



The Legislative Perfection of China's Social Protection System of the Minors

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Supported by Jingzhou Science and Technology Development Project (2015AD52); Youth Foundation of Yangtze University (2015cqn01); Society Science Foundation of Yangtze University (2015csy003); Innovation Foundation of Social Assistance Research Center of Yangtze University (15JZ03).

Received 5 October 2015; accepted 4 December 2015
 Published online 26 January 2016

Abstract

The healthy growth of minors is vital for the stability of the society and the future of China. At the meantime, they are vulnerable groups liable to suffer infraction. Therefore, special attention of the whole society should be paid to them. In modern times when human society continues to move towards the civilization and China's process of the rule of law continues to develop and depth, the use of legal means to protect minors has become an urgent and imperative measure.

Key words: Legislative perfection; Social protection system; The minors

Yang, C. L., & Huang, L. (2016). The Legislative Perfection of China's Social Protection System of the Minors. *Cross-Cultural Communication*, 12(1), 35-39. Available from: <http://www.cscanada.net/index.php/ccc/article/view/8040>
 DOI: <http://dx.doi.org/10.3968/8040>

INTRODUCTION

Minors enjoy basic rights of survival, development, protection, education and so on. Their right claims should be guaranteed and satisfied as it should be which reflects the social fairness and justice. Protection and relief work of minors' rights need countries to formulate the more specific, operational laws and regulations to

ensure that the task of rescuing minors has laws to go by and rules to follow.

1. THE NECESSITY OF PILOT WORK ON SOCIAL PROTECTION OF MINORS

In recent years, China has promulgated a series of laws and regulations and policies to protect minors. Protection work of minors' rights and interests has achieved positive results. A good atmosphere of the whole society care for minors has been formed. However, current laws related to the protection of minors such as *People's Republic of China on Protection of Minors Act* and *People's Republic of China on Prevention of Juvenile Delinquency* are too principle and lack of feasibility, especially lack of provisions on service protection. Besides, minors are affected by the economic poverty, loss of guardianship, family violence and inappropriate education, etc. Some minors encounter the difficulty of subsistence, the guardianship dilemma and growth barriers, while the existing legal system cannot provide effective protection.

China has not yet established a system of social protection of minors which take guardianship intervention as the core, so to speak. To this end, China urgently needs to establish a new social protection system.

China's Ministry of Civil Affairs decides to carry out pilot work on the social protection of minors, which complies with the urgent demand of development of the times, the provisions of Chinese constitution about respect and protection of human rights and the spirit of the State Council on the people's livelihood and social management, is the expansion and extension of the salvation and management functions of Civil Affairs Department. And it is an inevitable choice to safeguard minors' legitimate rights and interests and to strengthen and make innovations in social management.

2. THE SELECTION OF WORKING MODE OF SOCIAL PROTECTION OF MINORS

According to the deployment of Ministry of Civil Affairs, primacy of protecting minors' rights and interests should be adhered to in the pilot work. And we should strengthen theoretical innovation, policy innovation, system innovation and practice innovation, enhance headstream prevention and comprehensive control, actively explore the new system of social protection of minors and the system building to improve the mechanism of social protection of minors. In addition, we should establish a full-coverage service network for social protection of minors, build the service and referral platform for social protection of minors, promote the joint participation of all sectors of society on the protection of minors and strengthen the source control work on prevention of stray to effectively protect the legitimate rights and interests of minors. And previous design of the salvation management system which takes vagrants and beggars as objects and takes rescue work within institutions as centre has been far from meeting the developing situation needs and the requirements of social relief work. So, we ought to abandon the stray rescue mode and explore a new working mode.

As far as current necessity and possibility, possible effect and local factual conditions are concerned, we hold that it is appropriate for the current social protection of minors working mode to adopt the guardianship intervention model. Under the mode of guardianship intervention, many problems remain to be solved. They mainly include the expansion of institution function and protected objects, coordination function of Civil Affairs Department, the determination of functions of government department, linkage mechanism, liability investigation, the assessment of tutelage ability, the identification and confirmation of temporary guardianship object, the content of temporary guardianship of institution, guardianship transfer mechanism, institution nature, staffing levels, fund safeguard, the participation of social forces and the utilization of intellectual resources.

