

# The Predicament of Penal Enforcement and the Realistic Way Out behind the Phenomenon of "Judicial Orphan"

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**Abstract:** *The phenomenon of "judicial orphans" is frequent in trial practice, which leads to difficult problems of sentence enforcement. Therefore, it is necessary to improve the sentence enforcement system, appropriately increase the number of non-custodial sentences, set up a relatively unified enforcement department and strengthen law enforcement supervision, and build a social support system for "judicial orphans". In order to ensure the organic unity of the legal and social effects of criminal sentences, it is necessary to improve the sentence enforcement system, appropriately increase the types of non-custodial sentences, set up relatively unified enforcement departments and strengthen law enforcement supervision, and build a social support system for "judicial orphans" to ensure the proper placement of minor children of criminals.*

**Keywords:** *Judicial Orphans, Execution of Sentences, Non-Custodial Sentences*

## 1. Introduction

According to the relevant research statistics of the Ministry of Justice, as of 2005 (see Table 1), the total number of minor children of those serving prison sentences in China exceeded 600,000, accounting for more than one-third of the 1.56 million inmates serving prison sentences in China. Among them, 94.8% of the children have not received any form of social assistance, and 70% of the children of prison inmates followed their parents on the path to crime. A survey conducted by the Guangdong Provincial Department of Justice at the same time showed that 15 percent of the minors serving sentences in the province's juvenile correctional facilities had parents who were serving their sentences [10]. There is no law or regulation in China that precisely defines the minor children of those serving prison sentences, and there is no clear department responsible for providing them with assistance, nor is there a clear and complete set of support methods, but the suffering of parents serving prison sentences will eventually fall on the children, the most typical case being the June 21 Nanjing girl starvation case. In June 2013, two girls in Nanjing's Jiangning District unfortunately died of starvation at home. At the time of the tragedy, their father was serving a prison sentence for drug-related crimes. Before that, the two children were mainly taken care of by the father. Their mother, and sole legal guardian, Le Yan, had a seven-year history of drug use and had left her children at home more than once, sometimes for as long as four or five days. At the time of the crime, Le Yan had been away from home for many days and locked her children in her home, which eventually led to the tragedy. In early 2015, Le Yan was sentenced to life imprisonment and deprivation of political rights for life by the Nanjing Intermediate People's Court for intentional homicide. This incident caused an unprecedented heated debate on the Internet, and while netizens condemned the girl's mother, they also deeply explored and reflected on the current guardianship system and judicial functions in China. The rapidity and interactivity of information dissemination on the Internet give it an advantage that cannot be replaced by other media. With the joint promotion of various public forums, communities and opinion leaders represented by V.I.P.'s, public opinion has been accelerated and attention to the special group of minor children of prison inmates is unprecedented. Table 1 shows the status of minor children of persons serving prison sentences in 2005 in which we can see the severe problem we are facing with nowadays.

*Table 1: Status of Minor Children of Persons Serving Prison Sentences in 2005.*

Total number (600,000)	94.8% have no social assistance	70% have committed crimes
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## 2. Realistic Troubles: A Practical Examination of the Difficulties of Guardianship Enforcement due to "Judicial Orphans"

Li Guifang Theft Case: On June 4, 2003, Li Guifang, a long-time drug addict from Chengdu, was arrested for theft and sent to mandatory drug rehabilitation. After her arrest, Li Guifang repeatedly begged her captors to rescue her unaccompanied daughter, Li Siyi, who was locked up in the house, but was refused, and finally simply contacted by phone, and her family and neighbors were not notified when she sought help in the drug rehabilitation center. A full 17 days apart (Table 2).

