

On the Protection of Juveniles in China's Law and Suggestions for Legislation Improvement

Yiting Shao¹, Linyi Guo²

¹Shanxi University of Finances & Economics Law School, Taiyuan, China

²School of Finance, Shanxi University of Finance and Economics, China

Keywords: minors; protection of rights and interests; legal provisions; Legislative recommendations.

Abstract: Adolescents are not only the hope of our country but also the vulnerable groups which especially need social care and legal protection. At present, the special protection of vulnerable groups is the general trend of the development of human rights theory and world legislation. Whether the legislation of minors is perfect or not is the primary ruler to measure the progress of a country's legal system. Since the promulgation of the Law of the people's Republic of China on the Protection of minors, the protection of the rights and interests of minors in China has been greatly improved. However, with the rapid development of science and technology such as the reform and opening up and the Internet, as well as the changes in social atmosphere and development, there has been a new situation in the legal protection of the rights and interests of minors. Moreover, we in the law on the Protection of Minors is still a long way to go. Based on the relevant literature on the protection of minors at home and abroad, and on the international understanding of the protection of minors, based on the development and current situation of our country's juvenile legal protection, according to the existing problems, such as the lack of rigorous legislation, leading to the one-sided understanding of the law of psycho-sensitive minors and the frequent campus violence in modern society, this paper puts forward some suggestions to pay attention to the feelings of minors in the family proceedings, strengthen the cultural construction of law on the protection of minors, and improve the attention to the mental health of minors in the law and the prevention of prevention of campus violence.

1. The meaning of legal protection of minors' rights

1.1 Minor concept

Article 2 of the Law of the People's Republic of China on the Protection of Minors stipulates that citizens under the age of 18 are minors.

In the general context of our country, we refer to minors as "children, teenagers, adolescents," etc. These usages are habitual titles; while in the international arena, the so-called minors are usually citizens under the age of 18, that is, our country. Often referred to as "minors." According to the data, China is the country with the most significant number of minors in the world, accounting for a quarter of China's total population. Therefore, "minors" is a large number, special status, and complicated situation.

1.2 Specific protection subjects and obligations

Parents or other guardians are the subjects of protection. The primary obligations are: fulfilling the duty of guardianship; undertaking the obligation to support, ensuring that the right-aged are compulsory; educating and guiding minors to participate in activities that are beneficial to physical and mental health with healthy thinking and ethical conduct and appropriate methods; preventing and stopping minors from smoking, alcoholism, wandering, and gambling, drug abuse, prostitution. Minors shall not be abused or abandoned, and shall not discriminate against women and persons with disabilities; prohibit infants and abandoning infants, and shall not allow school-aged students to drop out of compulsory education; they shall not force or allow minors to marry or engage in

marriage.

Primary and secondary schools, kindergartens and work-study schools are also the mainstays of protection.

The main obligations are: comprehensively implement the principle of comprehensive development of morality, intelligence, art and labor, conduct social life guidance and adolescent education; care for and care for students, students who have shortcomings in conduct and difficulties in learning should be patiently educated and help, and must not discriminate; no corporal punishment, Disguised corporal punishment or insulting human dignity; respecting the right of minors to education, may not expel students at will; carrying out educational activities and selecting places should be conducive to the physical and mental health of students and prevent personal safety accidents.

For students who are enrolled in a work-study school following national regulations, the work-study school shall ensure that it completes the compulsory education of the prescribed school system; students who do not discriminate against or disregard work-study.

2. Legal norms for the protection of minors in China

The Constitution of our country, as well as the substantive and procedural laws of criminal, civil, and administrative provisions for the protection of the legitimate rights and interests of minors.

For example, the provisions of the Electoral Law on civil-political rights, the criminal law on the age of criminal responsibility, and the general principles of civil law on civil conduct are all based on the age of 18 and have provisions to protect minors.

Because of the insufficiency of physical and mental development of minors, special care and protection are required. The party and the state attach great importance to the healthy growth of minors and have formulated corresponding policies, laws, and regulations. The Seventh National People's Congress Standing Committee passed on September 4, 1991. The Law of the People's Republic of China on the Protection of Minors, a total of 7 chapters and 56 articles. Its legislative purposes are: to protect the physical and mental health of minors, to protect the legitimate rights and interests of minors, to promote the comprehensive development of minors in terms of morality, intelligence and physical fitness, and to cultivate them into ideals, ethics, culture, and discipline — the successor of the socialist cause. On June 28, 1996, the Standing Committee of the Ninth National People's Congress passed the Law of the People's Republic of China on the Prevention of Juvenile Delinquency, with a total of 8 chapters and 57 articles. Its legislative purpose is to protect the physical and mental health of minors, cultivate ethical conduct of minors, and effectively prevent juvenile delinquency.