3. LEGISLATIVE DIRECTION OF IMPROVING THE SYSTEM OF SOCIAL PROTECTION OF MINORS

The helplessness of minors is a serious social problem. Much of the overseas and domestic research fruit show that the minors are extremely prone to generate living predicament, aberration behavior and social security risks in the case of losing family protection. Once become minor vagabonds, they often bring many inconvenience and disharmony factors to urban community management and social security work. Most of the minor vagabonds are school-age children. The situation of their missing school

and dropouts is terribly serious. And then their growth fell into a vicious cycle.

Social protection of minors is complicated system engineering. To fundamentally reduce or solve the problem of minors, a social relief system with common participation of families, communities, schools, social organizations and relevant government departments must be established. Among them, public power of government is the leading force in social protection work of minors. Social organizations and the social public are the basic force in the cause of social assistance, possible effectiveness of which in social protection cause for minors should not be overlooked.

At present, volunteer team's construction in the field of social assistance is only in the beginning stages. Social donation work cannot reach regular and normalization. These require government departments to actively guide. At the specific level, in the current context of further and deepen market-oriented reform and social management system reform, under publicly declaring of the target to carry out the scientific outlook on development and improve all-round development of human beings, the proper solution to the problem of social protection of minors appears particularly important.

Under new circumstances, how to achieve a scientific, humanized and legalized social protection of minors more effectively in the context of the innovation of social management system of social protection work of minors aiming at characteristics of minors and combining with the social system and social environment is a new task. The solution to this problem not only needs to go ahead with a new system establishment, but more need to strengthen the construction of social ability of social protection of minors.

3.1 Design of Legislative Framework

The Minor Protection Law set rules for the temporary guardianship function of minors' social protection agency, but *The Measures on Aid and Management* do not make the corresponding provisions. If the corresponding provisions are made, problems such as the suspected mental patient, the mentally handicapped, the person with dementia, the pregnant homeless woman and stray minors' traffic accident claims, etc. all can get the corresponding solution.

So, we should improve the minors social protection legislation as soon as possible and make definitely regulations on the problems that organization property, government regulation separating from management, funds guarantee, sectors cooperation, staffing level, social participation and base for placement, etc. Moreover, performance aspects of leading role of civil affairs department in performance of the social protection and management functions should also be clearly defined. And a coordination and cooperation mechanism should be set up.

At the same time, the temporary guardian status should be endowed to social protection agency. It can be considered to modify *The Minor Protection Law* and *The Measures on Aid and Management* simultaneously. Achieving upgrade from *The Measures on Aid and Management* to *The law on Aid and Management* at the appropriate time with keeping on the coordination and unity of *The Minor Protection Law* and *The law on Aid and Management*.

3.2 The Provisions of the Specific Content

3.2.1 Institution Nature

At present, there are no explicit rules on the nature of rescue management institution (Social Protection Center for Minors) in relevant Chinese laws and regulations. From the point of view of practical rescue protection management work, protection agencies bear the rescue service functions and certain administrative functions.

The smooth running of the work of institutions is largely restricted because that the current laws and regulations do not explicitly give institutions administrative functions. If laws and regulations give institutions administrative functions, it will bring new problems that how to separate the management functions from the rescue service function and how to supervise it. That the nature of functions of management and service in rescue protection is undetermined, leading to a number of problems such as the ambiguity of the division of service and management and the lowness of work efficiency. The temporary guardian status should be endowed to the agency.

3.2.2 Separate Establishment of Institutions

Currently, domestic cities at prefecture level and above generally have set up rescuing and protection center for minors, and partial county-level areas have set up rescuing and protection organizations for stray minors, the vast majority of which unite with the salvation management station with implementation of the mode that “a team, two brands.”

According to *the construction standard of rescuing and protection center for stray minors*, cities whose floating population is below 350,000 within the jurisdiction area does not separately set up rescuing and protection center for stray minors in principle. If necessary, it can be constructed merging with the salvation management station. The benefits of the merging establishment manifest mainly as resource sharing and material saving, but it cannot carry out rescue protection work well aiming at the homeless minors’ physical and mental condition and special requirements, etc.. That makes them vulnerable to the adverse effects of adult rangers’ vices, and thus restricts the effect of rescue protection for the homeless minors.

We can take the opportunity brought by the pilot project to explore the problem of separate establishment of institutions and make it clear through the law. Meanwhile, we should also consider the problem of the expansion of

institution function and protected objects. The expansion within the agency is supposed to develop the functions from the simple food and lodging assistance to the cultural education, vocational education, psychological service, legal aid and medical assistance. The second aspect is developing functions towards external of agencies; include strengthening family care service and supervision, protecting the injured minors, rescuing and aiding the minors in a bind, improving the working mechanism and the system of social protection of minors.

