

The Legal Framework of the People's Republic of China on Privacy Protection -Present and Perspective

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Abstract

In this article, the focus of the discussion is on the PRC's privacy protection legislation in recent years. The legal confirmation of the right to privacy has undergone a long process in the People's Republic of China (PRC). Currently, the right to privacy in the PRC is directly and indirectly protected by constitutional law, both private and public law as well as procedural law. Although the Chinese people, as well as the Chinese government's attitudes toward privacy, have shifted enormously in recent years, the right to privacy in the PRC is less respected in practice, as well as less protected in law compared to other countries, which apparently leaves more room for the development of new technologies which are nourished by data.

Keywords: Privacy Protection, The Right to Privacy, People's Republic of China, Present and Perspective

1. THE LEGAL FRAMEWORK OF THE PRC ON PRIVACY PROTECTION

Do not watch if it disagrees with Li;¹ do not listen if it disagrees with Li; do not speak if it disagrees with Li and do not act if it disagrees with Li. (非禮勿視，非禮勿聽，非禮勿言，非禮勿動。)²

—Confucius

The legal confirmation of the right to privacy has undergone a long process in the PRC.³ The right to privacy has been available to Chinese citizens under the Constitution of the PRC and other laws and regulations since the 1980s.⁴ The latest legal development on privacy protection is the Civil Code of the PRC (Chinese title: 中華人民共和國民法典), which came into force on 1 January 2021.⁵ The Civil Code of the PRC uses a whole chapter to regulate privacy rights and personal information protection,⁶ and for the first time clearly defines the term "privacy".⁷ Currently, the right to privacy in the PRC is directly and indirectly protected by constitutional law, both private and public law as well as procedural law.

1.1 Constitutional Law

Privacy is protected by constitutional law by virtue of two ways: on the one hand, constitutional law grants constitutional courts the right to overthrow other laws which conflict with it (negative use),⁸ while, on the other hand, constitutional law can be the source of a right of action (positive use) but only against states.⁹

1 Li (禮) originally means 'a religious sacrifice but has come to mean ceremony, ritual, decorum, rules of propriety, good form, good custom, etc., and has even been equated with Natural Law'. See Wing-Tsit Chan (Translator), *A Source Book in Chinese Philosophy* (New Impression edn, Princeton University Press 1963) 790.

2 This doctrine protected individual's privacy right to a certain degree in Ancient China by disallowing the invasion of other people's private life. Confucius, 'Lun Yu (Analects)' (2011) 1(3) *Sciurch of Scientific GOD* 1, 60.

3 Ashley Winton, Alex Zhang and others, 'Data Protection and Privacy in China' (White and Case, February 2012) <<https://www.whitecase.com/publications/alert/data-protection-and-privacy-china>> accessed 29 May 2020.

4 Yu Du and Matthew Murphy, 'Data Protection and Privacy Issues in China' (MMLC Group) <<https://www.hg.org/legal-articles/data-protection-and-privacy-issues-in-china-5340>> accessed 29 March 2021.

5 'Civil Code of the People's Republic of China' (NPC, 2 June 2020)

<<http://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml>> accessed 23 June 2020.

6 Civil Code of the PRC, Part. 4Ch. VI: Privacy Rights and Personal Information Protections.

7 Civil Code of the PRC, art. 1032.

8 Graham William Greenleaf, *Asian Data Privacy Laws: Trade and Human Rights Perspectives* (1st edn, Oxford University Press 2014) 472.

9 Ibid.

The right to privacy is specifically referred to only once in the Constitution of the PRC,¹⁰ under the umbrella of “Freedom and Privacy of Correspondence”. More precisely, Article 40 of the Constitution of the PRC stipulates as follows:

Freedom and privacy of correspondence of citizens of the People’s Republic of China are protected by law. No organization or individual may, on any ground, infringe upon citizens’ freedom and privacy of correspondence, except in cases where, to meet the needs of State security or of criminal investigation, public security or procuratorial organs are permitted to censor correspondence in accordance with the procedures prescribed by law.¹¹

More information on the right to privacy can also be found in Article 39 of the Constitution of the PRC that provides specific protection to the residences of citizens. Unlawful search of, or intrusion into a citizen’s residence is prohibited except in accordance with law.¹² Although not directly mentioning the word “privacy”, this provision recognizes and protects the right to privacy in residence.

Furthermore, a citizen’s personal dignity is established as a fundamental right in the Article 38 of the Constitution of the PRC. Each citizen of the PRC is entitled to the dignity of personality. This article acts as a general guiding principle and accordingly, insult, libel, false charge or frame-up directed against citizens by any means are forbidden by the Constitution of the PRC.¹³ Although the Constitution of the PRC fails to define personal dignity, most Chinese legal scholars hold the opinion that personal dignity should include certain privacy rights.¹⁴ Although it is argued that the Constitution of the PRC establishes the right to personal dignity, which, according to relevant rules, is further interpreted to include the right to privacy, this is not made evident in the Constitution of the PRC’s actual text.¹⁵

Besides, the Constitution of the PRC protects the freedom of the person by stating as follows:

Freedom of the person of citizens of the People’s Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people’s procuratorate or by decision of a people’s court, and arrests must be made by a public security organ. Unlawful detention or deprivation or restriction of citizens’ freedom of the person by other means is prohibited, and unlawful search of the person of citizens is prohibited.¹⁶

Interpreting the constitutional provisions broadly, Articles 37 and 38 of the Constitution of the PRC can act as general guiding principles that provide the value basis of the right to privacy that is protected by the Constitution. By contrast, Articles 39 and 40 can be regarded more as to act as specific principles that propose workable measures for the protection of the right to privacy. However, the scope of the right to privacy is far beyond the articles on the “Freedom and Privacy of Correspondence” and the “Inviolability of the Residence”. In sum, the existing Constitution of the PRC is vague about the right to privacy. It is impossible for a legal system not to have some vague laws because any legal system must universally regulate human activity.¹⁷ However, abstract standards are needed, as Timothy Endicott states as follows:

10 The Constitution of the PRC (Chinese title: 中華人民共和國憲法) was adopted at the Fifth Session of the Fifth National People’s Congress and promulgated for implementation by the Announcement of the NPC on December 4, 1982, with further revisions in 1988, 1993, 1999, 2004 and 2018. ‘Constitution of the PRC (2018 Version)’ (NPC Homepage, 22 March 2018)

<<http://www.npc.gov.cn/npc/c505/201803/e87e5cd7c1ce46ef866f4ec8e2d709ea.shtml>> accessed 29 May 2018.

11 ‘Constitution of the PRC (2018 Version)’, art. 40 (NPC Homepage, 22 March 2018)

<<http://www.npc.gov.cn/npc/c505/201803/e87e5cd7c1ce46ef866f4ec8e2d709ea.shtml>> accessed 29 May 2018.

12 Ibid, art. 39.

13 Ibid, art. 38.

14 Hong Wang and Ge Liu, ‘Legal Basis and Ultimate Value of the Right of Privacy in Constitution’ (Chinese title: 論憲法隱私權的法理基礎及其終極價值) (2005) 5 Journal of Southwest University for Nationalities 西南民族大學學報 (人文社科版) 298; Jingchun Cao, ‘Protecting the Right to Privacy in China’ (2005) 36 Victoria University of Wellington Law Review 645, 653 and 664; Peifang Zeng, ‘On Privacy Right and the Protection of Civil Laws’ (2002) 22(2) Academic Forum of Nandu 87, 87-89; Winton and others (n 3); Marissa Xiao Dong, ‘Privacy in China: Overview’ (Practical Law, 1 June 2015) <[https://uk.practicallaw.thomsonreuters.com/6-571-3425?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/6-571-3425?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> accessed 29 May 2018; Liming Wang (王利民), ‘Redefining the Concept of the Right to Privacy’ (隱私權概念的再界定) (Iolaw) <<http://www.iolaw.org.cn/showNews.asp?id=30816>> accessed 21 March 2021.

15 José M. Maisog and Zhang Wei, *China, in the International Comparative Legal Guide to: Data Protection* (Hunton and Williams LLP 2015) Chapter 7; Winton and others (n 3).

16 Constitution of the PRC, art. 37.

17 Timothy Endicott, ‘Law Is Necessarily Vague’ (2001) 7(4) Theory 379, 382.

No decent traffic scheme can stop with blood-alcohol limits and traffic lights: it also needs prohibitions on dangerous driving. I will call such standards “abstract”. Abstract standards are vague, and the law of a community necessarily includes abstract standards.¹⁸

Abstract standards on privacy protection should be added when the PRC Constitution is amended.¹⁹ The current model of privacy protection in the Universal Declaration of Human Rights (UDHR) can be taken as a reference for the amendment of the Constitution of the PRC.²⁰ Privacy protection in the UDHR is expressed by the following sentences: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.²¹

Such regulations provide the fundamental basis for the constitutional protection of privacy rights. However, improving the constitutional provisions is far from adequate because the effective protection of human rights also depends on the enforcement of the Constitution in judicial practice.

