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Challenges for Legal Framework of Social Assistance

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Speeding up the Legal Process of Social Assistance

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Building a country, ruled by law, is the only way for China to become modern and powerful. The Social Security System provides for the basic livelihood needs of the people. It is vital for them and affects their overall situation and the country's long-term national development which will undoubtedly need to provide more stable security for the people which can be achieved through legalization. Social assistance is the most basic of institutional arrangements, shouldering the responsibilities of alleviating the crisis for urban and rural residents and determining the bottom line of today's social justice. It needs to enter as quickly as possible into the legal process. Therefore, completing the legislation for the social assistance system is not only the proper meaning of building China to a country which is “Ruling by Law”, but the inevitable choice for improving the social security system’s legislation.

I. Social Assistance is the most basic and the oldest part of the Social Security System

In China, the concept of social security is larger than in most countries. The social security system is huge. The social security system is a social policy, which is provided by the State for the protection and improvement of national life. It typically includes social assistance, social insurance, social welfare, special care and philanthropy and can be associated with commercial insurance. The common features of the statutory institutional arrangements are that they are established by laws, government-led, supported by finance, reflect the national social security or welfare rights and having as its main function the protection of basic living and providing long-term stability. It is a reliable system for universal well-being in China. Non-statutory institutional arrangements are characterized by being voluntary, being supported with policy, organized together with social and market forces, reflecting the multi-level characteristics of the social security system. Its main function is to expand the material basis of the social security system, to meet the needs of some members of society. It is a beneficial supplement to the statutory social security system, but lacks certainty.

Social assistance is one of the three basic security systems (like the social insurance and social welfare systems). It is not only the statutory social security system, but it is the most basic and oldest system. Social assistance is part of the essential institutional arrangements, and of the most universal arrangements all over the world. It is the total responsibility of a government to provide the baseline or
minimum life-support. If there is no social assistance or it has loopholes, it will cause someone to fall into crisis mode for various reasons.

Social assistance has a long history. It has existed since ancient times, and has played the most important role in disaster and poor relief in history. The three strategies, which include cash payments, providing food and supplies and providing disaster relief assistance nowadays, have three thousand years of history in China. Disaster relief is a necessary policy for rulers to avoid social unrest and regime crisis. If the rulers are of great importance to the population's livelihood then the poor would pay attention to disaster relief. As long as the Famine Relief Measures were complete, they would be not suffer from famine; On the contrary, there will be famine when facing disaster and chaos. Famine is the background of some of the biggest peasant uprisings in history. The Qin dynasty had the national prosperity to wipe out six countries, but it only existed for two generations because it paid no attention to the people's livelihoods and providing for them during disasters. The Sui dynasty was powerful and rich enough to cut the Beijing-Hangzhou Grand Canal, but experienced the same fate as the Qin dynasty because it did not take into account the need for disaster relief. The Han and Tang dynasties drew lessons from the former, paying more attention to the population's livelihoods, disaster relief and poverty, eventually establishing flourishing peace and prosperity and reaching the peak of China's feudal society. In the Song Dynasty, a large number of relief measures for the poor and the weak or unfortunate reached a very high level. This was called the “ancient welfare state”. Seen as the most basic and long-standing social security system, social assistance provides us with both positive and negative mirrors since ancient times. Learning from the experiences and lessons of history deserves the attention of the rulers.

Of course, the social assistance of history cannot match that of today. It is an institutional system including a plurality of relief items. At present, China's social assistance programs contain a system of minimum living standards, assistance to the poor, disaster relief, medical assistance, education assistance, housing assistance, employment assistance, temporary assistance, as well as other assistance. Compared with the other social security systems, social assistance provides minimum guarantees, whilst social insurance can be expected to provide basic living security, and social welfare is based on improving the quality of life and meeting individual needs. Thus, social assistance is intended for low-income disadvantaged groups, the unfortunate who suffer as a consequence of natural disasters, as well as for individuals falling into crisis mode of survival and those with special difficulties and those who cannot extricate themselves from poverty for other various reasons. They constitute the vulnerable groups who need government help and social assistance in a contemporary society. Solving their livelihood problems will solve the weaknesses of people’s livelihoods.

