

A Study on the Argumentation and Reasoning in Recording and Review Cases: Taking Fundamental Rights Cases as an Example

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Abstract: *Protecting citizens' fundamental rights is one of the basic functions of the system of recording and review, and relevant cases should fully embody this function. However, whether they are recording and review cases concerning fundamental rights or other types of recording and review cases, their argumentative logic is mainly reflected in legislative logic and policy implementation logic, ultimately aiming at the reconstruction of legal norms and featuring the nature of proactive legislation. At the same time, the argumentation of review authorities lacks technicality, with deficiencies in expounding the normative connotations of fundamental rights and social facts, making it impossible to highlight the protection of citizens' fundamental rights in review argumentation. The function of protecting fundamental rights in review argumentation should be reflected in three aspects: the function of transmitting fundamental rights values, the function of providing fundamental rights rules, and the function of taking fundamental rights as a methodology. Centering on these three points, an argumentation model for the recording and review of fundamental rights with human rights protection as the starting point should be constructed.*

Keywords: recording and review ♦ fundamental rights ♦ rights protection ♦ review argumentation

I. Question: Lacking of Argumentation Weakens of the Realization of the Human Rights Protection Function.

Article 1 of the *Decision of the Standing Committee of the National People's Congress on Improving and Strengthening the System of Recording and Review* (hereinafter referred to as the *Decision*), adopted at the seventh session of the Standing Committee of the 14th National People's Congress (NPC) on December 29, 2023, stipulates one of the functions of recording and review: "protecting lawful rights and interests of citizens, legal persons and other organizations." As a component of the human rights protection system of socialism with Chinese characteristics, the recording and review system plays an important role in safeguarding fundamental rights.¹ This provision directs the institutional design and operational arrangements for recording and review. *The Report on the Work of Recording and Review in 2018 by the Legislative Affairs Commission of the Standing Committee of the National People's Congress* (hereinafter, such annual reports are

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¹Liang Hongxia, "The Function of Human Rights Protection and Its Approaches of Filing and Review — Rethinking of PAN Hongbin Case," *Human Rights* 2 (2020): 66-67.

abbreviated as Annual Report on Recording and Review²) mentions that the original intent and responsibility of the recording and review system include “protecting lawful rights of citizens and legal persons,” with the term “quan li” (rights) appearing six times. One instance specifically emphasizes that “submitting review proposals to the Standing Committee of the National People’s Congress (NPCSC) regarding regulations and judicial interpretations is an important right conferred on citizens by the *Legislation Law* and the *Oversight Law*,” while the other five instances abstractly emphasize the protection of citizens’ rights. Subsequently, each Annual Report on Recording and Review has continued emphasizing the protection of rights. The 2020 Annual Report used the term “quan yi” (rights and interests), and the 2024 Annual Report, citing the provisions of the *Legislation Law*, used instead “quan li he li yi” (“rights and interests” spelled out in Chinese), reflecting subtle nuances in the recording and review system’s approach to rights protection work. The stipulation in Article 1 of the *Decision* indicates that the recording and review system “is aimed at ensuring the enforcement of decisions and plans of the Central Committee of the Communist Party of China, guaranteeing the implementation of the constitution and laws, protecting lawful rights and interests of citizens, legal persons and other organizations, safeguarding the unity of the legal system of the country...” However, compared to the prominence of other functions, in the recording and review cases concerning fundamental rights,³ the review authorities have not given sufficient attention to the realization of the rights protection function of the recording and review system, which still needs to be strengthened. This determines that in the recording and review cases concerning fundamental rights, it is necessary not only to resolve conflicts between specific provisions and higher-level laws or inconsistencies with the constitution and laws, but also to address substantive issues of fundamental rights protection.

In the recording and review cases concerning fundamental rights, the argumentation thinking and methods adopted by the review authorities are characterized by a considerable degree of subjectivity and arbitrariness, and insufficient argumentation and reasoning may, to some extent, constrain the realization of the human rights protection function. In China’s existing recording and review practice, the review argumentation does not focus on elaborating the circumstances in which individual rights are infringed, nor does it provide further conceptual clarification of the relevant

² Shen Chunyao, “Report on the Work of Recording and Review Since the 12th National People’s Congress and in 2017 by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress,” *Communiqué of the Standing Committee of the National People’s Congress of the People’s Republic of China* 1 (2018): 124-129; Shen Chunyao, “Report on the Work of Recording and Review in 2018 by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress,” *Communiqué of the Standing Committee of the National People’s Congress of the People’s Republic of China* 1 (2019): 327-332; Shen Chunyao, “Report on the Work of Recording and Review in 2019 by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress,” *Communiqué of the Standing Committee of the National People’s Congress of the People’s Republic of China* 1 (2020): 240-245; Shen Chunyao, “Report on the Work of Recording and Review in 2020 by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress,” *Communiqué of the Standing Committee of the National People’s Congress of the People’s Republic of China* 2 (2021): 350-356; Shen Chunyao, “Report on the Work of Recording and Review in 2021 by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress,” *Communiqué of the Standing Committee of the National People’s Congress of the People’s Republic of China* 1 (2022): 244-249; Shen Chunyao, “Report on the Work of Recording and Review Since the 13th National People’s Congress and in 2022 by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress,” *Communiqué of the Standing Committee of the National People’s Congress of the People’s Republic of China* 1 (2023): 150-159; Shen Chunyao, “Report on the Work of Recording and Review in 2023 by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress,” *Communiqué of the Standing Committee of the National People’s Congress of the People’s Republic of China* 1 (2024): 227-233; Shen Chunyao, “Report on the Work of Recording and Review in 2024 by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress,” *Communiqué of the Standing Committee of the National People’s Congress of the People’s Republic of China* 1 (2025): 149-155. The cases used in this paper are mainly drawn from these eight Annual Reports on Recording and Review.

³ In this paper, recording and review cases concerning fundamental rights refer to those cases in the recording and review process that should involve the fundamental rights stipulated in the *Constitution*.

fundamental rights or analysis of the legitimacy of restricting citizens' fundamental rights. The current recording and review system mainly demonstrates the following features: Reviewing whether normative documents violate the constitution and laws in order to safeguard the unity of the legal system; using the discovery of constitutional or legal defects in a normative document as the triggering condition; the outcome of the review is to rectify unconstitutional or unlawful normative documents.⁴ By examining expressions used in the Annual Reports on Recording and Review, such as "protection of citizens' rights," "citizens' basic interests," "constitutional review," "fairness," "equality," and "improper restrictions on citizens' rights or imposition of additional obligations," as well as rights-related notions appearing in specific cases, such as "human dignity," "private property," "communications freedom and communications confidentiality," "childbearing," "citizens' right to privacy," "right to material assistance," and "right and duty to work," we may generally infer the elements of fundamental rights argumentation in recording and review. However, the presentation of such clues falls far short of constructing a system of review argumentation for fundamental rights. From the functional orientation of protecting citizens' rights, it can be observed that the recording and review cases concerning fundamental rights remain inadequate in terms of review argumentation.

At present, Chinese scholars focus more on the issue of fundamental rights protection in individual cases of recording and review concerning fundamental rights,⁵ while there is insufficient general research on the process of review argumentation. Therefore, this paper aims to sort through the cases concerning the protection of citizens' fundamental rights that have emerged in recent years in the work of recording and review, and, centering on the argumentation thinking adopted by the review authorities in such cases, explore the optimization of the norms and methods of argumentation in the recording and review cases concerning fundamental rights.⁶

II. Elements of Argumentation in the Recording and Review Cases Concerning Fundamental Rights Formed in Practice

With the accumulation of recording and review cases,⁷ both the number and types of cases concerning fundamental rights have been continuously increasing. In the publicly released recording and review cases, the types of fundamental rights involved mainly include human dignity,

⁴ Liang Hongxia, "The Function of Human Rights Protection and Its Approaches of Filing and Review," 68.

