

# Insufficiency and Perfection of China's Guardianship System

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**Abstract:** *The development of guardianship system in China has a history of many years. However, in recent years, with the increasing aging of Chinese society, many systems in the past have been unable to adapt to the current changes. This article starts from the status quo of the guardianship system in China, and analyzes the current situation of the problems existing in the guardianship system in China. At the same time, this article also studies related issues, aiming to protect the due interests of Chinese wards.*

**Keywords:** *Guardianship, Minors, Adults, Behavioral Capacity*

## 1. Introduction

After a long period of development and improvement, the guardianship system in China has made great contributions to maintaining the stability of Chinese society. But at the same time, we should also realize that we should realize that China's guardianship system is still not perfect, there are still some areas that need to be further revised. In today's social background in China, we need to pay more to the guardianship system and continuously improve it to meet the needs of society.

## 2. The Current Situation of the Guardianship System in China

### 2.1 Guardianship of minors

In China, it is widely accepted that parents are the natural guardians of children. Under special circumstances, other people may also be responsible for the growth of minors. The problem of guardianship of minors at this stage is mainly concentrated in the latter situation. That is, when the is not the guardian, it needs legal provisions to be perfected.<sup>[1]</sup>

### 2.2 Guardianship of adults

The adult guardianship system is mainly for those adults with mental illness. Compared with adults, they cannot complete many behaviors independently, and at the same time, they may do some radical things, which may cause certain harm to the society and the masses. This particularity makes group need guardians to supervise them. For them, the first thing to ensure is that they can live in peace, and then they can further consider the issue of treatment and rehabilitation. Therefore, this group has higher requirements for the guardianship system. Only a more advanced and strict guardianship system can protect the interests of these adult guardians to the greatest extent.<sup>[2]</sup>

### 2.3 Significance of the guardianship system

The guardianship system has great significance for both adults and minors. On the one hand, for minors, the guardianship system is conducive to safeguarding the interests of minors. This system helps maintain social order and is of great significance to ensuring long-term social stability. On the other for adults, Chinese society is in a transition period. Many lonely elderly people also need a system to safeguard their interests and ensure that they can enjoy their old age. In general, whether it is for the elderly or young people, it has serious and necessary practical significance, and also plays an important role in the long-term development and stability of the overall society.

### **3. Inadequacies of the Chinese guardianship system**

#### ***3.1 The main body of the guardian is insufficient***

For the ward, the most important thing that the guardian gives the ward is actually spiritual encouragement and comfort. Only from the perspective of ordinary people, although there are relevant provisions in law, they are often not exactly implemented in actual situations. The fact is that some guardians are subjectively unwilling to perform their duties.<sup>[3]</sup>

#### ***3.2 The stipulation of guardianship duties is too simplistic***

China's existing guardianship system is not detailed enough in terms of guardianship duties, and only has a general framework. As a result, many guardians do not know how to perform their duties, and indirectly lead to various problems when the guardians of minors are not their biological parents. For some guardians, they do not have a clear awareness of the duties and obligations they should perform. Undoubtedly, the same problem exists for the guardianship of adults. Although the current Chinese law has more detailed provisions on adult property, for adults who need guardianship, their situation is not optimistic. For example, due to the general lack of ability of the adult group to be supervised, if the guardian wants to take their property, the consequences will be very serious.

#### ***3.3 The identification of the ward is too strict***

At present, in China's existing guardianship system, it is relatively easy for minors to identify the person under guardianship, that is, based on age. But for adults, the guardian identification process is more complicated. Although the rules for whether an adult needs to be supervised may seem simple, it depends on whether or not there is a mental illness. However, whether the adult belongs to the mental group, the specific conditions of the disease often require the identification of specialized institutions. During the identification process, the procedure becomes long and complicated. This complexity is mainly reflected in the inability to timely and effectively protect those who need guardianship in a short time.<sup>[4]</sup>

