

# Discussion on the Protection System of the Weak based on Private International Law

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**Abstract.** Private international law has a relatively long history and is an ancient law, which has a profound impact on the relevant legal system. With the rapid development of economic globalization, China's international civil and commercial exchanges are also increasing year by year. Foreign-related civil and commercial relations have become more complex and diversified. Only to attach importance to the scientific nature of private international law, adhere to the basic principles of private international law, and constantly improve the comprehensiveness of China's private international law. To achieve the purpose of protecting the legitimate rights and interests of the weak. With the accelerating pace of economic globalization and world integration, international civil and commercial exchanges are also increasing, and the protection of the rights and interests of the weak has become an important part of international judicial legislation. Through the induction and analysis of the principles for the protection of the rights and interests of the weak in the private international law of various countries, this paper puts forward some reasonable suggestions for perfecting the protection of the rights and interests of the weak in the private international law of our country.

**Keywords:** private international law; weak; protection of rights and interests.

## 1. Introduction

In recent years, with the rapid development of the global economy, international civil and commercial activities are gradually increasing, and various unequal factors have gradually surfaced in civil and commercial relations. To protect the legitimate rights and interests of the weak, so that all kinds of disputes can be fairly resolved, people attach great importance to the humanistic spirit of private international law. The transformation from formalism to materialism is the concrete embodiment of modern private international law. To understand the principles of safeguarding the rights and interests of the weak in the private international law of various countries, to improve the system of safeguarding the rights and interests of the weak groups in China's private international law, and to ensure that the legitimate rights and interests of the weak groups are protected, it is an effective way to reflect that our law keeps pace with the international community. [1-2]

## 2. The Principle of Protecting the Rights and Interests of the Weak in Private International Law

### 2.1 Apply the Principle of Advantage

Curry, an American scholar, put forward the theory of "interest analysis" in the 20th century. Under the influence of this theory, the idea of "favorable principle" came into being and developed continuously, and the "favorable principle" abandoned the extreme thought in "interest analysis". It is combined with the reasonable norms of conflict to form a specific concept of "interest analysis". The essence of the "favorable principle" means that when selecting laws, we should make great use of laws and regulations that are beneficial to the rights and interests of the weak, which is the concrete embodiment of the protection of the rights and interests of the weak by private international law. Such as the ubiquitous "good for consumers", "good for recipients" and other relevant legislative provisions. With the continuous advocacy and promotion of the "favorable principle", in the process of dealing with international civil and commercial cases, people in weak

groups have been more favorable in protecting their legitimate rights and interests and protected by a strong and perfect system. [3]

## **2.2 Application of Mandatory Norms**

Under the influence of the rapid development of economic level, the functions of the state begin to change gradually. To make the protection of the law play a real role, to ensure that the common interests of the state and social economy are effectively protected in international economic exchanges and civil exchanges, the state has successively formulated a series of relevant laws and regulations to adjust those targeted legal relations and resolve international disputes. From the process of the emergence and development of mandatory norms, we can see that the state's interference in social and economic life in the field of foreign-related laws is its main form of expression, and it is also an important tool for the state to intervene directly in economic life. Among them, if the judiciary or legislators want to protect the legitimate interests of small and medium-sized enterprises, consumers, women, children, workers, dependents, and other weak groups, they can be guaranteed through the rational use of mandatory norms. [4]

## **2.3 The "Autonomy of the Will" of the Parties May be Limited**

The unequal reasons for many factors, such as economic strength and information, may cause the parties to the contract to be in a relatively unequal position when establishing the contract relationship, with one party in a relatively strong position and the other in a relatively weak position. If the private law of the country agrees that the parties to the contract can independently establish all kinds of rights and obligations of both parties, The free choice of the applicable law by the parties to the contract will lead to the emergence of the unfair phenomenon. therefore, the existence of the state as a third party must appropriately restrict the autonomy of the parties through the establishment of relevant laws and regulations. to achieve the purpose of maintaining the stable development of social and economic order. [5]

## **2.4 Application of the Principle of "Public Order"**

The principle of "public order" refers to the use of foreign laws and regulations to safeguard national interests on the principle of exclusion, which is often caused by economic and political factors such as national interests, security, customs, and so on. although there is no special connection with the protection of the rights and interests of the weak groups, it reflects the tendency to protect the legitimate interests of the weak groups in the process of the application of public order. The concern for the weak has been effectively reflected through legislation and judicature. [6]

# **3. The Present Situation of the Protection of the Rights and Interests of the Weak in China's Private International Law and Legislative Suggestions**

