

Practical Difficulties and Regulation Measures of Barrier-free Environment Construction Legislation in Sichuan Province

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Abstract

The construction of Barrier-free environment includes material, information and communication, and social services, which is an important guarantee for the protection of the disabled, the elderly and other vulnerable groups in need. To this end, China has formed a preliminary framework of relevant laws and regulations, but there are some problems in both macro and micro levels. Although Sichuan province also issued the Procedures for Sichuan Province on the Construction and Administration of Barrier-free Environment, yet it still exists some problems in the construction of Barrier-free environment in rural areas, content of rights and legal responsibilities. These above problems can be solved by clarifying the responsibility of the government, combining with the local characteristics of Sichuan province, strengthening punishment measures, and refining the content of rights to improve the existing local legislation of the construction of Barrier-free environment in Sichuan Province.

Keywords

Barrier-free Environment Construction; Framework of Relevant Laws and Regulations; Current Situation of Legislation; Barrier-free Environment Construction in Sichuan Province; Regulation Measures.

1. Introduction

Barrier-free environment construction is a vital security social security to protect the disabled, the elderly, pregnant women, children and other vulnerable groups in need, which can provide great convenience for their integration into social life. According to the Report on The Cause for Persons with Disabilities in China (2018), there are more than 85 million disabled people in China, making China become the country with the largest number of disabled people in the world. In terms of research about Barrier-free environment construction, although China started relatively late compared with western developed countries, the relevant legal guarantee has been continuously developed and improved in the past 30 years, which has made great achievements.

At the same time, in accordance with the decision and deployment of the Central Committee of the Communist Party of China to achieve common prosperity, to strengthen the construction of Barrier-free environment, especially to improve the legal guarantee of Barrier-free environment construction, so as to effectively protect the right of the above vulnerable groups to Barrier-free environment, is bound to be an important part of the goal of achieving common prosperity.

Based on this, this paper will combine the concept of Barrier-free environment construction and the existing laws and regulations guarantee system to analyze the problems in the existing laws and regulations from the macro and micro perspectives. In addition, it respects the local characteristics of Sichuan province, analyzes the practical difficulties of relevant legislation in Sichuan Province, and explores feasible regulation measures of Barrier-free environment

construction in Sichuan province based on the current situation and experience of central legislation and other local government regulations.

2. An Overview of Barrier-free Environment Construction

Clarifying the concept of Barrier-free environment construction is the basis of constructing and perfecting laws and regulations for Barrier-free environment construction. Besides, the legislation of Barrier-free environment construction in Sichuan province should be based on the actual situation of China's local legislation, and with the development of the legal concept of Barrier-free environment construction, China has initially established relevant legal framework.

(1) Legal definition of Barrier-free environment construction

Although the international community has carried out relevant research on the construction of Barrier-free environment since the early 20th century, the definition of its legal concept has been increasingly deepened with the development of social life and the change of values, and China has formed a legal concept of Barrier-free environment construction with local characteristics.

The concept of Barrier-free environment construction can be traced back to the 1974 United Nations Expert Conference on the Living Environment of persons with Disabilities, but it only focused on the field of architecture. Subsequently, the World Programme of Action Concerning Disabled Persons adopted in 1982 expanded its connotation to include physical, cultural and social accessibility, but the specific connotation remained mainly in the construction of physical accessibility. Recently, the 74th Session of the United Nations General Assembly once again emphasized that building a Barrier-free environment involves both physical and virtual facilities. China also defines the construction of Barrier-free environment in the Regulation on the Construction of Barrier-free Environments by enumeration. However, the author thinks that the definition of Barrier-free environment construction in China is not comprehensive.

Therefore, combined with the above legal concepts of Barrier-free environment construction at home and abroad, it can be defined as: in order to protect the traffic safety and convenient use of the disabled, the elderly, pregnant women, injuries, children and other members of society, the construction projects which refers to the construction activities of the humanistic environment that supports the construction of the service facilities, obtains information on an equal basis, communicates with others, and participates in social life. Thus, it specifically includes three aspects: material, information and communication, and the construction of a social civilization Barrier-free environment.