*Table 2: Justice Orphan Dropout Rate.*

Before parent went to prison	While serving a prison sentence	After parent's imprisonment
17.56%	13.1%	82.445%

This is just the tip of the iceberg of the phenomenon of "judicial orphans" in trial practice. It has been 12 years since the "Li Siyi case", and the "Ma Mou intentional injury case" is happening now. According to the incomplete statistics of the S District Court where I work, from 2013 to 2014, there were 16 cases in which the defendant was pregnant, breastfeeding, or had minor children without support and supervision, causing difficulties in adjudication, mainly in three situations. The first is that the defendant is on bail pending trial because he or she has a young child who is unsupported, and the defendant is the sole guardian, so no other relatives can assume the responsibility of support if arrested and taken into custody; the second is that the couple commits a joint crime, and both of them are sentenced to a real sentence after the case is heard; the third is that the defendant is prosecuted after the sudden death of his or her spouse, and his or her young child is unsupported. And these, just a district court in the author's data, if the scope of statistics to expand to a city, a province, or even the country, what kind of huge number would be? These children are very similar to the "left-behind children" in rural areas, which are currently of great concern to society. Compared with "left-behind children", "judicial orphans" not only have a lower chance of seeing their parents, but also face discrimination and isolation from the society and even their friends and relatives, and are prone to leave school and drop out, live on the streets, beg for money, and commit crimes under the influence of negative social factors, and even die. Their growth is undoubtedly more severe in many aspects of learning, life and psychological problems, which can be said to be similar to but more than suffering, and more worthy of social attention and care. Table 3, 4 shows the psychological problems of judicial orphans.

*Table 3: Psychological Problems of Judicial Orphans.*

1. lack of security	2. introverted	3. sensitive	4. Distrustful	5. Low Self-esteem
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*Table 4: Reasons for Low Self-esteem of Judicial Orphans.*

37% of children expressed low self-esteem	Others look down on themselves (32%)
	Others have happy families while they don't (24%)

In practice, if it is only because the minor children need to be raised, when the guardian needs to be sent to prison, other possible guardians such as spouses are unable to fulfill their guardianship responsibilities, this situation obviously does not meet the statutory conditions for non-custodial sentences, forcing the execution of the sentence, the "judicial orphans" will be in a situation of no one to supervise. The case is a tragedy, but if the guardian is sentenced to probation or transferred to the execution of imprisonment for the sake of "judicial orphans", it faces the dilemma of no basis in law, and there is a large controversy, in the repeated procedures and the prolongation of the litigation cycle, the case is caught in a "dead end". In addition, there is no effective safeguard procedure in our society to ensure that minors can get relief after the emergence of "judicial orphans" and to relieve the worries of judicial decisions.

## 3. The Concept of Transmutation: The Construction of the Concept of Human Rights Protection System for the Implementation of Penalties

China's traditional criminal law emphasizes the fight against crime, the guilty must be punished, punish the guilty, influenced by this, the judicial field and the public's concept of heavy penalism in the

concept of far-reaching impact. In fact, criminal law is not only a tool to achieve the political rule of the state, but also a tool for citizens to prevent judicial arbitrariness and guarantee personal freedom, and is the carrier of social justice, the ultimate value and purpose of legal norms. Penal power is one of the most important state powers in peacetime, and the first and foremost constraint on state power is the constraint on the state's penal power [1]. Relative to criminal suspects and criminal defendants, the state judicial organs are obviously in a strong position. In criminal justice activities, it is impossible to truly maintain social justice and fairness if the strong are not given some restraint and the weak are not provided with a relative safeguard mechanism. Therefore, while punishing crimes, criminal justice should also protect the human rights of defendants and even relatives of defendants in accordance with the law. Accordingly, in the construction of the penalty enforcement system, it is necessary to gradually evolve the concept of punishment with the theme of punishment and retribution to the direction of individualization of punishment and execution of punishment with the content of guaranteeing their rights.

