

On the Relationship between the Representative and the Represented in Representative Litigation

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Abstract

In representative litigation proceedings, the relationship between the representative and the represented is a hallmark that defines different types of representative litigation, and also determines the way in which collective litigation procedure functions. The definitions of the representative as either an agent or a trustee of the represented characterize two distinct types within the relevant systems. The role and status of the representative in the litigation determine the scope of their authority and the various ways in which such authority is acquired. For a long time, the academic community has touted the existing representatives-as-agents arrangement as distinctive and innovative. However, few have questioned the potential side effects of this arrangement. As one of the tools used to resolve group disputes, representative litigation should transcend the confines of traditional individual litigation patterns to establish a system that allows for the maximization of its institutional functionality.

Keywords

Representative Litigation, Litigation Undertaking, Litigation Representation, Group Litigation

1. Introduction

China's representative litigation system is built on the foundation of collective litigation and absorbs the functions of the litigation representation system (Bi & Sading, 2019: p. 109). The main features of representative litigation are the following: Firstly the multiplicity of litigation subjects. It is the multiplicity of parties on one or both sides that gives rise to this system. Secondly, the representa-

tiveness of the subject of the litigation. China has introduced the system of representative litigation since 1991, which is a scientific initiative. The representative is both a self-interested party and undertaker of the litigation. Thirdly the extension of the legal effect, i.e. the expansiveness of the *res judicata*, the decision of the representative action in our country has a direct expansive effect on the registered and an indirect expansive effect on the unregistered rights.

This system is divided into two categories: representative litigation with a predetermined number of representatives and representative litigation with an indeterminate number of representatives. After reading and studying existing analyses and arguments in academia, one may note that many scholars opine that these two categories in the system have not achieved the legislators' original intentions and aspirations. This is mainly due to the difficulty in finding the corresponding applications of the aforementioned two categories in the legislation in the actual judicial practices for collective litigation. Courts' practices usually adopt the methods of "cases filed separately being heard jointly", "cases being filed separately and also heard separately", "exemplary litigation", "cases being uniformly filed and also uniformly heard", and "representative litigation", but it's challenging to align any of these methods with the representative litigation with an indeterminate number of plaintiffs as stipulated by Article 54 of the *Civil Procedure Law*. Some scholars even questioned whether this system is of too limited practical value and should be replaced with the class action system of the United States (Xu, 2019: p. 108). What's even tenser is the lack of motivation for the court to apply this system in practice. For a long time, scholarly discussions have primarily focused on making comparisons with foreign systems or criticizing the inadequacies in the relevant Chinese systems, scarcely proposing any practically-operational suggestions. Particularly lacking are detailed analyses and arguments on China's existing system and its technical aspects, which has resulted in an ongoing stagnation in solving the problems.

In theory, the author opines that the litigation status of representatives is one of the core issues that urgently need to be addressed. Properly determining the litigation status of representatives plays a crucial role in fulfilling the rightful procedural value of the representative litigation system.

To determine the litigation status of representatives, it is vital to clarify the relationship between representatives and those they represent. Currently, if we interpret Articles 53 and 54 of the *Civil Procedure Law* using a semantic interpretation approach, representatives are agents of the parties being represented. They are not the parties themselves (Shi, 2021: p. 164).

The key breakthrough in addressing the deficiencies of our existing representative litigation system lies in how to reasonably address the relationship between representatives and those they represent. In order to properly define the litigation status of representatives and clarify the relationship between representatives and those they represent, one has to address questions such as: who are the parties to the litigation, the representatives or each individual in the group being represented? If only the representatives are deemed as the parties to the litiga-

tion, why can each individual in the group benefit from the litigation outcome? Where does the authority of the representative originate? Is it authorized by the parties or granted by the law?