⁵ Zhang Xiang, "Constitutional Review of Consequences Attached to Crimes: An Analysis Based on the Recording and Review Opinion on the Prohibition of Joint Liability," *Criminal Science* 2 (2024): 143-161; Zheng Lei and Zhang Juntong, "Using 'Constitutionality and Constitution-Related Issues' as a Method: An Analysis of the Methodological Logic of the Review Opinion in the 'Joint Liability Provisions Case,'" *Journal of Human Rights Law* 3 (2024): 38-56; Du Wuqing, "On the Constitutional Limits of Local Regulations Imposing Occupational Restrictions on Special Industries: Focusing on the 'Lifetime Ban in Special Industries Case,'" *Chinese Journal of Human Rights* 2 (2024): 92-108; Zhao Hong, "Reflections on the Imposition of Occupational Restriction Penalties," *Law Science* 3 (2024): 46-61.

⁶ The reason for selecting the recording and review work of the Standing Committee of the National People's Congress (NPCSC) as the focus is twofold: first, due to the limitation imposed by the subjects of currently available public cases; and second, because of the NPCSC's special status within the recording and review system. The NPCSC possesses the authority to interpret the *Constitution* and the power to supervise its implementation, which endows it with a distinctive institutional role in safeguarding the fundamental rights of citizens enshrined in the *Constitution*. Since the recording and review mechanism is led primarily by the NPCSC as a state organ of power, the NPCSC's argumentation in recording and review plays a demonstrative and guiding role. In addition, a practical difficulty faced by studies on review argumentation lies in the limited public disclosure of the argumentations, which is also a key challenge encountered in this paper. Therefore, this study confines its analysis to the limited argumentations available in publicly released cases.

⁷ There are multiple channels for the public disclosure of cases by the recording and review authorities, such as the Annual Reports on Recording and Review issued by the NPCSC, the *Selected Cases of Recording and Review of Normative Documents*, cases published on WeChat public accounts such as "Recording and Review Updates," and recording and review cases released by provincial-level people's congresses. The cases cited in this paper are mainly drawn from the first three channels.

personal liberty, childbearing, property, equality, employment, communications freedom and communications confidentiality, material assistance, and the right and duty to work. The legal relationships concerning the protection of citizens' rights in recording and review are usually framed within the correspondence of "fundamental rights — state obligations" and "state power — citizens' rights," manifesting issues such as restrictions on fundamental rights and insufficient protection of fundamental rights. In practice, the argumentation structure of recording and review cases concerning fundamental rights mainly comprise three elements: considerations of public policies, citation of normative bases, and examination of implementation effects. These elements appear individually or in combination in the argumentation of individual cases, representing three fields from which the values of fundamental rights originate: the political system, the legal system, and the overall social system.

A. Considerations of public policies

The recording and review cases concerning fundamental rights selected in the Annual Reports on Recording and Review are closely related to the standardized implementation of major policies of the Central Committee of the Communist Party of China (CPC). Some cases display obvious characteristics of public policy considerations, for example, the "case of local regulations requiring local household registration for taxi driver qualification," the "case of excessive penalties and handling in family planning normative documents under local regulations," and the "case of dismissal for exceeding birth limits under local regulations."⁸ Public policies not only entail the requirements of national development and reform, but also embody the values and objectives of fundamental rights protection advocated by the Party and the state. The argumentation basis in each annual report includes the CPC Central Committee's reform requirements on "guiding the reasonable, smooth, and orderly flow of labor force" and "creating a fair employment environment, legally correcting employment discrimination based on identity or gender, and ensuring equal employment rights for urban and rural workers," the Party and state's principles and direction on reforming and improving family planning service management, and the principles of the fifth plenary session of the 19th CPC Central Committee to "enhance the inclusiveness of fertility policies." These are closely related to the values of citizens' fundamental rights, including the right to work, equal employment rights, and childbearing rights.

In the argumentation of recording and review cases concerning fundamental rights, using the CPC Central Committee's major policies and decisions as the basis for review serves as the primary determinant guiding the conclusions of the review. The review authorities employ this to clarify the political legitimacy of their conclusions and to realize the political function of the recording and review system, thereby effectively ensuring the implementation of the CPC Central Committee's decisions and plans. This also indicates that recording and review practice contains an inherent policy-oriented logic. In the "case of dismissal for exceeding birth limits under local regulations" in the 2019 Annual Report, the review authorities relied primarily on the CPC Central Committee's family planning policy as the main argument, providing the necessary legitimacy for the review conclusion and reflecting the evolution of the related constitutional provisions. First, the review authorities treated China's family planning policy as one of the fundamental bases for review, examining it from the perspective of policy changes. They concluded that overly strict family planning control measures and handling regulations no longer align with current family planning policy changes, and that relevant local regulations and rules should be adjusted accordingly. Article 25 of the current *Constitution* stipulates that "The state shall promote family planning to see that population growth is consistent with economic and social development plans." In the review, the authorities clarified that China's population development has undergone pivotal changes alongside economic and social development, which implies that the family planning provisions in the

⁸ Office of Recording and Review of Normative Documents, Legislative Affairs Commission of the Standing Committee of the National People's Congress, *Selected Cases of Recording and Review of Normative Documents* (Beijing: China Democracy and Legal System Publishing House, 2020), 17-19, 47-51, etc.

constitution have acquired new constitutional connotations under this social transformation. Policies that strictly restrict childbirth have become a thing of the past, and the degree of restriction on childbearing rights under the constitutional family planning provisions has accordingly been relaxed. Therefore, recording and review at this stage adapting to societal changes serves as a powerful tool for implementing the CPC Central Committee's major decisions and plans.⁹ Second, considerations of public policies take a dominant position compared with higher-level legal bases. Even when higher-level legal bases exist for the reviewed matters, the review authorities still reached negative review conclusions, indicating that in the review practice of family planning legislation, public policy considerations hold a clear priority. The connotation of the family planning provisions in the constitution is closely linked to the policies of the same period. It was initially incorporated into the constitution due to its strategic policy significance, and later clarified through the CPC Central Committee's policies and relevant resolutions of the NPC and its Standing Committee. Changes in the CPC Central Committee's family planning policy direction also determine the alteration of the constitutional connotation of the corresponding provisions.¹⁰ Related recording and review cases, such as the "case concerning provisions on mandatory paternity testing in the *Population and Family Planning Regulations of XX City*" and the "case concerning improper restrictive conditions in regulations, rules, and normative documents on applying for maternity insurance," are all associated with changes in family planning policy, reflecting underlying considerations of China's population and socio-economic development.¹¹ It can thus be seen that considerations of public policies run throughout the relevant recording and review cases concerning fundamental rights and constitute an important component of the review argumentation content.

The considerations of public policies reflected in the argumentation of recording and review cases concerning fundamental rights encompass the value pursuits of fundamental rights, representing the structural coupling of the legal system and the political system, which enhances the interpenetration between systems and generates positive interactions.¹² The 2020 Annual Report noted that some local regulations "require local household registration as a condition for engaging in the taxi driver profession locally." In the argumentation, the review authorities pointed out that the key basis for review is the CPC Central Committee's reform requirements on "guiding the reasonable, smooth, and orderly flow of labor force" and "creating a fair employment environment, legally correcting employment discrimination based on identity or gender, and ensuring equal employment rights for urban and rural workers." This public policy consideration reflects the state's proactive protection and promotion of citizens' right to work. On the one hand, the state, based on the defensive function of the right to work, provides protection for the equality of labor rights. On the other hand, by formulating favorable labor policies, the state creates supportive conditions for workers, with a policy focus on ensuring that they fully enjoy the tangible benefits derived from their labor.¹³ It also embodies the value of the right to equality and serves as a standard of judgment, namely, prohibiting unreasonable differential treatment. Specifically, discrimination is not allowed, whether based on identity, gender, or similar classification criteria. The preconditions for initiating an equality right review are the occurrence of "government classification" and the existence of a "discriminatory purpose."¹⁴

B. Citation of normative bases

⁹ Zhu Ningning, "The Function of Recording and Review in Implementing Major Decisions and Deployments of the CPC Central Committee Is Becoming Increasingly Prominent," *Legal Daily*, February 22, 2022.

¹⁰ Jiang Qinghua, "From 'Control' to 'Regulation' of Population Size: The Constitutional Evolution of the Connotation of Family Planning," China Law Review WeChat Official Account, September 11, 2021.

¹¹ Zhang Yong and Yan Dongfeng, *Selected Cases of Recording and Review of Normative Documents (II)* (Beijing: China Democracy and Legal System Publishing House, 2024), 40-43 and 62-68.