Provisions that refer to the rights of citizens under the Constitution of the PRC – especially those rights that can be seen as negative (such as the right to freedom and privacy of correspondence and the right to dignity) – are viewed by many as empty promises with little legal effect in judicial practice.²² In general terms, an independent mechanism to correct violations of these rights or to review low-level legal documents that may violate the Constitution of the PRC may currently be lacking.²³

The enforcement of constitutional provisions to the benefit of individuals has been viewed by many observers as beyond the authority of the Chinese courts.²⁴ The Constitution of the PRC has been widely considered a political document rather than a legally binding law, which means that it is non-justiciable.²⁵ The outlook for constitutional judicialization is not promising in the PRC because the Constitution of the PRC has not yet truly entered the field of justice. The constitutional provisions have been directly invoked only once in the process of judicial adjudication, in the case of *Qi Yuling v. Chen Xiaoqi et al.: Dispute over Infringement of a Citizen's Basic Right to Receive Education Protected by Constitution through Infringement of Right of Name*.²⁶ This case is considered the first and only case of direct judicial application of the Constitution in the PRC,²⁷ and a summary announcement published by the Supreme People's Court of the PRC abolished this case on 27 December 2008.²⁸

18 Ibid.

19 Xiaofeng Cheng and Chi Xu (陳曉楓, 許馳), ‘On Privacy Right Protected by Constitution’ (隱私權的憲法保護析論) (December 2008) 61(6) Wuhan University Journal 803, 806-807; Zhanxin Wei (魏占信), ‘The Constitutional Protection of Privacy’ (論隱私權的憲法保障) (2018) 36 Legal System and Society 240, 241.

20 ‘Universal Declaration of Human Rights’ (hereinafter: UDHR), GA Res 217 A (III) (United Nations, 10 December 1948) <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 5 March 2021.

21 UDHR, art 12.

22 Thomas E. Kellogg, ‘Constitutionalism with Chinese Characteristics? Constitutional Development and Civil Litigation in China’ (2009) 7 International Journal of Constitutional Law 215, 217.

23 Ibid.

24 Greenleaf (n 8) 198; Kellogg (n 22) 218.

25 Greenleaf (n 8) 198; Kellogg (n 22) 218.

26 In this case, High People's Court of Shan Dong Province utilized the Article 46 of 1982 Constitution of the PRC as a source of law. ‘Qi Yuling v. Chen Xiaoqi et al.: Dispute over Infringement of a Citizen's Basic Right to Receive Education Protected by Constitution through Infringement of Right of Name’ (Chinese title: 齊玉苓訴陳曉琪等以侵犯姓名權的手段侵犯憲法保護的公民受教育的基本權利糾紛案) (Supreme People's Court of the PRC (hereinafter: SPC) Homepage, 4 November 2012) <<https://www.chinacourt.org/article/detail/2002/11/id/17765.shtml>> accessed 5 December 2018; see also ‘Qi Yuling v. Chen Xiaoqi et al.: Opinion by the Higher People' Court of Shandong Province’ (2006) 39(4) Chinese Education and Society 60, 60-74 <<https://www.tandfonline.com/doi/abs/10.2753/CED1061-1932390403>> accessed 23 December 2018.

27 Robert J. Morris, ‘China's Marbury: Qi Yuling v. Chen Xiaoqi – The Once and Future Trial of Both Education & Constitutionalization’ 2 Tsinghua China Law Review 273, 274; see also Shen Kui (author) and Yuping Liu (translator), ‘Is It the Beginning of the Era of the Rule of the Constitution? Rinterpreting China's “First Constitutional Case”’ (2006) 12(1) Pacific Rim Law & Policy Journal 199, 199.

28 ‘Decision of the Supreme People's Court of the PRC on Repealing the Judicial Interpretation (Seventh Batch) Issued Before the End of 2007’ (Chinese title: 最高人民法院關於廢止2007年底以前發佈的有關司法解釋(第七批)的決定) (NPC Homepage, 27 December 2008) <http://www.npc.gov.cn/zgrdw/npc/xinwen/fztd/sfjs/2008-12/27/content_1465018.htm> accessed 23 August 2020.

The Provisions of the Supreme People's Court on Citation of Such Normative Legal Documents as Laws and Regulations in Judgements (Provisions on Citation),²⁹ although they do not explicitly forbid citing the Constitution, list the relevant sources of law that courts should invoke in different circumstances as follows:

A criminal judgment shall cite laws, legal interpretations or judicial interpretations. Article 4 of these Provisions shall apply to the citation of normative legal documents in judgments of civil suits collateral to criminal proceedings...A civil judgment shall cite laws, legal interpretations or judicial interpretations, and may directly cite the administrative regulations, local regulations, or regulations on the exercise of autonomy and separate regulations that should be applied...An administrative judgment shall cite laws, legal interpretations, administrative regulations or judicial interpretations, and may directly cite the local regulations, regulations on the exercise of autonomy and separate regulations, and interpretations of administrative regulations or administrative rules promulgated by the State Council or the departments authorized by the State Council, which should be applied.³⁰

From the quote derives that the Constitution of the PRC is not included as a source of law. The Provisions on Citation show that the courts of the PRC should not cite the Constitution in judicial judgements. In a Q&A section on the regulations which was published in the official journal *People's Judicature* (人民司法), the Supreme People's Court stipulated that "the constitution has no role in judicial decisions".³¹ The Supreme People's Court has issued a document to guide the "Provisions of the Supreme People's Court on Citation of Such Normative Legal Documents as Laws and Regulations in Judgements."³² The document stipulated that the courts must not handle "constitutional suits" and explicitly prescribed that "constitutional provisions must not be quoted in a judicial decision".³³ The Constitution of the PRC is therefore more regarded as an instrument for the "enunciation of the government's current political philosophy".³⁴ In addition, the Constitution of the PRC applies only against the actions of individuals and private organizations, not against the actions of the Chinese government.³⁵ Privacy remains subordinate to the power of the Chinese government.³⁶ Constitutional protection, not only in the field of privacy but also in all other fields, cannot be used either negatively or positively in the PRC.³⁷

By virtue of expanding the interpretation of Articles 37 and 38 and adding abstract standards of the protection of the right to privacy, it would not be difficult to realize the constitutional protection of privacy at the legislative level. The difficulties are first, how to implement the constitutional protection of the right to privacy in judicial practice and second, how to make the Constitution of the PRC become a truly useful and workable law. From the angle of a sustainable and also peaceful development of Chinese society, it is necessary to establish the right to privacy and an unconstitutional reviewing system to achieve effective constitutional protection of privacy.

1.2 The Protection of Privacy in Private Law, Public Law and Procedural Law

1.2.1 Private Law

29 The Provisions of the Supreme People's Court on Citation of Such Normative Legal Documents as Laws and Regulations in Judgements (Chinese title: 最高人民法院《關於裁判文書引用法律、法規等規範性法律文件的規定》) (hereinafter: Provisions on Citation) were adopted at the 1470th meeting of the judicial committee of the SPC on 13 July 2009, and effective on 4 November 2009. 'Provisions of the Supreme People's Court on Citation of Such Normative Legal Documents as Laws and Regulations in Judgements' (SPC Homepage, 10 February 2010) <www.court.gov.cn/fabu-xiangqing-73.html> accessed 10 March 2021.

30 Provisions on Citation (n 29) art. 3, 4, 5.

31 Daniel Sprick, 'Judicialization of the Chinese Constitution Revisited: Empirical Evidence from Court Data' (May 2019) 19(2) *China Review* 41, 44-45.

32 'The Understanding and Application of "The Provisions of the Supreme People's Court on Citation of Such Normative Legal Documents as Laws and Regulations in Judgements"' (Chinese title: 《關於裁判文書引用法律、法規等規範性法律文件的規定》的理解與適用) (pkulaw.cn) <http://pkulaw.cn/fulltext_form.aspx?Db=qikan&Gid=77b56acecfa66bbc464c50c5d4173363bdfb> accessed 22 August 2020.

33 Ibid.

34 Kellogg (n 22) 217.

35 Wang (n 14) 42.

36 Ibid.

37 Greenleaf (n 8) 472. However, in 2018, the district court of the PRC explicitly used the phrase "constitutional interpretation" in its reasoning process for the first time. In the judicial practice of the PRC, the parties (including the government) and the judges hold a pragmatic attitude towards the application of the constitution. Parties can claim rights under the constitution.

The protection of privacy in private law is undergoing a gradual process of evolution in the PRC. The latest development is the Civil Code of the PRC, which will come into force on 1 January 2021.³⁸ The Civil Code of the PRC uses a whole chapter to regulate privacy rights and personal information protections,³⁹ and for the first time clearly defines the term “privacy”.⁴⁰ According to the Civil Code of the PRC, citizens enjoy the right to privacy, which refers to private space, activities and information, and no entities or individuals should infringe upon the privacy rights of other person through spying, harassment, leaking or disclosure.⁴¹

Instead of directly mentioning the right to privacy, the original version of the General Principles of the Civil Law of the PRC (General Principles of the Civil Law)⁴² proposed a general right to reputation in Article 101 as follows:

Citizens and legal persons shall enjoy the right of reputation. The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited.

