



Optimisation of the Voluntary Guardianship System Application in China's Civil Law

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Abstract

The Voluntary Guardianship system was officially included into China's Civil Code on 1 January 2021. This system exhibits a comprehensive adherence to and acknowledgment of the rights of individuals within the realm of civil law. Nevertheless, the adoption of the new system gives rise to novel inquiries regarding the efficacy of the enforcement mechanism in ensuring the successful execution of the established guardianship system. Several perspectives have been proposed by scholars regarding the optimisation of the implementation procedures associated with the Voluntary Guardianship system. However, they do not fully and effectively resolve the challenges associated with the application of the Voluntary Guardianship system. Consequently, this study will employ some qualitative research methodologies to conduct a comprehensive analysis of potential enhancements to the Voluntary Guardianship system. This analysis will be informed by theoretical insights from pertinent scholars and will be supplemented by the implementation of a sociological survey focused on the Voluntary Guardianship system. Regarding the results obtained, this study underscores the significance of the Voluntary Guardianship system within the realm of civil law in China. The present Voluntary Guardianship system encounters challenges pertaining to inadequate supervision, insufficient procedural regulations, absence of objective judgement standards, and a lack of criteria for assessing guardianship qualifications. Hence, it is imperative to safeguard the legal entitlements of individuals within the Voluntary Guardianship framework by the implementation of procedural regulations and enhancements to substantive regulations. This study holds significant value in addressing the deficiencies within China's existing legal framework and facilitating the advancement of its legal system.

Keywords: Voluntary Guardianship, Implementation, China, Civil Code, Optimisation

1. Introduction

The Voluntary Guardianship system in China can be attributed to the process of legal transplantation. The inception of the notion of "Voluntary Guardianship" can be traced back to the enactment of the Law on the Protection of the Rights and Interests of the Elderly in 2013.

"Elderly individuals who possess the requisite mental ability to engage in civil conduct have the autonomy to designate their own guardians through a mutually agreed upon arrangement involving immediate family members or other individuals and organisations with whom they share a deep bond. These chosen guardians must be ready to undertake the obligations associated with assuming guardianship. In the event of an older individual experiencing a loss or partial loss of their capacity for civil behaviour, the guardian will undertake the responsibility of guardianship in accordance with the law."(Law on the Protection of the Rights and Interests of the Elderly, Article 26)

The Voluntary Guardianship system will be officially incorporated into Chinese statutory law for the first time on 1 January 2021, coinciding with the formal implementation of the Civil Code. The legal definition of Voluntary Guardianship is stipulated in Article 23 of the Civil Code.

"Individuals who possess the necessary maturity and ability to engage in appropriate societal conduct have the option to establish, through prior discussion with their immediate family members or other willing individuals or organisations, a written arrangement designating their own guardian. This appointed guardian will assume the responsibilities associated with guardianship in the event that the individual experiences a complete or partial impairment of their ability to engage in appropriate societal conduct."(Civil Code, Article 33)



Nevertheless, researchers have identified several issues with the current judicial implementation of the Voluntary Guardianship system.

1.1 Lack of effective supervision

Voluntary Guardianship, as an emerging guardianship system, distinguishes itself from traditional legal guardianship by placing a significant emphasis on the protection and preservation of citizens' human rights. Hence, while selecting a system, individuals may exhibit a greater propensity to utilise Voluntary Guardianship as a means to safeguard their lawful rights and interests. Furthermore, this observation highlights the sophisticated characteristics of the Voluntary Guardianship system. However, the implementation of the Voluntary Guardianship system still faces certain constraints in practise. At the outset with, it is evident that there exists a dearth of suitable groups or entities tasked with overseeing the efficacy of guardianship. Furthermore, there is a lack of explicit criteria for assessing the conduct of those acting as guardians when their rights and interests have been violated. Finally, there is a lack of explicit stipulation about the legal obligations of the guardian in the event of infringement upon the rights and interests of the ward. It is evident that the feasibility of implementing the Voluntary Guardianship system hinges upon the guardian's conscientious fulfilment of their guardianship responsibilities.

The responsibilities associated with Voluntary Guardianship encompass the comprehensive protection and advocacy for the welfare and rights of the ward. The failure of a guardian to diligently complete their obligations of guardianship can have significant consequences on the well-being, assets, rights, and overall interests of the individual under their care. It is important to highlight that during the execution of their responsibilities, guardians frequently encounter situations where the ward has either partial or complete incapacity. In such situations, the individual's personal and property rights and interests, while under guardianship, may be subject to heightened vulnerability. The necessity of supervision by the appropriate authorities is particularly evident at the present moment. If the guardian lacks objective restraint, they are unable to be hindered from encroaching upon the rights and interests of the individual under their custody. "In contemporary practise, it is common for parties involved in a Voluntary Guardianship agreement to include guardianship supervision clauses. However, the extent of actual monitoring primarily adheres to the terms outlined in the agreement itself, or occasionally involves retrospective written supervision(Wu Guoping,2022)." The establishment of a comprehensive and all-encompassing monitoring system for efficient monitoring is an area that requires further investigation.

1.2 Lack of adaptation rules

Since the 1970s and 1980s, extraterritorial countries, such as the United Kingdom and the United States of America, have been enhancing the Voluntary Guardianship system by implementing suitable rules(LiZhi,2022). In contrast, the Civil Code of China incorporates provisions for Voluntary Guardianship in a limited manner, only specifically delineated in Article 33 and Article 36. Although this statement is a broad generalisation, it is worth noting that the law may sometimes exhibit a relative dearth of substantive provisions, and there may be a lack of specialised regulatory frameworks to facilitate its implementation.

"Where a guardian is guilty of any of the following, the people's court, on the basis of an application by the individual or organisation concerned, shall revoke his or her qualifications as a guardian, arrange for the necessary temporary guardianship measures, and, in accordance with the principle of what is most favourable to the person under guardianship, appoint a guardian in accordance with the law:

- (i) Committing acts that seriously harm the physical or mental health of the person under guardianship;*
- (ii) neglects to perform his duties as guardian, or is unable to perform his duties as guardian and refuses to delegate some or all of them to another person, resulting in the ward being placed in a state of distress;*
- (iii) Committing other acts that seriously infringe upon the lawful rights and interests of the person under guardianship.*

The individuals and organisations concerned under this Article include: other persons qualified for guardianship under the law, residents' committees, villagers' committees, schools, medical institutions, women's federations, federations of persons with disabilities, organisations for the protection of minors, organisations for the elderly established in accordance with the law, and civil affairs departments.