¹² Li Zhongxia, "The Social Function of Fundamental Rights," *The Jurist* 5 (2014): 29.

¹³ Zhang Xiang, "Constitutional Review of Consequences Attached to Crimes," 204.

¹⁴ Liu Jianlong, "On the Review Methods in U.S. Equal Protection Cases," *The Jurist* 4 (2020): 87-89.

The recording and review cases concerning fundamental rights exhibit two characteristics in their citation of normative bases. On the one hand, some cases provide only limited explanation of the normative bases for review. The review conclusions involve different combinations of assessments, such as constitutionality and legality evaluations or legality and appropriateness evaluations, with the argumentation focusing primarily on legal system integration. This is a common feature of recording and review cases, and the review authorities do not provide special reasoning specifically for the recording and review cases concerning fundamental rights. On the other hand, the review authorities sometimes use the citation of normative bases to indicate whether the subject under review affects citizens' rights and obligations, reflecting an orientation toward protecting citizens' lawful rights and interests. The main criteria for judgment are whether the authorities exceeded their powers, or improperly "increased citizens' obligations" or "restricted citizens' rights," as well as issues of insufficient protection of fundamental rights. This distinction forms the core difference between fundamental rights cases and other recording and review cases.

First, the simultaneous listing of multiple-tier normative bases indicates that the review authorities do not differentiate between constitutionality and legality reviews, but rather conduct a systematic examination of the subject under review. This inevitably requires a coherent interpretation of the relevant provisions of the constitution and laws. Vertically, in the 2021 and 2022 Annual Reports' "case of mandatory paternity testing," the review authorities affirmed that the parent-child relationship falls within the scope of protection of citizens' fundamental rights, and is jointly protected by the constitution and laws. In the 2018 Annual Report, the review authorities recognized that the establishment of the "custody and education" system was based on constitutional and legal grounds in the "case of abolition of legal provisions and system for custody and education." In the "case on local government normative documents restricting social assistance for individuals involved in crimes," the review authorities held that excluding individuals involved in crimes from the scope of urban and rural minimum living guarantees was inconsistent with the principles and spirit of relevant constitutional and administrative provisions. Horizontally, in reviewing the provisions added to local population and family planning regulations, such as "dismissal for exceeding birth limits," the review authorities, primarily relying on Party and state policies, combined with relevant laws including the *Labor Contract Law* and the *Population and Family Planning Law*, concluded that the relevant provisions in the local population and family planning regulations no longer conformed to current social conditions and required adjustment.¹⁵ Therefore, interpreting the provisions of the constitution and various laws is necessary during the review process. Recording and review examines regulations and judicial interpretations through interpretation of the human rights embedded in the constitution, thereby maintaining the unity of the national legal system.¹⁶ Interpretation of constitutional human rights protection provisions is required in the review. However, no formal interpretation by the NPCSC has yet appeared in recording and review practice, with informal interpretations by the Legislative Affairs Commission of the NPCSC serving as the primary reference in practice. The argumentations in the annual reports indicate that, in the individual cases of recording and review concerning fundamental rights, the review authorities systematically place the subject under review within China's hierarchical legislative system, using fundamental rights norms as the basis for review and applying a systematic interpretive method. This approach mobilizes the corresponding rights norms throughout the legal system, tracing back to fundamental rights rules in the constitution while also linking to the specific laws and regulations that concretize these rights. This method facilitates the connection between recording and review and the constitutionality review system. The use of systematic interpretation allows constitutional provisions on fundamental rights to exert influence across the entire legal

¹⁵ Office of Recording and Review of Normative Documents, Legislative Affairs Commission of the Standing Committee of the National People's Congress, *Selected Cases of Recording and Review of Normative Documents* (Beijing: China Democracy and Legal System Publishing House, 2020), 17-19, 47-51.

¹⁶ Yan Hailiang, "On the Recording and Review of Judicial Interpretations in China and the Improvement of the System: An Analysis from the Perspective of Human Rights Protection," *Law and Modernization 2* (2022): 139.

system, thereby consolidating the protection order of fundamental rights within China's legal framework.

Second, in some cases, the review authorities, while citing normative bases, provide a simple and limited argumentation on the legitimacy of restrictions on citizens' fundamental rights. This is relatively fully illustrated in the "case of mandatory paternity testing." The review authorities first clarified that matters within the parent-child relationship, such as citizens' human dignity, identity, privacy, and family harmony and stability, fall within the scope of fundamental rights protected by the constitution and laws. They further stressed that local regulations mandating compulsory paternity testing, along with the associated administrative penalties, disciplinary actions, or procedural measures, are unjustified. The argumentation process demonstrates a certain rigor, reflecting that compulsory paternity testing infringes on citizens' human dignity and privacy, and that the legitimacy of this restrictive provision is insufficient. Similarly, in the 2023 Annual Report's "case on joint liability provisions in district council notices," the review authorities examined the adverse effects of these provisions on multiple fundamental rights of close relatives of key individuals involved in crimes. The authorities first clarified that the relevant provisions in the notices restrict the rights of spouses, children, parents, and other close relatives of key individuals involved in crimes in areas such as education, employment, and social security, and then argued the legitimacy of such restrictions. In doing so, the review authorities, relying on the basic principles of modern rule of law, the principle of individual criminal responsibility, the principles and spirit of Chapter II of the *Constitution* on "Fundamental Rights and Obligations of Citizens," and relevant national laws and regulations on education, employment, and social security, examined the restrictions on citizens' fundamental rights imposed by the "joint liability" provisions and ultimately derived a negative review conclusion. In the "case of regulations on prohibition of practice," the review authorities rejected the constitutionality of overly broad or arbitrary provisions restricting or prohibiting professional practice as "exceeding necessary and reasonable limits."

C. Examination of implementation effects

Implementation effects refer to both the effects produced by the subject under review and the feedback effects of the review outcome. This has become one of the elements of argumentation in the annual reports, with primary attention given to the implementation effects of the subject under review. The review authorities trace the legislative intent of normative documents and examine their implementation effects to briefly describe the legislative basis underlying the fundamental rights norms and its changes,¹⁷ such as shifts in economic and political contexts, thereby providing practical legitimacy for the review conclusions. Specific norms concerning fundamental rights that lag behind social development essentially reflect changes in social foundations that alter the connotation of fundamental rights norms, and the implementation effects change accordingly, gradually diverging from the original legislative intent. The review authorities analyze real social effects and practical problems, comparing the factual layer with the normative layer of legislative intent, to identify provisions on citizens' rights that are outdated relative to social development. Regarding feedback on review outcomes, the review authorities also demonstrate a certain proactivity in argumentation, explaining mandatory corrective measures, such as whether error-correction recommendations were issued and whether the relevant subjects under review have been amended.

First, in review argumentation, the review authorities trace the legislative intent of the subject under review, examining its constitutionality and legality at the time of enactment as a basis for their reasoning. After receiving review suggestions, the review authorities sometimes proactively request the enacting authorities to explain the legislative intent of relevant norms, which constitutes

¹⁷ Here, the author intends to clarify that "examination of changes in social foundations and implementation effects of norms" differ from the "policy changes" discussed in Section A of Part II: the former refers to factors considered in normative review, while the latter refers to factors considered in political review. This also illustrates that the element of "change" is reflected in both types of review standards.

an important part of the review argumentation. In reviewing the legal provisions and system of custody and education, the Legislative Affairs Commission of the NPCSC, together with the NPC Supervisory and Judicial Affairs Committee, the Ministry of Public Security, and the Ministry of Justice, established a joint research team to hold seminars across various localities and to send written inquiries to local authorities responsible for formulating and implementing normative documents. In the review conclusions,¹⁸ the team articulated the legislative intent at the time of enactment and, by comparing it with empirical findings on implementation, assessed the practical legitimacy of the normative documents. During the development of a system, changes in social foundations may cause the reasons justifying restrictions on fundamental rights to disappear, i.e., the disappearance of constitutional justification, thereby rendering previously constitutional provisions unconstitutional. Fundamental rights norms are closely related to various social subsystems, and the overall environment of social development has decisive significance for the evolution of these norms' connotations. For example, the "cases of judicial interpretation on disparities in compensation for personal injury between urban and rural residents" in the 2020 and 2022 Annual Reports are highly significant for the realization of the right to equality between urban and rural residents. The review authorities examined the Supreme People's Court's *Interpretation on Several Issues Concerning the Application of Law in Trials of Personal Injury Compensation Cases* in 2003 and concluded that the provisions calculating disability and death compensation based respectively on the per capita disposable income of urban residents and the per capita net income of rural residents were inconsistent with the principles of the constitution. The review authorities fully considered the changes brought about by urban-rural integrated development to the social context, and upon reexamining the normative provisions, held that differential calculation standards could lead to urban-rural inequities in case adjudication, thereby rejecting such differential provisions.