## **3.1 The Embodiment of the Principle of Protecting the Weak in China's Private International Law**

In China's current private international law, the legislative provisions on the protection of the rights and interests of the weak are relatively scattered, and the number is relatively small and does not form more systematic legal provisions. Although there are clear provisions on the protection of the rights and interests of the weak, to regard the principle of protecting the rights and interests of the weak as one of the basic principles of private international law in our country, there is no clear category for the protection of the weak, which forms some uncertain factors in judicial practice, and the field and scope of the protection of the rights and interests of the weak are also relatively small. For example, Article 25 of the Law on the Application of Law provides for the application of "laws conducive to the protection of the rights and interests of the weak", but there is no clear scope for the specific scope of the "weak" group. [7]

### **3.2 Suggestions on Perfecting the Principle of Protecting the Weak in China's Private International Law**

The protection of the rights and interests of the weak has always been a matter of attention in the legislative practice of our country. therefore, in the field of civil and commercial law of our country, there are many separate laws and legislative provisions that tend to protect the rights and interests of the weak. however, there are few provisions in the legislation of private international law, and there is no relatively complete code. The legislative level of protecting the weak is too low, and the relevant legal provisions are not systematic enough. Therefore, it is necessary to take the principle of protecting the weak as the basic principle of China's private international law, improve the level of legislation, increase and optimize the connection points of applicable law, and enforce the law flexibly; improve the laws and regulations on expert witnesses and "blind" conflict norms, implement the humanistic concern of private international law for the weak, so that private international law can truly safeguard the rights and interests of the weak in dealing with international civil and commercial relations.

## **4. Discussion on the Protection System of the Weak based on Private International Law**

### **4.1 Protection of the Weak should become the Basic Principle of China's Private International Law**

China's private international law pays great attention to the protection of the rights and interests of the weak and makes a continuous and in-depth study on it, but the legal provisions on the protection of the legitimate rights and interests of the weak are scattered in the laws and regulations of foreign-related civil relations, such as the General Principles of Civil Law and the Law of succession, there is no systematic and complete code of private international law, and there is no clear expression of the principle of protecting the legitimate rights and interests of the weak. Some international scholars believe that protecting the legitimate rights and interests of the weak should be one of the basic principles of private international law, and some scholars in China also think so. The legislative principle of protecting the legitimate rights and interests of the weak is promoted to the level of the basic principle of private international law, which can be followed in all fields of private international law. It has realized the protection of the rights and interests of the weak in private international law as a whole and improved the deficiency in the legislation of private international law to protect the weak. It is convenient for the relevant judicial personnel to use flexibly when implementing conflict norms in the process of law enforcement, and violating the basic principles will become a reason to exclude the law that is not conducive to the protection of the legitimate rights and interests of the weak in the designation of conflict norms so that the legitimate rights and interests of the weak can be effectively protected by law. [8]

### **4.2 Softening Methods for Protecting the Weak and Adding Connections**

When China's private international law is connected with other laws and regulations, the link points are relatively few and too rigid, which makes it impossible for private international law to link perfectly with laws and regulations conducive to the protection of the weak when protecting the rights and interests of the weak. so that the legitimate rights and interests of the weak can not be protected in a timely and comprehensive manner. Therefore, China's private international law should relatively increase the link points with other laws and regulations, soften the connection points, abandon the original rigid connection points, and replace them with flexible and relatively open ones, so that conflict norms can be flexibly used in the increasingly complicated and diversified international civil and commercial legal relations, and then play a positive and effective role. So that the legitimate rights and interests of the weak can be protected by a strong system in international civil and commercial laws and regulations. For example, in the trials of some cases, the testimony of tainted witnesses directly affects the establishment of charges against the accused

by judicial personnel and the trial of sentences. therefore, some defendants will make personal threats to the tainted witnesses themselves or their families before the trial, or carry out certain acts of retaliation against the tainted witnesses and their families after the trial, seriously endangering their lives and personal safety. These tainted witnesses are also part of the weak group to be protected by law, so based on lightning and reducing criminal punishment for tainted witnesses, we should also change and change the family identity, life, and place of work of tainted witnesses and tainted witnesses, to avoid retaliation against them by the defendant, and provide a strong guarantee for the personal safety and stability of the family members of tainted witnesses and tainted witnesses in the future.

## 5. Conclusion

Everyone has his legitimate rights and interests, and the essential task of the law is to protect people's legitimate rights and interests when they are illegally infringed. Private international law is the laws and regulations applicable to dealing with international civil and commercial relations. Take the principle of protecting the rights and interests of the weak as one of the legislative principles of private international law, regulate and improve the legal provisions to protect the rights and interests of the weak, and form a complete code. Provide complete and strong legal protection for the legitimate rights and interests of the weak, clearly show the humanistic concern of private international law for the weak groups, while safeguarding the rights and interests of the weak and promoting the development of civil and commercial affairs, it also gives full play to the real value of private international law.

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