

Perfection of Legal System of Social Relief Right of Chinese Citizens

-Determination of Legislative Principle of Social Relief Right

Jiang Longfei

School of Humanity and Law, Wuhan University of
Technology
Wuhan, China
1515779581@qq.com

Peng Zheyi

School of Humanity and Law, Wuhan University of
Technology
Wuhan, China
501845257@qq.com

Abstract—Considering that the relevant studies on civil right for social assistance are nearly blank at current stage, this paper aims to formulate and perfect the laws and regulations on civil right for social assistance, in order to help more citizens obtain the social assistance and balance the social resources; In terms of assistance region, this paper recommends to adopt a way of combining the urban assistance with rural assistance. In terms of assistance object, this paper can carry out an in-depth study on which kind of people need the social assistance, and summarize the legislative principles on this basis; The social assistance obtained by the poverty group has not been regarded as a kind of grace and charity, but is considered as a kind of basic obligation and responsibility performed and assumed by the governments. From the perspective of relevant studies for social assistance, the practical operation is emphasized, but the depth of theoretical is not enough, especially that the analysis about civil right for social assistance is very rare, thus directly cause the category of subjects needing the social assistance is disordered and the assistance standard is low. This paper summarizes the legislative principles suitable for China in the aspect of civil right for assistance by optimizing the social assistance management system and putting forward a feasible way of national legal assistance mechanism applicable to civil right for assistance.

Keywords—*Social relief right of citizens; Legal system; Uniform regulation; Legislative principle*

I. INTRODUCTION

Poverty problem is a social phenomenon of current world, while social relief system is the basic institutional arrangement and the most effective measure that different states cope with poverty problems, which causes attention of all walks of the society to the concept of “social relief right of citizens”. Many people still remember that Sichun in China took place M8.0 earthquake on May 12, 2008, which killed tens of thousands of people in an instant, and destroyed millions of houses. After the disaster, numerous victims became destitute and homeless, and family separation. These citizens suffered disasters were thirsty for citizens’ right to get materials and service, and their helpless eyes and wrecked homeland reminded us the fact that there were many subjects needed to be relieved in China, which also reflected the necessity and urgency of speeding up perfecting the system of social relief right of citizens. At the

same time, it verifies the importance of legislative principle in formulating and perfecting system of social relief right of citizens.

II. SET UP UNIFORM REGULATION OF SOCIAL RELIEF

A. Current condition of social relief

Investigating legislative procedure of social relief in China, the legislative mode is mainly adopting corresponding measures to problems existed in social relief. Of course it has a certain actual value under the condition in China that is lack of legislative experience and successful examples of social relief. But they lack of uniform planning, and don’t coordinating mutually, so they can’t form system. Most of them display countermeasure products of problems in society, and they can’t solve the problems of the development of social relief that troubles China fundamentally. The most direct case is that after the earthquake, China started to reflect construction of the order of disaster relief after the disaster and we lack of legislation of disaster relief. Such kind of institutional mode that is lack of long-term planning and forward looking is not enough to long-term construction and development of social relief. In the reform stage that China is developing rapidly, the actual background of the system of social relief changes rapidly, supplying of system mainly depends on guidance of central pilot and local legislation, which provides to social requirement in short term. But it lacks of long-term basic foundation, which causes regionalization and fragmentation of social relief system. Financial laws and regulations are not balanced, so regional differences of the development of social relief business are very big.

Analyzing from reality, the development of the career of social relief lacks of support of the system of social relief actually, and operability and feasibility of administrative regulations and rules of current social relief are relatively low, and they don’t implement enough in actual function, or in realizing of rights of subjects that are relieved. For instance, in institutional implementation of rural medical relief, although relevant documents have had regulations as to the connection of medical relief system and new rural cooperative medical system, urban employees’ and residents’ medical insurance

system, uniform medical relief system of city and towns, most of them are instructive suggestions without specific implementing methods. Under such situation, it is easy to cause confusion in institutional application of rescuer, so that they may mix their duties and relieving boundaries that they should bear. While system of social relief that is needed actually should guarantee benefit and right of rescuers in supplying, perfect relevant system, and in combination of relevant systems of medical relief, realize seamless connection of policies such as the basic cost of living allowances, five guarantees providing, temporary emergency aids in medical relief and social relief policies [1].