At that time, the behaviours that infringe on privacy were included in the behaviours that infringe on reputation. There are three judicial interpretations adopted between 1988 and 1998 about adjudicating civil cases relating to the right to reputation which include: 1) The Notice of the Supreme People’s Court on Issuing Opinions on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the PRC (for Trial Implementation) (1988) [partially invalid];⁴³ 2) the Official Reply of the Supreme People’s Court to Issues Concerning the Trial of Cases Involving Rights to Reputation (1993);⁴⁴ and 3) the Interpretation of the Supreme People’s Court on Several Issues about the Trial of Cases Concerning the Right of Reputation (1998).⁴⁵

Article 140 of the Notice of the Supreme People’s Court on Issuing Opinions on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the PRC (for Trial Implementation) (1988) [partially invalid] includes the behaviours that infringe on privacy in the behaviours that infringe on reputation and stipulates as follows:

In case anyone propagates the privacy of any other person in writing or orally, or fakes acts to uglify the personality of other person overtly, or damages other person’s reputation by ways of insulting and slandering, which result in a certain influence, such act shall be determined as act infringing the citizen’s right of reputation.

According to the Official Reply of the Supreme People’s Court to Issues Concerning the Trial of Cases Involving Rights to Reputation (1993):

38 See Civil Code of the PRC.

39 Civil Code of the PRC, Part. 4 Ch. VI: Privacy Rights and Personal Information Protections, see Civil Code of the PRC.

40 Civil Code of the PRC, art. 1032.

41 Ibid.

42 The General Principles of the Civil Law of the PRC (Chinese title: 中華人民共和國民法通則) was adopted at the Fourth Session of the Sixth National People’s Congress on 12 April 1986, entered into force on 1 January 1987 and amended on 27 August 2009. ‘General Principles of the Civil Law (1987 Version)’ (NPC Homepage) <http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4470.htm> accessed 8 March 2021; ‘General Principles of the Civil Law (2009 Version)’ (China Futures Association) <http://www.cfachina.org/ZCFG/FL/200807/t20080710_1439131.html> accessed 8 March 2021.

43 The Notice of the Supreme People’s Court on Issuing Opinions on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the PRC (for Trial Implementation) (Chinese title: 最高人民法院印發《關於貫徹執行〈中華人民共和國民法通則〉若干問題的意見(試行)》的通知) was published by the SPC on 26 January 1988 and entered into force on 2 April 1988. Article 88, 94, 115, 117, and 118 were repealed on 8 August 2008. ‘Notice of the Supreme People’s Court on Issuing Opinions on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the PRC (For Trial Implementation)’ (Law-lib) <www.law-lib.com/law/law_view.asp?id=4959> accessed 8 March 2021.

44 The Official Reply to Several Questions on Adjudicating the Cases of the Rights of Reputation (Chinese title: 最高人民法院關於審理名譽權案件若干問題的解答) was published by the SPC on 15 June 1993 and entered into force on 7 August 1993. ‘Official Reply to Several Questions on Adjudicating the Cases of the Rights of Reputation’ (Law-lib, 7 August 1993) <http://www.law-lib.com/law/law_view.asp?id=239> accessed 8 March 2021.

45 The Interpretation of the Supreme People’s Court on Several Issues about the Trial of Cases Concerning the Right of Reputation (Chinese title: 最高人民法院關於審理名譽權案件若干問題的解釋 (1998)) was published by the SPC on 14 July 2008 and entered into force on 15 September 2008. ‘Interpretation of the Supreme People’s Court on Several Issues about the Trial of Cases Concerning the Right of Reputation’ (Chinalawinfo) <<http://www.lawinfochina.com/display.aspx?lib=law&id=6673&CGid=>> accessed 8 March 2021.

Anyonewho discloses another person's private information without authorization or, in written or verbal form, damages another person's reputation by publicizing that person's privacy shall be dealt in accordance with damaging the right of reputation of that person.⁴⁶ Any person who causes damage of the reputation by insulting, libeling or disclosing the privacy of the certain person in the literary work based on real life or, in spite of not identifying the real name or address, has caused damage of the reputation of the certain person in literary work based on that person or that person's story through any content of insult, libel or privacy disclosure in that literary work shall be deemed as damaging the right of reputation of that person.⁴⁷

From the quote derives that if realistic works are used to insult or libel a person or to disrupt privacy in a way that damages the reputation of a specific person, even when the person's name and address are not specified, the realistic works point to a specific person and damage that person's reputation by insulting, libeling and disrupting privacy and therefore, such act shall be deemed as the infringement of a citizen's right to reputation.⁴⁸ In addition, if materials that infringe on the privacy of others are published without the consent of those others, or the privacy of others is infringed on in written or oral form, which results in the damage of their reputation, the case shall be deemed as the infringement of the citizen's right to reputation.⁴⁹ The Interpretation of the Supreme People's Court on Several Issues about the Trial of Cases Concerning the Right of Reputation (1998) confirms Answer 7 and 9 of the Official Reply of the Supreme People's Court to Issues Concerning the Trial of Cases Involving Rights to Reputation (1993) by defining the behaviours of unauthorized arbitrary exposure of other people's privacy or invasion of other people's privacy in written or oral form as the infringement of the right to reputation instead of the right to privacy.⁵⁰ According to the Interpretation of the Supreme People's Court on Several Issues about the Trial of Cases Concerning the Right of Reputation (1998): Where a staff member of a medical and hygiene institution illegally discloses that a patient is suffering from gonorrhoea, syphilis, leprosy, AIDS, etc., if the patient's right of reputation is thus damaged, it will constitute an infringement on the patient's right of reputation. If a medical and hygiene institution only informs the patient or his family member of an illness, it will not constitute an infringement on the patient's right of reputation.⁵¹

As mentioned above, the legal practice and legislation of the PRC have both inappropriately confused the concepts of privacy and reputation.⁵² The right to privacy was not previously considered an independent issue and was included in the right to reputation.⁵³

Other rights under the original version of the General Principles of the Civil Law related to the right to privacy include the right of personal name (Article 99),⁵⁴ the right of portrait (Article 100),⁵⁵ and the right of honour (Articles 102).⁵⁶

46 The Official Reply of the Supreme People's Court to Issues Concerning the Trial of Cases Involving Rights to Reputation (1993), answers 7.

47 Ibid, answers 9.

48 Ibid.

49 Ibid, answers 7.

50 Article VI. of the Interpretation of the Supreme People's Court on Several Issues about the Trial of Cases Concerning the Right of Reputation (1998) stipulates that: 'where a news agency gives a report on the basis of the document publicized by a state organ upon the strength of authority or the administrative act as publicly implemented, if the report is objective and accurate, it will not constitute an infringement on the right of reputation of another person; if the report is inconsistent with facts or the news agency refuses to correct its report when the said document or administrative act has been publicly corrected, and which thus causes damage to the reputation of another person, it will constitute an infringement on the right of reputation of another person'.

51 The Interpretation of the Supreme People's Court on Several Issues about the Trial of Cases Concerning the Right of Reputation (1998), art. VIII.

52 Cao (n 14) 645, 660.

53 Cao (n 14) 645, 657; Du and Murphy (n 4).

54 Article 99 of the General Principles of the Civil Law stipulates that: 'citizens shall enjoy the right of personal name and shall be entitled to determine, use or change their personal names in accordance with relevant provisions. Interference with, usurpation of and false representation of personal names shall be prohibited. Legal persons, individual businesses and individual partnerships shall enjoy the right of name. Enterprises as legal persons, individual businesses and individual partnerships shall have the right to use and lawfully assign their own names'.

55 Article 100 of the General Principles of the Civil Law stipulates that: 'citizens shall enjoy the right of portrait. The use of a citizen's portrait for profits without his consent shall be prohibited'.

56 Article 102 of the General Principles of the Civil Law stipulates that: 'citizens and legal persons shall enjoy the right of honour. It shall be prohibited to unlawfully divest citizens and legal persons of their honorary titles'.

The 2009 amendment to the General Principles of the Civil Law made no changes to the Articles 99,100,101 and 102⁵⁷ mentioned above.

It may seem that although specific provisions of the right to privacy are lacking in the original version and the 2009 amendment of the General Principles of the Civil Law, several judicial interpretations suggest that the General Principles of the Civil Law do somewhat protect privacy, although this kind of protection is not granted in the name of privacy.