#### ***3.4 The revocation of guardianship is not easy to operate***

In reality, there will be many such situations, that is, the guardian does not treat the ward legally and even directly violently. In this case, it is legally possible for other relevant persons to bring a lawsuit to the court to revoke the guardianship of the guardian. However, even if Chinese laws have such provisions, in reality, there are often no cases where relevant personnel file lawsuits to protect the ward. The reason is that the other guardians and guardians do not live together, or even have a long distance from each other. As a result, they do not know the specific living conditions of the ward, cannot quickly detect that the ward is being abused, and miss the best rescue time, thus making a big mistake. At the same time, the lawsuit to revoke guardianship in China is a right rather than an obligation. For the parties, whether to sue is up to the parties themselves. In most cases, even if other guardians in the ranking clearly know that the ward has been abused, they are often subject to concerns about their own safety and do not think too much about the ward. Although many minors are young, they already have the ability to think independently and have been able to recognize that they have been abused. At this time, if they can file a lawsuit in the court, they should not be deprived of the qualifications of the subject of the lawsuit because they are persons with full capacity for civil conduct, which is completely detrimental to the rights protection of minors.

### **4. Countermeasures and suggestions for China's guardianship system**

#### ***4.1 Recognition of the voluntary guardianship system***

The legal guardianship system in China often fails to select the most suitable guardian due to the lack of consideration of the wishes of the ward. China's guardianship system stipulates that the selection of guardians should be judged in accordance with the law, not according to the actual situation in life. This kind of regulation that does not put the opinions of the ward in the first place causes the selection of guardians to sometimes not match the needs of the ward. Whether choosing a guardian in full accordance with the law will be detrimental to the person under guardianship, a

voluntary guardianship system should be adopted. However, we should still take into account that because the ward is underage or incapable of judgment, their opinions may not necessarily be mature. This requires comprehensive consideration of various factors, and the combination of legal guardianship and voluntary guardianship to select a suitable guardian.<sup>[5]</sup>

#### ***4.2 Define the duties of guardians in detail***

China currently lacks specific regulations on guardians' behavioral constraints, but only generally stipulates the obligations of guardians. However, the specific division of responsibilities of guardians should be clearly stipulated in the law, which can ensure that guardians understand what obligations they should perform and what kind of behavior will be punished. Only when the responsibilities and obligations, regulations and punishments are clearly defined, the guardian can think for the ward and think for the ward. Adults need to be supervised often because of mental or physical eye injuries, most of which are difficult to heal for life. It is very important to them how to ensure that their property is not violated, but is actually used for their own health care. In other words, further consideration of rehabilitation is only possible if life is stable, and legal best efforts should be made to protect their property. At this point, China can actually learn from existing systems in Western countries, such as listing the property of wards. Use various methods to ensure the maximum protection of the property and personal interests of the ward.

#### ***4.3 Expand the scope of wards***

In the context of the obvious aging trend of Chinese society, including the elderly who cannot take care of themselves into the ranks of wards is conducive to safeguarding the rights and interests of the elderly group. It should also include adults who lack basic living abilities, including groups with physical and mental disabilities. Although there are corresponding social departments for disabled people in our country to help them, for some disabled people with physical disabilities but no mental disabilities, whether these people should be included as wards has been widely debated. From a practical view, their lives are still affected by physical limitations, the law should consider disabled people group and protect all kinds of interests by legislation.<sup>[6]</sup>

#### ***4.4 Improve the guardianship revocation system***

Although the guardian's guardianship qualification can be revoked, in quite a few cases, it cannot be successfully revoked due to various reasons, or it is revoked after a long time. In the process, the body and mind of the ward may have been suffering. The reason for this is mainly because the ward is in a weak position. Infringing acts cannot be identified in many cases. Only by taking the revocation of guardianship as an obligation rather than a power can we more effectively urge relevant subjects to actively perform their obligations and keep an eye on the ward. While strengthening the responsibilities of relevant subjects, the state public power should also actively intervene, and cannot rely entirely on subject supervision. The state needs to introduce relevant laws to allow grass-roots people's governments and grass-roots organizations to actively investigate the specific situation of guardian groups within their jurisdiction. Only through the active intervention of government power can the legitimate rights and interests of the ward be effectively protected.

### **5. Conclusion**

With the promulgation of the Civil Code of the People's Republic of China, China's civil legislation has risen to a new level. A large number of experts and scholars are working to revise the deficiencies in the guardianship system, which means that the study of Chinese civil law has been paid more attention by people. In the reform process of China's guardianship system, we have been achieved certain results. The deficiencies and shortcomings in the existing guardianship system will surely be solved one by one in the near future. Based on the high attention of the general public and the attention of government departments, China will continue to improve the guardianship system, so that people who have suffered misfortune in their lives can feel the warmth again brought by all society.

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