B. Remove obstacles for establishing regulations of social relief

At the very beginning of the development of system of social relief, different programs and methods can be adopted in implementing process according to actual differences of different regions because of effects of different aspects, which is also actual and objective route. But with the development of social relief, the original transitional methods are difficult to guarantee social relief rights of citizens vigorously. And they also conclude some precious experience and weaknesses for China to establish uniform system of social relief through a period of institutional application, which conducts effective argument for the feasibility of construction of uniform model in future. So under the current condition that regulations of social relief are disorder, one of the primary works at present is to clear existed laws, regulations and normative documents, coordinate existed regulations to let relevant laws, regulations and normative documents to develop to comprehensiveness and systematization, and clear obstacles for establishing uniform legal system of social relief. At present, identity of all walks to formulate Law of Social Relief and enthusiasm of legislative organs to formulate the law are based on this identity. What's to be considered firstly in microscopic layer to regulate the existed system is regulating application of concepts and terms uniformly, defining different relevant concept strictly and accurately. Because of historical reasons, the existed regulations to application of some terms are disordered. Firstly, unify basic concepts and regulations, which should not only refer to foreign experience, but also comply with actual development condition in China. Corresponding concepts can have its vitality in domestic practice. So establishing uniform social relief regulations will play major role and active promotion to develop and implement the whole system of social relief.

III. FORMULATE LAWS OF SOCIAL RELIEF AND APPLY LEGISLATIVE PRINCIPLE

The basic principle of legislation is an important criterion for legislative subject to legislate, and an important performance of guiding thought of legislation in legislative practice. It reflects what should be stressed specially in the process of combining guiding thought of legislation and legislative practice, and it is important reflection of executor in legislative consciousness and legislative system [2]. While the basic principle of legislation of social relief law is internal value rule and value orientation that legislation of social relief

needs to display, and it is behavioral criteria of institutional practice of social relief. At present legislation of social relief in China is not perfected enough, and one of the most important reason is that there are not enough research and recognition to legislative principle of social relief laws, which is related with the special background of China and the trend of social relief in domestic legal procedure. At present, maybe it is somewhat ideal to discuss about this problem. The author thinks that according to the current condition of China and the trend and experience of social relief legislation in the globe, the basic principle of the basic law of social relief can be concluded as the following points:

A. Principle of government responsibility

Principle of government responsibility refers that the government has the obligation to provide social relief to poor people. The government takes legal obligation of relieving poor people, and guaranteeing social weak. It means that the government shall take the responsibility in different aspects including legislation and enforcement, which should be confirmed and regulated as one of core contents in basic laws of social relief. The government takes the obligation of guaranteeing basic life of poor people. As long as citizens are disable to undertake living risk, and have difficulties in life, the government has the responsibility to relieve. The obligation of relief of the government is decided by responsibility of the government. As the manager of the society, the function of the government requires the government to take relieving social conflict, striving for social stability, guaranteeing survival right of social members, and enhancing social welfare as its own task. Among which guaranteeing citizens' survival right is one of the important responsibilities of the government.

B. Principle of general security

Principle of general security refers that the most basic living requirements of the whole social members are the range of subjects of social relief. This point has been verified in international human rights law. Enjoying social relief was put forward as a basic human right. For instance, universality of rights that citizens enjoy is expressed in treaty of human rights such as International Convention on Economic, Social and Cultural Rights [3]. In other words, from the perspective of international big trend, social rights including social relief right of citizens have been affirmed as basic right of right subject, and shared by citizens. Every citizen gets materials and service of social relief generally without exception. As a socialist country, it is natural mission of China government to protect survival and development of every citizen, which should be cleared more in legislation of social relief. Everyone should enjoy the right of getting social relief regardless of identity, place, gender, age or region. Anyone who face difficulties that can't solve relying on their own power can get social relief [4].