The procedure of using empirical methods to ascertain the implementation effects of normative documents has also become part of the argumentation in the review process.¹⁹ At present, in the review practice of recording and review cases concerning fundamental rights, the review authorities mainly obtain information through research and joint research, symposiums, and written inquiries. The information obtained may concern the social foundation at the time of the norm's enactment, the implementation status after its issuance, and the current social foundation. Possible participants in the review process include the entity submitting the review proposal, the drafting authorities of the normative matters under review, the body implementing the normative matters, as well as experts, scholars, and other citizens. This process shows that China's constitutionality review system differs from Western judicial review models, reflects the characteristics of the people's congress system and democratic centralism, and highlights the dominant role of the legislature in the constitutionality review process.²⁰

III. The Functions and Problems of Argumentation in the Recording and Review Cases Concerning Fundamental Rights

The review should not depend solely on the will of the review authorities; and the review conclusion should be justified through argumentation. Review argumentation serves multiple functions, and strengthening argumentation in the review process not only reflects the prudence of the review authorities in exercising its review power but also is an inherent responsibility in exercising such power. Review argumentation refers to the reasoning and discretionary process through which conclusions are reached regarding the review of normative documents, and the same

¹⁸ Office of Recording and Review of Normative Documents, Legislative Affairs Commission of the Standing Committee of the National People's Congress, *Selected Cases of Recording and Review of Normative Documents* (Beijing: China Democracy and Legal System Publishing House, 2020), 1-3.

¹⁹ Zheng Xianjun, "The Constitutional Nature of Constitutional Review in China," *Law and Economy* 5 (2020): 96.

²⁰ Li Shaowen, "Procedural Design of the Work-Oriented Constitutional Review System," *Law Review* 5 (2021): 25.

review conclusion may be reached through different argumentation thinking.²¹ In the recording and review cases concerning fundamental rights, a form of review argumentation centered on fundamental rights has emerged, which also reflects problems concerning the structure and normative quality of review argumentation.

A. The fundamental rights protection function of recording and review argumentation

The protection of fundamental rights is the key factor determining how argumentation in the recording and review cases concerning fundamental rights should be conducted. Given the individual relevance, high degree of controversy, and social sensitivity of such cases, the demand for argumentation in these reviews is even greater. In addition to the general function of reasoning and argumentation, the fundamental rights protection function of argumentation should also be reflected in the following aspects:

1. The function of transmitting fundamental rights values

Argumentation in individual cases can transmit fundamental rights values across functionally differentiated systems. By identifying fundamental rights values embedded in subsystems such as the social system and the political system and transmitting them into the legal system, it contributes to forming a complete value system for fundamental rights, thereby supporting the concrete realization of the fundamental rights protection function of the recording and review system. The transmission of fundamental rights values in argumentation exhibits three characteristics: (1) the value relevance of the political system; (2) the value transformation of the social system; and (3) the subjectivity of China. The transmission of fundamental rights values in the consideration of public policies and the core values reflected in the examination of implementation effects in light of social change constitute the premise and foundation for the realization of other review argumentation functions, and represent the direct source of the value basis of China's *Constitution*.²² As social facts and public policies forming the broader background for the formulation of normative documents, these elements simultaneously transmit fundamental rights values into the legal system, providing both social and political impetus for the realization of the fundamental rights protection function. "The realization of fundamental rights increasingly depends on changes in the times, shifts in social concepts, and the pre-setting of national political objectives."²³ The modern industrial system established in China is an artificial, politically-driven social solidarity process, and the connotations of citizens' fundamental rights should be observed within the context of China's political development.²⁴ Through receiving plural values from the political system and even the social system, the review authorities integrate them within the legal system through argumentation in the recording and review cases concerning fundamental rights, internalizing them as value support for safeguarding fundamental rights. This model of argumentation continuously provides strong reasoning grounds for the recording and review cases concerning fundamental rights, acts as a driving force behind the generation of broader social effects from individual review decisions, and directly promotes the realization of the fundamental rights protection function of the recording and review system.

2. The function of providing fundamental rights rules

Argumentation in individual case reviews performs the function of providing and updating fundamental rights rules through legitimacy reasoning of fundamental rights restrictions, systematic consideration of fundamental rights, and extraction of rights elements. This mainly includes

²¹ Zhu Yingping, "A Comparative Study of Constitutional Protection of Equality Rights in the United States and Australia," *Journal of Anhui University (Philosophy and Social Sciences Edition)* 6 (2006): 61-66.

²² Li Zhongxia, "What Kind of Constitutional Theory and Method Does China Need: Constitutional Change as a Method," *Journal of Renmin University of China* 4 (2024): 1-3.

²³ Li Zhongxia, "The Social Function of Fundamental Rights," 19.

²⁴ Qi Yanping, *China's Exploration of Fundamental Rights Protection* (Beijing: Law Press, 2020), 13-16.

clarifying the basis and standards of review, defining the scope and connotation of fundamental rights protection, and reshaping the concretized norms of fundamental rights. First, the review authorities, by continuously clarifying the review basis of fundamental rights in individual case argumentation and gradually accumulating review cases, develop general norms that serve as benchmarks for fundamental rights review. “The constitutional normative system is a system of constitutionality review standards constructed around fundamental rights.”²⁵ Since there is some overlap between the recording and review system and the *ex post* constitutionality review system, the constitutionality review function of recording and review has already been exercised in practice,²⁶ and thus recording and review can provide rule-based guidance for the benchmarks of constitutionality review of fundamental rights. Second, review argumentation should clarify the scope of fundamental rights protection, from which specific rights protection rules in the constitution and laws can evolve. Third, the use of systematic interpretation in review argumentation represents structured reasoning under normative texts. Its interpretation of fundamental rights concepts and connotations forms the prerequisite for subsequent protection and remedies of citizens’ rights. The annual report’s exposition of the boundaries and connotations of constitutional norms can produce practical effects equivalent to constitutional interpretation.²⁷ The review authorities can, through “informal constitutional interpretation” in the form of review reports and others, provide clues and recommendations for formal constitutional interpretation, thereby facilitating the development of constitutional interpretation concerning fundamental rights.²⁸ Fourth, review argumentation contributes to the reshaping of China’s fundamental rights protection system. In the recording and review cases concerning fundamental rights, the review focuses on the concretized outcomes of normative documents with respect to constitutional fundamental rights. Normative documents often entail widespread infringements of citizens’ fundamental rights, while the outcomes of recording and review serve to rectify such violations. Review argumentation can play a role both in evaluating the legitimacy of restrictions on fundamental rights and in addressing deficiencies in their protection.²⁹

3. The function of taking fundamental rights as a methodology

In individual case argumentation, attention should also be given to extracting methodological elements of fundamental rights protection. By using fundamental rights as a methodological tool, the legal order amid constitutional changes can be consolidated, and a China-specific system for safeguarding fundamental rights can be refined. Review argumentation demonstrates a skillful analytical approach, revealing the review authorities’ current conception of rights, injecting rights concepts into social life, enhancing citizens’ constitutional and rights awareness, and guiding the normative transformation of how stakeholders think about rights. This includes, for example, warning about risks of fundamental rights violations, assisting in the remedy of citizens’ fundamental rights, and promoting the modernization of the national rule of law. First, the integrity and normative quality of review argumentation can strengthen public confidence in defending fundamental rights through recording and review, enabling society to perceive fairness and justice in each case, and releasing the “kinetic energy” of rights to counterbalance the “potential energy” of

²⁵ Wang Dong, “The Three-Dimensional Structure of Empirical Legal Standards in Constitutional Review: Value, Form, and Function,” *Academics* 5 (2024): 37.

