



A Comparison of the Juvenile Procedural Agent System in China and Japan

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Abstract. China lacks a representative system effectively safeguarding the interests of minors in family justice. Traditional civil procedures have proven inadequate in resolving family disputes involving minors. Japan's juvenile procedural agent system, implemented in 2013, has matured significantly over the past twelve years, demonstrating positive social impact. Given the challenges faced by China's family courts, this study analyzes Japan's system to inform the development of a contextually appropriate minor interest representative system in China. Current shortcomings in China's procedural agent system include inconsistent work content and role definition, unclear legal status, a non-uniform selection process and scope of application, and a disorganized workflow. To address these practical issues, court-appointed lawyers or grassroots legal service workers should represent minors independently in litigation when conflicts of interest arise between the minor and their legal representative, when the legal representative cannot act, or when the legal representative faces significant difficulties doing so. This requires explicit legal provisions defining the representative's litigation status, rights, obligations, qualification criteria, selection process, remuneration, and relationships with litigants and other relevant parties, thus ensuring the effective protection of minors' best interests.

Keywords: Procedural agent; Family litigation; Procedural guarantee; Comparison between China and Japan

1 Introduction

Current Chinese legislation protecting the rights and interests of minors is fragmented, dispersed across various departmental laws and judicial pronouncements, and largely comprised of aspirational principles rather than concrete mechanisms [1-3]. Furthermore, the absence of dedicated family law legislation and a specific procedural safeguard system for minors in family litigation leaves significant protection gaps. When minors, lacking full legal capacity, are unable to exercise their legal rights, or when conflicts of interest arise between the minor and their legal representative, existing legal remedies prove ineffective, jeopardizing the child's interests. In litigation, minors are often passive participants, their lack of subject status preventing direct

engagement in pre-trial mediation and court proceedings, and hindering the assertion of their rights and claims to property [4].

Neither the Constitution nor the common law in China explicitly defines the principle of maximizing children's interests, which makes it challenging to reflect the unique legal status of children [5]. Furthermore, certain legal norms aimed at protecting children's interests are contradictory and lack scientific rigor. It is imperative for China to establish a clear principle of maximizing children's interests, along with defining their status as litigants in the formulation of family procedure laws. This includes creating independent procedural representatives for children to safeguard their rights and ensure accountability for their interests [6]. In 2011, Japan introduced the procedural representative system within its Family Matters Procedure Law, aligning with the United Nations' principles for the protection of children's rights and the best interests of minors. While countries outside the region have varying legal provisions, they all prioritize the continuous improvement of relevant legal frameworks in family procedures to effectively protect the interests of minor children.

2 Chinese Juvenile Procedural Agent System Judicature

From a legislative perspective, China's provisions on the protection of minors' rights and interests within substantive law are relatively comprehensive, playing a positive role in promoting and safeguarding these rights. However, in the realm of procedural law, there is a significant gap: not only does China lack a specific legal process for family litigation, but the existing relevant provisions are also fragmented and inadequate. Given the rapid increase in family disputes and the growing complexity of these cases, relying solely on substantive law and limited procedural law presents numerous challenges and difficulties in fully protecting the interests of minors. China has consistently prioritized the protection of minors' interests. Recognizing the unique nature of these interests, the country has developed a comprehensive legal framework based on its Constitution, aimed at safeguarding minors' rights and interests. The Civil Procedure Law enacted in the same year stipulates that guardians of minors must participate in litigation as their legal representatives. Despite undergoing five amendments, the law has yet to incorporate a special procedural system specifically designed for the protection of minors' interests, nor does it include provisions for family litigation. To further enhance the protection of minors' interests, China issued the "Opinions on Several Issues Concerning the Legal Handling of Guardians' Acts Infringing upon the Rights and Interests of Minors" in 2014, outlining the conditions under which legal guardians may be revoked if they infringe upon the interests of minors.