2. The Relationship between the Representative and the Represented: Displaced Arrangement

Representative litigation emerges as a procedural system based on collective litigation. Within the traditional theoretical framework, collective litigation arises when the subject matter of a lawsuit is the same or of the same nature. Therefore, all relevant parties in a dispute can litigate. However, in cases involving a large number of parties, traditional individual litigation and collective litigation both demonstrate insufficiency in terms of litigation space and time. This gives rise to the representative litigation system, where representatives participate in the litigation on behalf of the parties, thereby offering one available solution to the said problem. However, the participation of representatives in litigation is not a comprehensive solution to all issues. The role and status of representatives in the litigation proceeding and the positioning of the relationship between representatives and those they represent are primary issues to be considered following the election of the representatives. China's existing system adopts the traditional litigation representation framework where representatives are positioned as agents for other parties to the lawsuit. As a result, the rights of representatives to conduct litigation are restricted. Under statutory circumstances, the representatives' statement of intent requires the consent of other litigants they represent which adds to the negative burden of representative litigation.

Problems Underlying China's Representative Litigation System

The essential characteristic of collective litigation is that one or both parties consist of two or more persons. Whether it is mandatory collective litigation or common collective litigation, in the litigation proceedings they both result in the same outcome, namely, a consolidation of the subjects of an action. Therefore, regardless of the number of litigants in collective litigation, they are all consolidated subjects and parties to the litigation. It is based on this concept that China's representative litigation system comes into being. Article 53 of China's *Civil Procedure Law* stipulates, "A collective litigation action in which one party consists of numerous persons may be brought by a representative elected by such persons. The litigation acts of such representative shall be binding on all members of the party he or she represents. However, the representative's modification or relinquishment of claims, or recognition of the other party's claims or involvement in mediation shall be subject to the consents of the parties he or she represents." Here, the term "party" used in the legal text should refer to litigants. Thus, in China's representative litigation, each participant among the many is a litigant conducting the litigation in their own name and is bound by the court's decisions. In practice, expressions used in court judgments such as "the repre-

sentative collectively elected by the 169 plaintiffs...” or “the 189 plaintiffs in the initial instance” (*Appellate Case, n.d.*), along with the practice of even listing all the individuals who were engaged in the litigation and registered by the court, further prove that every participant in the lawsuit is regarded a litigant. China’s representative litigation system is designed exactly by defining all participants as litigants and adhering to the framework of traditional litigation principles. This consequently traps the subsequent arrangements within the confines of traditional theories. The idea of treating all interested parties as litigants naturally aligns with traditional theoretical frameworks and is not subject to much criticism. However, a collective litigation system built upon it has to contend with institutional bottlenecks, thereby diminishing its significant potential in addressing group interests or even societal welfare.

According to the traditional litigation theory, since all participants of a party consisting of numerous persons are litigants, they should conduct the litigation in their own names and complete the entire legal procedure accordingly. However, to alleviate the burden of involving numerous persons simultaneously in a single litigation, it is preferable not to have all persons participate in the litigation. This gives rise to the emergence of litigation representatives. Judicial interpretations indicate that generally, when the number of litigants exceeds ten¹, representatives should be elected to participate in the litigation. According to China’s current system, the representatives chosen by the litigants are equivalent to their litigation agents, possessing general powers of attorney though lacking the authority to make decisions regarding substantive rights. In the context of traditional theory, after entrusting their litigation agents, litigants may still participate in the litigation proceedings alongside the agents. However, in representative litigation, litigants who have selected a representative may not participate in the litigation themselves. If they fail to elect representatives, litigants in mandatory collective litigation can participate in the proceeding themselves; meanwhile, in common collective litigation, they may file their cases separately². Because all participants of the collective litigation are litigants, the representatives they elect cannot act beyond the litigants’ intentions. Even if a representative is also one of the litigants, his or her litigation actions are still subject to the will of others.

Excessive restrictions on the right of the representative have largely weakened the representative’s status as the main body of the litigation, resulting in a lack of motivation and an inability to achieve efficiency in the litigation. In addition, based on our social stability of the overall situation traditionally, the court and the government in fact do not want to encounter cluster litigation cases. In that case, the law also does not provide for what must be done, the court does nothing is inevitable, so involving a large number of parties to the cluster of litigation, the

¹Article 75 of the *Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China*.

