CHAPTER SEVEN

THE RISE OF RIGHTS AND PROTECTIONS FOR THE DISADVANTAGED

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In China, “disadvantaged citizens,” or “disadvantaged groups,” is a new category that emerged at the beginning of the reform and opening period. Currently, disadvantaged groups in China include: the physically disadvantaged, such as women, minors, the aged, the disabled, and invalids; and the economically disadvantaged, made up of citizens who find themselves on society’s bottom rung due to economic factors, inequality between urban and rural areas, or other difficulties encountered during the economy’s transition; examples of such economically disadvantaged include those who have been laid off, those who have become unemployed or have retired due to economic restructuring, migrant workers in cities, and poverty-stricken populations in rural areas. In addition, the scope of disadvantaged citizens or disadvantaged groups may vary based on specific situations, such as the position of employees versus that of their employers, the position of consumers versus that of large enterprises, etc. In the thirty years since the beginning of the reform and opening period, significant changes and the emergence of diverse interest groups have spurred the creation of laws and regulations protecting the rights of the disadvantaged. The emergence and improvement of these laws and regulations has played an indispensable role in the realization of social justice.

I. The Thirty Year History of Laws and Regulation Protecting the Rights of Disadvantaged Citizens

Since reform and opening, the development of laws and regulations protecting the rights of disadvantaged citizens can be divided into

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three phases, each marked by the different stages of establishing a system and the specific characteristics of the system at that time.

A. Establishing a Legal Basis for Progress and the Quest to Build a System (1978–1993)

During this phase, though the concept of protecting the rights of the disadvantaged had not yet emerged, the conceptual framework, symbolized by the recognition of citizens’ rights to material assistance, was established in the Constitution. In terms of actual institutions, there began to be some exploration into various small social security systems of a limited nature; also, the groundwork for a labor rights protection system was formed, and non-governmental organizations (NGOs) began to provide legal aid services.

1. The First Steps toward Legislating Social Security

During this period, apart from the traditional social welfare and social pension systems, there was otherwise a dearth of legislation or measures related to social insurance and assistance. However, the Constitution contained explicit stipulations regarding citizens’ rights to material assistance, which formed the basis for future legislation. Since the establishment of the People’s Republic of China until 1982, the Constitution has been revised and promulgated three times, with each version stipulating that workers had the right to material assistance when they were aged, ill, or unable to work. The 1982 revision to the Constitution redefined those with rights to material assistance as “citizens” rather than “workers” and established a pension system; it also established special treatment for the blind, the hearing-impaired, and other disabled citizens.

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1 Article 45 of the 1982 Constitution reads as follows: “Citizens of the People’s Republic of China have the right to material assistance from the state and society when they are old, ill, or disabled. The state shall develop the social insurance, social relief and medical and health services required to enable citizens to enjoy this right. The state and society shall ensure the livelihood of disabled members of the armed forces, provide pensions to the families of martyrs and give preferential treatment to the families of military personnel. The state and society shall help make arrangements for the work, livelihood, and education of the blind, deaf-mute, and other handicapped citizens.”