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Thinking on Ways to Promote the Active Participation of Diverse Social Subjects in Legal Aid

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Abstract: In the new era of the rule of law environment, people pay more and more attention to the use of legal knowledge to protect their legitimate rights and interests, but in the face of high legal fees, complex litigation procedures, the cultural level of the parties and other practical problems, the right to safeguard their legitimate rights and interests is still difficult. Legal aid pays attention to the vulnerable groups in society, providing them with the same pursuit of fairness and justice convenient channel. However, this channel is confronted with a series of problems such as insufficient social power and low participation enthusiasm of social subjects, and sometimes it cannot be truly realized. Therefore, how to effectively promote the participation of diversified social forces in legal aid is a problem worth further discussion. This paper puts forward its own thinking from the aspects of how to mobilize the enthusiasm of lawyers to handle cases, strengthen the construction of grassroots legal aid team, rely on university resources to form professional aid and organize a long-term incentive mechanism to strengthen social supervision.

Keywords: Legal Aid; Pluralistic Social Subject; Aid Team Construction.

1. Overview of Current Social Legal Aid

With the introduction of the idea of "governing the country by law", the general environment of the rule of law in China has changed in the new era. People pay more and more attention to the protection of their legitimate rights and interests, and pay more and more attention to legal knowledge and means of safeguarding their rights. However, there is a gap between the idealized demand and the real environment. In the face of practical problems such as high legal fees, complicated litigation procedures, and the varying educational level of the parties, it is still impossible to realize that everyone can equally enjoy the right to safeguard their legitimate rights and interests. The emergence of legal aid undoubtedly provides a convenient channel for the disadvantaged groups in society to pursue fairness and justice equally. However, this channel still faces the obstacles of insufficient social forces, the low enthusiasm of social subjects to participate, the litigants have no response and other problems, and there are some defects in the current legal system, so legal aid is still a short board in our judicial system. The "wooden barrel effect" tells us that how much water can be held in a bucket depends on the shortest piece of wood. Similarly, the perfection and perfection of our judicial system also depends on whether "legal aid" can really take root.

Legal aid is a system established by the state to provide legal advice, representation, criminal defense and other legal services free of charge for citizens with financial difficulties and other parties who meet the statutory conditions. It is an integral part of the public legal service system. The Legal Aid Law of the People's Republic of China, which came into effect on January 1, 2022, guarantees the assistance of diverse social forces in the field of legal aid. Compared with the Regulations on Legal Aid, it significantly expands the subject of responsibility, which means that the channels for seeking legal aid are also broadened. It establishes the legal aid responsibilities of people's courts, people's procuratorates and public security organs, and the legal aid obligations of lawyers' associations; It stipulates that the state encourages and supports the provision of legal aid by mass organizations, public institutions and social organizations, and strives to form a legal aid system featuring government leadership, public security law assistance and the participation of all sectors of society. However, how to effectively promote the participation of diverse social forces in legal aid is a problem worthy of further discussion.

2. Second, The Current Legal Aid System is Facing Difficulties and Reasons Analysis

(1) Weak social forces and low enthusiasm of social subjects to participate in legal aid

For a long time, legal aid work in China has been organized by government legal aid agencies, and social forces have been kept in the corner, which can fundamentally play a substantive role. [1] From the perspective of the main body of legal aid responsibility, its form has shifted from the past period of "overhauling" government responsibility to the period of "state responsibility". China, as a socialist country where the people are masters of their own affairs, naturally should regard legal aid as a livelihood project. It is the proper meaning to treat the project of people's livelihood that the subject of responsibility is diversified and the subject of responsibility is dispersed. However, "legal aid", as a kind of legal poverty alleviation, needs a large amount of financial assistance. China has a large population, a large base of recipients and a large number of legal aid cases. It is far from enough to rely only on the state finance and social donations to provide social entities with funds. [2] The direct cause of the weakness of the social strength of legal aid is the small amount of funds allocated by the state finance for legal aid. On the other hand, there are relatively few professional legal service personnel. According to relevant statistics, there are less than 130,000 registered professional lawyers in the country, that is, only one lawyer per 10,000 people on average. Moreover, most lawyers are concentrated in large and medium-sized cities, a small number in small counties, and lawyers in rural areas are even rarer. The lack of lawyers and

their uneven distribution led to a weak society. In addition, there are not many social aid organizations in China, and the staff of legal aid agencies is seriously insufficient. Other social groups who are willing to participate in legal aid play little role due to the lack of professional legal knowledge and practical experience, and high-quality and efficient legal aid services are difficult to sustain.