In the early 1990s, the personal secrets of minors began to be protected by the Law of the PRC on the Protection of Minors.⁵⁸ Article 30 of the original law (1992 version) precludes organizations or individuals from disclosing the personal secrets of minors.⁵⁹

Since the enforcement of the Law of the PRC on the Protection of the Rights and Interests of Women,⁶⁰ the concept of privacy has been gradually mentioned in other private laws in the PRC.⁶¹ The 2005 Amendment of the Law of the PRC on the Protection of the Rights and Interests of Women protects women's personal rights, such as the right of reputation, the right of honour, the right to privacy, and the right of portrait.⁶² It was the first time that the expression of "the right to privacy" was explicitly enshrined in Chinese law. The 2018 Amendment of the Law of the PRC on the Protection of the Rights and Interests of Women made no changes to this rule.⁶³

The Tort Liability Law of the PRC⁶⁴ explicitly categorizes the right to privacy as a civil right and interest by stating as follows:

Those who infringe upon civil rights and interests shall be subject to the tort liability according to this Law. "Civil rights and interests" used in this Law shall include...the right to name, the right to reputation, the right to honor, right to self-image, right of privacy...and other personal and property rights and interests.⁶⁵

57 'General Principles of the Civil Law (1987 Version)' (NPC Homepage) <http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4470.htm> accessed 8 March 2021; 'General Principles of the Civil Law (2009 Version)' (China Futures Association) <http://www.cfachina.org/ZCFG/FL/200807/t20080710_1439131.html> accessed 8 March 2021.

58 The Law of the PRC on the Protection of Minors (Chinese title: 中華人民共和國未成年人保護法) was effective on 1 January 1992 and amended in 2006 and 2012. See 'Law of the PRC on the Protection of Minors (1992 version)' (Central People's Government of the PRC Homepage) <http://big5.www.gov.cn/gate/big5/www.gov.cn/banshi/2005-08/04/content_20237.htm> accessed 9 March 2021. See also 'The Decision of the Standing Committee of the National People's Congress to Amend the Law of the PRC on the Protection of Minors' (Central People's Government of the PRC Homepage, 26 October 2012) <http://www.gov.cn/flfg/2012-10/26/content_2253932.htm> accessed 9 March 2021.

59 Article 30 of Law of the PRC on the Protection of Minors (1992 version) stipulates that: 'no organization or individual may disclose the personal secrets of minors.'

60 The Law of the PRC on the Protection of the Rights and Interests of Women (Chinese title: 中華人民共和國婦女權益保障法) was effective on 1 October 1992 and amended in 2005 and 2018. See 'Law of the PRC on the Protection of the Rights and Interests of Women (2005 version)' (Central People's Government of the PRC Homepage, 26 May 2005) <http://www.gov.cn/banshi/2005-05/26/content_980.htm> accessed 9 March 2021. See also 'The Decision of the Standing Committee of the National People's Congress to Amend the Wildlife Protection Law of the PRC and 15 Other Laws' (Chinese title: 全國人民代表大會常務委員會關於修改《中華人民共和國野生動物保護法》等十五部法律的決定), art. 5 (NPC Homepage, 27 October 2018) <<http://cpc.people.com.cn/BIG5/n1/2018/10/27/c419242-30366035.html>> accessed 9 August 2020.

61 Article 39 of the Law of the PRC on the Protection of the Rights and Interests of Women (1992) stipulates that: 'women's right of reputation and personal dignity shall be protected by law. Damage to women's reputation or personal dignity by such means as insult, libel and giving publicity to private affairs shall be prohibited'. See 'Law of the PRC on the Protection of the Rights and Interests of Women (1992 version)' (NPC Homepage, 1992) <http://www.npc.gov.cn/wxzl/gongbao/2000-12/05/content_5004563.htm> accessed 9 March 2021.

62 Law of the PRC on the Protection of the Rights and Interests of Women (2005 version), art. 42. See 'Law of the PRC on the Protection of the Rights and Interests of Women (2005 version)' (China Women's Federation Homepage, 2005) <www.women.org.cn/col/col57/index.html> accessed 9 March 2021.

63 Law of the PRC on the Protection of the Rights and Interests of Women (2018 version), art. 42.

64 The Tort Liability Law of the PRC (Chinese title: 中華人民共和國侵權責任法) was adopted at the 12th session of the Standing Committee of the Eleventh National People's Congress on 26 December 2009 and entered into force on 1 July 2010. See 'Tort Liability Law of the PRC' (Central People's Government of the PRC Homepage, 26 December 2009) <http://www.gov.cn/flfg/2009-12/26/content_1497435.htm> accessed 9 March 2021.

65 Tort Liability Law of the PRC, art. 2.

It is the first time that the right to privacy of all Chinese citizens was treated as an independent civil right and was no longer attached to the right to reputation in the legal system of the PRC.⁶⁶ More remarkably, Article 36 of the Tort Liability Law of the PRC stipulates as follows:

A network user or network service provider who infringes upon the civil right or interest of another person through network shall assume the tort liability. Where a network user commits a tort through the network services, the victim of the tort shall be entitled to notify the network service provider to take such necessary measures as deletion, block or disconnection. If, after being notified, the network service provider fails to take necessary measures in a timely manner, it shall be jointly and severally liable for any additional harm with the network user. Where a network service provider knows that a network user is infringing upon a civil right or interest of another person through its network services, and fails to take necessary measures, it shall be jointly and severally liable for any additional harm with the network user. Since the right to privacy is explicitly incorporated into Article 2 of the Tort Liability Law of the PRC – “Civil Rights and Interests”, Chinese network users and network service providers are exposed to tort liability for privacy infringements. A separate declaration is reserved for medical institutions in the same law as well – their medical staff are responsible for keeping patients’ information confidential.⁶⁷

The Tort Liability Law of the PRC provides general eight tort relief channels.⁶⁸ Those who believe that their privacy rights have been violated are entitled to bring claims directly against the offending party and request the cessation of the infringing act, compensation for loss, a formal apology, the elimination of ill effects and the restoration of reputation, and the above methods of assuming tort liability can be adopted individually or jointly.⁶⁹ Since the enforcement of the Tort Liability Law, the right to privacy as an independent civil right has been established in the civil law system of the PRC.

However, the Tort Liability Law of the PRC does not clearly define the right to privacy. This issue is subject to the interpretation of the courts. In October 2014, the Supreme People’s Court of the PRC released the Supreme People’s Court Regulations Concerning Some Questions of Applicable Law in Handling Civil Dispute Cases Involving the Use of Information Networks to Harm Personal Rights and Interests (SPC Some Questions 2014).⁷⁰ The SPC Some Questions 2014 dealt specially with civil dispute cases that involve:

The use of information networks to harm personal rights and interests as mentioned in these Regulations, refers to dispute cases triggered by harm to another persons’ right to a name, right to reputation, portrait right, right to privacy and other such personal rights and interests through the use of information networks.⁷¹

Article 12 of the SPC Some Questions 2014 further clarifies that a citizen’s privacy includes genetic information, medical records, health inspection materials, criminal records, the home address, and private activities or any other personal information. When a network user or network service provider discloses the information mentioned above through the network that causes damage to any person, and the infringed party requests the assumption of tort liability by the network user or network service provider, the people’s court shall support such a request except under the following circumstances:

66 Marissa (Xiao) Dong, ‘The Privacy, Data Protection and Cybersecurity Law Review-Edition 5(China)’ (Law Reviews, October 2018) <<https://thelawreviews.co.uk/edition/the-privacy-data-protection-and-cybersecurity-law-review-edition-5/1175626/china>> accessed 9 March 2021.

67 Article 62 of the Tort Liability Law of the PRC stipulates that: ‘a medical institution and its medical staff shall keep confidential the privacy of a patient. If any privacy data of a patient is divulged or any of the medical history data of a patient is open to the public without the consent of the patient, causing any harm to the patient, the medical institution shall assume the tort liability’.

68 Article 15 of the Tort Liability Law of the PRC stipulates that: ‘tort liability is mainly borne through: (1) The cessation of the infringing act; (2) The removal of an obstacle; (3) The elimination of danger; (4) The restitution of property; (5) Restitution to the original state; (6) Compensation for loss; (7) A formal apology; and (8) The elimination of ill effects and the restoration of reputation’.

69 Tort Liability Law of the PRC, art. 15.

70 ‘The Supreme People’s Court Regulations Concerning Some Questions of Applicable Law in Handling Civil Dispute Cases Involving the Use of Information Networks to Harm Personal Rights and Interests’ (Chinese title: 最高人民法院關於審理利用信息網絡侵害人身權益民事糾紛案件適用法律若干問題的規定) (hereinafter: SPC Some Questions 2014) (SPC Homepage, 21 October 2014) <www.court.gov.cn/zixun-xiangqing-6777.html> accessed 23 December 2018.