²Article 76 of the *Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China*.

trial staff instead have “nothing to do” feeling, the representative of the Belittle, neglect, or even contempt, which to a certain extent also diluted the main body of the main value of the litigation on behalf of the main body, function and status.

3. The Essence of the Problems

The academic community of civil procedural law has consistently positioned China’s representative litigation system as a new system that combines the strengths of both collective litigation and litigation agency systems (Song, 2017: p. 111). This claim likely stems from the interpretation of the legislation, holding the view that this system is established by incorporating the advantages of these two systems. Article 54 of the *Civil Procedure Law* stipulates that “The litigation acts of such representative shall be binding on all members of the party he or she represents. However, the representative’s modification or relinquishment of claims, or recognition of the other party’s claims or involvement in mediation shall be subject to the consents of the parties he or she represents.” Clearly, the legislation places representatives in the role of general litigation agents, and the authority of representatives is equivalent to that of litigation agents who are not granted the power to make decisions regarding substantive rights (Zhang, 2016: p. 154). If representatives need to undertake litigation acts that could lead to substantive consequences, they must obtain the consent of those they represent. In this context, the legislator places paramount importance on respecting the private autonomy of the represented. It seems unobjectionable, as those being represented are also litigants and shall have the right to autonomously decide changes and waivers of their claims, and settlements related to their litigation requests. However, the legislator has only employed unidirectional thinking here. Firstly, the law doesn’t explicitly define how the consent of those being represented should be expressed. Is explicit agreement required for consent, or is the absence of the statement of intention considered as consent? Secondly, the law does not address how to handle cases where those represented refuse to render consent. If a settlement is advantageous to the majority, should the objections of a minority be accommodated? Similarly, if a change in claims benefits the majority and a minority has not expressed their opinion, should the majority yield to the minority? It can be inferred that the focus of Articles 53 and 54(3) of the *Civil Procedure Law* is not on how the consent to the representatives’ acts is obtained, but rather on delineating the boundaries of representatives’ authority. Imagine how the role of a representative as an agent would be realized without the aforementioned provisions.

The current arrangement significantly diminishes the utilization rate of representative litigation in terms of safeguarding collective rights. According to relevant surveys, China’s current representative litigation procedure can only be applied in cases where the party consisting of numerous persons raises a generalized claim and the litigants form a relatively stable group capable of mutual communication and easy to reach a consensus, particularly when there are ex-

isting figures assuming leadership roles within the group (Wu, 2009: p. 69). Only under such circumstances is it convenient for the court to adopt the approach whereby the litigants elect their representatives for the proceedings. Conversely, in cases involving a large number of litigants with distinct and specific claims, and where individual verification of the facts and amounts upon which each litigant's claim is based becomes necessary, consolidating the trial under such circumstances would actually complicate the case. Judges would therefore be more inclined to separate cases rather than employ representative litigation (Wu, 2009: p. 69).

It can be observed from such reality that this legal provision overlooks a crucial fact: litigation representatives themselves are also parties to the litigation. They become representatives and engage in litigation because they share common interests with the majority. Without recognizing this fundamental premise, the law treats and examines representatives as individuals, with each action of the representative requiring approval from the principal. This would undermine the basis of collectivism in cases of representative litigation. Undeniably, conflicts of interest may exist between representatives and those they represent, thereby giving rise to the risk that representatives, driven by their own interests, collude with the opposing party to the detriment of the interests of those they represent. However, addressing these issues through an authorization and consent-based approach does not offer a real solution; on the contrary, it can introduce operational complexities to the proceedings. In resolving the issue of how to obtain consent from group members when a representative settles the dispute with the opposing party, the United States legal system offers some operational guidance, namely, with notices provided to the parties to the extent possible, to allow dissenting parties to opt out of the group and initiate individual proceedings. After notice is issued, parties who have not expressed their stance are regarded as having accepted the settlement proposal (Wang, 2008: p. 267).