C. Principle of free relief

Principle of free relief refers that relieved subject getting social relief is the duty of the government singly, and it shall not take any cost of the relieved subject as foundation or condition. Relieved subjects shall include all of social members, that are citizens, but actually citizens that get social relief just

those social members that can't overcome living difficulty by themselves and are trapped in living predicament. Social relief is the last safe net that citizens get as social members. Social relief just gives this part of social members the basic survival and development requirement to these social members, and it is a kind of social security behavior with the saving nature. Such uniqueness decides free nature of social relief. So social relief must follow free principle working as the last social security to those citizens being trapped in living difficulty. While supplying of funds of social relief should also be subject to government finance supplemented by social donation. Deliver capitals and materials of social relief to citizens that are comply with standard through legal procedure [5]. Of course because of free nature of social relief, family investigation must be conducted strictly before giving corresponding social relief in order to maintaining fairness of the society so as to guarantee that the applicant is in poor condition, and this procedure is the condition to get social relief. States with developed social relief all have such regulation in legislation.

D. Principle of combining material help and independence help together

Principle of combining material help and helping them to be independence together refers to conduct social relief through the method of combining material help and helping them to be independence together. The experience that can be got from the practice of poverty relief in China that pure poverty relief can't solve poverty and poor image finally. What's more important is cultivating healthy and aspiring living attitude and living method of poor people. It can be said that it is just basic objective of social relief to solve survival in living difficulty, and they still need to cultivate independent spirit and capacity of poor people. So legislation in social relief needs to carry out the principle. In other words, it needs to implement a positive and comprehensive social relief, and it needs to combine pure poverty relief and self-independence together, which can be realized through positive methods in legislation such as "production and self-help", "poverty relief with science and technology", "working for vendor", etc.

E. Principle of combining fairness and efficiency together

The principle of fairness and efficiency, it needs to maintain social fairness, and also improve efficiency. In social relief, both of them are not conflicting, but combined together. From the perspective of the basic objective of social relief of guaranteeing basic survival and development of citizens, social relief maintains social fairness. Fairness must be stressed in legislation. Any citizen should enjoy social relief fairly as long as complying with the standard so as to relieve survival difficulties that are faced. Social relief doesn't just pursue for fairness, but also consider efficiency. It can't be accepted just to pursue fairness, but neglect efficiency. Emerging of equalitarianism [6], "big pot" and "welfare problem" will also effect the development of social economy seriously. So it is of great importance to pay attention to efficiency and play independence of citizens in survival difficulties.

F. Principle that guaranteeing level and economic development level are matched

Objectively speaking, social relief needs to depend on the support of government finance, so basic laws of social relief shall be formulated and system shall be constructed based on the development level of productivity at that that. Of course analyzing from the objective of social relief, the implementation of the system of social relief also promotes stable development of social economy at the same time of maintaining social fairness and guaranteeing citizens' rights. The society belongs to the whole social citizens, providing social relief is to maintain stability and security of the whole society. Of course, the implementation of social relief is supported by a certain material wealth, and it is "expensive" to provide help and service for material of poor people in difficulties. They occupy social rare resources such as housing, food, and medical service, which are all based on social economic development. If social economic is not developed well, and people's life can't be guaranteed, there will no sufficient resources to relieve. Relief to poor people shall be conducted under objective condition. The theoretical analysis is helpful to guarantee rights of poor people to realize, but it should also comply with actual condition. The guaranteeing level of the realizing of social relief needs to be supported by economic development level, so it is also an important principle that basic law of social relief needs to abide to treat standard of social relief objectively, and the change of standard of social relief dynamically in system.

IV. CONCLUSION

To change the phenomenon of the lack of social relief right of citizens in China, it shall take overall security as the objective, position duty of the government accurately, and broaden covering range of social relief. Display the above principle in the process of legislation, establish uniform system of social relief as soon as possible, and let more and more people enjoy citizens' right of social relief.

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