### ***3.1. Humanistic View of Punishment***

The view of punishment refers to the general term of people's conceptions and values regarding the nature, mission, purpose, and role of punishment as well as the setting and operation of punishment [8]. The concept of punishment plays a crucial role in guiding the national penal system, and its establishment cannot be separated from the social roots and growing soil. Every economic and social development and change in material living conditions will bring about changes in the purpose, degree of combat and focus of punishment. Therefore, the concept of punishment must be adapted to the political, economic, cultural and other elements of the society in which it is imposed. Feuerbach advocated putting people first and taking them as the starting point of all social activities, and this concept has become the consensus of the times. In line with this, China's view of punishment should also adhere to the "humanitarian", "human" as the basic starting point of punishment, emphasizing the realization of the basic values of human beings. The purpose of punishment is not only to punish the crime, but also to achieve the effect of general and special prevention, to prevent the risk of recidivism, and to maintain the stability of society [7]. The inclusion of "respecting and safeguarding human rights" in the Criminal Procedure Law in 2012 is an extension of our human rights protection efforts. This is a leap forward in the cause of human rights protection in China, indicating that our criminal legislation and justice are constantly developing in a more humane direction. From this basic point of view, legislators should draw a reasonable line between the state's penal power and the individual rights of citizens, and between social protection and human rights protection, so that human rights protection takes precedence over social protection, and individual legal rights take precedence over the state's penal power. Judicial workers should abandon the past "control" type of judicial philosophy, and establish a new concept of "human rights protection" type of criminal justice, treating criminal suspects, criminal defendants and criminals as "human beings" "We respect and protect their human rights."

### ***3.2. Individualization of Penalties***

In the theory and practice of criminal law, the issue of individualization of penalties has been an old topic of great concern. Professor He Bing-song pointed out as early as 1986 that "on the premise that the perpetrator has committed a certain illegal act, it is necessary to differentiate not only according to the nature of the act, the circumstances, and the degree of harm, but also according to the specific situation of the subject of the act [6]." In the same period, Professor Wang Zuofu also holds a similar proposition, "the offender should be considered not only according to the seriousness of his crime, whether he should be sentenced or should have been sentenced heavily or lightly, but also whether he needs to be sentenced according to his personal situation or whether he needs to be sentenced heavily or lightly, which is not only to implement the principle of adaptation of crime and punishment but also to reflect the principle of individualization of punishment, which is the unity of principle and flexibility." Of course, there are also scholars who oppose the theory of individualization of punishment and believe that it violates the principle of equality before criminal law. Formally, the imposition of the same penalty for the same criminal act seems to be the equality of all people before the criminal law. In fact, this has precisely resulted in substantive inequality. Different sex, occupation, family origin, property status and other offenders have different personal danger, as the evaluation of the personal danger of the penalty, should result in different sentencing results. The substantial expression of the principle of equality before criminal law in the application of penalties should be that the sentencing result of each offender is compatible with the facts reflecting the personal danger of the offender and the humanity of criminal law, humane care and human rights protection,

such as the non-application of the death penalty to pregnant women and the lenient treatment of minors and the elderly. In this way, the modern rational individualization of punishment is, on the one hand, an important content and outward expression of the modern basic principles of criminal law that materialize the law of crime and punishment, the adaptation of crime and punishment and equality before criminal law, and, on the other hand, an important intermediary of the intrinsic relevance among the three basic principles of criminal law. Therefore, the differential application of penalties to the guardians of "judicial orphans" is also a concrete manifestation of the modern rational idea of individualization of penalties. Therefore, we should pay special attention to individualization.

### **3.3. Socialization of Execution**

With the innovation of the concept, how to carry out social management with the help of social power has become a hot topic of discussion nowadays, especially the community correction system was written into the 2011 Amendment (VIII) to the Criminal Law, marking that the socialization of execution has become a trend in the development of China's criminal law [5]. The reason for the emergence of "judicial orphans" is that their parents were sentenced to imprisonment, which is a coercive measure to isolate society. Personality, conducive to the return of criminals to society, to achieve a better correctional effect. Whether for the offender, or the community where the person lives, and even for the whole society, is a beneficial choice. Based on the actual situation in China, the public, prosecution, law and justice departments should establish the concept of modern criminal justice, form a consensus on expanding the application of the socialization of sentencing, gradually explore and improve the execution system of non-custodial forms of punishment, such as community corrections, on the one hand, and gradually relax the conditions for the application of existing non-custodial sentences such as control, probation and provisional release, and then promote the transformation of mature experience into formal legislation to build a scientific, perfect and suitable for our national conditions. And suitable for China's national conditions, to help promote the construction of a harmonious society.