It should be emphasized that social assistance is a way to protect the bottom line of social justice, reflecting the Government's minimum responsibility for livelihoods and the conscience of the whole of society. However, the bottom line is not static, moving with the nation’s development. As it reduces or even eliminates extreme poverty and continues to improve people's living standards, the bottom line will rise. The objective of the assistance will move from extreme poverty to relative poverty. According to the United States and other developed countries, more than ten percent of low-income groups will need government assistance. In China, social assistance will always play an important role on the basis of institutional arrangements in the processes of the Chinese social security system. Whether the
Government pays attention to social security, we need to observe whether or not it values social assistance. To judge whether a country has a sound social security system, the first step is to see whether the country has a sound social assistance system; meanwhile, enhancing the level of social assistance is a symbol of upgrading national social security. By paying attention to the bottom line, emergency relief, sustainable development and connecting with other social security systems, the level of social assistance adapts to the level of economic and social development and is in a reasonable position based on the specific features of the social assistance system. Only by having a perfect social assistance system, can the government ensure that every member of society will not get into the problem of survival for various reasons.

II. Social assistance should move into the legislative sphere

Social assistance needs to move into the legislative sphere, not only because it is the most basic and oldest social security system, but also for the following points:

1. The rights based on law. Social assistance is the most basic social or social security right for the population. If that right is guaranteed by legislation, this right can be converted into legal rights and truly become an actual right.

2. Responsibility statutory requirements. The Government must assume the prime responsibility for protecting and improving the population. Providing vulnerable groups and unfortunate persons with material or other forms of assistance is a Government's inherent mission but the size and the way of fulfilling that responsibility needs to be regulated by the law. On the one hand, the government is responsible for providing social assistance. On the other hand, this responsibility should not be self-determined or prescribed by the Government. Only the Legislature can have a strong constraint for implementing social assistance.

3. International general rules. Internationally, the first step is to enact social assistance legislation because the most vulnerable groups are often in need of assistance. Social security legislation in Western countries arose from the United Kingdom in 1601 promulgating the "Poor Laws". In modern society, the developed countries also tend to be the first have in place the legal norms of social assistance and then to legislate for social insurance and social welfare. The objective laws of a social security system reveal that fair value is primarily concerned with vulnerable groups.

4. The need for legislation to solve practical problems. China has yet to develop a "Social Assistance Law". In February 2014 the government promulgated "Interim Measures of Social Assistance". This covered administrative rules and temporary administrative norms. Although it can address some problems associated with the social assistance practice it is still not enough to specify and constrain the operation of the entire system. In practice, social assistance should include all levels of government sharing responsibility, the relief conditions and qualification of the objects, the operation of professional relief agencies, as well as the punishment for misconducts. All of them are short of strict legal norms and as a consequence the system has many difficult problems in its operation. This situation will lead to the lack of guaranteeing responsibilities and rights, making it difficult to provide stable security expectations and bring about a crisis of confidence in the public as well.
In summary, having social assistance legislation is an inherent requirement of the system with an objective of solving a lot of the practical problems in the management of social assistance.

III. Periodical progress of, and reasons for, the delay in legislation for social assistance

In the era of planned economy, the social assistance system in China was a typical example of the rule by man. It was basically stipulated by official documents. After the reform and opening-up, the Government accorded great importance to the enactment of laws that pertained to the field of social assistance. As a result of having such high importance, the State Council of China successively stipulated and promulgated the following laws and some of their corresponding amendments:

- Regulations for Five-guarantee Work in Rural Area in 1994 and its Amendment in 2006,
- Regulations on Minimum Living Guarantee for Urban Residents in 1999,
- Measures for Salvaging Vagrants and Beggars in Cities in 2003,
- Regulations for Relief Service After Natural Disasters in 2010, and finally
- Draft Decree on Social Assistance in 2014.

The development of social assistance services has therefore been bolstered by the legal basis on account of the enactment and implement of these laws and governmental regulations.

Among the above-mentioned laws and governmental regulations, the recently stipulated Draft Decree on Social Assistance is the most significant. This interim decree is a key step in the legalization of China’s social assistance service. It not only, for the first time, legalizes and regulates a comprehensive social assistance system into a legislatively authorized decree, but it also ascribes the Government’s responsibility and the mechanism for positioning the Government as the chief administrator and coordinator. It therefore has laid a sound foundation for the making of a specialized law for the social assistance system. Meanwhile, the legislature of China has initiated the process of drafting the Charity Law, and the preliminary draft has been submitted for the first deliberation to the Standing Committee of NPC in late October, 2015.

However, the current social assistance decrees and regulations are only administrative regulations stipulated by the Government. They have a low legal status and have defects such as vaguely defined duties and responsibilities. As the most basic part of the social security system, as well as being the instrument of defining citizens’ basic civil rights and the government’s duty to ensuring the population’s livelihood, social assistance in China still does not have its own specialized law. This demonstrates a legislative delay lagging behind the implementation. The reasons for the legislative delay related to social assistance are as follows:

(i) A stereotypical concept formed via the tradition of the rule by man. Most people consider social assistance as emergency measures or the good deeds of the Government, not as the self-evident rights of citizens and a duty of the government. Thus, they will seldom think of legislation of such law to secure their expectation for stability.