In response to the rising number of family cases and their increasing complexity, local courts have innovated and tailored family litigation systems to align with the unique characteristics and needs of family trials based on regional conditions. For instance, the Shenzhen Baoan District People's Court has actively implemented a family investigator system since August 2013. Through various selection channels, the court has meticulously chosen and appointed qualified family investigators, who

have significantly contributed to improving the quality and efficiency of family trials. Many courts have made concerted efforts to fully integrate the principle of maximizing the interests of minor children into all aspects of family trials, ensuring that the rights and interests of these children are adequately protected. Additionally, some courts are actively exploring the establishment of a family ombudsman system, tasked with conducting in-depth investigations into the specific facts of family cases. Upon completing the investigation, family investigators produce detailed written reports for the presiding judges, providing valuable insights to aid in case handling. This approach not only alleviates the burden on judges but also enables them to gain a comprehensive understanding of each case. Furthermore, the legal rights and interests of minors have been enhanced through innovative measures, such as the introduction of procedural agents and observation protection systems. These advancements reflect a profound and comprehensive reform of the family trial system and lay a strong foundation for the continued development of family trial practices in the future.

3 Procedural Protection of Minors' Interests in Japanese Family Litigation

The procedural agent system in Japan's family proceedings is governed by the Japanese Family Matters Procedure Law, which was established and enacted in 2013. According to Article 42 and paragraph 1 of Article 258, minors are permitted to engage in litigation in certain cases, such as divorce mediation, exchange meetings, appointment of guardians, and changes to parental rights. They can participate as procedural subjects in family cases where they have a vested interest. In this context, a juvenile procedural agent is a lawyer specifically designated to support minors during family mediation and trials. There are key distinctions between procedural agents and traditional legal agents. While legal representatives fall under the category of *ad litem* agents, procedural agents operate independently, specifically created to prioritize the special protection of children's interests. Moreover, the status of legal representatives is typically limited to the parent or guardian of the child. Therefore, in family cases, both legal representatives and procedural agents can coexist to more comprehensively safeguard the rights and interests of minor children. Article 23 of Japan's Family Matters Procedure Law stipulates that in judicial proceedings involving family matters—especially those affecting the rights and interests of minor children, such as parent-child relationships, custody, and guardianship—minors capable of expressing their will are guaranteed participation throughout the process. Their legal status as parties in family cases is recognized, ensuring that their legitimate rights and interests are protected and that judicial fairness is upheld. In addition to minors having the right to petition the court for the appointment of procedural agents, the court is also obligated to proactively select agents for minors when necessary, thereby fully protecting their litigation rights. The fundamental purpose of this agent system is to prioritize the perspectives of minors, ensuring that their true intentions are reflected in the proceedings and effectively safeguarding their right to voice their opinions, allowing them to become genuine participants in the legal process.

In selecting agents, procedural agents must be chosen from among qualified lawyers, with their primary responsibility being to thoroughly investigate the true wishes and needs of children. Acting in a completely independent capacity, these representatives are tasked with providing the court with recommendations regarding the case based on the child's specific circumstances. Currently, due to the complexity of the system, many individuals may struggle to understand the procedural agent framework; as a result, courts often appoint procedural agents on behalf of minors. The legislation governing the procedural agent system has been established, and after several discussions, the Japan Lawyers Association announced in July 2015 that the scope of the *ad litem* agent system includes cases where minors face challenges in exercising their rights, where family investigators are unable to conduct a proper investigation, where minors have difficulty articulating their opinions, or where the outcome of the case may not align with the genuine wishes of the minors involved.

In 2003, Japan's new Personnel Procedure Law explicitly defined the responsibilities of family investigators, encompassing both fact investigation and evidence gathering, to ensure fairness and efficiency in family litigation. Unlike the adversarial litigation methods employed in ordinary civil cases, family court investigators utilize a different approach to evidence examination, adhering to the principle of *ex officio* investigation in family matters. Family investigators apply their expertise in fields such as medicine, psychology, sociology, and economics to investigate issues that directly affect the interests of minor children. These issues may include the appointment of guardians, the exercise of visitation rights, and the determination of alimony. They do not, however, investigate aspects unrelated to the interests of minor children, such as the grounds for divorce between spouses or the division of marital property.