## **4. The Judicial Way Forward: The Model Choice of Non-Custodial Penalty Enforcement System Reform**

With the rapid development of China's civil society and the progress of the criminal justice environment, the concept of the penalty system to protect human rights has become a social consensus, but China's criminal law and criminal prosecution law do not adequately respond to it. Therefore, it is necessary to reorganize the current penalty enforcement system, strengthen the blind spots and weak points of the legislation, and reduce the soil of "judicial orphans" from the legal system. Since the 20th century, the expanded application of non-custodial sentences has become the general consensus of the international community, but in China, there are only a few types of non-custodial sentences, such as control, fines, deprivation of political rights, probation, etc., which are narrowly applied, low usage rate and poorly applied, and are increasingly out of line with the needs of the current "society in transition". In contrast, in countries around the world, non-custodial penalties account for roughly 40% of the total number of penalties. The German Penal Code and the Italian Penal Code alone provide for 14 and 25 non-custodial measures, respectively, and resources are constantly invested in the discovery of new non-custodial measures and the adaptation of old ones [2]. The U.S. federal courts and state district courts have widely adopted alternative measures to imprisonment for misdemeanor defendants who voluntarily plead guilty and for a small number of offenders whose crimes are relatively minor and less dangerous to the person, the most basic being mandatory participation in community labor. Several major lower courts in New York City have set up full-time community labor investigation, coordination and supervision positions, which are responsible for collecting and compiling statistics on the various social service needs of the various communities within their jurisdictions[4], arranging and supervising offenders sentenced to community labor by the courts to participate in unpaid community labor, and if they do not participate in labor for no reason, the supervisors can give warnings; if the circumstances are serious, the judge can impose a sentence of imprisonment upon the report of the supervisors [9]. The Hong Kong Special Administrative Region of China, on the basis of inherited British law, has developed a rich variety of non-custodial penal system with a wide range of enforcement methods, mainly including community service orders, fines, compensation or damages, probation, conservative behavior, criminal bankruptcy orders, forfeiture, suspension of driving licenses, etc. Hong Kong law also explicitly requires that custodial sentences may only be applied when all available options have been considered and are deemed insufficient to punish the defendant, and custodial sentences are explicitly required to be used with caution for offenders under the age of 21. Japan, Korea, Singapore,

and Taiwan also have a large number of similar provisions.

In order to establish a scientific and reasonable system of non-custodial penalties, in addition to changing the stereotype that non-custodial penalties are a supplement to custodial penalties, it is entirely possible to gradually increase the types and number of non-custodial penalties from our practice, drawing on some of the proven experiences and practices of the above-mentioned regions. For example, we can introduce community service sentences, which require offenders with special needs and certain conditions, such as legal guardians of "judicial orphans", to go to "community service bases" in the communities where they live or where they committed their crimes, and participate in specific public welfare programs under the supervision of the grassroots judicial office. Under the supervision of grassroots judicial staff, they can participate in specific public welfare projects and provide unpaid services for a certain period of time, so that they can not only be punished, but also repair the community relations damaged by the crime, and facilitate the care of minor children, thus solving the problem of applying punishment. On this basis, from the perspective of maintaining the unity of the socialist legal system and guaranteeing the smooth implementation of non-custodial sentences and other penalties, it is necessary to organize the formulation of a special Community Corrections Law or even further adopt a Criminal Enforcement Law, based on the adjustment and revision of existing legislation and timely summing up pilot experiences in various regions. Further enhance the level of rule of law in the execution of penalties.