3.1. A Comparative Study on Extraterritorial Systems

Although legislation categorizes representative litigation into two types based on whether or not there is a fixed number of participants upon the commencement of the proceeding. In fact, for the participants concerned in a collective action, the number of participants is always fixed, regardless of what type of representative litigation it is. Even in cases of so-called representative litigation with an undetermined number of participants, once the announcement period expires and the court registration process is finalized, individuals listed as registered participants in the court's judgment are all regarded as parties to the litigation. This is for sure. Thus, the distinction between a determined and undetermined number of participants only applies at the outset of the litigation and is used to guide whether a public announcement is required. In this regard, China's representative litigation system differs significantly from Japan's designated litigant system and the class action system in the United States. Firstly, in Japan's designated litigant system, it is explicitly stated that those being designated are liti-

gants. In other words, those who are not designated are not considered litigants. Designation can occur either before the litigation is initiated or during the course of a pending suit. “Designation during the course of pending suit naturally leads to the withdrawal of those who designate the litigant.” (Shindo, 2008: p. 560) Therefore, according to the Japanese system, only the designated litigants, i.e. those who specifically participate in the litigation, are parties to the litigation, while others who are involved in the designation process are not considered litigants thereafter. Other litigants who share common interests with those already involved in the pending suit can designate these litigants as their own representatives and entrust them to conduct the litigation (Nakamura, 2001: p. 84). Secondly, in the United States’ class action system, although only one or two individuals file the lawsuit, the law fictitiously establishes a collective entity, with those filing the lawsuit acting as representatives of the collective. The class action brings isolated individuals together as a collective to jointly confront a powerful opposing party. The collective represents itself and its members in adopting litigation to defend their legitimate rights and interests. Absent members in a class action are not litigants in the traditional sense; they do not participate in the litigation proceedings (Wang, 2008: p. 2). The definition of the scope of litigants determines the different relationships between representatives and those they represent. If only representatives are deemed litigants, while other interested parties are not, it would render it impossible for representatives to act as litigation agents for other individuals. The group litigation in the United States is a system rooted from the equity law, and initially originated from the British representative litigation. In the process of the introduction to Chinese system, the applicability of the process and feasibility of the system lacks sufficient theoretical support and system design guidelines. However, its positive significance should not be underestimated, from its form to content. Firstly, the group litigation adopts the system of “implied joining and express withdrawal”. Secondly, there exists a potentially effective incentive mechanism. Thirdly, the scope of application of the group litigation is precise—focusing on a large number of small amount of request for litigation cases.

3.2. Rationales for Choosing between the Two Mechanisms

The solution to the problem of defining the relationship between representatives and those they represent is the core issue of group litigation, namely, representative litigation. The point for addressing this issue should start with the functions of the representative litigation system. A rational arrangement should allow the representative litigation system to fully exert its functions. The institutional design of a new type of litigation should be based on mechanisms that align with its inherent requirements, rather than imposing traditional institutional constraints upon it.

While on the surface, representative litigation appears to be a collective action involving the consolidation of subjects consisting of numerous persons, in a certain sense, group litigation is also a response to the complexities of modern so-

cial developments. The increasing complexity of modern society has led to situations where a single human action may benefit or harm many people. As a result, the traditional litigation system, which treats legal disputes solely as matters between two parties, becomes inadequate (Cappelletti, 2005: p. 372). Individuals often fail to effectively protect themselves against such harm. Even when individuals have a legal cause of action, there may be other factors hindering judicial relief: their individual rights might be too fragmented, dispersed, or insignificant to motivate them to seek legal remedies; they may not even be aware that their rights have been infringed upon; they might fear the powerful party infringing on their rights; and, of course, the high costs of litigation could deter them from seeking relief before the court. It is therefore, necessary to move beyond the fundamentally individualistic and laissez-faire 19th-century litigation conception and introduce new litigation concepts that can uphold modern society's collective remedies and procedures. In fact, one of the most intriguing features of the development and evolution of modern justice is the exploration of new remedial methods and procedures. However, the traditional notion of litigation restricts the right to sue to subjects whose individual rights in a narrow sense have been infringed upon. For example, it may grant the right to sue to the owners of adjacent property in cases of environmental pollution or regional infringements.