If the individuals and organisations other than the civil affairs departments specified in the preceding paragraph fail to apply to the people's court in a timely manner for the revocation of guardianship, the civil affairs departments shall apply to the people's court.”(Civil Code, Article 36)

The definition of Voluntary Guardianship is exclusively only provided for in Article 33 of the Civil Code(Zhangyi, 2022). Within the guardianship system, the guardian assumes the responsibility of safeguarding the rights and interests of the ward, encompassing several domains such as medical treatment, property, and personal agency. Consequently, the establishment of comprehensive and precise implementation guidelines assumes paramount significance. In practical situations, the absence of specific details often hinders the decision-making process for guardians, leading to potential infringements on the rights and interests of the ward. Furthermore, this lack of information may also have a certain impact on the rights and interests of the guardian. Individuals encounter numerous challenges while selecting a guardianship framework, leading to a general sense of disillusionment and discouragement.

1.3 Lack of criteria for objective judgement of incapacity

According to the provisions outlined in the Civil Code, the commencement of duties for an individual appointed as a Voluntary Guardian is contingent upon the determination that the person under guardianship exhibits either complete or partial incapacity for engaging in civil conduct. This determination is made by the People's Court, which serves as a prerequisite for establishing the partial or total incapacity of the person under guardianship(Wu Guoping, 2022). At present, the sole method for establishing the capacity of a human individual to engage in actions in an objective manner is through the utilisation of a forensic examination. Furthermore, the authority to declare a natural person as lacking the ability to engage in actions rests solely with the court system(Zhang Haiyan & Su Jie, 2022). The current model of determination lacks diversity, which hinders its ability to effectively safeguard the rights and interests of those under guardianship both before to and following their initial incapacity.

Furthermore, the scope of "loss or partial loss of civil capacity" within the context of Voluntary Guardianship encompasses a range of conditions, ranging from total loss of civil capacity to limited civil capacity to incapacity. The standards for assessing the loss of legal competence vary depending on the specific circumstances. The legislation does not provide any differentiation in this matter, but rather provides a broad characterization in generic language. When dealing with individuals who are partially handicapped but maintain a certain level of self-awareness, it is incumbent upon the guardian to prioritise the preferences expressed by the person under their guardianship. In situations where an individual is completely incapacitated, it is necessary for a guardian to assume the responsibility of representing and advocating for their personal rights. The court primarily relies on pertinent medical certificates, psychiatric evaluation reports, disability certificates, and other information from the judicial appraisal department to ascertain the legal incompetence of an individual. The variability of the mental status of the ward is a salient aspect in reality, and it is evident that the aforementioned judgement lacks a subsequent evaluation throughout the entirety of the process.

1.4 Unclear guardianship provisions

According to the Civil Code of China, the stipulations for entering into a Voluntary Guardianship arrangement necessitate that the designated guardian must satisfy the criteria of being "an adult possessing complete legal capacity", or alternatively, "a close relative, or any other individual or organisation expressing willingness to assume the role of a guardian". Is it possible for a guardian to be held legally responsible for their guardianship duties if they possess a morally questionable character? Can a guardian with a history of misconduct impartially use judgement on behalf of their ward while fulfilling their responsibilities as a guardian? Is the guardian capable of providing comprehensive care and protection for the ward? What are the most effective strategies for safeguarding the rights and interests of the ward in every given circumstance? The Voluntary Guardianship does not make any mention of this aspect. Furthermore, the course of tasks for the guardian does not include any explicit reference to their responsibilities and rights.

1.5 Research objectives

As mentioned above, it is not difficult to find that Voluntary Guardianship still has considerable problems. By searching previous related academic articles, we can find that scholars have provided ideas to solve the improvement of Voluntary Guardianship system under different perspectives. Li Yuncang (2022), in "The Establishment and Improvement of Voluntary Guardianship System under the Perspective of Aging", puts forward suggestions for the improvement of Voluntary Guardianship from the perspective of the elderly. In "Exploration of Notary's Participation in Voluntary Guardianship System for Adults", Xun Daqing(2023), focuses on the importance of notary's participation in Voluntary Guardianship. Zhang Haiyan & Su Jie (2022), in "Extraterritorial Examination and Local Reference of the Voluntary Guardianship System for the Elderly", suggests the improvement of the Voluntary Guardianship for the



elderly in China by comparing and analysing the extraterritorial legal system. Gong Yimei (2022), in "Research on the Legal System of the Right to Make Medical Decisions of Voluntary Guardianship People", provides a more comprehensive discussion on the medical disputes of Voluntary Guardianship. However, these academic articles on Voluntary Guardianship lack social surveys of citizen public opinion. Therefore, based on the analysis of related literature, this study designed a social survey questionnaire on Voluntary Guardianship, aiming to explore the improvement of Voluntary Guardianship from the real perspective of citizens.

2. Methodology

2.1 Design Ideas

The primary objective of this study is to investigate potential avenues for enhancing the Voluntary Guardianship system by soliciting feedback from individuals regarding their sentiments towards such system via a survey. This study will utilise both normative and empirical research methods within the qualitative research framework for analysis.

The methodology employed in normative legal research. By engaging in a comprehensive review of existing scholarly material on the Voluntary Guardianship system in China, we have undertaken the task of summarising and categorising the institutional flaws identified by contemporary researchers. Furthermore, through the utilisation of the comparative research method, an examination of the Voluntary Guardianship system is conducted, leading to a synthesis of existing scholarly approaches aimed at enhancing said system.

Furthermore, the primary methodology employed in this study is the administration of a questionnaire. The present study employs a questionnaire to quantitatively examine the efficacy of the Voluntary Guardianship system in terms of its publicity strength, citizen support, and overall appraisal. Individuals have the opportunity to assess and choose the pertinent inquiries in order to offer their perspectives on their attitudes towards the Voluntary Guardianship system.