71 Ibid, art. 1.

... (1) The information is disclosed within the agreed scope with the written approval of the natural person. (2) The information is disclosed within the necessary scope for the purpose of promoting public interest. (3) The information is disclosed by a school or scientific research institution for the purpose of academic research or statistics based on public interest, and with the written consent of the natural person, and the method of disclosure is insufficient to identify the specific natural person. (4) The information is disclosed voluntarily by the natural person on the network or any other personal information has been disclosed in accordance with the law. (5) The personal information is obtained through lawful channels. (6) It is otherwise prescribed by any law or administrative regulation.⁷²

The SPC Some Questions 2014 provides a series of workable measures to guide the handling of cases of privacy infringements. However, the SPC Some Questions 2014 deals with the applicable law issues only in handling civil dispute cases triggered by harm to a person's rights through the use of information networks. The SPC Some Questions 2014 applies neither to the state organ's exercise of powers to disclose personal information nor to other ways of undermining personal rights and interests.⁷³ Its use in practice is limited.

On 10 October 2014, the Supreme People's Court of the PRC published the Eight Model Cases Regarding Infringement upon Personal Rights and Interests by Using the Information Network (Eight Model Cases).⁷⁴ No. 6 of the Eight Model Cases is the *Wang Fei* case⁷⁵ – the PRC's first case against “Internet vigilantism” (人肉搜索). “Internet vigilantism” refers to:

The crowd sourced actions of Chinese netizens who see a form of outrage and then use the Internet to punish the offender by posting personal details ranging from phone number and address to blood type online for individuals to view and use in harassment.⁷⁶

In this case, news of the plaintiff Wang Fei's affair was spread after his wife's death. His real name, the name of his company and even his family address were made public. The People's Court of Chaoyang District, Beijing Municipality held that:

A citizen's personal emotional life, including his or her extramarital affair, is personal privacy. Zhang's act of disclosing Wang's personal information infringed upon Wang's right of privacy. In the special webpage coverage of this event by Lingyun Company on the website www.daqi.com it operated, it failed to conduct technical processing of the party's name and other personal information and photograph, which has infringed upon Wang's right of privacy and caused damages to Wang's right of reputation. Therefore, Lingyun Company should assume such infringement liabilities as deleting the special webpage, making an apology, and compensating for mental distress.⁷⁷

Wang Fei case happened in 2008 before the enforcement of the Tort Liability Law. At that time, the right to privacy as an independent civil right has not yet been established in the civil law system of the PRC. This case has attracted much attention because the judge, for the first time, introduced the concept of personal privacy as well as standards for the judicial review of the right to privacy in the judgement.

The legal confirmation of the right to privacy in the PRC has undergone a long process. The right to privacy that is well known was not protected in the PRC before the enforcement of the Tort Liability Law of the PRC.

72 Besides, 'where a network user or NSP discloses personal information as set forth in item (4) or (5) of the preceding paragraph in the method which violates public interest or social ethics, or the disclosure of such information infringes upon the vital interests of the right holder which is worthy of protection, and the right holder requests the assumption of tort liability by the network user or NSP, the people's court shall support such a request.' See *ibid*, art. 12.

73 Paul De Hert and Vagelis Papakonstantinou, 'The Data Protection Regime in China, In-depth Analysis' (19 November 2015) 1(4) Brussels Privacy Hub Working Paper 1, 10 <[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/536472/IPOL_IDA\(2015\)536472_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/536472/IPOL_IDA(2015)536472_EN.pdf)> accessed 20 June 2020.

74 'Eight Model Cases Regarding Infringement upon Personal Rights and Interests by Using the Information Network Published by the Supreme People's Court' (Chinese title: 利用信息网络侵害人身权益典型案例) (People's Court Daily, 10 October 2014) <http://rmfyz.chinacourt.org/paper/html/2014-10/10/content_88719.htm?div=-1> and <http://rmfyz.chinacourt.org/paper/html/2014-10/10/content_88722.htm?div=-1> accessed 24 December 2018.

75 'Paper of Civil Judgment of Wang Fei v. Zhang Leyi Case' (Chinese title: 王菲訴張樂奕名譽權糾紛案民事判決書) (Chinacourt.org, 18 December 2008) <<https://www.chinacourt.org/article/detail/2008/12/id/337278.shtml>> accessed 24 December 2018.

76 Joshua Smallridge, Philip Wagner and Justin N. Crowl, 'Understanding Cyber-Vigilantism: A Conceptual Framework' (January/February 2016) 8(1) *Journal of Theoretical & Philosophical Criminology* 57, 59-60.

77 'Paper of Civil Judgment of Wang Fei v. Zhang Leyi Case' (n 75).

The right to privacy was formerly enshrined in basic Chinese law and ultimately connected to the right to dignity and the right to reputation, which is quite different from the approach of most other countries.⁷⁸ With advances in civil society, several laws regulating privacy were passed, and an increasing number of Chinese people began to realize that the right to privacy is one aspect of personal rights that they should enjoy. They began to uphold their right to privacy. 94288 results were obtained when the word privacy was searched in China Judgement Online,⁷⁹ meaning 94288 cases related to privacy had happened in the PRC before 17 October 2018.

Infringement of privacy in cyberspace is complicated.⁸⁰ Anyone can be both the sender and receiver of information; anyone can be both the perpetrator and victim. It is not easy to identify infringers because of the anonymity of the Internet.⁸¹ Based on the Tort Liability Law of the PRC, Internet Service Providers (ISPs) are exposed to tort liability for privacy infringements.⁸² The Internet service provider (ISP) liability depends on what degree of duty of care an ISP shall bear on users' activity.⁸³ There is a concern that if an ISP is required to take on more responsibility, the growth of the Internet industry and thus the dissemination of information may be hindered.⁸⁴

There are two cases of Eight Model Cases⁸⁵ regarding ISP liability: first, Case No. 2 – *Cai Jiming v. Baidu Inc case*⁸⁶ which involves the responsibility boundary of ISPs. In this case, the Supreme People's Court held that it is inappropriate to determine that the ISP (in this case, Baidu Inc) knows the infringement fact only based on the occurrence of infringement information.⁸⁷ Second, Case No. 7 – *Yan v. Beijing Sina Interconnection Information Service Co., Ltd. and Beijing Baidu Netcom Technology Co., Ltd. case*⁸⁸ which discussed how to properly handle the relationship between determining the identity of an infringer and maintaining the ISP statutory duty of keeping information on network users confidential.⁸⁹ Through the form of action, the people's court makes a judgment after the examination of plaintiff's claim that the ISP should provide the user's personal information on the network, which can realize the balance between the relationships mentioned above.⁹⁰ To balance the relationship between the protection and

⁷⁸Hert and Papakonstantinou (n 73) 13.

⁷⁹ China Judgment Online (Chinese title: 中國裁判文書網) is an official website featuring over 20 million court documents which were uploading by the SPC of the PRC. See the China Judgment Online <<http://wenshu.court.gov.cn/>> accessed 17 October 2018.

⁸⁰Guosong Shao, *Internet Law in China* (Chandos Publishing 2012) 162.

⁸¹ Ibid, 163.

⁸² Tort Liability Law of the PRC, art 2 and 36.

⁸³ Tao Qian, 'Legal Framework of Online Intermediaries' Liability in China' (Emerald Insight, 21 September 2012) <<https://www.emerald.com/insight/content/doi/10.1108/14636691211271235/full/html?mobileUi=0&fullSc=1>> accessed 17 June 2020.

⁸⁴ Shao (n 80) 163.

⁸⁵ 'Eight Model Cases Regarding Infringement upon Personal Rights and Interests by Using the Information Network Published by the Supreme People's Court' (n 74).

⁸⁶ 'Cai Jiming v. Baidu Inc case' (Chinese title: 蔡繼明與百度公司侵害名譽權、肖像權、姓名權、隱私權糾紛案) (Chinacourt, 9 October 2014) <<https://www.chinacourt.org/article/detail/2014/10/id/1456160.shtml>> accessed 24 August 2020; see also 'No. 2 of Eight Model Cases regarding Infringement upon Personal Rights and Interests by Using the Information Network Published by the Supreme People's Court: Cai Jiming v. Baidu Inc (dispute over infringement upon right of reputation, right of portrait, right of name, and right of privacy)' (pkulaw.cn) <<http://en.pkulaw.cn/display.aspx?cgid=a25051f3312b07f36fa768bb5adc194fab16601e9f1551c3bdfb&lib=case>> accessed 17 June 2020.

⁸⁷ 'Cai Jiming v. Baidu Inc Case' (n 86); see also 'Eight Model Cases Regarding Infringement upon Personal Rights and Interests by Using the Information Network Published by the Supreme People's Court' (n 74).

⁸⁸ 'Yan v. Beijing Sina Interconnection Information Service Co., Ltd. and Beijing Baidu Netcom Technology Co., Ltd. Case' (Chinese title: 閻某與北京新浪互聯信息服務有限公司、北京百度網訊科技有限公司侵犯名譽權、隱私權糾紛案) (Chinacourt, 9 October 2014) <<https://www.chinacourt.org/article/detail/2014/10/id/1456192.shtml>> accessed 24 August 2020; see also 'Eight Model Cases Regarding Infringement upon Personal Rights and Interests by Using the Information Network Published by the Supreme People's Court' (n 74).