(2) The legislative framework of Barrier-free environment construction in China

At present, China has formed a preliminary legal and regulatory framework in the field of Barrier-free environment construction. However, due to the economic development and social values at the time of legislation, the relevant legal and regulatory framework is still in the embryonic stage and not perfect. The details are as follows.

At the legal level, after the amendment of the Law of the People's Republic of China on the Protection of Disabled Persons, Barrier-free environment is listed as a separate chapter; In the Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly, Law of the people's Republic of China on the protection of public cultural services and other laws, there are brief provisions on the contents and legal measures of Barrier-free environment; Funding for the maintenance, renewal and renovation of the common parts of accessibility facilities is also briefly addressed in the Civil code of the people's Republic of China.

At the level of administrative regulations, China's Barrier-free environment construction is mainly supplemented by the Regulation on the Construction of Barrier-free Environments

(hereinafter referred to as Regulation), supplemented by the People with Disabilities Education Ordinance, Regulation on Public Cultural and Sports Facilities and other individual regulations. At the level of departmental regulations, various departments of The State Council issued the Guiding Opinions on Strengthening the Construction of Barrier-free Environment in Villages and towns, the Notice on Strengthening Barrier-free Reconstruction of Public Facilities in Elderly Families and Residential Areas, and the Notice of the Ministry of Construction on Improving Barrier-free Facilities in Cities. [1]

In the aspect of local rules and regulations, government rules and regulations, China Disabled Persons' Federation based on security legislation of professional and scientific considerations, drafted the Barrier-free environment construction of the reference sample, and we have already had 20 provinces, autonomous regions and municipalities directly under the central government has issued relevant regulatory documents, but most is to copy and paste, the regulations and not combined with local characteristics to innovate.

3. Current Situation of Legislation on Barrier-free Environment Construction

To clear the central host law with other local regulations and local government regulations of legislation about Barrier-free environment construction problems, and the improvement of the legislation for Sichuan province Barrier-free construction provides practical experience, the author will start from the perspective of macro and micro two, respectively, analyzes the current situation of the construction of Barrier-free environment legislation of our country.

(1) The legislation status of Barrier-free environment construction from the macro perspective As mentioned above, the central legislation of China's Barrier-free environment construction has formed a legal system dominated by the Regulation. Other laws are mostly brief supplements to individual provisions or aspects of the Regulation, so the Regulation can reflect the widespread problems at the central legislative level. Therefore, at the macro level, the author mainly combs the Regulation and obtains the following existing problems:

First, the concept of legislation is not comprehensive. The Regulation emphasize the construction of Barrier-free environment for material, information and communication, but ignore the construction of Barrier-free environment for social civilization, including the implementation of non-discriminatory environment and fair treatment, which is the core of Barrier-free environment construction. At the same time, in the definition of the right subject of Barrier-free environment construction, only the disabled are listed as the right subject, and this ambiguity also reflects the imperfection of the legislative concept. [2]

Second, the legal content is not perfect. Although many localities have issued relevant local government regulations to supplement the Regulation as the upper law, there are still some provinces directly implementing Barrier-free environment construction in accordance with the Regulation. Therefore, the imperfection of the legal content is the focus of the existing problems in the Regulation. Among them, the most prominent is in the construction of Barrier-free environment, the Regulation put forward the requirements of building and rebuilding the physical environment, but there is no specific time limit and implementation standards, so it is very likely to lead to the implementation of relevant rights.

Third, the responsibility setting is not clear. The Regulation only stipulate that the governments at or above the county level and the Ministry of Construction and the Ministry of Industry and Information Technology are responsible for the construction of Barrier-free environment, but there is no provision on the coordination between departments, nor specific time arrangement and corresponding accountability mechanism. [3] Therefore, it is easy to see the situation of

unclear rights and responsibilities between government departments and negligent law enforcement.