4 The Problems of the Juvenile Interest Agent System in China

There is currently no standardized framework for defining job responsibilities and roles. Since the initiation of the family affairs reform, the Supreme People's Court has not provided explicit guidance on the duties of juvenile interest agents in the reform opinions it has issued. This lack of clarity hinders the effective implementation of the juvenile interest agents system in pilot courts to some extent. In practice, while maximizing the interests of minors serves as the guiding principle, there is an absence of systematic management. Furthermore, to carry out their responsibilities, juvenile interest agents must interview and communicate with relevant individuals involved in the case and conduct specialized investigations. However, some of these individuals do not grasp the nature of the agents' work and may refuse to cooperate with inquiries. This reluctance poses challenges for juvenile interest agents, impeding their ability to carry out their work effectively. In the context of family trial reform, various pilot courts have adopted different titles for agents representing minors' interests.

The legal status of minor interest agents remains ambiguous. These agents are appointed when a minor's legal representative is absent, unable to exercise their authority, or when there is a conflict of interest between the legal representative and the minor. In such cases, the minor interest agent helps fill the gaps in the legal representa-

tive system, acting as a bridge between the minor and the court, as well as other participants in the litigation. They are authorized to undertake all procedural acts necessary to protect the interests of minors, including rights related to acceptance, withdrawal, and reconciliation. It is important to clarify that the power exercised by minor interest agents is distinct from that of litigants. They do not assume rights and obligations and are not bound by the case's judgment. If a minor interest agent believes that the judgment will adversely affect the minor's future development, they can independently file an appeal and express dissent. However, this does not replace the legal status of the parties involved in the litigation. Therefore, minor interest agents should be viewed as representatives rather than parties to the case. It is also important to note that the minor interest agent does not replace the legal representative; throughout the proceedings, legal representatives will continue to participate alongside the minor interest agent.

5 The Enlightenment of the Juvenile Procedural System in Japanese Family Litigation to China

In China, it is essential to establish a juvenile procedural agent system in alignment with the national theory of parental rights and the principle of prioritizing the interests of minors, particularly given the increasing prevalence of family-related cases. The existing legal representative system and the relevant provisions regarding litigation capacity have proven inadequate in effectively safeguarding the interests of minor children in non-family cases. Therefore, China can develop a procedural agent system tailored to its national conditions by drawing upon the relevant provisions from other countries regarding minor procedural agents. In situations where a minor's legal representative is absent, unable to fulfill their duties, or has a conflict of interest with the child, it is crucial to address the shortcomings faced by minors in the litigation process and enhance the protective mechanisms in place, thereby maximizing the protection of minors' interests.

Examining the family investigator systems of various countries, Japan and others have explicitly defined their family investigator systems and the accompanying procedures within their legislation. In light of the current family trial environment in China, the foremost priority should be to clearly establish the family investigator system in legislative frameworks, providing a legal foundation for its implementation across different regions. Additionally, it is crucial to develop a unified standard for the selection of family investigators as soon as possible. Given their significant influence on the interests of minors in family cases, the selection criteria for these individuals must be stringent.

Due to their unique characteristics, family cases are markedly different from ordinary civil and commercial cases, a fact that is widely acknowledged and appreciated globally. Consequently, the establishment of comprehensive and specialized family trial institutions has become an essential choice in order to align with this global trend. However, countries vary significantly in terms of legal traditions, historical contexts, cultural backgrounds, and levels of development, leading to differences in

the establishment of specialized family trial institutions. Some countries have established dedicated family courts, while others have integrated family courts within their existing court systems.

6 Conclusion

This study conducts a comparative analysis of the juvenile procedural agent system in family litigation between China and Japan. By reviewing the current legislation and judicial practices in China, it identifies several existing issues, including shortcomings in the legislation concerning the fundamental principle of protecting minors' interests, a lack of recognition of minors' legal status in family litigation, inadequacies in the fact-finding procedures, and the absence of a unified family trial institution. Drawing on Japan's procedural agent system and considering China's unique context, this paper offers several suggestions for improvement. Specifically, it advocates for enhancing the mechanism for minors' independent participation in family litigation and establishing a juvenile procedural agent system grounded in clearly defined principles for protecting minors' interests. Furthermore, while reinforcing the court's investigative powers, it recommends the establishment of a cohesive family investigation officer system, the improvement of the social protection framework, and the creation of a unified family trial institution nationwide, all aimed at comprehensively and effectively safeguarding the interests of minors in family litigation.

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