²⁶ Qin Wenfeng and Li Zhongxia, “The Constitutional Review Function of the Recording and Review System and Its Realization: An Empirical Study Based on Annual Reports on Recording and Review over the Years,” *Journal of Soochow University (Law Edition)* 4 (2023): 14-26.

²⁷ The interpretation of the evolving constitutional connotations of family planning norms, as demonstrated in the aforementioned review argumentation of the “case of dismissal for exceeding birth limits under local regulations,” which has had a certain impact on both academia and practice, serves as an example.

²⁸ Liang Ying, “Principles and Approaches for Advancing Constitutional Review,” *Study Times*, December 24, 2018. Here, the author distinguishes the “informal constitutional interpretation” found in review reports from the “constitutional interpretation” formally issued by the competent authority in accordance with statutory procedures.

²⁹ Wang Kai, “The Application of the Proportionality Principle in Recording and Review: Focusing on the Suitability Review,” *Local Legislation Journal* 5 (2023): 5-6.

power.³⁰ The recording and review recommendation mechanism provides citizens and organizations with an alternative channel for rights remedies beyond judicial avenues. The vast majority of fundamental rights cases are initiated upon application. The review recommendation serves as the initial impetus for review, primarily reflecting the subjective rights claims of the requesting party.³¹ Thorough review argumentation can respond in detail to these subjective claims, enhancing citizens' motivation to protect their rights. Second, review argumentation provides methodological guidance for the actions of other stakeholders, directing proper implementation of rights protection measures. Complete review argumentation encompasses the review authorities' understanding of the connotations of the constitution and laws and regulations, the implementation of public policies, and rigorous review logic and analytical methods, which together offer normative guidance for other state organs. This helps reduce legislative or enforcement inconsistencies, arbitrary law application, and divergent rulings in similar cases. Last, the methods and content of review argumentation serve as a practical foundation for academic research, providing empirical material and forming the cornerstone of China's theoretical framework for fundamental rights protection. Strengthening review argumentation makes fundamental rights a more operational method for relevant stakeholders, provides approaches for resolving social conflicts, and fulfills social and state governance functions. This contributes to the modernization of the rule of law and the national governance system and capacity, and enhances the social foundation of the fundamental rights protection system.

B. Practical challenges of argumentation in the recording and review cases concerning fundamental rights

The publicly available review argumentations currently exhibit an overly thin structure, lacking both a stable normative framework and systematic argumentation. The advantages of this approach lie in its low reasoning cost and resource efficiency. Its drawbacks, however, include incomplete argumentation, arbitrary selection of argumentation elements, insufficient logical rigor, and weak verifiability of review conclusions, all of which undermine the effective realization of the human rights protection function. The review authorities show little methodological awareness or technical rigor in presenting the reasoning process and argumentative logic of its conclusions; and the form of review argumentation itself lacks standardization. In terms of argumentation style, the recording and review cases concerning fundamental rights do not exhibit characteristics distinct from other case types, reflecting insufficient attention to the function of safeguarding fundamental rights. This is primarily manifested in three ways: a) the selection of public policies lacks clear value criteria; b) argumentation at the level of fundamental rights norms is insufficient, particularly in enumerating the norms and explaining their connotations; and c) the presentation of social facts relevant to fundamental rights is inadequate, with little focus on the actual infringement of citizens' rights by normative documents.

1. Lack of value criteria in public policy selection

In current recording and review cases concerning fundamental rights, the public policies cited have not yet been governed by consistent selection criteria. Policy considerations often fail to highlight the value of safeguarding fundamental rights, which undermines the function of transmitting fundamental rights values in review argumentation. On the one hand, to ensure legal stability and predictable realization of fundamental rights, the considerations of public policies should adopt the "major decisions and plans of the CPC Central Committee and major national reform directions" as clear and specific review criteria. On the other hand, considerations of public policies are not only meant to ensure the implementation of the CPC Central Committee's decisions and plans but also perform the function of transmitting fundamental rights values within the

³⁰ Guo Daohui, *Essentials of Human Rights Theory* (Beijing: Law Press, 2015), 286.

³¹ Wang Wei, "Coordination Between Objective Legal Order and Subjective Interests: Improving China's Constitutional Review Mechanism," *China Law Review* 1 (2018): 134.

political system. In practice, argumentation at the public policy level neither demonstrates standardized selection criteria nor emphasizes the value of fundamental rights protection. However, if public policies are used as the basis for argumentation, it is necessary first to select the applicable policies and provide reasoning for their application. Given the frequent use of public policies in recording and review, the absence of clear application criteria and thorough explanation may affect the legal integrity of recording and review, making it difficult for review authorities to convey consistency and predictability to the bodies responsible for enacting normative documents.³²

First, the specific scope and significance of available public policies are uncertain. At present, in review argumentation, public policies that can serve as the criteria for reviewing normative documents are not differentiated from ordinary political decisions in terms of significance. Public policies are characterized by their large quantity, broad coverage, high flexibility, strong principles, and diverse connotations. Interpretations of policies vary among different stakeholders and from multiple perspectives. The characteristics of the policies themselves determine that authorities may apply different policies depending on their focus, and varying political considerations may lead to differentiated review conclusions. For example, in the 2021 Annual Report's argumentation on the "case of lifetime prohibition of special industries under local regulations," the national policies actively promoting citizens' labor rights were not mentioned. The delineation between law and policy is also a matter that should be considered in argumentation. For instance, the 2018 Annual Report noted that the establishment of the credit punishment system also raised concerns about abuses of credit punishment infringing on citizens' privacy and other legitimate rights. Unclear criteria for the application of public policies in argumentation may a) lead to uncertainty in review conclusions, affecting the effectiveness of argumentation; and b) undermine the authority of recording and review, affect the independence of review judgments, and cause unnecessary disputes.

Second, there is a lack of selection criteria regarding the relevance and degree of connection between public policies and the protection of fundamental rights. In argumentation for fundamental rights recording and review, public policy considerations are used as an element of argumentation, but the value of public policies in protecting fundamental rights is not emphasized. For example, in cases concerning family planning such as "dismissal for exceeding birth limits" or "employment termination for exceeding birth limits," the argumentation relied on the Party and the state's principles and directions regarding the reform and improvement of family planning service management. These fertility policies are clearly important for protecting citizens' childbearing rights, but this was not appropriately explained in the review argumentation, which affects the practical realization of fundamental rights protection.

2. Insufficient argumentation on the connotations of fundamental rights norms

In argumentation for recording and review cases concerning fundamental rights, there should be an analysis and explanation of the normative basis of fundamental rights. However, in practice, this level of argumentation is insufficient, affecting the function of providing fundamental rights rules and undermining the persuasiveness of review conclusions.

First, the citation of normative bases in review argumentation is selective, enumerative, and generalized, lacking theoretical awareness in forming review standards. On the one hand, the citation of review bases lacks a standardized pattern, and some cases do not clearly specify the exact review bases. A systematic review method covering constitutionality and legality can identify all unconstitutional and illegal issues in normative documents, but these were not detailed in the review argumentation, and this manner of citing normative bases increases the ambiguity of the review argumentation. Moreover, the invocation of the constitution in recording and review conclusions is indecisive. The argumentation does not clearly specify which cases should be elevated to constitutional standard review, or whether they can be concluded within the scope of

³² Li Songfeng, "Political Review in the Recording and Review Process," *Peking University Law Journal* 5 (2023): 1255.

legality review. On the other hand, review argumentation lacks adversarial reasoning, with a tendency to cite only supportive review bases while ignoring negative ones. When reviewing provisions in local regulations such as “all levels and types of ethnic schools should teach using their ethnic language and writing or the commonly used language and writing of their ethnic group” and “with the consent of local education authorities, some courses in ethnic schools with conditions may be taught in the Chinese language and writing,” it is necessary to explain the relationship between Article 4 of the *Constitution*, which stipulates “All ethnic groups shall have the freedom to use and develop their own spoken and written languages,” and Article 19, which stipulates “The state shall promote the common speech — putonghua — used nationwide.” The absence of argumentative rigor in review argumentation can create the appearance that review conclusions cite only supportive bases while ignoring negative ones, increasing the risk of challenges to the conclusions.