2.2 Literature review

This study conducted a literature analysis by querying the academic articles within the China National Knowledge Information Network (CNKI) database, focusing on the period following the implementation of the Civil Code of China. The search was performed using the phrase "Voluntary Guardianship". As of August 12, 2023, a total of 87 scholarly articles pertaining to the Voluntary Guardianship system were obtained. The analysis of article subjects reveals that the majority of research on the Voluntary Guardianship system primarily examines the stages of policy formulation and implementation. The discourse around policy can be classified into three main categories: the establishment of guardianship, the provision of notarial judicial assistance, and the implementation of advance medical directives. The study in these domains has a greater degree of dispersion, encompassing both studies on civil law theory and investigations into the policy surrounding medical guidelines and the judicial aid system.

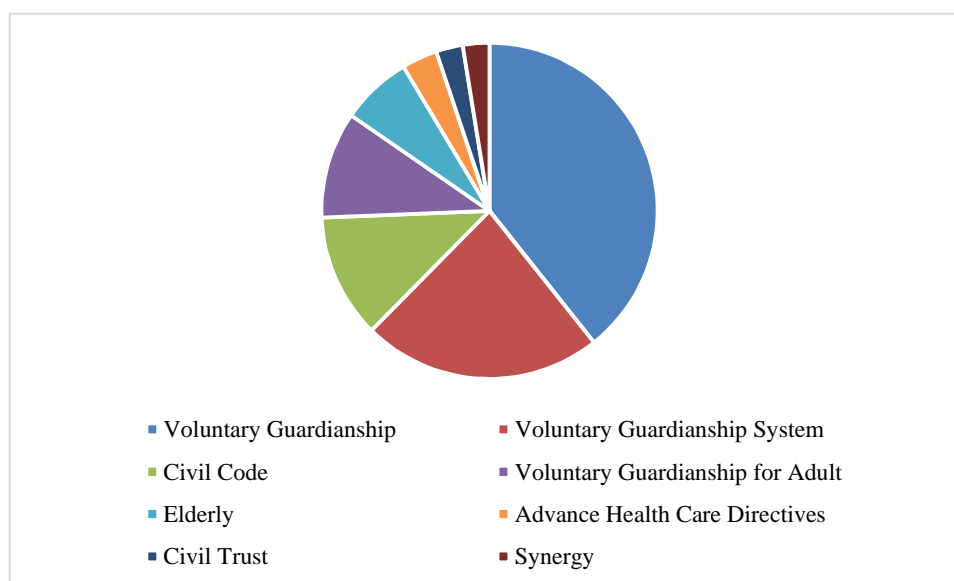


Figure 1: Analysis of Literature Theme

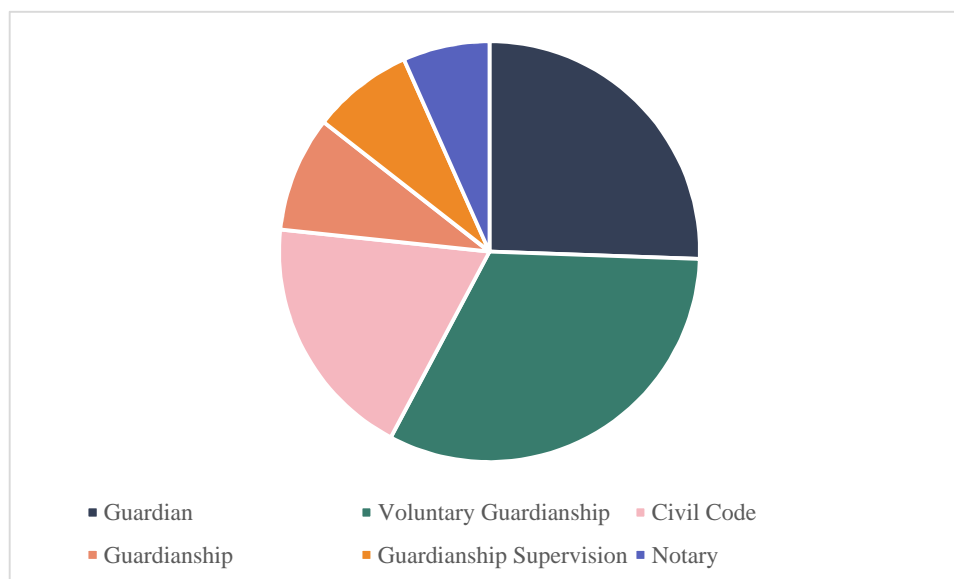


Figure 2: Analysis of Literature Second Theme

Consequently, this study proceeds to conduct additional comparative analyses subsequent to an extensive review of the aforementioned literature. The purpose is to present a comprehensive analysis of the legal frameworks governing Voluntary Guardianship in the United States, the United Kingdom, and Japan. Furthermore, to provide a comprehensive overview of the institutional challenges associated with Voluntary Guardianship as discussed in the existing literature. Finally, it will undertake a comparative analysis of potential solutions proposed in the relevant scholarly works. This study focus on gather an overview of perspectives of the proposed solutions for the Voluntary Guardianship system and offers theoretical backing for future research endeavours.

2.3 Questionnaire

Given that the primary emphasis of this research work is around the perspectives held by individuals, the utilisation of questionnaires has been employed as a means to efficiently gather a substantial volume of opinions within a limited timeframe. This study administered 1000 online surveys to the internet. The survey instrument was constructed to encompass a comprehensive set of 15 inquiries, comprising nine items that required respondents to select a single option, four items that allowed for multiple choices, and two items that necessitated participants to provide a written response. The survey encompassed three distinct components, namely: demographic information pertaining to the participants, perspectives regarding Voluntary Guardianship, and any recommendations put forth.

The initial section of the respondent's basic information consists of four single-choice questions that have been intentionally crafted. The factors under consideration include age, the level of economic development in the region, gender. The questionnaire has been organised into six distinct tiers based on age: under 18, 18-30, 31-40, 41-50, 50-60, and 60 and above. This comprehensive categorization encompasses a wide range of age groups, ensuring representation across many stages of life. This study posits a correlation between the level of policy implementation and the local economy in several economic regions of China, considering the variations in implementation time and feedback among these regions. Economically developed regions exhibit a greater propensity for embracing novelty. Hence, the inquiry regarding the level of economic development within the region was posed, and the responses were categorised into three distinct groups: economically advanced, moderately economically advanced, and economically disadvantaged.