Moreover, issued a series of legal norms such as the "Prevention of Juvenile Crimes Act" and "Several Opinions on Further Strengthening and Improving Minors' Ideological and Moral Construction" and joined the UN Convention on the Rights of the Child. It is intended to comprehensively protect the rights of minors in China and create a suitable environment for them. China's newly revised Law on the Protection of Minors of the People's Republic of China clearly states: Minors have four fundamental rights: the right to life, the right to development, the right to protection and the right to participate. This is in the UN Convention on the Rights of the Child. The high level of rights that children should enjoy is an excellent example of the legislative thinking that is in line with international conventions.

At the same time, it also emphasizes that "minors enjoy the right to education, and the state, society, schools, and families respect and protect the right to education of minors", which fully reflects China's actual national conditions.

3. Problems in the protection of minors in China

3.1 The relevant provisions on minors in the law are not rigorous enough

The precocity of the whole society and the development of online big data, children have

premature contact with all information of all ages, children receive information outside the age range, most children have precocious and sensitive inner state, and nowadays Under the rule of law society and the popular law, our law puts a label on the “person without civil capacity” before a child reaches adulthood. This label, which is different from peers, tells everyone that children have limited ability, limited ability to act and have limited responsibility. Moreover, I think that even if children have cognitive defects at different ages and cannot identify their behavior, can we wait? It is not reasonable to discuss whether 18 years old (the actual situation is that the general mental health needs to be after this), but we cannot wait for 18 years old now.

Capability refers to the qualifications and skills of external activity, so it is both an “access” element and a “competition” element. The capacity for civil conduct refers to the legal qualifications for civil subjects to independently participate in civil legal relationships and obtain civil rights or assume civil obligations following their legal acts. It is not only the "identity card" for the main body to carry out local activities, but also the main component of judging the effectiveness of legal acts. In essence, local capacity is the ability of the actor to autonomy. If the perpetrator has complete autonomy of autonomy, then it is a person with full capacity for civil conduct. The law stipulates that this is only a “nationally recognized”; and if the perpetrator does not have full autonomy for some reason, Then there is no total capacity for civil conduct. The law stipulates this as a kind of "public law intervention," that is, restricting the free expression of the perpetrator. The local capacity system is based on reality, and gives different civil subjects different levels of behavioral ability to correct the inequality caused by different factors such as age, intelligence, and mental status.

For children who are sensitive to the various stages of information, is this a contempt for their dignity?

3.2 The law lacks psychological attention to minors

The non-civil capacity that minors understand is also straightforward and rude "no responsibility," so even if there is a lack of stability and care for the children, there is even a 13-year-old child who has hurt his companion because of trivial use. After the significant eulogy: I am only 13 years old, do not take responsibility for anything. A cute and kind-hearted and companion will also turn around and have good age, and this kind of cognition of his age and responsibility issues, and such a cruel thing to say such shocking and chilling words.

The enjoyment of the local capacity of minors is slightly different in the legislative cases of various countries, but mainly imposes a certain degree of restrictions on the local capacity of minors. The reason for the restrictions is nothing more than the maturity of such groups to be improved, so it is necessary to legislate to limit their local capacity so that the radius of their civic activities is “narrowed” to avoid suffering from non-interest, and also for trading counterparts. Provide legitimate expectations on the choice of counterparty. Article 18 of the latest "General Principles of Civil Law" in China reduces the aged standard of people with limited capacity so that more minors can enjoy full freedom of meaning, thus implementing corresponding civil legal acts, and at the same time complying with a certain extent. The overall psychological maturity of modern children and the social reality of physiological age.

3.3 Damage to minors in school violence

School violence refers to the use of some bullying methods by the students to use the bullying means to physically, property, or mentally harm the weaker party. However, because the situation of minors is unique, according to the prevention of minors The provisions of the Human Offences Act deal with students, so to a certain extent, the results are minimal. In other words, the main body of violence in school violence is some minors. The current law is relatively light on the strong side of the campus violence, that is, the perpetrators.