Second, review argumentation inadequately elaborates on the connotations of constitutional fundamental rights norms, lacking conscious exploration of specific rules for fundamental rights recording and review. First, the connotations of fundamental rights in the constitution relate to the legitimacy of specific fundamental rights norms and are central to argumentation, which should be explained and argued in recording and review work. Second, the review argumentation lacks specific explanation regarding the scope and limits of citizen rights protection. Third, when fundamental rights conflict with public interests, the review authorities do not conduct reasoning on interest balancing, and the justification for rights limitations or additional obligations is insufficient. The 2019 Annual Report noted that some local regulations stipulate that “traffic management departments of public security organs may consult and copy the communications records of parties when investigating traffic accidents.” The review authorities issued a negative review conclusion but did not explain the constitutional connotations of “communications freedom and communications confidentiality,” leaving the scope of this fundamental right unclear and causing multiple doubts in both practice and academic research. In 2020, Zhu Zhengfu, member of the Chinese People’s Political Consultative Conference, proposed that collecting airport construction fees, which involves the expropriation of citizens’ private property, should undergo constitutionality review. The review authorities held that “collecting the Civil Aviation Development Fund does not constitute expropriation or requisition of private property under Article 13 (Paragraph 3) of the *Constitution*.”³³ Since expropriation or requisition of private property involves the protection of citizens’ property rights under the constitution, the review authorities should explain the concept and boundaries of expropriation or requisition in argumentation and then clarify the nature of collecting the Civil Aviation Development Fund. In the argumentation on the “case of local regulations requiring local household registration for taxi driver qualification,” the dual function of labor rights was already reflected, which could have been used to further elaborate the norms’ connotations of the state’s proactive promotion of labor rights. In summary, the lack of relevant conceptual explanations limits the effectiveness of protecting citizens’ fundamental rights.

3. Insufficient elaboration of social facts concerning fundamental rights

In the argumentation of existing recording and review cases concerning fundamental rights, insufficient attention is paid to whether the subjects under review have actually infringed upon citizens’ rights, particularly the infringement of individual citizens’ rights. The review authorities’ explanation of practical factors affecting the development of fundamental rights and related social facts is inadequate, failing to provide an objective basis for the functional realization of a fundamental rights-oriented approach.

On the one hand, review argumentation lacks elaboration on facts of citizens’ rights being violated and lacks extraction of commonalities from specific cases. Recording and review cases concerning fundamental rights are generally related to judicial cases, whereas the recording and

³³ Jiao Minlong and Wang Yijun, “NPCSC Corrects ‘Red-Headed Documents (Official Directives),’” *China Youth Daily*, January 25, 2021.

review procedure is an independent normative document review process, separate from judicial proceedings. Citizens are generally absent; even in individual case reviews where citizens hold the right to initiate review, they may have no freedom to participate in review judgments or decisions, which easily leads to information asymmetry.³⁴ Recording and review is an abstract normative process, with a weak connection to individual judicial cases. Moreover, written reviews may encounter the issue that the facts presented by the drafting authorities do not necessarily align with the actual review facts or objective reality.³⁵ Specific individual cases continuously expand public attention to recording and review cases concerning fundamental rights. The large number of review proposals submitted by citizens indicates that the implementation of certain normative documents may have already caused infringements on citizens' fundamental rights. This underscores the importance of integrating review argumentation with real cases for the accuracy, credibility, and effectiveness of citizens' rights remedies in review conclusions. If argumentation fails to elaborate on commonalities among specific cases and reach consensus on focal issues, such as whether legislative acts constitute infringements on citizens' fundamental rights, the conclusions of constitutionality review will struggle to gain social credibility.

On the other hand, review argumentation still shows insufficient empirical examination of changes in the objective environment, and the explanation of the implementation effects of the subjects under review is not detailed enough. Insufficient elaboration on social facts may lead to review conclusions that are overly subjective and lack persuasiveness. Some scholars argue that "If constrained by a purely normativist approach that entirely ignores the objective environment, normativism transforms from being open to rigid, from relative to absolute, and legal conclusions inevitably become disconnected from the demands of the times."³⁶ From the practice of the U.S. Supreme Court in interpreting fundamental rights, it can be observed that the connotation of the same fundamental rights provision changes with shifts in the objective environment.³⁷ Such changes inevitably affect the implementation effects of the relevant norms, forming an interactive process. Currently, in review argumentation, descriptions of implementation effects and changes in the objective environment remain general and abstract. For example, a series of cases reviewing and clearing norms related to population and family planning provide an appropriate opportunity to elaborate on changes in China's objective environment and the historical development of its population. How effective were these norms in controlling population size? To what extent did they influence population numbers and promote pivotal developments in China's demographic trajectory? At present, the descriptions in review argumentation regarding these issues lack persuasiveness.

IV. Constructing an Argumentation Model for the Recording and Review of Fundamental Rights with Human Rights Protection as the Starting Point

Whether in recording and review cases concerning fundamental rights or other types of recording and review cases, the argumentation logic primarily reflects legislative logic and policy implementation logic. The function of protecting citizens' rights within the recording and review mechanism remains to be further emphasized, and the deficiencies in review argumentation techniques exacerbate this issue. Against the backdrop of the continuous development of human rights protection in China and the gradual enhancement of the recording and review system's role in safeguarding citizens' rights, exploring how to improve the argumentation approach and methodology for recording and review cases concerning fundamental rights not only aligns with the

³⁴ Yuan Yong, "The Constitutive Structure and Operational Mechanism of China's Normative Review Power," *Journal of Henan Normal University (Philosophy and Social Sciences Edition)* 2 (2012): 70.

³⁵ Li Lei, "Exploring the Optimization Mechanism for Doubts in the Conclusions of the NPC Recording and Review," *Law Science* 12 (2021): 58.

³⁶ Han Dayuan and Wang Jianxue, ed., *Fundamental Rights and Constitutional Precedents* (Beijing: China Renmin University Press, 2013), 28.

³⁷ *Ibid.*, 28.

current objectives of the recording and review system but also meets citizens' practical expectations for protecting and remedying their fundamental rights.

A. Clarifying the argumentation purpose and value based on human rights protection

To realize the rights protection function of the recording and review system, recording and review cases concerning fundamental rights should adopt a function-oriented approach led by rights protection, establishing an argumentation model centered on safeguarding rights. Recording and review should address the potential infringement of fundamental rights by public authorities, such as the state's legislative power, and should regard the realization of fundamental rights as the ultimate value goal.

The functional orientation of the recording and review system determines the objectives and direction of review argumentation. As a constitutional supervision mechanism, the recording and review system safeguards the implementation of constitutional and legal provisions, ensures the strict enforcement of directives from the CPC Central Committee, and maintains legal unity by correcting unconstitutional and illegal normative documents. Its ultimate purpose is to protect the fundamental interests of the people.³⁸ Within the recording and review system, human rights protection is the ultimate goal. In particular, in the argumentation of recording and review cases concerning fundamental rights, the focus should be on realizing the function of protecting citizens' rights. General Secretary Xi Jinping's important discourses on human rights serve as a theoretical guide for effectively safeguarding citizens' rights in the recording and review process. General Secretary Xi Jinping has emphasized that "the fundamental purpose of advancing comprehensive rule of law is to protect the rights and interests of the people in accordance with the law."³⁹

The guiding trend of the rights-protection principle within the recording and review system has gradually strengthened. In the argumentation of recording and review cases concerning fundamental rights, the principles of constitutional supremacy and human rights supremacy should be upheld, with the protection of citizens' rights as the central focus. First, within the principles of modern rule of law, the status of human rights principles has increasingly risen. The development of a market economy has continuously heightened individuals' awareness of their rights, and review proposals serve as an important channel for expressing citizens' subjective rights claims. This also explains the increasing number of review proposals submitted by citizens in the recording and review process. Second, the proportion of rights protection within the functional structure of the recording and review system has steadily increased.⁴⁰ The Annual Reports on Recording and Review repeatedly emphasize including various normative documents that directly involve citizens' rights and obligations within the scope of recording and review, and the concept of "rights — interests" has been employed to expand the scope of citizens' rights protection. Some scholars further argue that the positioning of protecting citizens' rights in recording and review should focus on safeguarding individual rights in specific cases, which differs from the protection of citizens' rights under the broader function of legal unity.⁴¹ Therefore, by clarifying the purpose of argumentation

³⁸ Office of Recording and Review of Normative Documents, Legislative Affairs Commission of the Standing Committee of the National People's Congress, *Theory and Practice of Recording and Review of Normative Documents* (Beijing: China Democracy and Legal System Publishing House, 2020), 230.

