fully protect the right to life and health, the establishment of epidemic prevention policy evaluation system should be highly valued by the government. The evaluation of the decision-making process of epidemic prevention policy can ensure the democratic, scientific and rational decision-making process. The evaluation of the policy text can ensure the clarity of the content of the policy text and the consistency and coherence of the policy system. The evaluation of the implementation process of epidemic prevention policies can ensure the efficiency and fairness of policy implementation; The evaluation of the value of epidemic prevention policies can ensure that they fully realize the value of human rights, further improve the implementation of the protection of life and health, and effectively test the scientificity and humanization of epidemic prevention policies. Driven by the current goal of promoting the modernization of national governance, policy evaluation, as a necessary part of the policy process, plays an irreplaceable role in the scientific process of epidemic prevention policy.

Under the logic of mutual adaptability of system and governance, "good governance" is not a literal understanding that only focuses on the results of governance. Instead, it establishes an indicator system to measure "good governance" based on the implementation of policies and runs through the whole process of governance actions. Therefore, under the logic of mutual governance, the value index of human rights should be included in the evaluation of "good governance" of the epidemic prevention and control in China, and the weight of the evaluation index of specific human rights such as the right to life and health, and the right to an adequate standard of living should be increased. At the same time, in the establishment of the measurement scope system of "good governance", the values of equality and justice corresponding to the goal of "good governance" should also be integrated and implemented, and their values should be embedded in the evaluation system to further safeguard the protection of life and health rights.

5. Conclusion

As a bundle of rights, the right to life and health is centered on life and health, and is associated with other necessary rights, such as the right of the person and the right to a standard of living. Only when related rights are well protected can the right to life and health be truly implemented. We will analyze the implementation of policies and put forward measures to better protect the rights and interests of the people under the logic of mutual governance.

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