#### ***4.1. Integrating the Work Functions of Relevant Departments and Setting up a Relatively Unified Execution Department***

As a penal power equal to criminal investigation, criminal prosecution and criminal discretion in criminal justice, the execution of penalties has its own unique status and independent value and cannot be mixed with other powers of penalties and exercised by the same institutions [3]. Currently, bail pending trial, residential surveillance, control, deportation, and deprivation of political rights are enforced by public security departments; fines, confiscation of property, compensation for damages, apologies, and confessions are enforced by courts; community corrections are enforced by judicial administrative departments; and the enforcement of non-custodial sentences such as probation, parole, and provisional release requires joint enforcement by multiple departments. There are many non-custodial sentence enforcement agencies, duplication of functions, cross-authority, and multiple departments, which not only waste resources, but also have the disadvantages of multiple execution of sentences, unclear authority and responsibility, lack of supervision, poor execution of sentences and judicial fairness, which seriously affects the authority of the execution of sentences. Moreover, the public security and courts, which actually bear part of the function of execution of penalties, are facing the problem of having too many cases and too few people, and taking up two major functions at the same time is not only difficult to ensure quality, but also violates the principle of division of labor and mutual restraint, which isn't appropriate nowadays.

#### ***4.2. Strengthen Supervision of Law Enforcement and Avoid Abuse of Judicial Power***

"With power comes responsibility, and the use of power is subject to supervision". Article 129 of the Constitution provides that "the People's Procuratorates of the People's Republic of China are the legal supervisory organs of the State". Article 224 of the Criminal Procedure Law provides: "The people's procuratorates shall exercise supervision over the lawfulness of the activities of the execution organs in carrying out penalties. If violations of the law are found, the execution organ shall be notified to correct the situation." Compared to the supervision of the execution of custodial sentences, the procuratorial organs have less supervision over the execution of non-custodial sentences and out-of-prison execution activities such as probation and parole, and have invested significantly less resources. In judicial practice, it is not uncommon to see the improper exercise of judicial power such as the release and omission of offenders from prison, and there are many problems. The goal of crime prevention is primarily or fundamentally realized only through the execution of penalties. In order to reverse the current lack of supervision, it is necessary to establish a special agency within the procuratorial organs for the execution of non-custodial sentences, which is specifically responsible for the supervision of the execution of non-custodial sentences. For example, procuratorial organs should station people's procuratorial offices in judicial administrative departments at or above the county level to implement front-line supervision of law enforcement activities of noncustodial sentences, and the newly established procuratorial agencies should carry out supervision throughout the implementation of noncustodial sentences: establish a strict system of integrity risk prevention and control system for the implementation of noncustodial sentences, including a pretrial risk assessment mechanism, and

strengthen legal supervision and accountability. In concrete terms, the procuratorial authorities can use a combination of monthly or quarterly routine inspections and temporary random inspections, regular meetings and questioning of non-custodial offenders, regular rotations to avoid occupational risks, supplemented by a smooth channel for receiving reports and complaints, and collecting clues to wrongdoing in all directions. If illegal and undisciplined behavior is found, the case will be promptly launched to carry out investigation, and after verification, punishment will be proposed to the relevant departments; if it constitutes a crime, public prosecution will be initiated in accordance with the law; if non-custodial sentence enforcement decisions and implementation work are found to be risky and hidden, timely prosecution recommendations will be made. At the same time, the procuratorial organs should also establish a sound law enforcement supervision file to ensure that the prevention and control system is put into practice. Table 5 shows the criminal justice system with rational allocation of penal power. In this way, the problems the "judicial orphans" are facing with would be solved properly.

