Research on the Care Service and Guarantee of Disabled People in China

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Abstract. China has a large number of disabled people, and its influence is wide. How to effectively protect the rights and interests of disabled people is a key issue that we and society concern most. As an important way to protect the rights and interests of disabled people, the care service for disabled people has just started in China, and the relevant services and systems are not perfect. Establishing and perfecting the disabled care service guarantee system and solving and meeting the needs of the survival and development of the disabled are of great importance to the self-development of the disabled and of great significance to social progress.

Overview of the Care Service and Guarantee for the Disabled

Concept of the Care Service for the Disabled People

In 2007, our country issued the Notice of China Disabled People’s Federation about Printing and Distributing National Work Conference Spirit for Intelligent and Mental Disabled Care Service, clearly defining the concept of "social cultivation" about rehabilitation, treatment, education, employment and training. It clearly defines that three types of disabled people, intellectual disability, mental disability and heavily physical disability, conform to care service agency’s service objects, and it is not limited to daily life care and nursing, also contains the life self-care ability training, athletic training, the ability of social development training, career development and labor skills.

Forms of the Care Service for the Disabled People

Daytime Care. Daytime care refers to the care service form of rehabilitation treatment, life care, self-care training and other services for the three types of disabled people who meet the requirements of care service conditions during the day. It is a model for disabled people who come into the care service institution to receive relevant services and integrate into their family life at night because their family members are unable to take care of them during the day.

Homestay Care Service. Homestay care service is a form of care service that totally trusts the care service institutions with disabled people, mainly for those disabled people living alone or whose daily life need to be taken care of, while whose family does not have the conditions of taking care of them.

Home Care Service. Home care service refers to the service that helping staff for the disabled directly goes into intellectually, mentally and severely disabled families, through the management and counseling to the disabled and their family members as well as relying on the families, to provide life care, rehabilitation training and vocational training for the disabled people.

Present Problems of the Care Service and Guarantee for the Disabled People in China

Status Quo of the Care Service and Guarantee for the Disabled People

According to relevant statistics, the total number of disabled people in our country exceeds 83 million at present, affecting the family life of 260 million people. In this huge group of disabled people, those with intellectual, mental and severe disabilities, meeting the conditions of care service are the more disadvantaged groups among the disabled people, and more than 140,000 of these
groups now get their care service, accounting for only 0.56% of the needs of care service support, which is also drawing the attention of the party and government.

At present, there is no specific resolution mechanism for dispute of care service for the disabled in our country, and the provisions of general laws are mainly applied to them, such as the General Principles of Civil Law and the Contract Law. However, with the emergence of a large number of care service disputes, due to the special nature of such cases, such as the qualification of litigants, the distribution of the burden of proof and the status of the main body of the contract, new challenges will inevitably arise to the existing laws, regulations and dispute resolution mechanisms. In order to protect the lawful rights and interests of disabled people, it needs to give full consideration to vulnerable groups and embody social and humane care service. It is urgent to improve existing laws and regulations and make it more forward-looking, predictable and well-directed.

**Shortcomings of the Care Service and Guarantee for the Disabled People**

**Shortcomings of the Legislative Guarantee.** Currently, when it comes to the laws officially involved in the law of the disabled, there is only one Law on the Protection of Disabled Persons in the People's Republic of China in our country. Since its implementation in 2008, the law has nine chapters. Chapters 2-8 stipulate the rights for disabled people should enjoy in the context of rehabilitation, education, labor and employment, cultural life, social security, accessible environment and legal responsibility as well as the punishment caused by the violation of the aforementioned legal rights of disabled people. The term "care service for the disabled" also appeared for the first time in the law. In addition, there are only principle stipulations and still a lot of blank for the care service and relevant stipulation of the disabled in the Constitution, Tort Liability Act, General Principles of Civil Law, Tax Law and in Contract Law.[3]