(2) There is no response to the request of the parties

Due to the shortage of legal aid funds, social forces willing to participate in legal aid are already weak, and the enthusiasm for participation is not high. Without the support of funds, the activities of legal aid agencies cannot be carried out, corresponding measures cannot be implemented, and the legitimate rights and interests of vulnerable groups are difficult to be guaranteed [3]. On the other hand, in addition to the establishment of a "qualification access" system for legal aid lawyers dealing with complex cases of life imprisonment and death penalty, China has not set restrictions on the qualification of legal aid subjects for other relevant subjects, and the entry threshold is low, which leads to some groups' professional knowledge is not strong, professional experience is not rich enough, and litigants' demands cannot be effectively responded to and high-quality feedback.

In view of the above status quo of legal aid, the author has made some reflections on how to promote the path of diversified social forces to participate in legal aid.

3. Third, To Promote the Diversification of Social Subjects to Actively Participate in Legal Aid Path Thinking

(1) Adopt a multi-pronged approach to fully mobilize the enthusiasm of lawyers in handling cases

Compared with other social subjects, lawyers are undoubtedly more professional and more experienced, and can be said to be the main force of legal aid in our country. Therefore, it is necessary to strengthen the construction of the lawyer team and promote the lawyer body to go deep into the legal aid work of the special vulnerable people. However, the nature of lawyers' profession is both commercial and social. The number of grassroots legal aid cases is increasing rapidly, and more and more legal aid cases are handled by lawyers, and the cost of cases is increasing day by day. Most lawyers are busy with their own work, and compared with other legal systems, legal aid is more public welfare, and the cost subsidies for lawyers are less, so it is difficult to mobilize their enthusiasm to participate in legal aid.

In this regard, first of all, we can broaden the funding channels for grassroots legal aid, raise the subsidy standard for legal aid cases, establish and improve the legal aid case guarantee mechanism, and solve the bottleneck problem of lawyers handling cases and worry about their future. [4] Local governments can also compete with law firms through "bidding", publicize cases requiring legal aid through newspapers, news and other means, and give bonuses or honors to this, so as to improve lawyers' enthusiasm to participate in legal aid. Secondly, to increase publicity, so that the consciousness of voluntary dedication in the society has become a trend, with the mainstream values of society as the guidance, to guide lawyers to consciously perform social duties, take the initiative to participate in public legal services. For example, the publicity of "lawyers into the community" can be carried out in the community, and the free consultation day and other activities can be carried out by the law firms themselves, so that the lawyers can feel the needs of the people in practice, feel the lack of legal publicity, and realize that the lawyer as the main body of legal aid is the pursuit of justice, ethical characteristics and the requirement of social attributes of the lawyer profession. Under the guidance of this mainstream idea, the enthusiasm of lawyers to participate in legal aid can be enhanced.

In 2019, the Opinions of the Ministry of Justice on Promoting Lawyers' Participation in Public Interest Legal Services issued by the Ministry of Justice proposed that lawyers should actively participate in public interest legal services activities of Party committees and governments, judicial administrative organs and lawyers' associations. It calls for every lawyer to participate in no less than 50 hours of public interest legal services or handle at least two legal aid cases every year. [5] It can be seen that to actively participate in legal aid, we should not only improve the duty lawyer system from top to bottom through the government and the state, or take a certain degree of government purchase legal aid services, increase financial subsidies, but also mobilize the initiative of local governments and improve the ideological consciousness of lawyers. From the two aspects of superstructure and economic foundation, strengthen the active initiative and professional responsibility of lawyers to participate in legal aid work.

(2) Strengthening the construction of grassroots legal aid teams and consolidating the foundation of grassroots legal services

Notaries and grassroots legal workers are part of the main body of society and an important part of the main body of legal aid. However, it should be clearly realized that the inclusion of these subjects is a practical and helpless action of the state. Compared with lawyers, these social forces lack professionalism, and if they slack in the access mechanism, they will even have adverse consequences for the vulnerable groups of aid recipients. Therefore, under the condition that these groups meet their professional qualifications, if they are willing to participate in legal aid work, they can set up certain access permits. For example: notaries or grassroots legal workers who are willing to have the qualification of legal aid subject should be assessed and evaluated by written tests and interviews, and licenses should be set up for some groups according to the proportional mechanism. This way can not only form a "winning" competition among these social subjects, but also better enhance the professional quality and ability of legal aid subjects. In order to better encourage the participation of this group, the state finance should give a certain degree of support in salary treatment, which can be paid monthly wage subsidies or annual incentive funds. Only by taking specific and clear access and incentive mechanism at the hand of the state, can the intervention of social forces be better used for legal aid work.