It has been seen from previous social encounters that individuals of varying genders and sexual orientations exhibit distinct approaches while addressing a certain matter. Furthermore, it is important to note that mainland China currently does not allow for same-sex marriage. However, several scholars suggest that Voluntary Guardianship may emerge as a potential alternative to the existing marriage framework for same-sex couples within the realm of legality. As a result, question 5 establishes a corresponding differentiation in sexual orientation based on the gender identified in question 4. The second section pertaining to perceptions of Voluntary Guardianship encompassed a total of seven inquiries. These inquiries comprised three single-choice questions and four multiple-choice questions. The questions encompassed the following aspects: awareness of Voluntary Guardianship, endorsement of Voluntary Guardianship, rationales for non-endorsement, rationales for endorsement, inclination towards selecting Voluntary Guardianship individuals, selection



criteria for Voluntary Guardianship individuals, and factors to be taken into account in the hypothetical scenario of having Voluntary Guardianship individuals.

Questions 1-5 were prepared with the intention of eliciting people's comprehension and endorsement of the concept of Voluntary Guardianship. Questions 2-4 of the survey were designed to discern the varying perspectives of individuals towards Voluntary Guardianship. To get insight into the selection of Voluntary Guardianship individuals by citizens, a set of five alternatives was presented, namely: family, close friends, partners, neighbours, and acquaintances. In the final question of this section, the focus is on the implications of the absence of regulations pertaining to Voluntary Guardianship. Specifically, this absence raises concerns regarding the protection of rights and the conscientiousness of guardians in fulfilling their responsibilities. Notably, Liu Chaoyue & Wang Juan (2022) and Zhang Yi (2021) have addressed the issue of remuneration rights in their respective studies, which are relevant to the analysis of this topic in the existing literature. Consequently, the available options for this question revolve around the theme of "Rights Protection of the Guardian." Hence, the available choices for this inquiry have been formulated to encompass the concepts of "safeguarding the rights and interests of guardians" and "compensation for guardians."

Part 3 of the report encompasses a set of recommendations that are structured around four key inquiries. These inquiries pertain to the potential shortcomings of Voluntary Guardianship, the identified defects within the Voluntary Guardianship system, suggested improvements for Voluntary Guardianship, and the comparative merits of Voluntary Guardianship vs formal guardianship. The final component of the comprehensive questionnaire holds paramount significance. This study centres on the examination of individuals' perspectives regarding Voluntary Guardianship. Hence, this section is centred around open-ended questions, allowing for a more flexible and subjective approach to answering without predetermined solutions. In contrast to the preceding two sections, the inclusion of a question and answer segment in this section facilitates enhanced citizen engagement and expression of opinions during the questionnaire completion process. In this section, the study will employ an interview-style method to synthesise the collected replies.

3. Results

3.1 the reasons for implementing Voluntary Guardianship

The Voluntary Guardianship system is a necessary and unavoidable option in response to the phenomenon of population ageing. The phenomenon of population ageing has long been seen as a significant global issue, posing substantial challenges to countries. This demographic shift, which has been observed since the 19th century, has affected numerous nations, with France serving as an early example of a country transitioning towards an ageing society. China's substantial population base renders the ramifications of population ageing more severe in comparison to other nations. Based on the recently published census statistics by the National Bureau of Statistics of China, it can be determined that China has successfully transitioned into a complete ageing society. This classification is based on the established criterion that the proportion of individuals aged 60 years and above exceeds 10 percent of the overall population within developing nations. Furthermore, the conventional paradigm of guardianship, which relies on familial and marital ties, is inadequate in addressing the demands of contemporary society. This is particularly evident as the number of individuals belonging to varied gender groupings and those who are not married to one another continues to increase annually.

Furthermore, Voluntary Guardianship demonstrates a comprehensive regard for civil liberties and serves as a manifestation of the safeguarding of human rights for individuals. The issue of human rights is frequently a subject of global discourse, with a greater emphasis placed on human rights in countries that have achieved higher levels of economic development. In contemporary times, within the context of the global framework, there exists a growing inclination among individuals towards the value of freedom. Furthermore, as a result of the divergent evolution of national regulations, there has been a steady rise in the prevalence of multi-gender groupings and non-marital relationships throughout the years. In light of the growing demographic of adults and the elderly, there is a recognised need for a more adaptive approach to guardianship. As a result, Voluntary Guardianship has emerged as a proactive reaction to this societal shift. In contrast to alternative legal options, voluntary guardianship offers a greater degree of autonomy, allowing the individual to select their own guardian to provide protection in the event of a partial loss of civil capacity. This arrangement is characterised by a strong emphasis on personal agency and volition.

3.2 the comparison of the existing Voluntary Guardianship

The primary legislation governing the Voluntary Guardianship system in the United States is the Uniform Durable Power of Attorney Act of 1979 (DPA) (Li Xia, 2011). The DPA Act includes provisions for Voluntary Guardianship as



a form of "continuing agency." This agency is established through written authorization while the individual is capable of expressing their purpose, and it remains in effect as long as the agency exists, even when the authorised person becomes incapacitated (Zhang Lu, 2010). The continuity of agency that was initially established by the DPA has been preserved and extended in the Uniform Power of Attorney Act (UPA). The voluntary guardianship system in the United States is based on the private guardianship paradigm. Prior to the 1950s, the common law system employed a comprehensive guardianship model that not only infringed upon the personal rights of the guardian, but also subjected them and their relatives to significant social stigmatisation. Furthermore, the court's involvement in appointing guardians through a legal process led to prolonged durations, exorbitant expenses, and instances of guardianship abuse. The United States implemented the continuous agency system as a solution to address the shortcomings of the conventional guardianship system. This was achieved through a series of legal modifications, with the primary objective of ensuring the complete protection of the individual's right to self-determination who is placed under guardianship. The United States legislation has consistently upheld the principle of prioritising private rights, which has led to the continued use of agency granting systems as a means for the government to exercise its supervisory powers. However, the misuse of these agencies has become a persistent issue, posing a significant threat to the rights and interests of those being regulated. Following a progressive intensification of the legislative investigation in the United States, measures were taken to protect the interests of the guardian established by a third party through judicial oversight and evaluation of the private supervisory mechanism.

