

Access to Justice in China: From A Legal Aid Perspective

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Access to Justice: In General

Though it is popularly thought that the concept of access to justice and rule of law in common law culture may date back to the thirteenth century, the jurisprudence and practice of access to justice has continued to command our attention even if we stand in the twenty-first century. This topic is of greater importance and interest to the attorneys from the People's Republic of China.

It is firmly held that no right is as fundamental as the capability to access the legal system. Inherent from the beginning was the common-law idea that a right requires a capability of securing a remedy. That remedy must necessarily be found in a justice system. Thus, rights cannot exist and have meaning if the system cannot be accessed, and if it fails to provide a fair and just hearing, and result. The core idea of "access to justice" has been referred to by terms such as "access to the courts" and/or "the right to a remedy". By this article, we would attempt to explore access to justice in China from the perspective of legal aid.

The People's Republic of China has set a goal to establish and implement rule of law. China's legal institutions, systems and processes have evolved over the past two decades, enabling the legal system to improve its management of an increased number and range of disputes. Since 1986, the PRC Ministry of Justice (MOJ) has conducted legal literacy and universal legal education programs. While the mid-1990's saw a growing number of people seeking legal remedy, many could not afford legal counsel.

The right to legal assistance plays an important role in safeguarding the basic rights of people who cannot afford the legal costs. Without this right, the poor and the disadvantaged in society would be excluded from access to the judiciary to seek justice for their injuries. Economic growth in China has been accompanied by the increasing importance of resolving disputes through legal means. Chinese citizens have come to rely more and more on legal services to protect their rights and interests. However, the widening divide between the wealthy and the poor raises concern about the inequality of people before the law as the poor cannot afford the increasing legal fees. Justice

non-accessed is justice denied. Thus, there is an urgent need to create a legal aid system in China.

China's Legal Aid System: History

In 1994, the PRC Ministry of Justice for the first time proposed the establishment of a legal aid system in China. Legislative work as well as organization work were carried out to achieve this goal. Some major cities, such as Beijing, Guangzhou and Wuhan and Shanghai, set up municipal legal aid centres and legal aid foundations as pilot projects in 1994 and 1995. In addition, specific provisions on legal aid were added to the revised PRC Criminal Procedure Law of the People's Republic of China and the Lawyers' Law. Article 34 of the PRC Criminal Procedure Law sets forth that, (i) in the case where a public prosecutor appears, the defendant has no attorney for economic difficulty or other reasons, the court may designate an attorney with the duty to provide legal aid; (ii) if the defendant without an attorney is blind, deaf, dumb or a minor, the court shall designate an attorney with the duty to provide legal aid; and (iii) in the event the defendant without an attorney should have the likelihood of being sentenced to death, the court shall designate an attorney with the duty to provide legal aid. Article 42 of the Lawyer's Law states that an attorney must undertake by law the duty of legal aid in accordance with national regulations and provide legal aid with professionalism and diligence.

On December 16, 1996, the Legal Aid Centre of the PRC Ministry of Justice was established to promote the development of legal aid bodies nationwide and to monitor their operation. Several months later in May 1997 the PRC Ministry of Justice also set up the China Legal Aid Foundation to raise funds for legal aid. The source of funds for legal aid primarily comes from governmental appropriations with supplements from professional contributions and social donations.

China's legal aid bodies are divided into four categories from the central to the local level, namely: the central, provincial (or autonomous region or metropolitan city directly under the central government), regional (municipality or prefecture) and county or district legal aid bodies. The entire country currently has 32 provincial legal aid centres; approximately three hundred regional legal aid centres; and around 1840 county legal aid centres. On the provincial level, each province (or autonomous region or metropolitan city directly under the central government) has one legal aid center.

The legal aid centres provide legal services for civil, criminal and administrative procedures or non-contentious cases. Two requirements must

generally be satisfied for Chinese citizens to receive legal aid: (1) adequate reasons to prove that legal assistance is needed to protect his or her lawful rights and interests; and (2) economic difficulty meeting standards stipulated by the local government. Furthermore, in criminal proceedings, the accused, who might be facing the death penalty and does not have any appointed advocate, shall be entitled to legal aid.

Legal aid centres provide legal assistance either at the request of the courts or after accepting the application of a citizen. In the former case, the court orders the legal aid centre to designate a lawyer for the defendant who meets the requirements for legal aid in a criminal proceeding. In the latter case, a citizen can make an application to a legal aid centre for legal assistance for litigation or non-litigation services. For the request for litigation legal assistance, the legal aid centre will assign a law firm to provide a lawyer to handle the case. According to the Lawyers' Law, every lawyer has an obligation to provide free legal services once or twice a year. The legal aid centre will supervise the work of the lawyer on the case.

Moreover, modern technologies have been applied in legal aid service. Almost all legal aid center have at least one hotline and fax machine. We no longer live in the Gutenberg world of paper and the printing press, but in the modern electronic world of digital technology. China has launched, at the central level, a legal aid website making the legal aid services and information available via Internet to the public. More and more local legal aid centers have provided legal aid service via digital technology. It is no doubt that the application of new technologies facilitates legal aid services.

China's Legal Aid System: Problems and Solutions

However, there are several problems with the present legal aid system in China. First of all, in contrast to the huge population of China, the provision of legal aid still lags far behind the demand. Second, the operation and quality of legal aid centres varies greatly from place to place. The reason is that there is no national law to unify and standardise the structure, operating procedures and sources of funding of the legal aid centres. Third, quite a few local governments lack funds to set up legal aid centres. Fourth, the quality of legal services cannot be ensured. The problem is that lawyers are now required to provide legal assistance without any payment from the legal aid centres. Therefore, the incentive of lawyers to work hard in legal aid cases is low. Fifth, there is no mechanism to ensure the independence of legal aid centres from the interference of the administration and local interest groups in their consideration of legal aid applications and of lawyers in handling legal aid cases.

To address such problems, a comprehensive national law on legal aid should be made to set forth clearly the organisational structure, functions and powers, funding sources and operating procedures of the legal aid centres at different levels. This law should guarantee the provision of sufficient funds for legal aid centres and provide mechanisms to ensure their independence. Some sort of payment system for lawyers has to be considered to increase the incentive of lawyers in handling legal aid cases.

Conclusion

The development of the legal aid system in China is still at an early stage. It is very important to the protection of the basic rights of the people and the development of the rule of law in China. Other countries can contribute to these legal aid initiatives by providing professional as well as financial support. It would be of help to China to acquire from other nations experiences and knowledge concerning the development of a legal aid system. We hold the belief that a sound and efficient legal aid system definitely improve and promote access to justice and rule of law.