Since the latter half of the last century, representative litigation and other related forms of group litigation have experienced significant development. Group litigation serves the following purposes: 1) attaining judicial relief. Group litigation is an effective tool for enforcing substantive laws, as complex substantive issues require a practical and cost-effective means of implementation; 2) elevating substantial equality between the plaintiff and defendant. When litigating individually, group members often lack the economic resources and litigation capacity to effectively counterbalance the opposing party. Only through group litigation can numerous members gather their strength to confront the opposing side; 3) curbing illegal conduct by large corporations. The defendants in group litigation are typically large companies that impact society at large. Group litigation can compel these powerful companies to relinquish gains of illegal proceeds (Wang, 2008: p. 60). Therefore, the functions of group litigation go beyond those of simple collective litigation. To fully explore such value of group litigation, it is necessary to thoughtfully and rationally design its institutional arrangements. Merely transplanting traditional systems is insufficient. If the function of protecting collective interests inherent in representative litigation cannot come into full play, we would lose a highly advantageous tool in the context of modern litigation systems. Satisfying oneself with wearing new shoes but treading the old path, or using new vessels for old wine, and simplistically treating representative litigation as collective litigation, or positioning representatives as mere agents of the represented, is akin to burying a brilliant gem in the mire.

From the above discussion, it is evident that whether considering representatives as agents of the represented or as the litigation undertakers will lead to

vastly different trajectories for the relevant litigation proceedings, and it will also result in significant variations in the value of group litigation procedures. Positioning representatives as agents of the represented would diminish their proactive role in litigation and complicate procedural advancement. On the other hand, such an arrangement would necessitate treating all interested parties as litigants, and this consolidation of parties makes it challenging for the court to transcend individual claims and focus on shared factual or legal issues. The court would be required to address the demands of each litigant individually. Conversely, in the scenario of litigation undertaking or litigation trust, the court only deals with one consolidated claim of the so-called representatives and the represented. This enables courts to focus on the litigation where the undertaker acts as a litigant, while the judgments rendered address the claims of the represented party.

Of course, the shift in the role of representatives will also impact the design of numerous procedural stages. One example is the issue of notification. Because Japanese law adopts the designated litigant system, the relevant parties are clearly defined, irrespective of whether the designation takes place before or after the litigation is initiated. The court is spared from the need to serve numerous legal documents to the designating parties, but only needs to verify the validity of the designation. At the same time, since the designated litigants are the litigants themselves, during the proceedings the court faces only a few designated litigants. In contrast, under the United States' class action procedure, the one or two individuals initiating the lawsuit are litigants themselves, eliminating the process of designation. Individuals seeking class action status are required to demonstrate the class's existence to the court. Moreover, they must issue notices to class members for matters like settlements, so as to address issues such as whether class members wish to opt out or hire their own attorneys. Between these two systems, considering the differences in legal traditions and the overall institutional disparities in the litigation procedure, the litigation undertaking model might be relatively easier for Chinese law in transitioning the role of representatives to something other than that of mere agents. It's worth noting that even within Japan's designated litigant system, challenges remain concerning the election of representatives. In comparison to the institutional design of the United States law, where representatives autonomously assume their role, the Japanese system still exhibits noteworthy limitations. As the relevant legal system matures in practice, there may be potential for further improvement and development.