(ii) Legislative barriers caused by the dissection of system. In the comprehensive system of social assistance different projects are administered by different Ministries. Issues such as the system of
minimum living standards etc. fall into the executive ambit of the Ministry of Civil Affairs. However, the MCA is somehow curbed by the Ministry of Finance, and there are also some organizations like the Labour Union, Women’s Federation and CDPF etc. that can use public resources to play parts in the social assistance service. This dissected system causes difficulty in reaching a legislative agreement among different ministries and administrative departments.

(III) Problems with the legislative procedures. There are two major problems with the legislative procedures associated with social assistance. First, there are limitations in an administration dominated legislative process. In the background of a separated administrative power, coordination among departmental interests is the prerequisite for the legislation. The legislature cannot play their full role in this process. Second, the aim of the legislation is to establish “big democracy” and thus compromise “small centrality”. This means that with the “swarming-in” of many administrative departments, the executive power of the chief administrator will be restrained and the situation will become more complex. In the nearly ten-year legislative marathon, there have been three hiatuses all on account of disagreement among different departments. Bifurcations on the range of legislative regulations, as well as some immature reforms in assistance projects, also play their role in the delaying of the legislation.

(iv) Other factors. One factor is that the harsh restrictions on permanent staffing have directly influenced the specialization and professionalization of social assistance agencies. Current social assistance agencies widely utilize the method of employing “off-staff” personnel. This has a great practical side-effect on the assistance system. These “off-staff” personnel cannot be punished even if they do not abide by the rules. There are other factors that can also hamper the legislation process, to wit, the equivocally defined duties between central government and local government on social assistance etc..

IV. Legislative procedures for a social assistance law should be resurrected as soon as possible

The social assistance system is closely related to the Government’s basic duties and the population’s basic rights. If there are no restrictions from law, there will be no authoritative basis for the implementation of the social assistance system. Ergo, making a specialized Social Assistance Law is of high necessity and imminence. The 10th and 11th Standing Committee of NPC have had the making of Social Assistance Law listed in their five-year legislative plans. However, such plans have never been enacted and remain in abeyance. There are objective reasons for the abeyance, and resurrecting the legislative procedure can meet the need of further developing the social assistance system. In this particular milieu of comprehensively implementing governing the country by law, if one important system, which is closely related to the Government’s basic duties and the population’s basic rights is not buttressed and regulated by law, then apparently the population people cannot be provided with a steady expectation of security. Consequently, there will be twisted situations in practice and the law-breakers cannot be legally punished. Therefore, it is of great urgency to resurrect the legislative procedure for the Social Assistance Law and in the interim to ameliorate the related legal regulations in order to ensure the social assistance system is implemented in an orderly and legal manner. Additionally, strict regulations and punishment measures should be utilized to prevent and eradicate all
kinds of law-breaking actions. In a word, the legislation of Social Assistance Law shall be resurrected as soon as possible. Ergo, I propose that:

(i) The Ministry of Civil Affairs should conduct studies on the legislation of social assistance as quickly as possible. It can conduct the studies themselves or they can delegate the studies to an institution with related academic background. The entrusted institution ought to draft or solicit drafts on the Social Assistance Law. By doing so, the legislative process can be theoretically and completely bolstered as far as possible.

(ii) The Charity Law can be used as a reference for drafting the Social Assistance Law. The whole legislative process can consist of three parts: the dominance of the Internal and Judicial Affairs Committee of NPC, participation of MoCA and intelligent back-up by non-government organizations.

(iii) The Social Assistance Law should be positioned as the fundamental law in the sphere of social assistance. The law should thus stress the unequivocal definition of the Government’s rights and obligations, establish the framework of, and basic legal basis for, a comprehensive social assistance system, regulate the unified administrative system and operating mechanism, and define the legal responsibilities that the related subjects shall assume etc..

(iv) The related mechanisms should be improved. Such mechanisms consist of the professionalization of the delegated institutions and departments, the construction of information systems and the cooperation of philanthropies etc..

V. Deepening reform of the social assistance system

Maturity of the reform of the social assistance system is the prerequisite for the legislation. An immature reform of the system will only lead to the immaturity of the legislation. Such immature legislation will not fulfill expectations and even, conversely, impede the perfection of the system. Consequently it is essential to intensify the reform of the social assistance system and simultaneously emphasize promotion of the social assistance legislation.