*Table 5: A Criminal Justice System with Rational Allocation of Penal Power.*

Legislation	Investigation	Public Prosecution	Judgment	Enforcement
NPC	Public Security	Prosecutor's Office	Courts	Judicial Administration

### 5. Supporting Measures: Design of Social Security Mechanism for "Judicial Orphans"

The "judicial orphans" have lost their parents' guardianship and family's economic pillar due to the imprisonment of their parents, and their survival situation is worrying. The protection and rescue of "judicial orphans" is a systemic project involving all aspects, which can be done not only by the courts. To eliminate the phenomenon of "judicial orphans" from the source, it is urgent to establish a set of undercover protection mechanisms for state relief and intervention with the participation of government departments and all sectors of society. The United Nations Convention on the Rights of the Child stipulates that children have four basic rights: survival, protection, development and participation. To implement these rights, many countries have enacted independent child welfare laws and rescue systems: for example, Japan's Law for the Promotion of Child Development Support, which details the obligations of the state, local governments and social organizations to rescue children and adolescents in difficulty from the perspectives of living, education, medical care, health care and social welfare. In the Macao Special Administrative Region of China, a special chapter of the Civil Code provides in detail various relief measures for "children with de facto loss of parental authority", including the minor children of prison inmates. In Germany, there is a special "mother-child" program. Germany has also established "mother and child prisons" with special rooms for mothers and children and special elementary schools, where mothers can bring their young children to serve their sentences and ensure their children's education.

China's Constitution and the General Principles of Civil Law provide for the protection of minors in principle, and the laws that specifically address the protection of minors are the Law on the Protection of Minors and the Law on the Prevention of Juvenile Delinquency. Among them, Article 16 of the Law on the Protection of Minors provides for the guardianship of a special group of "judicial orphans" in principle. However, it is difficult to advance in judicial practice, and the courts have made decisions on revocation, deprivation and transfer of guardianship in accordance with the law. On the one hand, minors who are civilly incompetent or have limited civil capacity find it difficult to file a petition for revocation of guardianship on their own without external assistance; on the other hand, relatives and friends of minors, their parents' units and grassroots organizations in their places of residence have no incentive to file petitions for fear of the exhausting litigation of revocation of guardianship and the guardianship obligations they may face after revocation. In addition, China's prison law explicitly prohibits offenders from bringing their children to prison.

To ensure that "judicial orphans" grow up as healthy and happy as children from normal families, the legislature can draw on the experience of the above-mentioned regions with advanced rule of law to formulate a special law that covers all aspects of life, education, medical care, psychology and welfare of "judicial orphans" and has a strong operational character. In order to fill the gaps in the law from the practical level, the legislature can learn from the experience of the above-mentioned regions with advanced rule of law and formulate a special law for children's assistance with strong operability. Specifically, we can learn from Japan's legislative experience and have the State Council issue special administrative regulations to incorporate special children, including "judicial orphans," into the social assistance system, provide detailed measures and standards for assistance, and instruct governments at all levels above the county level to formulate annual assistance plans for special minors, specifying the

responsible departments, contents of assistance, sources of personnel, and assessment standards.

### ***5.1. Clarifying the Subject of Guardianship and Mobilizing the Strength of All Parties***

In practice, when parents are taken compulsory measures or handed over to serve their sentences, there is a lack of a legal subject to follow up, the first time to find out that their minor children are out of guardianship, and to promptly transmit this information to the competent authorities to start the replacement procedure in a timely manner. The essence of this problem is the absence of a guardianship subject. In Japan, the Law for the Promotion of Child Rearing Support for Juvenile Children stipulates that the governments at all levels, such as prefectures, provinces, prefectures, and cities and towns, are obliged to formulate plans for the rescue of minors in their jurisdictions and arrange for the provision of special funds and professional staff. In 1968, the UN ECOSOC adopted resolution 1296, which specifically established a committee of NGOs to recognize and support the development of such social organizations, providing humanitarian services to them.