To promote the active participation of social forces in legal aid requires not only the incentive and supervision mechanism at the national level, but also the power of the broad masses of the people. After analyzing the 100 questionnaires produced by the project members, they found: The public's understanding of the subject of legal aid is mostly limited to "government legal aid organizations", "social groups such as workers, youth, women, the elderly, disabled persons' federations", and "duty lawyers", while there is little understanding of the workstations for migrant workers and women's rights protection and "research institutions"

established by the "legal clinics" of law schools of colleges and universities relying on law firms. We can start from how to let the public know the diversified legal aid subjects after the introduction of the Legal Aid Law in a large scale, and use the enthusiasm of social groups to seek legal aid to promote a variety of social subjects to participate in legal aid. For example, strengthen the publicity of the Legal Aid Law in the community, invite law professors or practical lawyers to publicize the law at the grassroots level, and carry out the "legal system into the village" activity. Through multiple forms and good interaction, the public can really get close to the law and understand the law, so as to form the driving force and supervision of legal aid workers at the social level.

(3) Relying on the resources of colleges and universities to form professional aid organizations

University personnel should be actively encouraged to participate in legal aid. A university legal aid organization with college students as the main body and teachers as the auxiliary body can be formed to actively participate in social legal aid. Such an organization has more talent advantages and knowledge advantages, and has sufficient theoretical team support. The newly promulgated Legal Aid Law makes institutional arrangements for the social governance idea of "social coordination and public participation", including mobilizing social forces such as enterprises and public institutions, social organizations and individuals. For example, institutions of higher learning and scientific research institutions are encouraged to organize legal education and research personnel and law students to provide legal advice and draft legal documents for parties in need, laying an institutional foundation for the positive interaction between "government governance" and "non-governmental governance". [6] The main forms of the Legal Aid Law include legal advice and drafting legal documents on behalf of the parties; Criminal defense and criminal representation; Civil and administrative representation; non-litigation legal affairs agency; Notarial certificate; And other forms of legal services. College students, scientific research institutions, and legal scholars may use their legal professional theoretical knowledge to provide consulting services and other forms of non-litigation legal aid. The state can focus on this group. For law students, participation in legal aid can be included in academic evaluation and social practice activities. For scientific research institutions and legal scholars, it can increase the reward mechanism and strengthen their ideological and moral construction. The participation of university teachers and students in legal aid can help cultivate their humanitarian spirit and enhance their sense of social responsibility and mission.

(4) Introduce a long-term incentive mechanism to strengthen social supervision

No matter what kind of social force intervenes in legal aid, the supervision mechanism is indispensable. As a complete and independent legal system, legal aid law should have its corresponding and independent legal responsibilities and consequences. It is necessary to establish and improve the legal aid supervision mechanism, implement dynamic monitoring of the whole process of legal aid handling, and ensure the effectiveness of social participation in legal aid. [7] Supervision should be carried out before, during and after legal aid. Inform recipients of their rights and obligations in advance. During the case, the specialized supervision organ will track the whole process of the lawyer's handling of the case and review the progress, quality and results of the lawyer's work simultaneously; At the same time, the payment of subsidies is linked to the filing of case files, and economic means are used to promote the case personnel to complete the task in a timely manner with quality and quantity. [8] For those who cause damage to the interests of the aid recipients due to their own dereliction of duty or negligence, in addition to compensation, the state may also appropriately require the legal aid personnel to compensate.

All in all, to break through the traditional legal aid system dominated by the government and assisted by social forces, it is necessary to start from the direction of entry, incentive and supervision mechanism, promote the participation of diversified social forces in legal aid, and explore a mechanism suitable for China's national conditions from the two aspects of economic base and superstructure. To make it more convenient and efficient for special groups to enjoy legal aid services, so that the national rule of law construction can better serve the people.

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References

[1] Jia Zihan. Journal of Hubei Second Normal University 2022, 39 (05),42-48.

[2] Zhang Qin. Legal Science Expo 2023,(07),160-162.

[3] Ren Junlin Guo Mengru. Journal of Hebei University of Science and Technology (Social Science Edition) 2022,22 (03), 40-46.

[4] Zhang Xiaohua. Shaoguan Daily, 2021.

[5] Supreme People's Court, Supreme People's Procuratorate, Public Security, State Security, Ministry of Justice, Opinions on Carrying out the Work of Duty Lawyers in Legal Aid, Chinese Justice, No.10, 2017, p. 91.

[6] Song Zhuoyi. Legal System and Society 2012,(24),291-292 DOI:10.19387/j.cnki.1009-0592.2012.24.150.

[7] Ji Xiangde. Politics and Law. 2022(06) Peking University Core CSSCIAMI.

[8] Duan Qijun. Journal of Law. 2013,34(12) Peking University Core CSSCI.