⁸⁹ 'Yan v. Beijing Sina Interconnection Information Service Co., Ltd. and Beijing Baidu Netcom Technology Co., Ltd. Case' (n 88); see also 'Eight Model Cases Regarding Infringement upon Personal Rights and Interests by Using the Information Network Published by the Supreme People's Court' (n 74).

⁹⁰ 'Yan v. Beijing Sina Interconnection Information Service Co., Ltd. and Beijing Baidu Netcom Technology Co., Ltd. Case' (n 88); see also 'Eight Model Cases Regarding Infringement upon Personal Rights and Interests by Using the Information Network Published by the Supreme People's Court' (n 74).

the dissemination of personal information, it is important to strike the right balance between imposing proper liability on ISPs and granting them immunity.⁹¹

In addition to the private laws and regulations mentioned above, privacy is also protected in Article 15 of the Law of the PRC on the People's Bank of China (2003 Amendment),⁹² Article 38 of the Lawyers Law of the PRC (2017 Amendment),⁹³ Article 13 and 23 of the Notary Law of the PRC (2017 Amendment),⁹⁴ Article 22 and 37 of the Law on Practicing Doctors of the PRC (2009 Amendment),⁹⁵ Article 42 of the Public Security Administration Punishments Law of the PRC (2012 Amendment),⁹⁶ Article 12 and Article 69 of the Law of the PRC on Prevention of Treatment of Infectious Diseases (2013 Amendment),⁹⁷ Article 29 of the Law of the PRC on Commercial

91 Anne S. Y. Cheung, 'Study of Cyber-Violence and Internet Service Providers' Liability: Lessons from China' (2009) 18(2) Pacific Rim Law & Policy Journal 323, 340-341.

92 Article 15 of the Law of the PRC on the People's Bank of China (2003 Amendment) (Chinese title: 中華人民共和國中國人民銀行法 (2003 修正)) stipulates that: 'the governor, deputy governors and other staff of the PBC shall keep state secrets according to law and have the duty to keep secrets of the banking institutions and the clients in relation to their performance of functions'. See 'Law of the PRC on the People's Bank of China' (NPC Homepage, 5 December 2000) <http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content_4637.htm> accessed 9 March 2021.

93 Article 38 of the Lawyers Law (2017 Amendment) (Chinese title: 中華人民共和國律師法 (2017 修正)) stipulates that: 'a lawyer...shall not divulge any privacy of a client. A lawyer shall keep confidential the relevant condition and information that is known by the lawyer in practicing law and the client and other persons are reluctant to disclose, however, except facts and information on a crime compromising the national security or public security or seriously endangering the safety of the body of a person, which a client or other person prepares to commit or is committing'. See 'Lawyers Law' (NPC Homepage, 25 February 2013) <www.npc.gov.cn/wxzl/gongbao/2013-02/25/content_1790832.htm> accessed 9 March 2021.

94 Article 13 of the Notary Law (2017 Amendment) (Chinese title: 中華人民共和國公證法 (2017 修正)) stipulates that: 'no notarial office may... (4) divulge any state secret, commercial secret or personal privacy it has access to in its practice...' Article 23 of Notary Law stipulates that: 'no notary may: ... (8) divulge any state secret, commercial secret or personal privacy he has access to in his practices...' See 'Notary Law' (Civil and Commercial Law Network, 12 September 2017) <<http://m.liuxiaoer.com/tc/2400.html>> accessed 9 March 2021.

95 Article 22 of the Law on Practicing Doctors (2009 Amendment) (Chinese title: 中華人民共和國執業醫師法 (2009 修正)) stipulates that: 'doctors shall fulfill the following obligations in the practicing activities... (3) to care for and respect the patients and preserve the privacy thereof;...' Article 37 of the same law stipulates that: 'doctors violating this law and having one of the following behaviours during the course of medical practice shall be warned or have their medical practice suspended for a period between six months and one year by the health administration departments of the people's governments at or above the country level; Their practicing certificates shall be revoked for cases with serious circumstances; Their criminal liabilities shall be investigated and prosecuted according to law in case of criminal offenses:... (9) divulging the privacy of patient and causing serious consequences;...' See 'Law on Practicing Doctors' (Central People's Government of the PRC Homepage, 12 September 2017) <http://www.gov.cn/banshi/2005-08/01/content_18970.htm> accessed 9 March 2021.

96 Article 42 of the Public Security Administration Punishments Law (2012 Amendment) (Chinese title: 中華人民共和國治安管理處罰法 (2012 修正)) stipulates that: 'anyone who commits any of the following acts shall be detained for not more than 5 days or shall be fined not more than 500 yuan. If the circumstances are relatively serious, he (she) shall be detained for not less than 5 days but not more than 10 days, and may be concurrently fined not more than 500 yuan:... (6) Peeping into, sneaking photos, wiretapping or spreading the privacy of any other person'. See 'Public Security Administration Punishments Law' (Central People's Government of the PRC Homepage, 29 August 2005) <www.gov.cn/flfg/2005-08/29/content_27130.htm> accessed 9 March 2021.

97 Article 12 of the Law of the PRC on Prevention of Treatment of Infectious Diseases (2013 Amendment) (Chinese title: 中華人民共和國傳染病防治法 (2013 修正)) stipulates that: 'disease prevention and control institutions and medical agencies shall not divulge any information or materials relating to personal privacy. Where health administration departments and other relevant departments, or disease prevention and control institutions and medical agencies infringe upon the lawful rights and interests of any units or individuals when exercising administrative control or taking preventive and control measures in violation of law, the units or individuals concerned may apply for administrative reconsideration or initiate legal proceedings according to law.' Article 69 of the same law stipulate that 'where the disease prevention and control institutions commit any of the following acts in violation of the provisions of this Law, the health administration departments under the people's governments at or above the country level shall order them to rectify within a time limit, criticize them in a circular and give them a disciplinary warning; the persons in charge who should be held responsible and the other persons who are directly responsible shall be demoted, dismissed from office or discharged according to law, and the practicing certificates of the persons concerned who are responsible may, in addition, be revoked according to law; and if a crime is constituted, criminal responsibility shall be investigated according to law:... (5) purposely divulging information and materials relating to personal privacy of an infectious disease patient, a pathogen carrier, a suspected infectious disease

Banks(2015Amendment),⁹⁸ Article 116 of the Insurance Law of the PRC (2015Amendment)⁹⁹ and Article 22 of the Archives Law of the PRC (2016Amendment).¹⁰⁰ These laws all aim to protect the privacy of individuals known by service providers of particular sectors during the work. Some say that this kind of professional obligations could be extended to big Internet firms, hence improving the trust of users in their services.¹⁰¹ After years of big Internet firms of the PRC (Baidu, Tencent) building business models around Chinese people's lack of awareness about privacy, users are getting angry about big Internet firms abusing their personal information.¹⁰² This growing awareness of privacy stems from people's concern over data breaches, which often led to unwitting Chinese individuals are taken advantage by scammers and criminals.¹⁰³ The right to privacy has finally been confirmed by the General Provisions of the Civil Law of the PRC (General Provisions of the Civil Law).¹⁰⁴ Judicial and theoretical circles have reached a consensus that the right to privacy is an independent civil right. Article 110 of the General Provisions of the Civil Law clearly grants the natural person the right to privacy.¹⁰⁵ Therefore, the legal status and nature of privacy have been fully established in the civil law system of the PRC.

In conclusion, privacy protection is fragmented across different Chinese private laws and regulations, most of which apply to a specific sector. The definition and scope of privacy are still not clear in the existing Chinese private law. The right to privacy, which is explicitly enshrined in the "Civil Rights and Interests" list of the Tort Liability Law of the PRC and Article 110 of the General Provisions of the Civil Law, should be considered an open and evolving concept.

1.2.2 Public Law

patient, or persons in close contact with such patients'. See 'Law of the PRC on Prevention of Treatment of Infectious Diseases' (Central People's Government of the PRC Homepage, 19 October 2006) <http://big5.www.gov.cn/gate/big5/www.gov.cn/fwxx/bw/wsb/content_417553.htm> accessed 9 March 2021.

98 Article 29 of the Law of the PRC on Commercial Banks (2015 Amendment) (Chinese title: 中華人民共和國商業銀行法(2015 修正)) stipulates that: 'commercial banks shall follow the principles of voluntary deposit and free withdrawal, paying interest to depositors and keeping secret for depositors in handling individual savings deposits. Commercial banks have the right to refuse any entity or individual to inquire about, freeze or deduct individual savings accounts, unless it is otherwise prescribed by laws'. See 'Law of the PRC on Commercial Banks' (China Banking Regulatory Commission) <http://www.cbrc.gov.cn/govView_D91D231FDF9244FDA1844114F2F9A1F3.html> accessed 9 March 2021.

99 Article 116 of the Insurance Law (2015 Amendment) (Chinese title: 中華人民共和國保險法 (2015 修正)) stipulates that: 'in their insurance operations, insurance companies and their staff shall be prohibited from... (12) divulging any trade secret of an insurance applicant or insured known in the process of business activity...'. See 'Insurance Law' (NPC Homepage) <http://www.npc.gov.cn/wxzl/gongbao/2015-07/06/content_1942828.htm> accessed 9 March 2021.