In order to eliminate the court's concern about "judicial orphans" at source, it is necessary to strengthen the main responsibility of the state and establish a "state guardianship system". Specifically, for parents who are unable to perform their guardianship duties for minors because they are under compulsory measures or serving prison sentences, the courts should establish a linkage mechanism with the judiciary to investigate in advance whether there are suitable adults who can assume guardianship of their minor children, and to verify whether there are no qualified guardians or such persons are unable to perform their duties for whatever reason. It should be clear that the civil affairs department of the government should act as the "ultimate parent" to take over the guardianship duties and guarantee the right to survival and education of the "judicial orphans" according to the Constitution. On the one hand, the civil affairs department should clarify that existing government-sponsored charitable institutions such as children's welfare institutions, homes for the elderly, and orphanages should include "judicial orphans" and other special children into their targets, and provide financial budgets in accordance with the law and subsidize them according to the number of people they accept and the effectiveness of the assistance they provide; on the other hand, government departments should change their mindset and encourage and support private charitable institutions and caring individuals. On the other hand, government departments should change their mindset and encourage and support the participation of private charities and caring individuals in the rescue work, not only by summarizing and promoting the existing model of children's village, but also by providing specific support to charitable organizations and individuals who fund and participate in the rescue of "judicial orphans", including the use of land, water, electricity, transportation, tax credits, personnel training and recognition and publicity. Third, governments at all levels should set up a special relief fund for "judicial orphans" and implement an application-based reimbursement model for all needs. The fund should come mainly from the fiscal budget and social donations, and should also introduce a modern fund management model, with regular audits, transparent management, and public disclosure of all accounts to the public in a variety of ways, including online and physical, and accept public supervision.

### ***5.2. Refine the Content of Assistance and Guarantee the Effect of Assistance***

The assistance for "judicial orphans" concerns the growth of an individual society and involves many complex and detailed contents, which is a highly technical area of social governance. A modern rule of law state should start from the "minors' orientation" and "minors' priority", conduct regular research to determine the appropriate living standard of the children's location, and set scientific and reasonable standards for child assistance and assessment to ensure that the material, spiritual and developmental needs of children are met. The first is basic livelihood assistance and financial support. The State sets minimum living and medical standards for children in difficulty and adjusts them in a timely and dynamic manner according to price fluctuations to ensure that special minors, including "judicial orphans," are fed and clothed and grow up healthily. Second, psychological counseling and affection education, through the government's purchase of social services, fostering the cultivation of psychological counseling institutions and kindergartens, nurseries and other professional institutions in their own placement of "judicial orphans" while providing professional skills training services to society. In addition, we will establish a foster family support and assistance model based on the standards for adopted children, and encourage eligible loving families to adopt "judicial orphans" temporarily, so as to connect the broken chain of affection and family warmth for the formation of a sound personality. Third, knowledge and life skills education. Relying on existing public primary and secondary schools and private schools and early childhood education institutions that meet the requirements, special scholarships and grants are set up to provide compulsory education and basic life

skills training for "judicial orphans" to ensure that this special group has sufficient knowledge reserves and skills. Fourth, the family ties of "judicial orphans" should be maintained. The judicial administrative department should formulate norms, set up special meeting places for parents and children, and arrange regular meetings between inmates and their minor children, especially on holidays and special dates such as birthdays and family anniversaries, so as to promote emotional exchanges between direct blood relatives and help in the rehabilitation of inmates. For female inmates whose children are particularly young (under one week old), special cells can even be arranged to live with their mothers. Fifth, the civil affairs department should give full play to its advantage in coordinating the social assistance system, and coordinate with the Women's Federation, the Youth League, education, the public prosecutor, the judiciary and other departments and organizations to give full play to their respective advantages, and provide support to "judicial orphans" in the form of joint construction and friendship, so as to provide them with a comprehensive and seamless protection and assistance system, and jointly help The "judicial orphans" will be helped to grow up in a more proper way.

## 6. Conclusions

At this point in the article, let us review the opening two cases, we see the tragedy of criminals like Ma, who, after being sent to prison for their crimes, are unable to raise their minor children outside the bars, and the judge, outside the law, realizing the serious problems that may be caused by the decision, can only go through internal struggle, resisting the pressure to make "illegal" but reasonable decisions. The root cause is that our rule of law is not yet sound, and the failure of legal channels has directly led to such a dilemma. We do not expect to put forward perfect solutions in the limited space of this article, but based on the simple faith of a legal person, worried about the absence of law in judicial practice, hoping that through their own superficial exploration, to provide an inspiration or a more appropriate idea for the solution of the problem.

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