Dispute resolution: Identity theft in China and Morocco, a comparison (Najib Bouabid):

It is common for humans to rely on their judicial legislations to resolve problems. In our modern world, each country had to develop a certain system which goes by people’s cultures, thinking, or even religion in order to ensure public satisfaction and stability. With such, this power to resolve people’s disputes in courts is through what people call mediation system in dispute resolution.

As someone who came from a country that has quite different system in dealing with problems resolution, I would like to dedicate this paper to making a comparison of two different systems in terms of dispute resolution. This will compromise a certain system that relies on religious law, and another one that is not religious; in other words, this paper will be discussing the differences or similarities in problem resolution in countries that represent these systems, also known as Morocco and China.

Morocco, as it is considered an Islamic country, has made a special type of constitution that is based on both the Sharia law, also known as the Islamic law from the religious teachings, and the French constitution that was obtained from the French colonization back then. Thus, it could be seen that the system in itself provides quite progressive legislations compared to other conservative countries such as Saudi Arabia that entirely depend on the religious teachings to make legislations. The after effects of colonialism allowed the country to open up to the world and try to keep up with global moderation in its legal system as a rule for independence.

On the other hand, China has been known to be contrasted to what was mentioned before; in other words, the constitution separates itself from religious teachings as the socialist system and the Chinese culture dictates. The socialist system, which derives itself from communist and Marxist ideas, states that religious teachings are nothing but opium for society. Thus, it would be natural to find lots of differences in of the constitutional contents. It should also be noted that Morocco is a kingdom which fundamentals differ from China which is a republic as well as they both have different histories and cultures.

When talking about a case of dispute in between the people which is interpreted as a type of dispute, the countries would eventually have different ways to deal with such. This paper will be discussing the problem of identity theft in China, as a problem that any citizen could fall for. It should be noted that the identity theft is dealt with differently in both systems as the severity of punishments deffer in both countries.

When mentioning identity theft in China, the famous Qi Yulin versus Chen Xiaoqi would rise up a story that was made as a huge scandal. Thus, it would be necessary to take it analyzing it as a case that made a huge impact on the Chinese constitutional system for a certain time. In addition to that this paper would eventually examine the same problem in the way it would be handled in a different country’s judicial legal law that is Morocco.

Qi Yulin is known as that young high school girl who grew up in a small village in Shandong province. Just like any other Child within the country, she took the college entrance examination and even got to pass the test. It is usually known that people who pass such exam would get a letter delivered to their home; unfortunately, that never came because a certain powerful person within the small village, in which Qi Yulin lives, took and used the scores and the letter to his personal motive for the purpose of giving it to another high school girl named Chen Xiaoqi, who happened to be his daughter and did not manage to pass that exam, to use it and get to college instead of Qi Yulin.

What is astonishing is the fact that Chen Xiaoqi used the real name in the letter Qi Yulin and has used that name since then not only to get to college, but also to get a job in a bank as if her real name never existed. When the real Qi Yulin discovered the news, she went to the court and sued Chen Xiaoqi. Qi Yulin’s complaint included identity theft and the compensation for personal damage which changed, if not, destroyed her life for ever.

Away from the legal point of view, It could be seen that Qi Yulin suffered severe damages on the personal and financial life which requires the offenders, that is Chen Xiaoqi and her father, to compensate her for that in addition to criminalize the act of identity theft which destroyed Qi’s life. More to that, it is quite strange how did Chen Xiaoqi get into College, not only that, but also graduate and get a job on top of it at a bank with no governmental institutions realizing the fraud that happened which triggers the possibility of corrupted dealings and abuse of power by some officials within these governmental institutions. Fortunately, with the huge media coverage and as it was expected, Qi Yulin was seen to be a rightful one and her case was eventually a win. This would lead us to examine the Chinese Constitution functions in such type of cases.

The theft of Identity was a stand still complaint, and the state, obviously, does protect the right to one’s identity which is valid in Qi Yulin’s case. However, the other claim to retrieve personal damage was dealt with in a different way as the court in Shandong was unable to pass such judgment that may contrast or interpret the constitution in any other way which led the local court to seek the Supreme People’s Court (SPC) to see to this matter. As It was seen that Qi Yulin right to education was affected, thus, the Supreme court allowed Qi Yulin to claim cover for the damages.

In the other hand, if such case was ever to happen in Morocco, this matter would have turned out far different from what has been done here in China. First, it should be known that these types of cases are considered subject to the criminal law in which the one who used someone else’s identity could face imprisonment depending on the damages he or she have done, gains and benefits or fields of use like wearing clothes that gives people the image of someone working in a certain specific fields of work, like medicine or military, by someone who is not functioning in those fields for example.

In Qi Yulin case, the court would take extreme measures due to the immense damages and offense to the state and its constitution, not only with Chen Xiaoqi and her father, especially the father as the main offender of the state, as the main lawbreakers but also with every single individual who has proven that he or she helped or has been involved in any way within the fraud process including the official workers in addition to any other person who knew about the act and chose not to report it to the local authorities. As well as that, Chen Xiaoqi and her father would be obliged to compensate for all damages done to the state in the case Qi Yulin chose not to make a complaint asking for compensation for personal and psychological damages, which would double in case she wanted her own compensation.