³⁹ Institute of Party History and Literature of the CPC Central Committee, ed., *Xi Jinping on Respecting and Protecting Human Rights* (Beijing: Central Party Literature Press, 2021), 157.

⁴⁰ Zheng Lei and Zhao Jiyi, "Lexical Development of the Basic Functions of the Recording and Review System: Based on a Review of the Reports on Work of the Standing Committee of the National People's Congress and Annual Reports on Recording and Review," *Law and Modernization* 5 (2019): 81; Zhu Ningning, "Recording and Review: The Role of Safeguarding Citizens' Legitimate Rights and Interests Is Becoming Increasingly Prominent; the Legislative Affairs Commission of the NPC Standing Committee Will Further Expand Channels for Citizens and Organizations to Submit Review Proposals," *Legal Daily*, January 9, 2024.

⁴¹ Liang Hongxia, "The Function of Human Rights Protection and Its Approaches of Filing and Review," 67.

based on the principle of human rights protection, the review authorities are required not only to focus on doctrinal interpretations of the normative connotations of fundamental rights but also to pay attention to the factual instances in which citizens' fundamental rights are infringed, completing the review argumentation with the ultimate goal of realizing fundamental rights protection.

This provides a value-based standard for selecting public policies. The value of human rights determines the internal rationale for choosing public policies, which in China's *Constitution* corresponds to the fundamental rights values to be realized. Clearly defining the criteria for public policy selection and providing thorough reasoning in argumentation facilitates the exercise of the fundamental rights protection function in review argumentation and enhances the predictability of review conclusions. First, considerations of public policies should embody the shared values underlying the functioning of the recording and review system at both the political and legal levels. Public policies carry the values of the political system⁴² and serve as a conduit through which the political system conveys fundamental rights values to the legal system. It therefore plays a guiding and reinforcing role in supplying fundamental rights rules, interpreting the connotations of fundamental rights norms, and realizing the function of using fundamental rights as a methodology. For these reasons, the selection of public policies is particularly important. Second, the criteria for selecting public policies need to be clarified, and "fundamental rights values" should serve as the entry point. Fundamental rights, through their "values," bridge the political and legal systems, transmitting value between the two. In the argumentation of recording and review cases concerning fundamental rights, the first step is to consider "shared values" as the key criterion to screen the public policies to be used as argumentation evidence. The final selection is then made according to the extent to which the policy reflects fundamental rights values. Establishing this criterion for judging the value consistency allows public policy considerations to serve as reinforcing argumentation evidence, ensuring that recording and review cases concerning fundamental rights rely primarily on normative elements. It also ensures that the recording and review authorities within the NPC system exercise caution in considering public policies, thereby avoiding overstepping their functional scope and encroaching upon the domain of other authorities.⁴³

B. Refining the argumentation structure and content based on the focus of review

A structured argumentation framework greatly enhances the effectiveness of argumentation and forms the foundation for standardized review opinions. In China, judicial argumentation primarily relies on subsumption reasoning, whereas legislative argumentation more often employs practical reasoning, which also considers the legitimacy and rationality of the norms under discussion.⁴⁴ The logic of argumentation in recording and review is similar to that of legislative argumentation, as both are oriented toward practical reasoning and focus on the argumentation of normative legitimacy. A standardized review argumentation structure comprises the following three elements.

First, it is essential to clearly define the focus of the review, which constitutes the prerequisite for conducting review argumentation. Fundamental rights cases in the recording and review process are primarily initiated upon request, and the unfolding of the review procedure is closely linked to recommendations on constitutionality. By identifying the subject under review and pinpointing the disputes around the core claims of constitutionality review recommendations, the review argumentation can be conducted in a targeted and purposeful manner. Once the review focus is established, the review argumentation of the subject can proceed with emphasis, systematically deconstructing each issue corresponding to the review focus.

⁴² Li Songfeng, "Political Review in the Recording and Review Process," 1253.

⁴³ Zhang Xiang, "Constitutional Procedural Law: A Perspective on the Allocation of State Power," *China Law Review* 1 (2020): 32.

⁴⁴ Zhong Wang, "The Structure, Methods, and Jurisprudential Analysis of Legislative Argumentation," *Seek Truth From Facts (Shi Shi Qiu Shi)* 4 (2020): 59.

Second, the review focus should serve as the entry point for identifying relevant constitutional provisions and other higher-level legal bases, thereby enabling legitimacy argumentation at the normative level. Judicial authorities, in the reasoning sections of their rulings, provide detailed enumerations and separate analyses of the application of laws and regulations; in the judgment sections, they further list the specific legal bases for each ruling. Recording and review argumentation may draw on this procedural model. On the one hand, review argumentation should explicitly specify the applicable review bases and clarify their normative connotations. Different types of fundamental rights require distinct review standards, which depend both on the accumulation of practical cases and on the development of legal hermeneutics. In the review argumentation of individual cases, reference may be made to the three-tiered review formula in the defensive dimension of fundamental rights, following the sequence: “scope of fundamental rights protection — limitations on fundamental rights — constitutionality argumentation and analysis of fundamental rights limitations.”⁴⁵ Argumentation should clearly identify the type of fundamental rights involved in the subject under review, specify the concrete constitutional and legal bases under consideration, delineate the scope of protection of fundamental rights, interpret their normative connotations, and address the legitimacy of any limitations on those rights. On the other hand, constitutionality standards should play the primary role, while other review standards remain subsidiary, with analytical attention flowing dynamically between the constitution and statutory law. Although a hierarchy exists between the constitution and other higher-level laws, there is no fixed rule for their order of application. Therefore, what should be determined is the hierarchical position of review standards rather than their sequential application. Systematic protection of fundamental rights requires not only the internal coherence of the legal order but also the alignment of the overall legal system with the value requirements of fundamental rights. In review, argumentation should be guided by the normative connotations of constitutional fundamental rights, extending this interpretation to laws, regulations, and other normative instruments, thereby achieving a systematic unity of the fundamental rights framework. The NPCSC should attach particular importance to constitutional argumentation in review work, using the normative provisions of fundamental rights in the constitution to regulate and guide the objective legal order.

Third, taking practical cases as the entry point, the legitimacy argumentation at the factual level should be improved. Reassessing the legitimacy of restrictions on fundamental rights in the context of social change requires the use of sociological analytical methods to provide standards and approaches for determining whether legislative facts have changed to a degree warranting revision,⁴⁶ and to assess, based on social effects, whether the concretization of fundamental rights should be supported or rejected. In constitutionality review, adopting sociological analysis of the implementation effects of normative documents as an argumentation strategy is also reflected in the argumentation of U.S. court’s precedents, such as in the shift from “separate but equal” to “separate but unequal.”⁴⁷ The key to the sociological analytical strategy lies in thoroughly investigating and analyzing the implementation effects of normative documents and, through examining policy changes and social transformations, providing timely standards for evaluating the legitimacy of the subject under review at the level of social facts. First, the factual narrative of the violation of citizens’ rights should be improved, with a focus on extracting the rights elements in cases, so as to maintain a rights-protection orientation throughout the argumentation. Relevant judicial cases can provide rich supporting material for review argumentation. In the “case of judicial interpretation on disparities in compensation for personal injury between urban and rural residents,” rural and urban residents in similar circumstances received significantly different compensation amounts in the

⁴⁵ Zhang Xiang, “Constitutional Review of Consequences Attached to Crimes,” 92.

⁴⁶ Zhao Jiyi, “Institutional Positioning and Systematic Development of Changes in Legislative Facts in the Recording and Review Process,” *Law Science* 9 (2025): 66.