From this point of view, there are some shortcomings in the laws and regulations of some minors in China. For example, some laws on minors are almost blank for minors under the age of fourteen. Some of the more fundamental laws, such as the Law on the Prevention of Juvenile Delinquency, have flaws in the protection of the weaker ones in school bullying, and there is no way to protect

their rights and interests better. In the end, it will be handled following other laws, and only the compensation for money will be obtained. This kind of punishment is also not conducive to the physical and mental development of minors and the formation of correct values. It is easy to cause their legal awareness to be weak, feel that they have made mistakes, and they can make monetary compensation without paying other costs, which is not conducive to them in the future. The relevant laws such as the Criminal Law and the Security Administration Punishment Law are not able to effectively punish younger minors, so the legal omissions are also apparent.

4. Legislative advice on the protection of minors

Given the above problems, I believe that in the future legal measures to protect minors, we should pay attention to two aspects. First, we must strengthen the protection of minors' rights and interests, and on the other hand, prevent and guide the crimes of minors. This is also a kind of protection for them so that they feel respect.

4.1 Adding a culture of protection to minors in the law.

China has already comprehensively protected the rights and interests of minors. However, in the current complicated situation of rapid development, we should also learn from the advanced experience of other countries in the legal system and amend the existing laws to make up for legal loopholes. I believe that an important content should be established to stipulate the policies and rights and obligations of the party and the state against minors, especially the laws and requirements for the development of national youth, and to fundamentally protect the education of minors. If the juvenile is active, then the country is stable. Only when the overall quality of the minor is improved can the effect of the law be more productive.

In the family, through cooperation with the society, in-depth study of family education-related content, help parents to establish a correct family education concept, create a pleasant family environment for the growth of minors; carry out campus education activities in schools, improve minors Legal awareness and self-protection awareness. Through the development of a variety of legal education courses, safety education courses and other courses to enhance the quality of minors, create a good campus environment; in the community, through publicity and education activities, combined with daily law enforcement activities, increase the protection of minors The propaganda of the Law and the Law on the Prevention of Juvenile Delinquency will create a good social atmosphere. In the administration of justice, we must seriously consider the psychological feelings of minors, and even strengthen the psychological considerations when considering cases such as divorce and inheritance. Development considerations and even minors should be respected in legal terms.

4.2 Improve the legal concerns about the mental health of minors

China has not yet perfected and is very useful for the field of child welfare. Japan has long formulated the Children's Welfare Law and related laws in the field of child welfare to protect children's rights and interests and has specialized protection agencies and professionals responsible for specific implementation, and theoretical discussions and research on problems encountered in practice. To continuously improve the law. Because of this, this article will review the Japanese minor legal system, legislative provisions, latest research, and other related materials, and describe the protection of Japanese minors. The full text consists of three parts: preface, body and concluding remarks. The text includes five parts. Part I: Protection of minors and their world trends. Based on clarifying the definition of minors, it is distinguished from the youth and introduces the historical evolution of the system of minor protection and related fundamental theories and international legislation. The second part: the legislative and legal enforcement agencies for the protection of minors in Japan. Through the legislative overview, the parliamentary system and the legally-established institutions of the Japanese minor protection system, the legislative basis and legislative principles on which the protection system is based are analyzed, and the child welfare law of the parliamentary system that is distinctive and not yet perfect in China is carried out.

The third part: family protection of Japanese minors. This section will focus on the protection of minors in the family environment, such as the different protections between legitimate and illegitimate children, the different protections of adoptive children and stepchildren, the protection of minors who reorganize family support, and the divorce families. The issue of the protection of adult rights. Part IV: The latest amendments to the Japanese Civil Law on the development of the protection system for minors. In 2012, the Japanese Civil Law Amendment adopted amendments to the Civil Law and the Child Welfare Law from the standpoint of preventing child abuse and protecting the rights of children. As a new law that has just been implemented for two years, there is no answer to whether the content of the amendment is favorable or unfavorable, and the problems existing in practice have not been revealed. Therefore, the analysis focuses on the interpretation of the amendment and the evaluation of the theoretical viewpoint. The fifth part: the enlightenment of the Japanese minor protection system to China. This section points out that the Chinese government attaches great importance to the protection of minors and related legislative and judicial and administrative initiatives. However, there are flaws in the legislation for the protection of minors in China, and there are no problems in the practice of protection of minors. If there is no particular management institution, the coordination agencies are mostly, leading to mutual excuse, and the rights of minors cannot be effectively guaranteed. This section suggests that the Chinese legislature and the government should combine the social conditions and refer to the Japanese protection system to further improve the protection legislation for minors and its implementation mechanism.