Plus, Chen Xiaoqi and her father would be subject to be deprived from several civil rights for some years according to the decision of the court. These rights would include the deprivation from participating in any College entrance exam for at least five years, lose the right to vote or even have their identity cards confiscated for a couple of years which would leave them as second degree citizens for at least two years.

Identity theft is severely punished by the Moroccan courts to the point that pretending to be someone else in social media could get the offender to be sued and imprisoned from one month to five years in minimal cases. In the case of using the identity to get any sort of benefit the offender could face a sentence up to 10 years in addition to a fine depending on the amount of damages caused. In addition to that, the court could issue a note that in the offender’s official papers to alert any bureau in the case the offender had to prove his or her identity elsewhere.

. A famous case was reported within the country when a certain man claimed the identity of the brother of the king of Morocco in a social website Facebook.[[1]](#footnote-1) The man opened an account with the name of the Prince of Morocco for fun as he claimed, but the Moroccan authorities arrested him for interrogation to make sure that the person was not using that identity for any personal or financial interests and had that Facebook account shut down. The Offender was released afterwards but that could be seen as a proof that the case of using another’s identity is a very serious crime in the country. It could be criticized that what I just wrote is not valid because we are dealing with a figure within the Moroccan authority, which is true, but any other person can legally sue any single individual using his or her own identity online especially if financial or personal interests were involved.

Going back to the Chinese constitution and the legislative method it had to undergo to get Qi Yulin compensation for her damages show the need for a certain review in the judicial constitution and its functionality. In Qi Yulin’s case, the court recognized the fact that she her right for her personal identity to be infringed by Chen Xiaoqi, however the problem with wether her right to education was violated or not was a whole different matter for the fact that this type of rights is included as constitutional, thus would not be applied as a civil right which made it even harder for the court to make a decision, for the record, the Chinese judicial institutions are under the supreme rule of the constitution, which does not allow them to either review or deem a certain part of the constitution unconstitutional.

In Morocco for example, the judicial branch is said to be independent. In other words, in the case a part of a certain part of the constitution is unconstitutional, it would require the court to address it personally through the representative of the king in each court, the complexity of a case would sometimes require the supreme court to interpret the law, but in the case of violation of great fundamental laws, that would require the monarch of the country to interfere which would usually happen in extreme cases. For Qi Yulin case, to determine whether her right to education was violated or not would, simply, require the judges to discuss it with the king representative in the court who is usually appointed by the king to make decisions at court. As well as that, unlike China, this case is seen from the fraud perspective at first which includes personal damage cover in the case there were any

Eventually, under a huge movement of judicial scholars who urged the government to make litigation constitutional, it was said that in 2001 the Supreme People’s Court issued a notice doing so which gave Qi Yulin the right to proclaim the personal damages that occurred to her over the years. Moreover, this was to be the first time in history that this type of legislation was made which put made “Qi Yulin versus Chen Xiaoqi” not only a dispute among citizens but a national issue which urged the government to reviw its constitution in favor of the citizens.

Usually, in the history of many countries, it would take quite a few cases, or better be called scandals, to test the efficiency of the judicial laws and institutions through mediation. When such seem to not work would usually require a review. Each nation has its own way to break through constitutions, and from a foreign perspective, I could see that China tends to be more of practical rather than relying on theories. The case of Qi Yulin was indeed what was needed for the constitution to review its litigation system.

In Morocco’s case, the threat of the Arab Spring urged the government to make serious efforts into, not only reviewing the judicial branch, but also the constitution in general, as the king made a speech in response to what was happening in neighboring countries like Tunisia, Libya and Egypt to review the constitution for the sake of stability. That being said, the judicial branch was pushed forward to become partially independent from the government as a part of the people’s demand.

Going back to Qi Yulin’s case, it was unfortunate that the constitutional litigation was abolished in the constitutional review in 2008 by ones who legislate it. Theories vary on the main reason behind this abolishment which could derive from the fact that a similar case had never appeared or that prolonging this law could harm the stability within the judicial branch which is what the Chinese government is trying to avoid at any coast so I personally assume.

The Chinese judicial system, as it was said in the introduction, was seen to be one that seems to be very distant from the Moroccan judicial system due to the differences in the fundamental constitutions as Morocco drafted its constitution from the French constitution, nevertheless the it was made with Moroccan characteristics to ensure that the laws could be applied and satisfy the majority. That being said, Islam in its teachings condemns people for stealing any kind of thing that belongs to somebody including someone’s identity; it also and dictates that the offender should face punishments and cover the damages for the offended. Therefore, It could be seen that the judicial constitution in relation to this matter is derived from both the French and Islamic constitutions.

In the other hand, It is seen that the socialist system Chinese constitution adopts also made sure to incorporate the local culture within to get the public satisfaction, the identity theft issue was not much seen because of the cultural assets which sees that people are the same, thus there would be no need for someone to impersonate another person. With the evolvement of the Chinese society it would be required that these institutions review certain laws to keep up with the progress for a better world for their future generations.

1. http://news.bbc.co.uk/hi/arabic/middle\_east\_news/newsid\_7259000/7259841.stm [↑](#footnote-ref-1)