100 Article 22 of the Archives Law (2016 Amendment) (Chinese title: 中華人民共和國檔案法 (2016 修正)) stipulates that: 'article 22 State-owned archives shall be made public by archives repositories or State organs authorized by the State; no organization or individual shall have the right to make public such archives without permission from such archives repositories or State organs. With respect to collectively-owned or individually-owned archives, the owners shall have the right to make them public but they must abide by the relevant State regulations, and may not endanger the security and interests of the State or encroach upon the lawful rights and interests of others'. See 'Archives Law' (NPC Homepage) <http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4486.htm> accessed 9 March 2021.

101 AofeiLv and Ting Luo, 'Asymmetrical Power between Internet Giants and Users in China' (2018) 12 International Journal of Communication 3877, 3878 and 3879; Shazeda Ahmed and Bertram Lang, 'Who's Really Responsible for Digital Privacy in China?' (ChinaFile, 30 May 2018) <<http://www.chinafile.com/reporting-opinion/viewpoint/whos-really-responsible-digital-privacy-china>> accessed 9 August 2021.

102 Sam Sacks and Lorand Laskai, 'China's Privacy Conundrum' (Slate, 7 February 2019) <<https://slate.com/technology/2019/02/china-consumer-data-protection-privacy-surveillance.html>> accessed 9 July 2021.

103 Ibid.

104 The General Provisions of the Civil Law of the PRC (Chinese title: 中華人民共和國民法總則) was adopted at the 5th Session of the Twelfth NPC on 15 March 2017 and has come into force since 1 October 2017. See 'General Provisions of the Civil Law of the PRC' (NPC Homepage, 15 March 2017) <http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-03/15/content_2018907.htm> accessed 29 August 2020.

105 'A natural person enjoys the rights of life, inviolability and integrity of person, health, name, likeness, reputation, honor, privacy, and marital autonomy, among others. A legal person or an unincorporated organization enjoys the rights of name, reputation, and honor, among others'. See General Provisions of the Civil Law of the PRC, art. 110.

According to the Criminal Law of the PRC, a person who illegally physically searches others, illegally searches others' residences, or illegally intrudes into others' residences is to be sentenced to three years or fewer in prison or placed under criminal detention.¹⁰⁶ Judicial officers who abuse their power and commit the crime mentioned above are to be severely punished.¹⁰⁷

The Criminal Law of the PRC prohibits insulting others using force or other methods, fabricating stories to slander others,¹⁰⁸ and infringing upon citizens' right of communication freedom by hiding, destroying, or illegally opening others' letters.¹⁰⁹ "The case is serious" is the precondition for punishment.¹¹⁰ Postal workers who, without authorization, open, conceal or destroy mail or telegrams are to be sentenced to a fixed term of imprisonment of not more than two years or put under criminal detention.¹¹¹

In addition to the criminal law mentioned above, public law protections of privacy are fragmented across Article 92 of the Social Insurance Law of the PRC,¹¹² Articles 9 and 39 of the Statistics Law of the PRC (2010 Amendment),¹¹³

106 Criminal Law of the PRC (Chinese title: 中華人民共和國刑法) was adopted on 1 July 1979 and amended on 14 March 1997, 29 December 1998, 29 December 1999, 31 August 2001, 29 December 2001, 28 December 2002, 28 February 2005, 29 June 2006, 28 February 2009, 27 August 2009, 25 February 2011, 29 August 2015 and 4 November 2017. Article 245 of the Criminal Law of the PRC (2017 amendment) prohibits illegally physically searching others or illegally searching others' residences, or those illegally intruding into others' residences. Person who violated are to be sentenced to three years or fewer in prison, or put under criminal detention. Judicial workers committing crimes stipulated in the above paragraph by abusing their authority are to be severely punished. 'Criminal Law of the PRC' (Supreme People's Procurator of the PRC Homepage, 6 February 2018) <www.spp.gov.cn/spp/fl/201802/t20180206_364975.shtml> accessed 13 March 2021.

107 Criminal Law of the PRC, art. 245.

108 Article 246 of the Criminal Law of the PRC stipulates that: 'those openly insulting others using force or other methods or those fabricating stories to slander others, if the case is serious, are to be sentenced to three years or fewer in prison, put under criminal detention or surveillance, or deprived of their political rights'.

109 Article 252 of the Criminal Law of the PRC stipulates that: 'those infringing upon the citizens right of communication freedom by hiding, destroying, or illegally opening others' letters, if the case is serious, are to be sentenced to one year or less in prison or put under criminal detention'.

110 Article 246 of the Criminal Law of the PRC stipulates that: 'those openly insulting others using force or other methods or those fabricating stories to slander others, if the case is serious, are to be sentenced to three years or fewer in prison, put under criminal detention or surveillance, or deprived of their political rights'.

111 Article 253 of the Criminal Law of the PRC stipulates that: 'postal workers who open, hide, or destroy mail or telegrams without authorization are to be sentenced to two years or less in prison or put under criminal detention'.

112 Article 92 of the Social Insurance Law of the PRC (Chinese title: 中華人民共和國社會保險法) stipulates that: 'when a social insurance administrative department or any other relevant administrative department, social insurance agency, social insurance contributions collecting agency and its staff disclose illegally information concerning an employer or an individual, the principals who bear direct responsibilities and other persons with direct responsibilities shall be sanctioned by law. If damage has been done to the employer or individual, liability for damage shall be assumed by the person(s) responsible according to law'. See 'Social Insurance Law of the PRC' (Central People's Government of the PRC Homepage, 28 October 2010) <http://www.gov.cn/flfg/2010-10/28/content_1732964.htm> accessed 9 March 2021.

113 Article 9 of the Statistics Law of the PRC (2010 Amendment) (Chinese title: 中華人民共和國統計法2010) stipulates that: 'statistics institutions and statistician shall keep confidential of national secrets, business secrets and individual information known in statistical work'. Article 39 of the same law stipulates that: 'where any of the statistics institution or the relevant department under the people's governments at or above the countrylevel has any of the following practices, its principals bearing direct responsibilities and the other persons with direct responsibilities shall be sanctioned by the agency responsible for appointment and removal or the supervision agency according to law: (1) Illegally releasing statistical data; (2) Disclosing any business secrets and individual information of the objects subject to statistical investigation, or providing or disclosing any materials that obtained in statistical investigation and may be used to identify or deduce the identity of an object subject to statistical investigation; or (3) Violating the relevant provisions of the State and causing damage or loss of statistical data. Statisticians who commit any of the above-mentioned practices shall be sanctioned according to law'. See 'Statistics Law of the PRC' (National Bureau of Statistics Homepage, 29 June 2009) <http://www.stats.gov.cn/zjtj/tjfg/tjfl/200906/t20090629_8791.html> accessed 9 March 2021.

Articles 12 and 20 of the Passport Law of the PRC,¹¹⁴ Articles 6 and 19 of the Law of the PRC on Resident Identity Cards (2011 Amendment)¹¹⁵ and Articles 27 and 40 of the Lottery Regulations.¹¹⁶

All the public laws and regulations mentioned above aim to regulate the confidentiality obligations of state organs and their staff and do not refer to the scope of privacy and personal information. All personal and private information obtained by state organs and their staff in the course of carrying out their duty shall be kept confidential.

Thanks to the technological innovations in such areas as big-data analytics, AI, and the Internet of Things, Chinese citizens will likely continue to experience intensified, wider government surveillance on the Internet.¹¹⁷ In the past five years, Chinese state agencies and their private-sector partners have begun to combine big data with wider surveillance and information-collection infrastructure to access to a wide array of systematic data about citizens.¹¹⁸ However, a comprehensive privacy law covering both the private and public sectors is lacking in the PRC.¹¹⁹

1.2.3 Procedural Law

First, the Criminal Procedure Law of the PRC regulates that the people's court, people's procuratorate, and public security authority shall take protective measures to protect a witness, identification or evaluation expert, or victim who testifies in a crime of compromising national security, a crime of terrorist activity, an organized crime of a gangland nature, or a drug crime, as such testimony may endanger the personal safety of the witness, identification or evaluation expert, or victim or his or her close relatives.¹²⁰ These protective measures include not disclosing the individual's true personal information, such as name, residence address, and employer, and not exposing his or her appearance or true voice when he or she takes the stand.¹²¹ Second, the law gives criminal suspects the right to refuse to answer questions that are irrelevant to the case.¹²² Third, this law clearly regulates the behaviours of investigators as follows:

114 Article 12 of the Passport Law of the PRC (Chinese title: 中華人民共和國護照法) stipulates that: 'the passport issuing authority and its staff members shall keep confidential citizen's personal information gained through processing issuing passports'. Article 20 of the same law stipulates that: 'a staff member of the passport issuing authority who commits one of the following acts shall be given an administrative sanction in accordance with law; if a crime is constituted, he shall be investigated for criminal responsibility in accordance with law:... (5) disclosing a citizen's personal information gained through processing, issuing a passport, and thus infringing upon the citizen's lawful rights and interests; and...' See 'Passport Law of the PRC' (Central People's Government of the PRC Homepage, 29 April 2006) <http://www.gov.cn/jrzq/2006-04/29/content_271199.htm> accessed 9 March 2021.