The legal provisions on voluntary guardianship in the United Kingdom are a refinement of the American model. As per the provisions of the British Mental Capacity Act, an individual who possesses complete cognitive abilities has the prerogative to designate a competent individual or organisation as their representative through a formal agreement. This grants the designated party the authority to manage the individual's personal and financial matters, a framework commonly referred to as the Lasting Power of Attorney (LPA) system. The distinguishing characteristic of the LPA system pertains to the unique position held by the judiciary. The agreement's implementation necessitates court registration, and the determination of ability, whether present or absent, must also be adjudicated by the court. The court must also determine the absence of capacity to act. From a progressive standpoint, the United Kingdom's "Continuous Agency Registration System" diverges from the United States' approach to determining the loss of a ward's capacity to act. Unlike the US system, which relies on a "one-size-fits-all" judgement method, the UK system does not solely consider the weakening of the ward's capacity to express their views or their loss of capacity to act as a concurrent agent. However, it is essential to note that the Voluntary Guardianship is granted solely upon submission of a written application to the court by the individual holding the Voluntary Guardianship. The Voluntary Guardianship system in the United Kingdom is characterised by the adoption of a public power model. The United Kingdom has taken note of the experience of the United States of America, where the absence of public oversight has hindered the efficient regulation of agency power, leading to instances of abuse. The scope of agency in the DPA was broadened to encompass medical acts and daily life issues, resulting in the establishment of a novel and distinct system of ongoing agency. Additionally, the Court of Protection and the Office of Public Guardianship were created with the explicit purpose of overseeing the implementation of agency. In contrast to the Data Protection Act (DPA) in the United States, the Meaningful Capacity Act in the United Kingdom places greater emphasis on safeguarding individuals with behavioural deficiencies and facilitating their involvement in the decision-making process regarding their own affairs to the fullest extent feasible. Consequently, it establishes a system of ongoing public oversight that incorporates the intervention of governmental authority.

The Law Concerning the Arbitrary Guardianship System in Japan serves as the nation's primary legislation pertaining to the voluntary guardianship system. This law implements a two-track supervision model, commonly referred to as the arbitrary guardianship system, which draws upon and incorporates key elements from both the British and American systems (Zhou Tianyu, 2022). In order to uphold and honour the principle of protecting and acknowledging the right to self-determination of the involved parties, a model of public-private supervision has been implemented. This model entails direct oversight of guardianship matters by the supervisor, while the family court assumes an indirect supervisory role over the supervisor. In accordance with Article 4 of the "Law on Arbitrary Guardianship," individuals are granted the privilege of selecting a private supervisor for themselves, their spouse, and other eligible parties. However, Article 5 explicitly bans the spouse, immediate blood relatives, and siblings of the ward from being considered as potential supervisors. The legislation establishes both private and public oversight throughout the entirety of the process, encompassing pre- and post-occurrence stages. According to Article 7, paragraph 3, of the Act, the family court has the authority to request the guardian to submit a report on their affairs, order an investigation into the guardian's affairs or the condition of the ward's property, and enforce disciplinary measures as deemed necessary in relation to the guardian's additional responsibilities. Article 8 also stipulates that the family court may remove the guardian from office upon the request of the supervisor, ward, relatives or prosecutor in the event of misconduct, serious misconduct or unfitness of the guardian to perform the duties of guardianship" (Zhang Haiyan & Su Jie, 2022).



This not only avoids the drawbacks of the lack of authoritative guarantee in the American private supervision model, but also makes up for the higher cost of the British public supervision model.

3.3 Results of the survey

In order to gain insight into public perceptions of the Voluntary Guardianship system, this study sent 1,000 survey questionnaires to the internet. The purpose of this investigation was to examine the implementation of the system and ascertain the views of individuals towards it. The questionnaires were specifically created to gather feedback from individuals across all age groups, aiming to capture the perspectives and attitudes of different age cohorts within the Chinese population. The survey comprised a total of 15 inquiries, encompassing sections on biographical details, perspectives on Voluntary Guardianship, and individual suggestions. The questionnaire was developed with the aim of comprehending the diverse perspectives held by individuals of varying genders, economic regions, and social groups. The aggregate number of questionnaires that were returned amounted to 1001. Out of the questionnaires that were deemed legitimate, a total of 474 from female, representing 47.35% of the sample, while 527 from male, accounting for 52.65% of the sample. The population is divided into six age groups. Among these groups, 3.1% consist of individuals under 18 years old, 29.57% consist of individuals aged 18-30 years, 37.46% consist of individuals aged 31-40 years, 24.98% consist of individuals aged 41-50 years, 4.8% consist of individuals aged 51-60 years, and 0.1% consist of individuals aged 60 years or older (Figure 3).

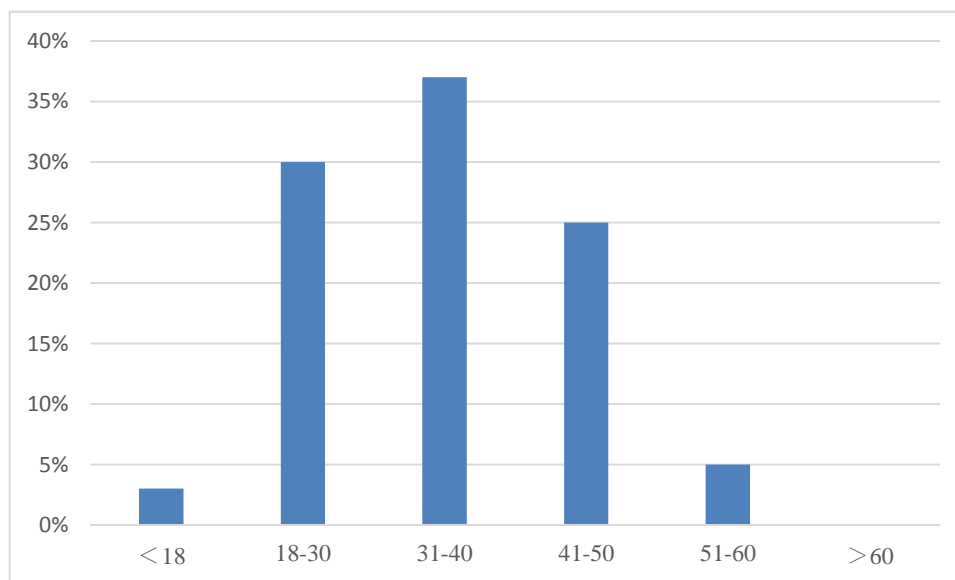


Figure 3: Distribution of respondents

The poll data indicates that a mere 9.89 % of the population lacks awareness regarding the Voluntary Guardianship system. In relation to the inquiry regarding the endorsement of the Voluntary Guardianship system, a majority of 62% express approval, whereas the remaining 38% hold a disapproving stance. The reasons for this endorsement are as follows. Initially, it is observed that 42.76% of individuals hold the belief that the system in question is advantageous to the general populace. Furthermore, a significant majority of 61.44 % of respondents hold the belief that the current system effectively upholds the human rights of citizens and respects the autonomy of individuals placed under guardianship. Moreover, a significant majority of 69.13% of respondents hold the belief that the system exhibits a high degree of liberalism and effectively caters to the requirements of the individual. Finally, a total of 22.68 % of the respondents hold the belief that for a system to be considered advantageous to residents, because it is implemented by the governing body.