⁴⁷ Sun Guangning, “Argumentation Strategies for Fundamental Rights and Their Application: A Case Study of Brown,” *Essays on Legal Methodology (Fa Xue Fang Fa Lun Lun Cong)*, vol. 00, no. 2 (2014): 225-238.

same case.⁴⁸ Large-scale statistical analysis of individual case data can more intuitively demonstrate how the relevant judicial interpretation infringed upon citizens' right to equality. Second, the implementation effects should be elaborated in detail, supplemented by rigorous scientific analysis. A standardized research procedure should be used to ensure the truthfulness and completeness of factual argumentation; diverse perspectives of stakeholders should be included to enhance the contestability of the argumentation; and effective data analysis should be employed to ensure objectivity and scientific rigor in factual argumentation. As the range of stakeholders in recording and review continues expanding and experience in assessing implementation effects of norms has accumulated, what remains to be strengthened is the procedural rigor of empirical investigations, the depth of participation of all stakeholders, and the scientific nature of data analysis. First, clarifying compliance with procedural standards can enhance the persuasive force of argumentation. Since investigations into implementation effects and social foundations should be conducted through formal procedures, standardized review research procedures should be established and selected based on different research needs. Second, the composition of review participants should reflect both expertise and democratic representation, and their review opinions should be fully utilized to strengthen the contestability of review argumentation. The expression of citizens' political participation provides momentum for the development of China's *Constitution*.⁴⁹ Properly adopting citizens' suggestions constitutes a form of democratic dialogue and is necessary for advancing constitutional development.⁵⁰ Accordingly, the opinions raised by review participants, including those diverging from the final conclusion, should be incorporated into deliberation and integrated into the review argumentation in a targeted manner. From legislative equality to review equality, the theory of legal equality in China can be gradually enriched. Last, the implementation effects of norms, current social conditions, and their development trends should be fully analyzed in the review argumentation, and analytical methods should be made more scientific, with appropriate use of data presentation, so as to enhance the effectiveness of fundamental rights review argumentation.

Overall, the types of argumentation bases in fundamental rights recording and review may be categorized into political bases, normative bases, and factual bases. To ensure that the argumentation in individual cases constitutes a coherent and self-consistent whole, and to preserve the normative integrity of the recording and review system, normative bases should take precedence in the argumentation process, with factual and political bases serving as supplementary and reinforcing grounds.

C. Strengthening the argumentation methods and outcomes based on the principle of proportionality

Article 11 of the *Decision* adds "adherence to the principle of proportionality in terms of the measures adopted and objectives that they are aimed to attain" as a key subject of review, indicating that the principle of proportionality has become a review standard and a standardized method of

⁴⁸ For example, in a traffic accident that occurred in Chongqing in 2005, three students on the same vehicle lost their lives. According to the applicable rules, the two students with urban household registration (*hukou*) were each entitled to compensation of more than 200,000 yuan, whereas the student with a rural household registration could receive only a little over 58,000 yuan, despite the fact that the latter had lived since birth with his/her parents in a sub-district in the main urban area of Chongqing. The authoritative basis for this calculation was the *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in Trials of Personal Injury Compensation Cases*, adopted on December 4, 2003, which explicitly provides: Death compensation shall be calculated according to the standard of the per capita disposable income of urban residents or the per capita net income of rural residents in the previous year at the location of the court accepting the case, calculated over a period of 20 years.

⁴⁹ Stephanie Balme and Michael W. Dowdle, *Building Constitutionalism in China* (New York: Palgrave Macmillan, 2009), 2-5.

⁵⁰ Wang Jianxue, "Constitutional Review Procedures as a Platform for Democratic Dialogue," *China Law Review* 1 (2020): 50.

review argumentation. This provision offers an available approach for determining whether the subject under review involves “reducing the rights of citizens, legal persons, and other organizations or increasing their obligations.” Employing the principle of proportionality as a method and technique of argumentation aligns with the rights-protective orientation of fundamental rights recording and review, which takes human rights protection as its starting point, and contributes to enhancing the reasoning quality of review argumentation of individual cases.

On the one hand, the methodological significance of the principle of proportionality lies in its instrumental and operational nature, which enables effective demonstration of whether “the measures adopted and objectives that they are aimed to attain” constitute an improper reduction of the rights or an improper increase of the obligations of citizens, legal persons, and other organizations. First, the principle of proportionality may serve as a structured and methodologically sound instrument for guiding review discretion and for constructing legal argumentation. The logic of the principle of proportionality is formulaic and progressive, following the steps of “legitimacy, adequacy, necessity, and proportionality,” and may be applied to determine whether legislation imposes excessive restrictions on, or insufficiently protects, citizens’ fundamental rights, thereby strengthening argumentation in individual cases.⁵¹ Second, with rights protection as its normative orientation, the principle of proportionality can highlight the rights protecting function of the recording and review system in review argumentation. This is because the principle of proportionality is grounded in human rights protection and has rights balancing as its core function.⁵² Last, applying the principle of proportionality can help clarify the scope and connotation of fundamental rights protection, as it performs this function by calibrating relationships between public power and rights, as well as among different rights.⁵³

On the other hand, the principle of proportionality contains an inherent mechanism for selecting regulatory measures. The review and argumentation authorities can employ the principle of proportionality to articulate the rights protection rationale underlying their conclusions and to clarify the complex balancing of interests involved in recording and review cases concerning fundamental rights. Some local regulations impose strict joint-governance measures and disciplinary sanctions on civil servants who violate the family planning policy, such as the rule of “dismissal for exceeding birth limits,” which implicate citizens’ right to childbearing, right to work, and other rights. The principle of proportionality can be applied as a method of argumentation in these cases. First, the disciplinary measures prescribed in the local regulations constitute an excessively severe restriction on citizens’ right to childbearing and impose improper obligations on their right to work. By linking the right to work to compliance with the state’s family planning policy, these measures result in a misalignment between rights and obligations. Second, when comparing the restriction on citizens’ right to work with the social and economic benefits achieved, the former constitutes a thorough limitation rather than the least restrictive means. Therefore, the measures fail to satisfy the requirement of proportionality *stricto sensu*. For public servants who violate the family planning policy, imposing dismissal effectively deprives them of the opportunity to re-enter public service in the future, which also represents a substantial limitation on their right to work. By contrast, alternative measures such as fines could achieve the punitive purpose in a more moderate manner. Applying the principle of proportionality in such cases can help clarify the boundaries of state restrictions on citizens’ right to childbearing and the protective limits of citizens’ right to work.

V. Conclusion

⁵¹ Wang Kai, “The Application of the Proportionality Principle in Recording and Review: Focusing on the Suitability Review,” 1-16.

⁵² Mei Yang, “The Legislative Application and Development of the Proportionality Principle,” *Journal of Gansu University of Political Science and Law* 4 (2022): 2.

⁵³ Liu Quan, “A New Interpretation of the Chinese Constitutional Basis of the Principle of Proportionality,” *Political Science and Law*, *Political Science and Law* 4 (2021): 68.

With the development of China's modern human rights protection efforts, higher demands have been placed on the human rights protection function of the recording and review system. This paper examines the argumentation approaches of review authorities through an analysis of recording and review cases concerning fundamental rights. To strengthen the protection of citizens' rights in recording and review, such cases should reflect a argumentation path distinct from other types of cases, guided by the logic of fundamental rights protection. In the review argumentation process, emphasis should be placed on whether the subjects under review violate constitutional or statutory provisions concerning citizens' rights and whether they result in actual infringements on such rights. To this end, the NPCSC should seize opportunities during review argumentation to clarify the normative connotation, scope of protection, and protective rules of fundamental rights, thereby establishing a benchmark for fundamental-rights-based recording and review and enhancing the system's rights protection function.

Continuous improvement of review argumentation relies on the accumulation and analysis of practical cases. While the Annual Reports on Recording and Review are limited in length and cannot fully disclose argumentation content, a regular and institutionalized system for publishing guiding cases should be established. Such a system should include complete and standardized review opinions, ensuring that review argumentation is both normative and comprehensive. Currently, channels for publishing recording and review cases are gradually expanding, the number of cases is increasing, and the scope of reviews is broadening. Greater transparency means that the argumentation process is subject to closer scrutiny, which should be leveraged to further improve review argumentation. In this way, a recording and review system suited to China's national conditions can be developed. It invigorates theoretical development through practice and contributes Chinese insights to the global system for the protection of fundamental rights.

(Translated by *JIANG Yu*)