According to the deployment of Ministry of Civil Affairs, this pilot is intended to explore the establishment of the discovery, reporting and response mechanism for the injured minors, rescue and aid the minors in a bind, strengthen family care service and supervision and construct the community protection network for minors. Minors actual unattended because they are abandoned or their guardians are in prison or serious disease, etc, minors without proper care because the frequent neglect of their guardians or family violence, etc, minors faced with dropping out of school or lost basic livelihood ensure due to the poverty of his family, minors who experienced vagabondage and minors who got into trouble because they are abducted or illegal employed are the five types of minors who are included in the protected objects in the pilot.

3.2.3 Protective Network

In accordance with the requirements of pilot working file of the Ministry of civil affair, the social protection work of minors should be highlighted and social protection network should be further improved and perfected to achieve the ceaseless improvement of the level of social protection work.

We should strengthen the construction of monitoring system of minors through legislation. And we shall dynamically obtain the related information about minors such as the basic situation of families, the cause and time of wandering, the number of times to be rescued and the channel of resettlement, etc through the establishment of the minor information database to focus on solving the problem of difficulty in sending back and crack down illegal acts that abetting or coercing minor vagabonds to participates crimes and controlling minors begging, etc..

Meanwhile, we should give the role of society and non-governmental organizations into play. The linkage among family, community, school and the protection center for minors should be implemented. And social protection network for minors which contains government domination, director of the Ministry of civil affair, sectors cooperation and social participation ought to be further improved. We may provide that a joint conference system of social protection of minors should be established by relevant departments of governments to hold regular meetings, clarify the responsibility of the relevant departments to protect minors and result

in a closely cooperative mechanism. Moreover, the national information internet needs to be established among local aid agencies to achieve timely and effective communication, coordination of the work and exchange of experience. And it is necessary to clearly define the functions and responsibilities of the various departments by laws.

3.2.4 Security System

We need legislation which rules that the department of finance must bring the funds for the rescuing and protection organizations for minors into financial budget and ensure timely and full payment. That is to say, the department of finance at the same level ought to give support to the wherewithal needed by minors' social protection agency. The assistance standard shall be reasonably determined to effectively safeguard the work for minors' life, education and placement, etc progresses smoothly. Finance and civil affairs departments of the provincially administered municipalities have rights and liabilities to determine the specific criteria and report it to provincial finance and civil affairs departments for the record.

It is needed to help minors' social protection agency establish and improve financial management regulations. The account setting of the funds for the minors' social protection agency and the special funds must be independent, and they shall be separately accounted to boost efficiency in fund use. Organization authorization departments shall do a good job in the check work for the authorized strength of minors' social protection agency. For the organization lacking or missing the authorized strength, we should supply the authorized strength appropriately according to the regional actual situations on the principle of streamlining & efficacy. And it should take effective measures to ensure that the personnel in vacancy of the authorized strength can supplement timely. It ought to implement accountability system towards relevant units and individuals if the problem of the insufficient funds and serious shortage of the authorized strength make the work of social protection of minors cannot be carried out properly, in order to solve the problem of financial security and shortage of the authorized strength at the institutional level.

3.2.5 The Construction of Team

To do a good job in the protection of minors needs to build a professional team with high quality which integrates education, service, management functions. Particularly, it is necessary to treat the education for minors as an important matter to embody the educational right of minors. And the center should be equipped with full-time teachers to be responsible for the education of morality, intelligence and physique, the psycho-rectification, the social work and the legal assistance work, etc..

Moreover, to make them settle for their own work, the problem of treatment such as the technical title and

post allowance should be effectively solved. At the same time, we should strengthen the professional training of existing staff team to make them be capable of educating according to the characteristics of minors and thus to achieve differential treatment in education to continuously improve the effectiveness of education. In addition, qualification admittance for all kinds of personnel shall be carried out.

3.2.6 The Intervention of Social Work

The intervention of social work also needs to clarify in legislation. The implementation of the system of social work in the field of rescue and protection of minors is an important content of management innovation of social security system which is urgent to be improved. For the special needs those protecting juveniles, the current work of rescue and management needs extension forward and backward, and the work within the agency needs to develop in depth. The design of these rescue work programs, the offer of service and the evaluation of the effectiveness of service all require professional knowledge and skills of social work.