(2) The legislation status of Barrier-free environment construction from the micro perspective Although China's Barrier-free environment construction is under the overall management of the central government, local legislation will play an important role in its construction process through the concretization of laws, which can also provide reference for the Barrier-free environment construction in Sichuan Province. Therefore, the author compared the existing regulations of 20 local governments except Sichuan Province, especially the Regulations on Barrier-free Environment Construction of Beijing, then found that most of the existing regulations of other local governments have the following problems.

First, the lack of local characteristics in local legislation is a common problem. It can be seen from the comparison that most of the above-mentioned local government regulations are simple supplements to the Regulation, or even copied and pasted, which lacks the connection between local and national legislation, ignores the special needs of local Barrier-free environment construction, and is difficult to respond to the special needs of local Barrier-free environment construction.

At the same time, local legislation mostly focuses on the construction of Barrier-free environment in cities, with little or no mention of the construction of Barrier-free environment in rural areas, thus ignoring the needs of social groups such as disabled people in rural areas. Comparing the aforementioned local regulations, it is not difficult to find that most of the regulations do not mention the construction of rural Barrier-free environment at all. However, the overlapping of rural and disabled people's identities, their vulnerable position is more obvious, of course, should be the right subject of Barrier-free environment construction.

Finally, the subject of local legislative responsibility is repeated. Although most of the local government regulations have expanded the subject of responsibility in the Regulation, the author thinks that the expansion is not equal to determining the subject of responsibility. On the contrary, the increase of the number of responsible subjects will easily lead to the overlapping of rights and responsibilities within the relevant administrative law enforcement departments, and the difficulty of the right holders to resort to relief.

4. Legislative Difficulties of Barrier-free Environment Construction in Sichuan Province

As an important economic province in southwest China, with the proposal of Chengdu-Chongqing Economic circle, Sichuan's economy is bound to further flourish. Meanwhile, according to the national survey on the disabled, there are 6.223 million disabled people and 17.51 million elderly people in Sichuan province, accounting for 7.57% and 21.09% of the total population respectively. There are also a large number of pregnant women and children, who must rely on various Barrier-free facilities to participate in social activities. On November 18, 2021, Sichuan Province promulgated the Measures for The Construction and Management of Barrier-free Environment in Sichuan Province (hereinafter referred to as the Measures), which made a series of innovations. However, the author thinks that the Measures still have the following problems.

First, compared with other regulations on Barrier-free environment construction, the Measures innovatively put forward that the development of townships and villages should also gradually meet the Barrier-free environment construction standards. However, the Measures only make the above provisions, but do not specify the specific implementation measures, supervision authorities and compliance time of the rural Barrier-free environment construction in the following text. As a result, it is easy to make this article into a declarative clause, which still cannot guarantee the implementation of the rural Barrier-free environment construction.

Second, although the Measures have expanded the specific content of material, information and communication, and the construction of a Barrier-free environment for social civilization, the author believes that the specific content of the Measures, especially the construction of a Barrier-free environment for social civilization, needs to be improved according to the specific needs of the elderly and the disabled. For example, the elderly, the disabled and other Barrier-free right holders have a large demand for food and medicine. At the same time, as a bridge between the government and the rights of Barrier-free environment, venues providing government affairs should have the ability to provide Barrier-free services, which is not mentioned in the Measures.

Thirdly, the Measures made detailed provisions about the construction of Barrier-free environment related legal responsibility, however, most of rules are for the design units, construction units and the construction supervising units by regulatory agencies, and there is no specific provision regulation subject specific duties of government departments, only general rules for the construction of Barrier-free environment construction, maintenance, shall be the responsibility of the government departments at or above the county level, The supervision and management work is responsible by multiple government departments, which will lead to unclear responsibilities among departments, even overlapping functions and other problems, but also not in line with China's current reform trend of streamlining administration and delegating power.

5. Suggestions on Barrier-free Environment Legislation in Sichuan Province

In view of the above problems in the Measures, combined with the current situation and experience of the central legislation and other local government regulations, the author believes that the existing local legislation on Barrier-free environment construction in Sichuan province can be improved from the following four aspects.