There may be conflicts among the representatives, but it is unlikely that they will have a conflict of interest with a big difference, because the interests of representative's and the represented are bundled. So under this system, unless there are ulterior motives, the content and scope of the authorization accepted by the representative should be similar with his or her own substantive goals and litigation interests. 1) Giving the representative of the right of action is to trust as one of the basic mechanism. But, if the representative of the abuse or do not con-

scientifically perform their duties as will have adverse consequences, more likely to stir up the litigation, the court should be ex officio supervision, review, on the ability to litigation, litigation exercise of the legitimate or not, litigation claims typical or not, and many other aspects of the review, once found different, classified responsibility or to be removed. 2) If there is a counterclaim and the counterclaim is successful, two kinds of claims of the respective results cannot be legal offset. And from the defendant's counterclaim can be seen on behalf of the difference between the interests of litigants, litigation behavior is justified or not, so as to find the appropriate path to be bridged.

4. China's Choice: Litigation Undertaker—Beyond the Traditional Approach

It is undeniable that the modern judiciary has assumed greater responsibilities in addressing group actions compared to the past. To overcome the limitations faced by group litigation within the confines of the traditional theoretical framework, certain countries have incorporated into their legislation mechanisms that transcend traditional theoretical frameworks. The litigation undertaking system in civil law and the trust mechanism in Anglo-American law are the primary solutions devised to tackle these issues.

4.1. Practices of and Lessons from Extraterrestrial Systems

The system of designated litigants in Japanese civil litigation was established during the amendment of laws in 1926 under the influence of the trust theory in English law. When a group of parties jointly litigates for common interests and consists of numerous individuals who do not belong to specified non-corporate entities, one or several individuals among those sharing common interests can then be designated to represent the entire group and participate in the lawsuit as litigants. The individuals who perform the designation are referred to as “designators”, whilst the chosen individual(s) is termed “designated litigants”. This constitutes the designated litigant system in Japanese law. Designated litigants hold a special legal status in the litigation process. They represent the collective members rather than acting as their agents. Upon completion of the designation process, the designators automatically exit the lawsuit, surrendering their right to participate in the litigation. While the judgment is nominally directed at the designated litigant(s), its legal implications extend to all designators (Nakamura, 2001: p. 83). Consequently, all designators are bound by the outcomes of court decisions. Designated litigants are trustees of the collective members' right to execute litigation. The adoption of designated litigants to carry out litigation on behalf of designators exemplifies a form of discretionary litigation undertaking (Shindo, 2008: p. 557). This arrangement within the Japanese legal framework differs from China's representative litigation in that only designated litigants are the ones participating in the litigation. Once the designation process is finalized, other parties with shared interests naturally withdraw from the litigation, thus no longer being considered as litigants. Whether the designation occurs during

the pending suit or prior to it, only the designated litigant(s) remain as parties to the lawsuit. Consequently, the authority of designated litigants to manage the litigation is not restricted in the same manner as that of proxy agents. To facilitate the litigation process, designated litigants have the autonomy to carry out the litigation in line with their own intentions, including the disposal of some important rights. Although the system of designated litigants emerged during the early stages of legislation under the influence of the British trust system, it still shares fundamental similarities with litigation undertaking in terms of its underlying mechanism. As a result, Japanese scholars also classify it as a variant of discretionary litigation undertaking. The assignment of litigation rights from a right holder to another party through an expression of intent gives rise to discretionary litigation undertaking, which is sometimes referred to as litigation trust. However, considering the potential confusion with Article 11 of Japan's *Trust Act* which also pertains to "litigation trust", it is recommended to refrain from using the term "litigation trust". The designated litigant system serves as an example of legally permissible discretionary litigation undertaking (Shindo, 2008: p. 211).

In contrast, the class action system in the United States employs the trust mechanism within the framework of Anglo-American law in a purer way. The appointment of representatives does not require an election process. Class representatives emerge due to the shared or legal issues presented in the lawsuit which involves a potential group. Upon the court's verification that the conditions for a class action are satisfied, the relevant parties assume the role of representatives for the class. Naturally, the court would assess the fulfillment of legal prerequisites and even the adequacy of the representation before granting confirmation.