4.3 Improve the law on the prevention of school violence

Based on the severe harm caused by school violence and behavioral violence to society, campus, and students, in order to reduce and suppress these damages, we propose the following measures.

First of all, it is necessary to stipulate the penalties for the mistakes made by minors in school violence. It is not a one-sided approach to judge whether or not to take responsibility through age. It is a very one-sided approach, and with the development of society. The growth rate and understanding ability of minors are also continually developing, and the growth environment has undergone significant changes. Although some minors are younger, there are also some behavioral violence, but also for campus safety and society. Safety has had a terrible effect. Therefore, there is a lag in judging whether or not to punish minors and what kind of punishment should be used.

Second, the method of punishment should be improved. According to the "Criminal Law" and the "Public Security Administration Punishment Law," the punishment for school violence and behavioral violence should be punished according to the characteristics of the minors themselves, find out the reasonable punishment methods, and improve the punishment methods.

Finally, we should pay attention to the growth of minors, and should pay more attention to minors who are victims of school violence and behavioral violence. We must improve the ways to relieve victims of violence. Facts have proved that monetary compensation is not suitable for the relief of victims. Treating victims should be based on psychological aspects, reducing the harm of violence to minors, helping victims to get out of the haze, feeling the warmth and feeling the law. Fair and equitable, at the same time, minors should be educated to prevent school violence, and their ideology should be raised to prevent more minors from being harmed.

5. Conclusion

"You are a strong country and a strong country." Minors are the future of the motherland and the hope of the country. They bear the historical responsibility of realizing the great rejuvenation of the Chinese nation. China has been strengthening the protection of minors. However, we must also recognize that the times are developing, and the psychological situation and sensitivity of minors are also changing.

Moreover, in some areas, the penalties for criminal law are difficult to break through, such as the impact of the network on the mentality of minors, online. The spread of pornographic information, violent games, etc. for the induction of minors; therefore, we still have a long way to go in the protection of minors. We must have the rigor of perfecting the law and consider the cognitive

effects of minors. On the other hand, we must pay attention to the development of the education and comprehensive ability of minors, especially their mental health. Concerns, "flowers have a reopening day. No one is younger." The protection of minors is the direction that our country has always paid attention to, but with the development of society, we still need to work hard.

References

- [1] Luo Wei, Yan Liping. On the Legal Protection of the Rights and Interests of Minors[J]. Journal of Jiangxi Institute of Education, 2011, 06: 112-116.
- [2] Liu Qin. On the legal protection of the rights and interests of minors [D]. East China University of Political Science and Law, 2004.
- [3] Song Huiyu. On the Perfection of Legal System for the Protection of Juvenile Rights and Interests[J]. Legal System and Society, 2012, 06: 51-52.
- [4] Chen Meihua. On the Legal Protection of the Rights and Interests of Minors[J]. Office Business, 2012, 13: 127+133.
- [5] Ouyang Youhui. On the special protection of the rights and interests of minors in civil law [D]. Jiangsu University, 2008.
- [6] Zhang Bin. A brief discussion on the improvement of criminal protection of minors in the Criminal Law Amendment (IX) [J]. Legal Expo.
- [7] Xu Songlin. Interpretation and reflection of the Law on the Protection of Minors [J]. Legal and Social, 2009, 36: 78-79.
- [8] Lin Zeya. On the Procedural Protection of Juvenile Interests in Family Litigation [D]. South China University of Technology, 2007.
- [9] Zhu Zuoxin. The Concept, Current Situation and Prevention Countermeasures of Campus Violence[J]. Journal of Guangxi Youth Cadre College, 2015(05): 21-23+26.
- [10] Li Liequn. An example of the law on the protection of minors [M]. Hunan People's Publishing House, 2004: 58-62.
- [11] Lin Yanqin. Theory and Practice of the Guardianship System for Minors in China [M]. Beijing: Peking University Press, 2017: 7-31.