First, clear government responsibilities. As mentioned above, the Measures define the relevant responsibilities of renovation subjects, construction subjects and maintenance and management subjects, which is a major innovation of the Measures. However, the lack of accountability of government departments may lead to confusion of responsibilities among government departments. Therefore, the author thinks that in the future, the Measures still need to define the creation subject and supervision subject and their scope of responsibility in government departments. To be specific, the creation subject should determine the industry standard for the allocation of Barrier-free facilities and issue corresponding safeguard measures and incentive measures, while the supervision subject should strengthen the multiple supervision responsibilities before, during and after the event, and bear the current responsibility for omission or abuse of power, and refine the supervision, assessment and evaluation mechanism.

Second, combine local characteristics. According to the results of the seventh national population census, 56.73% of Sichuan province's population lives in urban areas, lower than the national average of 63.89%. It can be seen that Sichuan province has the local characteristics of large rural population. Therefore, the author thinks that the Measures only make declarative provisions without specific provisions about responsibility and content of rights, which is not difficult to fully meet the urgent needs of Barrier-free environment construction in rural areas. At the same time, Sichuan province as a big tourism province, the construction of Barrier-free environment in tourist attractions should also be included in the local characteristics, so as to further promote the economic development of Sichuan province on the basis of protecting the right holders of Barrier-free environment.

Third, strengthen punishment measures. Although the legal liability of relevant subjects is stipulated in Chapter VI of the Measures, it is obvious that the punishment measures are not operable, and neither the amount of punishment nor the time limit is clearly stipulated in the Measures. Therefore, the author thinks that in the future, the Measures should be combined with the economic conditions of Sichuan province and the actual situation of Barrier-free construction and development, specify the amount of penalty, time and other specific contents of construction, increase the types and intensity of penalty measures, and no longer stick to the liability for compensation. In serious cases, administrative responsibilities such as revocation of license can be increased. To avoid the construction of Barrier-free environment into a castle in the air without the right to remedy, enhance the operability of laws and regulations.

Fourth, refine the content of rights. Refining the content of rights is an important step to ensure the construction of Barrier-free environment. The Measures supplement and refine the specific content of Barrier-free environment construction to some extent, making it more enforceable, but there are still rights that need to be enriched. For example, in the construction of Barrier-free environment, the Measures should be supplemented with the determination of relevant standards for Barrier-free facilities construction and the implementation of renovation plans. In terms of building a Barrier-free environment for information and communication, the Measures should further supplement the types and locations of public services. In terms of the construction of Barrier-free environment for social services, the author believes that the relevant services with strong demand should be solved first, and then gradually expand the types of services according to the development level of Sichuan Province.

6. Conclusion

Under the goal of realizing common prosperity for all the people, the construction of Barrier-free environment is an important guarantee for safeguarding the interests of vulnerable groups and even sharing the fruits of labor, including material, information and communication, and the construction of Barrier-free environment for social civilization. Due to its important functions in practice, the construction of Barrier-free environment needs to be protected by relevant laws and regulations. However, there are some problems in China's existing laws and regulations framework, including incomplete legislation concept, incomplete legal content and unclear responsibility setting. In addition, the lack of local characteristics, neglect of the needs of rural Barrier-free environment construction, duplication of responsibility subjects, and other problems, thus providing experience for the Barrier-free environment construction in Sichuan Province.

However, there are some problems in "Sichuan Province Barrier-free environment Construction Management Measures ", such as rough construction of Barrier-free environment in rural areas, incomplete establishment of rights and legal responsibilities, etc. Therefore, combining the experience of central and local legislation and aiming at the problems existing in the existing legislation of Sichuan Province, the author puts forward the regulation paths such as clarifying the government responsibility, combining the local characteristics, strengthening the punishment measures and refining the content of rights to improve the existing legal guarantee of Barrier-free environment construction in Sichuan Province.

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