Currently, it is international experience to carry out professional social work in the field of minors' protection or to introduce social work system into the field. And it is also the requirements of current China's work of rescue and protection of minors. Moreover, the successful experience of many domestic institutions is the display of the effectiveness of social work.

3.2.7 Interference at Early Stage

The effective method to intervene at early stage should be stipulated in the legislation. On the basis of further strengthening the construction of social security system, the system of allowance and cash aid for minor family shall be established to subsidize minors in poverty-stricken family in order to prevent them from going out to stray for the poverty of family. Meanwhile, we should be targeted in our carrying out publicity and education with basing the new situation and new problems occurred in the relief work. Especially, we need to strengthen publicity and education for the community and the family and enhance the consciousness of the whole society to rescue and protect the homeless minors, so as to prevent and eliminate the generation of the phenomenon of wandering minors from the source through the early intervention of family, school and community. All these need legal protection.

3.2.8 The Transfer of Guardianship

Aiming at the phenomenon that guardian do not fulfill the guardianship duties, we demand the stipulation of revocation and transfer of guardianship of minors. Monitoring capability assessment system should be set up. The setting conditions and legal status of the evaluation mechanism and the evident effect of the assessment report shall be ruled in it. And litigation system on the transfer of guardianship shall be set up.

3.2.9 The Method of Placement

We must change concepts and make the mechanism in order. And variety of placement-path scheme should be put forward according to the reality of the stranded object. External force is needed and the method that aiding while tracing relatives shall be taken. We can get help in verification of the information through television stations, newspapers and public security registration system, etc. For the personnel who can not get response after inquiring, we need to apply to the civil affairs bureau for arranging them to the welfare house and supporting them by the government.

Meanwhile, the method to combine the receiving of formal education with special education should be adopted. It is expected to transact the registered permanent residence for the homeless minors under 16 who are studious and disciplined. And the education departments have to be coordinated to guarantee the formal education for them. Moreover, we need to build bridges to contact the labor security department and social force to actively provide special training of vocational skills for recipients. According to the actual situation of the recipients, making them accept the professional skills training on vehicle repairing, computer skills, cooking, sewing or hairdressing, etc. These items require explicit regulation in law.

3.2.10 The Participation of the Society

We should focus on the economic and social development; take the enhancement of the social service function of non-governmental organization as the main point to strengthen the formation of the folk organization development pattern which has the standardized management, rational layout, optimized structure, complete functionality and obvious effect. This is the trend in development of the reform of social management mode. Of course, it should be clear in the form of law. At the same time, the corresponding propaganda work is supposed to be provided to speed up the formation of an atmosphere that the whole society pays attention to the social protection work of minors.

3.2.11 The Function of Community

Community is the intermediary between the government and the society, but also the organization which is most closely linked with the family. In the social protection of minors, urban and rural communities, for example, residents committee and village committee can play an important role.

First of all, in the prevention of street children, the community can take the initiative to establish archives of all children's families in the region, investigate the economic position and educational status of children in each family to discover the "problem families" timely. Secondly, community can take the initiative to intervene in the family that may or may have emerged waif. For instance, providing material support to families with financial difficulties, providing childcare guidance

for single parent families and family with low skills in child rearing, providing psychological nursing for troubled children and to educate, warn or investigate the responsibility of the family which is ineffective in the guardianship. The work of reunion surveys about minors who experienced vagrant life and already returned home shall be done well, from the aspects of personal reasons and family environment factors, etc. The effect of grass-roots community organizations shall actually operate to prevent these minors from secondary stray even circular stray.

CONCLUSION

In recent years, with the development of China's economy and society and the advance of the construction of democracy and the rule of law, the legislative work on minors has made considerable progress. However, due to historical, economic, social and other reasons, there are some factors unfavorable to the healthy growth of minors.

This is mainly manifested as: on the one hand, the legitimate rights and interests of minors are often infringed. Phenomena that minors drop out of school, be abused, suffer corporal punishment, be abducted and be recruited as child labor, etc. are repeated. Some pornographic audio-visual products and readings with inferior taste also often appear. On the other hand, juvenile crime rate remains high, and majority of them is serious violent crime.

The existence of these phenomena has greatly affected the normal study and life of minors and is threat to the cultivation of the quality of the successors in the national construction. The practice of legislation and law enforcement in various regions fully testifies that only by strengthening the legislative work of minors, can we safeguard their legitimate rights and interests effectively.

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