The factors contributing to the lack of acknowledgment are outlined below. Initially, a significant proportion of individuals, specifically 17.51%, expressed non-acceptance of the system due to a lack of subjective understanding or awareness regarding its functioning. Furthermore, a notable proportion of individuals, specifically 14.32%, express reservations in embracing Voluntary Guardianship due to its perceived novelty. Moreover, a significant majority of 77.19% expressed the belief that the implementation of this novel method entails a greater level of risk. Finally, a majority of 86.74% of respondents believe that Voluntary Guardianship exhibits legal inadequacies that hinder its effective implementation and have the potential to negatively impact individuals' rights and interests.



Furthermore, the findings of this poll indicate that 69% of the participants expressed a willingness to select their own guardian, while the remaining 31% did not exhibit such a preference. Regarding the selection of a guardian, as depicted in Figure 4, it is evident that individuals within the public exhibit a preference for appointing a relative as their Voluntary Guardianship representative. This inclination is followed by a preference for a partner, and subsequently, a close friend.

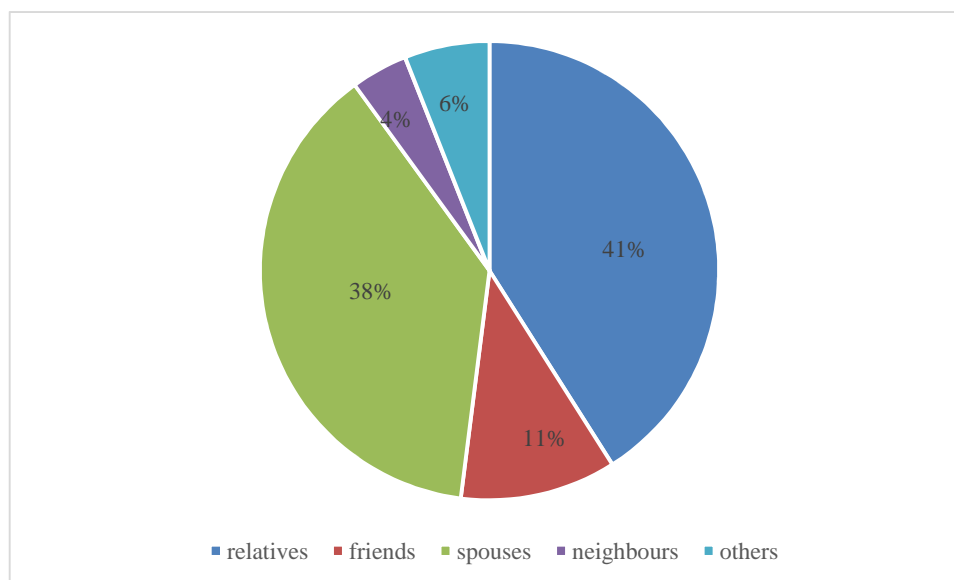


Figure 4: Trends in guardianship selection

The concern surrounding Voluntary Guardianship individuals encompasses several key dimensions. Firstly, there is a prevailing anxiety regarding the feasibility of adequately safeguarding their rights and interests. Furthermore, the current legislation lacks stringent limitations pertaining to various facets of this system, including the potential ability of the guardian to effectively carry out their guardianship duties for their own well-being in the future. Furthermore, in cases when the ward experiences complete incapacitation, it is imperative to ensure that the Voluntary Guardianship individual will not pose any harm to the ward's personal interests, but rather prioritise and protect them. In addition, it is necessary to consider if compensation can be provided to the guardian for fulfilling their responsibilities in the context of guardianship. The deficiencies of the Voluntary Guardianship system were examined, and the input received from participants was described in a general manner.

First, there is instability and uncertainty in the guardianship relationship. Secondly, the system is not perfect and does not protect the interests of the ward. Thirdly, there is coercion in the choice of a guardian by the ward. Fourth, the scope of application of Voluntary Guardianship is limited. Fifth, there is no judicial supervision. Sixth, Voluntary Guardianship lacks bylaws. Seventh, there is a lack of social popularity. Eighth, whether legal guardianship interferes with Voluntary Guardianship decisions. Ninth, the nature of Voluntary Guardianship agreements is unclear.

In conclusion, the analysis revealed that a majority of 61.14% of the valid data collected supported the concept of voluntary guardianship, while 38.86% not. This finding suggests that the population exhibits a greater inclination towards prioritising the protection of individual human rights and the freedom to make autonomous decisions. The findings of this survey exhibit minimal deviation from anticipated outcomes. However, owing to the substantial population size of China, there exists a notable disparity in the quantity of data collected, rendering the obtained data less thorough. Moreover, there is a significant limitation in the scope of data coverage. In summary, based on the survey data, it can be observed that individuals exhibit a higher level of acceptance towards the Voluntary Guardianship system. Moreover, they display a greater inclination towards embracing the adoption of the new system, while also harbouring elevated expectations for its efficacy. Additionally, individuals demonstrate a propensity to express their own subjective perspectives on the system. It is evident that China should prioritise the implementation of the Voluntary Guardianship system and enhance its efficacy in safeguarding the rights and interests of its citizens.



4. Discussion

4.1 Improvement of the supervision system

When examining the Voluntary Guardianship system in various countries, it becomes evident that China's monitoring system has significant room for improvement. When examining the Voluntary Guardianship system's supervision framework, it becomes evident that China has significant progress to make in comparison to the American private supervision model, the British public supervision model, and the Japanese dual-regime supervision model. The American model of private supervision emphasises the manifestation of the ward's will, whereas the British model of public supervision prioritises the safeguarding of the ward's rights and interests. In contrast, Japan's dual-regime supervision integrates the merits of both the American and British models of supervision. This study posits that China has the potential to derive valuable insights from the Japanese Voluntary Guardianship oversight model in the context of its own system. In consideration of China's specific national circumstances, the combination of public power intervention and private oversight effectively addresses the challenges arising from excessive public power engagement, while simultaneously upholding the autonomy of individual residents.