(i) Optimizing the current system and securing the baseline. Optimizing the system should be the priority. Practical measures for optimization are as follows. First, the overlapping assistance should be changed into classified assistance. Those assistance projects that overlap with minimum living standard system will be divided and applied according to the assistance needs of the lowest-income group. This would mean that those who have difficulties in medical treatment, education, housing etc., and who cannot solve those problems themselves, can apply for the corresponding assistance even if they are not in the minimum living standard system. This measure is essentially aimed at the neutralization of the twisted parts in the minimum living standard system and the disparities that are growing among the marginalized groups. Also, this is the must-do that will allow the more difficult families to get social assistance from the government. The second measure requires clarification between the social assistance and the social welfare system, namely, deleting welfare for the disabled and senior citizens that is tagged onto the minimum living standard system. This deletion will help unravel the original duties of every assistance project and correct the systematic malposition of the different guarantee systems. The last measure demands an essential remediation of flaws. Those
emergency assistance projects which have not been included in the social assistance system shall be included henceforth. The remedial inclusion will help construct an umbrella system of social assistance, through which the bottom line of the system will be secured and qualified applicants thereby assisted appropriately.

(ii) To clearly define the Government’s duties and to orderly distribute responsibilities among central and local governments while harnessing the market and social mechanisms as auxiliaries. It is unquestionably acknowledged that social assistance pertains to the duties of Government. And it is necessary to unambiguously define the dividing line between the Government’s duties and the distribution of responsibilities among central and local administrative powers. A reasonable division would be like this: the Government’s duties ought to entail the guarantee of a basic living standard for groups with difficulties and the security of the bottom line. There should be a certain ratio for the distribution of responsibilities among central and local governments, like 7:3, 6:4 or 5:5. A stabilized distribution of duties can have governments of all levels understand their duties in the sphere of social assistance and therefore mobilize financial resources in a planned way. Moreover, there are real examples of heavy governmental liability caused by some of the social assistance projects. Therefore it is certain that market and social mechanisms shall be harnessed as positive auxiliaries. Take assistance after a natural disaster as an example. It is unsustainable and unfair to provide assistance by mobilizing national resources. The Government’s duty should be restricted to the aspects of urgently assistance persons and the public health services during or after a disaster. The colossal cost needed for post-disaster reconstruction should be raised via a market mechanism e.g. business insurances as far as possible. Additionally, philanthropy can play a beneficial role in the relief services and post-disaster reconstruction. If the market mechanism and philanthropy can be developed and harnessed, the dividing line of the Government’s duties will be clear and the market, society and disaster-stricken citizens can be readily coped with. Such actions will strengthen China’s muscle in coping with disasters. In a word, re-distribution of the responsibilities in the sphere of social assistance has become an urgent task as well as a prerequisite for a mature and complete social assistance system.

(iii) Reform the system and optimize the mechanism. It is now urgently required that the administrative structure of power division by multiple departments shall be altered, the inter-department coordination system cancelled and the MoCA administered social assistance service clearly established. Only with those actions can executive power be highly unified and public resources rationally distributed. Then the related departments can cooperate according to their duties. Conspicuously, this highly-centralized administrative system is the only sine qua non of an effective administrative accountability system, which can ensure flawless systematic arrangements and assist umbrella social groups who have difficulties. Furthermore, a professionalized operation should be promoted. The fact that agent operation twisting is systematic practice without punishments illustrates that a specialized institution is required for the implementation of social assistance. Thus it is better to establish a specialized institution for social assistance rather than holding an intense grip on staffing and continuing the agent operation function with its system-rotten effects. Once it is ensured that this specialized institution is function well, wasted resources in the sphere of social assistance can be avoided and public credibility maintained.
(iv) Cooperate with related systems and establish a correspondingly stimulative mechanism. Firstly, social assistance service requires active cooperation from social insurance, social welfare and even charities and business insurance. Cooperation, on the basis of respecting respective patterns and duties, should be reasonably planned and developed hand in hand as far as possible. For example, it is better to establish corresponding welfare systems for the elderly and the disabled respectively rather than categorizing them into the social assistance or even the minimum living standard systems. And this solution, per se, is a necessary step to establish a clearly-defined social assistance system.

Furthermore, a stimulative mechanism needs to be established in order to avoid the vicious circle of poverty. Some countries as well as regions like Chinese Hong Kong have widely utilized an effective stimulative mechanism. This would allow the assisted subjects to apply for a tax-free income when they work. By doing so, assisted subjects can work and create values for the betterment of their lives instead of getting a deduction for assistance costs from their earned income, etc..

Finally, other measures have to be taken including reinforcement of information technology for social assistance and improving the technical back-up units for maintaining a sound systematic functionality.

In short, because of the necessity for, the importance of, and the basic nature of social assistance, we should find it a reasonable position in the overall social security system. Under the condition of optimizing the system’s structure and a reasonable share of responsibility, we should promote social assistance into the mature and legal system orbit. A sound comprehensive social assistance system will be the first block of the stable development of Chinese society.
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