4.2. Institutional Arrangement of China's Representative Litigation System

Whether it is the litigation trust or litigation undertaking, both significantly diverge from the concept of agency. According to the theory of litigation undertaking, when a third party replaces (or simultaneously joins) the subjects of rights and obligations under substantive law in conducting litigation as a legitimate party, and the legal effect of the judgment also binds the subjects of rights and obligations, it constitutes a third-party litigation undertaking. In this context, the third party takes on the role of a litigant rather than a litigation agent (Takahashi, 2003: p. 216). The key distinction between a litigation undertaker and a litigation agent resides in the fact that the former acts as a party to the lawsuit in their own name, whilst the latter does so in the name of the represented party. It is evident that for all designators and their own litigation, the designated litigants, as parties to the lawsuit, possess the capacity to carry out the litigation. They are empowered to engage in various litigation activities within the proceedings, without the limitations that apply to proxy agents. The authority of the designated litigants also includes the power to settle the litigation. Even if the designators attempt to impose restrictions, such restrictions would be void

(Shindo, 2008: p. 559). The institutional advantage of such an arrangement lies in the fact that representative litigation addresses common factual or legal issues pertinent to the group. Therefore, the litigants should be those capable of pursuing benefits for the entire group through their litigation activities, rather than functioning as agents who merely follow the instruction of each individual. The designation of a representative strengthens the achievement of group interests, which is also the underlying rationale for adopting this arrangement in Japanese law. In practice, to enhance judicial efficiency, the law must to some extent put aside the individual's right to control the proceedings in collective litigation involving representatives. Only in this way can a firm grasp of the reins in group litigation be guaranteed. If in group litigation the primary emphasis remains on preserving individual litigation rights, an awkward situation could emerge where neither collective nor individual interests can be effectively safeguarded.

As the representative is also a member of the collective group, in general, the representative's interests align with those of the represented individuals. Therefore, even if the representative initiates litigation primarily for their own benefit rather than that of the represented individuals, the litigation outcome should still be advantageous for the represented. The overall collective interest is realized through the implementation of litigation activities by the representative. Considering scenarios where a representative might disregard or even harm collective interests for personal gain, the remedy lies in overseeing the representative and granting mechanisms for the represented to withdraw from the litigation.

Whether applying the trust model or the litigation undertaking system, a common institutional element is that any interested parties who do not participate in the litigation are not acknowledged as litigants in the proceeding. In terms of the legal procedure, the presence of all interested parties matters only in the sense that they are affected by the outcome of the litigation.

5. Conclusion

While legislation and judicial interpretations adhere to the structural model in which litigation representatives function as agents, the changing landscape of societal activities has increasingly revealed the constraints of this arrangement in practice. As a result, there arises a need for suitable modifications to the representative litigation system. Compared with the agent structural model, the litigation undertaker system holds greater advantages. In this arrangement, only the representatives are recognized as litigants. They possess the same power and authority to initiate and carry out litigation activities as the parties to the litigation, without having to seek authorization or consent from other interested parties. The autonomy to initiate lawsuits as a litigant cannot be matched by that of a representative acting as an agent.

In fact, the issues stemming from China's representative litigation system, both in its legislation and in practical implementation, are not merely due to differences in procedural design from analogous systems in other jurisdictions.

The crux of these issues lies in the failure of legislation and judicial interpretations to responsively factor in the evolution of modern litigation and the functional demands of the contemporary time for a new litigation system when determining the functional role of representative litigation and applying fundamental principles of civil litigation into rule formulation. The design of the role of representatives must incorporate an understanding and acceptance of the protective function for group interests inherent in representative litigation.

Of course, beyond the issue of the relationship between representatives and those they represent, there are other matters such as the selection of representatives and the scope of procedural application that merit discussion when modifying the current representative litigation system. Possibly, as the relationship between representatives and the represented becomes more refined and matured, we can anticipate that China's representative litigation system will grow stronger in fulfilling its function of safeguarding collective interests.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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