Voluntary Guardianship agreements can be officially recorded by a notary public, who will authenticate the agreement throughout the registration process, thereby verifying its contents and the intended recipient. Furthermore, the court will serve as the guarantor upon the agreement's commencement, and the notary will proceed to present the Voluntary Guardianship agreement to the court for official documentation. Additionally, China's Voluntary Guardianship system offers the option of both judicial and social monitoring, as well as public guardianship. Moreover, it allows for the appointment of supervisors, so facilitating the integration of public and private functions. During the signing of the agreement, it is permissible for both parties to select their respective supervisors who will oversee the guardian's execution of responsibilities. The guardian is expected to promptly notify their supervisor of any issues encountered while fulfilling their duties. The supervisor, in turn, is responsible for reporting these problems to higher authorities to safeguard the rights of the guardian. Additionally, measures such as appointing neighbourhood committees for regular supervision and visits, or establishing a dedicated guardianship supervisory organisation, can be implemented to ensure effective monitoring. Once the ward satisfies the necessary conditions for being subjected to guardianship, the judicial system possesses the authority to compel the guardian to fulfil their obligations. In the event of non-compliance, appropriate penalties such as fines or incarceration may be imposed, the severity of which will be determined by the gravity of the situation. In the event that the judiciary is unable of fulfilling this duty, the guardian is subjected to legal proceedings in the courts.

4.2 Improvements to the Voluntary Guardianship

The topics of discussion encompass supplementary medical care, personal rights, and property. The objective is to propose refinements to Article 33 of the Civil Code, with a specific focus on the domains of medical care and property.

The provision of medical care holds significant importance due to the pre-existing disability of the ward upon assumption of guardianship responsibilities by the guardian. The agreement of the guardian for alternative therapy is of utmost importance due to the numerous complexities that may develop in cases where the ward is incompetent. The primary function of the Voluntary Guardianship individual is to safeguard the rights and interests of the ward by acting as a proxy, with the ward's rights being prioritised. In the event of an emergency, if the individual in question maintains some level of consciousness, their expressed desires shall be given priority. Conversely, if the individual is fully unconscious, the guiding principle shall be to choose the course of action that is most advantageous to the individual. In such cases, decisions will be made on behalf of the individual with the utmost consideration for their well-being. Furthermore, within the realm of property, it is worth noting that due to the absence of biological kinship between guardians and their wards, the participation of relatives is not lacking when guardians exercise their rights in this domain on behalf of their wards.

In order to mitigate these effects, it is imperative to implement regulations pertaining to the use of property. When a guardian is discovered to have engaged in inappropriate behaviour, or has failed to fulfil their duties as a guardian in accordance with legal requirements, or has misused their authority to violate the rights and interests of the individual under their care, it is imperative that the supervisor promptly conducts an investigation into the matter. In the event that it is verified that the guardian has engaged in any of the aforementioned instances of unlawful guardianship, the matter shall be duly reported to the judicial authorities for appropriate disciplinary action. In situations where personal rights are violated, the guardian may be held legally accountable in accordance with the applicable provisions of the Civil Code. Similarly, in cases of infringement upon property rights and interests, appropriate compensation measures may be implemented, and the guardian may be required to undertake corrective actions. In cases when the gravity of the



situation meets the criteria for criminality, the guardian will be subject to legal accountability as prescribed by the law. By using this approach, it becomes possible to enhance the compensation for the losses incurred by the ward, protect the ward's rights and interests, and further enhance the comprehensiveness of the Voluntary Guardianship system.

4.3 Determining when guardianship takes effect

The effective execution of responsibilities by a guardian in the context of Voluntary Guardianship is contingent upon the civil capacity of the individual under guardianship. In cases where deemed required, an evaluation entity is responsible for assessing this competence. In the context of our nation, the implementation of Voluntary Guardianship necessitates that the individual under guardianship is partially or fully incapable. When considering legislation from abroad, there exist several standards for assessment, namely the substantial damage criterion, functional damage criterion, and the criterion that combines medical appraisal and legal appraisal. The initial two conditions are not relevant in the context of volunteer guardianship within the Chinese legal framework. The standards established by the World Health Organisation (WHO) for assessing the handicap of an individual who has committed an offence are grounded in three key dimensions: physical health, personal activities, and social connections (He Shuang & Kang Jinpin).

The implementation of mandatory evaluation may be triggered when the individual subject to legal guardianship exhibits observable indicators of diminished capacity. The medical assessment verifies the level of incapacitation of the patient in the ward. Additionally, in accordance with the international standard, individuals are assessed based on their ability to perform six specific activities: eating, dressing, getting in and out of bed, using the toilet, walking indoors, and bathing. Those who are unable to perform one or two of these activities are categorised as having a "mild disability," while those who cannot perform three or four activities are classified as having a "moderate disability." Furthermore, individuals who are unable to perform five or six activities are also considered to have a "moderate disability." A "moderate disability" is characterised by the presence of 5-6 items, while a "severe disability" is defined by the presence of more than 6 things. In situations where the ward experiences mild incapacity, they retain the ability to express themselves independently and engage in autonomous actions. Consequently, the guardian's responsibilities may be temporarily suspended, and the ward's relatives assume the responsibility of caring for them. In cases of partial incapacity, the ward has the option to initiate a personal request for an assessment, or their relatives may submit a report for an assessment on their behalf. Once the evaluation has been confirmed, it is imperative for the guardian to commence fulfilling their responsibilities, as partial impairment greatly affects the ward's life. In the event that the ward becomes fully incapacitated, the relatives may directly initiate the appraisal process. Currently, the guardian assumes instant efficacy. Supervisors, supervisory bodies, and judicial authorities, in their capacity as subjects of supervision, exercise ex officio supervision when the guardian fulfils their obligations of guardianship, therefore preventing any infringement upon the rights and interests of the individual under care.