**Inadequate Law Enforcement and Supervision Guarantee.** In our country, there is not enough enforcement and supervision guarantee for violations of the rights of disabled people in the operation of disabled care service institutions. First of all, the main body of law enforcement and supervision is unknown. Whether the law enforcement powers and the supervision and management responsibilities of the disabled care service center belong to the CDPF or the civil administration system, there is no clear division of administrative responsibilities in the country, leading to the unknown subject of law enforcement and supervision. [1] Second, there is a clear lack of supervision over the infringement of public institutions for disabled people and their law enforcement efforts. That is, it is often difficult for the government to handle the cases in strict accordance with the law when it comes to their own departments. Since the disabled people are the vulnerable groups in the process of care service, their legal knowledge and legal awareness are not enough, and most of the disabled people enjoy the government's financial subsidies and financial support, resulting in their negative sentiment and wrong legal awareness, such as "Getting more out of things" and "Government lawsuit cannot fight ."

**Inadequate Judicial Guarantee Mechanism.** Among disabled people, those with intellectual disability and mental disability are limited in recognition of their self-behavior, lack of understanding of the infringement existing in the process of care service and unable to guarantee their own legal rights. The three types of disabled people, such as intellectual disability, mental disability and severe physical disability, are at a significant disadvantage in their daily life. For example, they have low economic incomes, are unable to pay for judicial-related expenses, and have indifferent legal knowledge and legal awareness. They do not know how to use the law as weapons to maintain their legal rights, and they have poor communication with the outside world and less communication opportunities.[5]
The Perfection of the Mechanism for the Care Service and Guarantee for the Disabled People in China

The Perfection of the Mechanism for the Care Service and Guarantee for the Disabled People

There is a great deal of blank in our legislation of care service for the disabled people. It is imperative to improve the relevant legislation before improving the development of care service industry. In our country's legislative system, there is only the Law on Protection of Disabled People in the one-way law against disabled people. Only Article 49 and Article 65 of this only one law are enacted for the disabled, and both articles only provide general indications of the types of disabled people and the violation of the rights of disabled people will be legally and administratively punished. It can be seen that the Law on the Protection of Disabled Persons involves too few laws and regulations, fails to establish a legal system, and lacks specific enforceable provisions. Therefore, it is difficult to regulate all parties’ scope of responsibility and rights of obligation with the participation of government, society and individuals, combined with the fact that neither the new laws of the other branches of our country nor the one-way laws update or stipulate the new term of the care service for the disabled people, thus restricting the good development of the care service and guarantee for the disabled in our country. In combination with foreign experience, some scholars in China also proposed that the Law on Care Service for Disabled People should be formulated and the relevant legal responsibilities of government agencies, social organizations and individuals should be directly regulated in the form of a one-way law, and the status of different legal entities should be clarified. At present, laws, regulations, notices and opinions with a low legal status are incorporated into the one-way law to make the proposals such as the legal system for the care service of disabled persons more comprehensive. Therefore, the formulation of one-way care service law can effectively complement the imperfect system of legislation of disabled people in our country and form a good situation with law to be followed.

The Perfection of the Mechanism for the Material Guarantee for the Disabled People

The Country Should Increase Investment in Care Service Industry for the Disabled People. In order to ensure the smooth development of China’s care service industry for the disabled people, our country should increase investment in the disabled people industry, especially the care service industry for the disabled people, raise the support standards of care service institutions, and increase the targeted inputs of care service programs and draw a proper proportion from the employment security fund for disabled people to develop care service industry for them. Country policy support should include the inclusion of disabled people in their plans for national economic and social development and obtain financial support from the financial budget, and implement them in place and earmarked funds to ensure the quantity and quality of funds used.

Family Moderate Investment Mechanism. Since the level of economic development of country is still not enough to reach the level that all the care service costs are covered by the government. Therefore, in the fund components, it not only includes the investment from the government and investment from social organizations, but also includes the care service costs paid by the care service-taker or their guardians to the care service providers under the market mechanism.

References