115 Article 6 of the Law of the PRC on Resident Identity Cards (2011 Amendment) (Chinese title: 中華人民共和國居民身份證法 (2011修正)) stipulates that: 'public security organs and people's police shall keep confidential citizen's personal information gained through making, issuing, examining or seizing resident identity cards.' Article 19 of the same law stipulates that: 'any of the people's police commits one of the following acts shall, according to the seriousness of the circumstances, be given administrative sanctions in accordance with law; and if a crime is constituted, he shall be investigated for criminal responsibility in accordance with law:... (5) divulging a citizen's personal information gained through making, issuing, examining or seizing his resident identity card and thus infringing upon the citizen's lawful rights and interests'. See 'Law of the PRC on Resident Identity Cards' (NPC Homepage) <http://www.npc.gov.cn/wxzl/gongbao/2011-12/30/content_1686368.htm> accessed 9 March 2021.

116 Article 27 of the Lottery Regulations (Chinese title: 彩票管理條例) stipulates that: 'lottery issuers, lottery sellers, commissioned lottery sales agents and other persons who have access to the personal information on prize winners due to their jobs or business facilities shall keep confidential the personal information of lottery prize winners.' Article 40 of the same law stipulates that: 'where any lottery issuer or seller commits any of the following acts, the finance administration shall order it to make correction; where there are illegal proceeds, such illegal proceeds shall be forfeited; and the principal and other persons directly responsible shall be punished according to law:... (5) Divulging personal information of lottery prize winners...' See 'Lottery Regulations' (Central People's Government of the PRC Homepage, 12 May 2009) <http://big5.www.gov.cn/gate/big5/www.gov.cn/zwgk/2009-05/12/content_1311668.htm> accessed 9 March 2020.

117 Sacks and Laskai (n 102); Xiao Qiang, 'The Road to Digital Unfreedom: President Xi's Surveillance State' (January 2019) 30(1) *Journal of Democracy* 53, 53.

118 Xiao Qiang (n 117) 56.

119 Paul and Dr. Vagelis (n 73) 23, 24.

120 Criminal Procedure Law of the PRC (2018 amendment), art. 64. The Criminal Procedure Law of the PRC (Chinese title: 中華人民共和國刑事訴訟法) was effective on 1 January 2013, amended in 2017 and 2018. See 'Criminal Procedure Law of the PRC' (NPC Homepage, 5 December 2018) <<http://www.npc.gov.cn/npc/c12435/201811/59b0fd9941804636b9e403d17d6e3ebf.shtml>> accessed 9 March 2020.

121 Ibid, art. 64(1) (2).

122 Ibid, art. 120.

The investigators shall keep confidential any state secret, trade secret, or personal privacy known in the course of taking technical investigation measures; and must destroy in timely manner materials irrelevant to a case acquired by taking technical investigation measures... the relevant entities and individuals shall provide cooperation and keep relevant information confidential.¹²³

Fourth, this law prescribes that a case may not be tried openly if the defendant has not attained the age of 18 at the time of trial.¹²⁴

The Civil Procedure Law of the PRC provides that civil cases shall be tried openly, except those relating to any state secret or the privacy of individuals or as otherwise provided by law.¹²⁵ In addition, evidence that involves any privacy of individuals shall be kept confidential and shall not be presented in open court.¹²⁶

The Administrative Litigation Law of the PRC has similar regulations,¹²⁷ requiring lawyers to keep materials that involve any state secret, trade secret, or the privacy of individuals confidential¹²⁸ and granting the parties and other litigation representatives the right to consult and copy materials related to the court trial except the portions involving any state secret, trade secret, or the privacy of individuals.¹²⁹ In addition, this law regulates that a people's court shall publish effective written judgements and rulings for public inspection except the parts involving any state secret, trade secret, or the privacy of individuals.¹³⁰

1.2 Conclusion

Things are universally connected, which is especially true in today's social networks.¹³¹ No matter how hard people try to protect their privacy, as long as they contact other people – their relatives, colleagues or friends – by mobile phone, WhatsApp, Messenger or other similar means of communication, they cannot hide, and their privacy will be invaded sooner or later. For example, Facebook's "People You May Know" feature recommends new friends every time a person opens the app or website.¹³² Even if a person does not log in after registration, he/she may still appear in others' "People You May Know" lists.

The right to privacy is evolving. The birth of data-fueled technology such as big data has created a new landscape for which current legal standards are inadequate. The main waves of technological and social change have encouraged the improvement of the laws.¹³³ The right to privacy is threatened more than ever by scientific and technological advancement.¹³⁴ The digital revolution has upended the structure of privacy.¹³⁵ Now, personal data typically are not

¹²³ Ibid, art. 152.

¹²⁴ Ibid, art. 285.

¹²⁵ Civil Procedure Law of the PRC (2017 amendment), art. 134. The Civil Procedure Law of the PRC (Chinese title: 中華人民共和國民事訴訟法) was effective on 9 April 1991, amended in 2007, 2012 and 2017. See 'Civil Procedure Law of the PRC' (NPC Homepage, 29 June 2017) <<http://www.npc.gov.cn/npc/c30834/201706/71680113fdf741608c23bc87f3c71398.shtml>> accessed 9 March 2020.

¹²⁶ Ibid, art. 68.

¹²⁷ Administrative Litigation Law of the PRC (2017 amendment), art. 65. The Administrative Litigation Law of the PRC (Chinese title: 中華人民共和國行政訴訟法) was effective on 1 October 1990, amended in 2014 and 2017. See 'Administrative Litigation Law of the PRC' (NPC Homepage, 29 June 2017) <<http://www.npc.gov.cn/npc/c30834/201706/2579219236d64f59967f077e3a8cf739.shtml>> accessed 9 March 2020.

¹²⁸ Ibid, art. 32.

¹²⁹ Ibid.

¹³⁰ Ibid, art. 65.

¹³¹ Alexander Spirkin, *The Principle of Universal Connection and Development in Dialectical Materialism* (Progress Publishers 1983) Chapter 2.

¹³² Kurt Wagner and Jason Del Rey, 'Facebook's "People You May Know" Feature Can Be Really Creepy. How Does It work?' (Recode Coober, 1 October 2016) <<https://www.recode.net/2016/10/1/13079770/how-facebook-people-you-may-know-algorithm-works>> accessed 7 July 2020.

¹³³ Michael Rogers Rubin, *Public Wrongs: The Computer and Personal Privacy* (Ablex Publishing 1998); see also Lyria Bennett Moses, 'Adapting the Law to Technological Change: A Comparison of Common Law and Legislation' (2003) 26(2) University of New South Wales Law Journal 394, 394.

¹³⁴ Jemima Kiss, 'Does Technology Pose a Threat to Our Private Life?' (Guidance, 21 August 2010) <<https://www.theguardian.com/technology/2010/aug/21/facebook-places-google>> accessed 1 June 2020; Julie Myhre, 'Technology Is Invading Our Privacy' (DM Notes, 20 August 2013) <<http://www.dmnews.com/marketing-automation/technology-is-invading-our-privacy/article/307471/>> accessed 1 June 2020.

¹³⁵ Stephen J. Schulhofer, 'An International Right to Privacy? Be Careful What You Wish For' (2016) 14(1) International Journal of Constitutional Law 236, 238.

stored entirely at home or even within the physical control of the person they affect.¹³⁶ Technological developments have reduced the costs of data collection and processing, granting the man in the street the ability to collect, process, and even manipulate data. All of these developments call for specific legal recognition and the protection of personal data.

Bad laws that led to contradictions should be quickly repealed and replaced by no laws or at least better ones, in case that the emergence of new facts, presented by way of neologism in the disguise of oxymora or paradox render the laws in force obsolete.¹³⁷ The PRC has adopted many laws and regulations concerning privacy protection. The right to privacy is directly and indirectly protected by constitutional law, private law and public law. However, the laws and regulations mentioned above have defined neither privacy nor the right to privacy. Defining a word is much more difficult than illustrating its use. To leave the regulatory margin open to subsequent changes and developments, the law can first define privacy, avoiding using an exhaustive definition and specifying the range of privacy, and then add the following aspects: in view of the various definitions of privacy published by different bodies and constant technical and scientific developments, the legislature shall adjust and adapt the definition of privacy to technical and scientific progress and to a definition subsequently agreed upon at the international level.

136 Ibid.

137 Rostam J. Neuwirth, *Law in the Time of Oxymora: A Synaesthesia of Language Logic and Law* (Routledge 2018) 206.