4.4 Regulation of guardianship

To mitigate the potential violation of the ward's rights and interests, it is advisable to incorporate a guardianship review mechanism in cases when both parties opt for a Voluntary Guardianship arrangement. A credit breach refers to a situation in which an individual or corporation possesses an unfavourable credit history, typically resulting from non-compliance with contractual obligations or violation of legal statutes or regulations. In the event that an individual possesses an unfavourable credit history, they may decline to fulfil their responsibilities as a guardian. However, it is not feasible to assess their suitability for guardianship solely based on this record. However, in order to mitigate the potential severity of the requirements, one might adhere to the principle of "things not three." This approach suggests that those who have committed significant crimes and displayed subjective purpose should be disqualified from guardianship. On the other hand, those who have committed small offences or displayed negligence may be considered for further evaluation. Besides, the assessment pertains to character evaluation, wherein the guardianship eligibility is determined by scrutinising the personality and behaviour of the prospective guardian. While it is possible that the aforementioned two appraisals may contain prejudice, it is widely recognised that an individual's character is readily apparent to all observers. When assessing an individual's character, one can ascertain their qualifications by considering the accounts provided by neighbours, relatives, and friends. It is imperative to prevent individuals with unfavourable reputations from assuming the role of a guardian, as this would pose a risk of encroaching upon the rights of the person under guardianship. Furthermore, when choosing alternative entities to serve as guardians in the context of Voluntary Guardianship, it is crucial to consider the historical performance and public assessment of said entities. This evaluation aims to ascertain whether the organisation has effectively fulfilled its responsibilities in previous guardianship cases and adhered to rigorous standards in its professional duties. Provided that the aforementioned criteria are satisfied, the organisation is deemed eligible to attain the status of a Voluntary Guardianship.



4.5 Guardianship Interests

Voluntary guardianship exhibits clear distinctions when compared to alternative guardianship frameworks. Given the unique characteristics of Voluntary Guardianship, it is imperative to not solely underscore the obligations of the guardian. Rather, it is reasonable to expect that the rights afforded to the guardian would diverge significantly from those associated with other guardianship frameworks. An illustration of this concept can be seen in the case of a Voluntary Guardianship, where the individual designated as the guardian possesses the prerogative to decline assuming the role until a mutually agreed upon agreement is executed by all involved parties. Additionally, it is important to acknowledge that the guardian possesses the right to voluntarily resign from their role. In the context of a voluntary guardianship, both parties involved are considered equal entities under civil law. Therefore, it is crucial to fully accept the decision of the other party about their willingness to assume the responsibilities of a voluntary guardian, without imposing any form of coercion. Although the Civil Code provides provisions for the revocation of guardianship, it does not grant guardians the autonomy to voluntarily resign from their position. In order to ensure a fair balance of rights and interests between the parties involved, it is necessary for the guardian to initiate the process of resigning from their guardianship duties prior to the ward's incapacitation. This entails submitting a formal application for resignation to the supervisory organisation. After a thorough verification of the relevant facts, the guardianship will be officially revoked. In the event that a guardian is unable to fulfil their duties subsequent to assuming their role, several circumstances may necessitate their resignation. In such cases, the guardian may submit an application to the supervisory organisation, accompanied by relevant documents, to formally request their resignation. Additionally, the implementation of a remunerated volunteer guardianship system can serve as a means to incentivize guardians to execute their responsibilities. In the recommendation section of the questionnaire, respondents proposed that guardians could be appropriately compensated to incentivize them in fulfilling their responsibilities. In practical application, numerous instances have arisen wherein guardians have engaged in the misappropriation of assets belonging to their wards. The responsibilities of a guardian necessitate a significant amount of effort in fulfilling their obligations towards their ward, thereby justifying the provision of appropriate compensation. When entering into a Voluntary Guardianship Agreement, both parties have the opportunity to engage in negotiations on compensation and establish a specific remuneration sum. This serves the purpose of minimising instances of property misappropriation. Additionally, the establishment of the Voluntary Guardianship Priority serves the purpose of safeguarding the guardian's authority against any potential encroachment by legal guardianship subsequent to the ward's selection of Voluntary Guardianship. In practical scenarios, instances have arisen wherein the Voluntary Guardianship individual has encountered difficulties in restraining the legal guardian from employing assertive and stringent measures when the legal guardian challenges the decisions made by the Voluntary Guardianship individual while carrying out their responsibilities. Once the Voluntary Guardianship individual assumes their responsibilities, they effectively assume the role of the principal representative of the ward's intentions in all decision-making processes. Consequently, following the selection of Voluntary Guardianship, it is imperative that the Voluntary Guardianship arrangement be given priority.

5. Conclusions

The utilisation of literature analysis and questionnaires in research has not been a unique strategy, although it has been under-utilized in prior studies. Furthermore, there is a significant dearth of research focused on citizenship attitudes. Hence, employing this method becomes more crucial in the examination of Voluntary Guardianship. Nevertheless, the survey data collected in China is limited in its comprehensiveness due to the country's vast population and significant disparities in numbers. This lack of data breadth results in potential omissions in the questionnaire options, restricting citizens to select from the provided choices rather than expressing their own individual perspectives. In this particular scenario, there exist specific constraints or restrictions.

However, it can be inferred that the general populace exhibits a greater degree of receptiveness towards the Voluntary Guardianship system and displays a heightened willingness to embrace the adoption of this novel framework. Furthermore, individuals own elevated standards for the system and possess the capacity to provide their subjective and candid perspectives regarding it. The results of this study give a real and reliable reference on a certain basis, and to a certain extent, it also reflects the importance that citizens attach to Voluntary Guardianship. Therefore, this paper puts forward the following suggestions for the improvement of Voluntary Guardianship based on the real will of the citizens: 1. Draw on the extraterritoriality and improve the supervisory mechanism. 2. Improve the bylaws. 3. Determine the time when the Voluntary Guardianship comes into effect. 4. Clarify the rights of the person who is the Voluntary Guardianship. 5. regulate the qualifications of guardians.



The Voluntary Guardianship system has been officially implemented in China by the inclusion of article 33 in the Civil Code. In light of the contemporary era, numerous challenges persist throughout diverse domains. Specifically, there is a dearth of legal intricacies and a deficiency of oversight systems. Nevertheless, it is undeniable that the implementation of the Voluntary Guardianship system in China has revitalised the guardianship system, affording numerous individuals the freedom to exercise their autonomy in decision-making.

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