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Dilemmas and Solutions for Judicial Protection of Spiritual Support for the Elderly—An Examination Based on Norms, Judgments, and Enforcement

Shihong Lu*

Xinjiang Institute of Political Science and Law, Tumushuk 843900, Xinjiang, China

Author to whom correspondence should be addressed.

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Abstract: With the accelerating population aging process, supporting the elderly involves not only material provision but also spiritual comfort. The improvement of household economic conditions has well satisfied the material needs of the elderly, yet spiritual support has been neglected. To respond to this practical demand, the *Law of the People's Republic of China on the Protection of the Rights and Interests of the Elderly*, revised in 2013, added provisions on "spiritual support." Nevertheless, such provisions encounter problems in practice, including ambiguous definitional criteria and imperfect enforcement mechanisms. At the normative level, vague criteria create difficulties for the elderly to adduce evidence, and the lack of adjudicative rules for judges leads to inconsistent judgments in similar cases. At the enforcement level, the performance of obligations is not suitable for compulsory enforcement, and corresponding punitive measures are absent, which hinders the realization of the elderly's right to spiritual support. In view of the above, it is necessary to further clarify the definition of spiritual support, refine behavioral standards, adopt flexible measures to urge obligors to perform their obligations, and improve pre-trial procedures in judicial trials.

Keywords: Spiritual support for the elderly; Mode of performance; Judicial protection

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1. Introduction

Population aging is accelerating, and the elderly population keeps growing. According to data released by the National Bureau of Statistics, by the end of 2024, China's population aged 60 and above stood at approximately 297 million, accounting for around 21 percent of the total population, and the figure is expected to exceed 400 million by 2034. Against such a backdrop, the elderly's right to spiritual support is gradually transforming from a moral obligation into a legal right. The *Law of the People's Republic of*

China on the Protection of the Rights and Interests of the Elderly, revised in 2013, established the obligation of "spiritual support" through legislation for the first time, marking the expansion of the protection of the elderly's rights and interests from the material dimension to the spiritual dimension [1]. However, 187 cases concerning "spiritual support" retrieved from China Judgments Online reveal that judges lack unified legal grounds for their rulings.

Tensions between principled legal provisions and practical judicial demands are becoming increasingly prominent. At the litigation stage, the elderly find it hard to file lawsuits due to deteriorated physical functions or the traditional mindset of "family skeletons should not be exposed in public." At the normative level, the law fails to clearly define the connotation and denotation of spiritual support. Vague adjudicative criteria give rise to frequent inconsistent judgments for similar cases, and the elderly are confronted with the dual predicament of difficulties in adducing evidence and high rights defense costs. At the enforcement level, the performance of obligations bears personal and emotional attributes, and existing institutions lack supporting disciplinary measures, so that performance remains superficial. Therefore, it is urgent to improve relevant legislation and carry out judicial technical reforms, break the closed-loop dilemma of "vague norms — disordered judgments — weak enforcement" via judicial approaches, perfect the judicial protection system for the elderly's spiritual support, and promote the profound transition from "the elderly being provided for" to "the elderly living in peace."

2. Theoretical overview of spiritual support for the elderly

2.1. Definition of spiritual support for the elderly

The concept of "spiritual support" was formally put forward by Professor Mu Guangzong from Peking University in 1995, yet China's current effective laws do not explicitly define its connotation [2]. Two viewpoints exist in academic circles. One holds that spiritual support refers to a right through which children, society, and the state safeguard the elderly's dignity and meet their expectations for their children, and its subjects are not limited to family members [3]. Others regard it as a personal-status-based right under which children give psychological and emotional care to their parents [4]. Combining the provision on "support-and-assistance obligations" in the *Constitution of the People's Republic of China* and Article 1067 of the *Civil Code of the People's Republic of China*, spiritual support in China is positioned as a personal-status-based right originating from family ties, with children as the primary obligors. That is to say, children shall visit, care for, and look after their parents and safeguard their personal dignity, so that the elderly can enjoy a happy old age free from loneliness.

2.2. Characteristics of spiritual support for the elderly

First, the subjects are definite. Spiritual support arises from kinship-based personal-status relationships [5]. Obligors are children (including step-children and non-marital children) [6]. The obligation features strong personal attachment, is generally performed in person, and is non-replaceable. Second, the content of performance is indefinite. Spiritual support satisfies spiritual demands at the conscious level. Obligation contents vary with individual needs of the elderly, and performance modes are diverse, including phone calls or video greetings, in-person visits, daily care, and so forth. Third, litigation is independent. Claims for spiritual support can be filed separately without being premised on material support. Even elderly people with sound financial conditions may request their children to visit and care for them so as to enjoy their old age spiritually.

3. Judicial status quo of protection for spiritual support for the elderly in China

3.1. Review of cases concerning spiritual support for the elderly

By the end of 2024, 85,540 civil cases under the cause of action "support-related disputes" had been retrieved from China Judgments Online, among which 187 cases involved the keyword "spiritual support" [7]. The overall number of accepted cases rose and then leveled off. Three main types of causes of action can be identified: children's long-term neglect of contact and visits leading to the elderly's psychological loneliness [8]; children's refusal to pay visits due to family conflicts [9]; failure to perform care-giving obligations when parents fall ill or lose self-care capacity [10]. In terms of court hierarchy, 3 cases were heard in high-level people's courts (approx. 1.6 %), 47 in intermediate-level people's courts (approx. 25.13 %) and 137 in basic-level people's courts (approx. 73.26 %). Most cases ended at the first-instance stage. Geographically, 24 cases took place in Beijing, 22 in Shandong, 21 in Jiangsu and 21 in Henan. Elderly people in economically developed regions show relatively higher awareness of rights defense.

As for litigation claims, claims for spiritual support mostly appear as accessory claims attached to material-support claims, and merely 3 cases involved pure spiritual support claims [11–12]. This reflects that the elderly generally pursue spiritual demands only after their material conditions are satisfied. Claims fall into four categories: regular visit claims, daily care claims, claims for performance of obligations without concrete contents, and phone greeting claims, among which regular visit claims account for the largest proportion.

An analysis of 104 valid judgment cases yields four types of judicial rulings on spiritual support. First, full-upholding rulings: courts uphold claims and specify performance modes in detail [13]. Second, partial-upholding rulings. For instance, in Case (2019) Hu 02 Min Zhong No. 10045, the court upheld claims such as no fewer than three visits per month. Third, dismissal rulings: cases get dismissed either for objective factors such as distance and work or for insufficient evidence, e.g., Case (2016) Su 0724 Min Chu No. 3563. Fourth, non-adjudication rulings: courts hold that spiritual support shall not be subject to compulsory requirements, e.g., Case (2019) Yu 0304 Min Chu No. 271. In dismissed and non-adjudicated cases, courts mostly give explanatory reasons and advise children to actively perform their obligations, so as to mitigate family conflicts through reason-and-sentiment considerations and facilitate the implementation of judgments.

3.2. Analysis of current judicial application norms

3.2.1. Relevant provisions in the constitution

The *Constitution of the People's Republic of China* establishes "respect for and protection of human rights" as a fundamental principle, and stipulates that adult children shall perform obligations to support and assist their parents. Its connotation covers spiritual care for parents, furnishing fundamental principles and grounds for spiritual support [14].

3.2.2. Relevant provisions in the law of the People's Republic of China on the protection of the rights and interests of the elderly

The *Law of the People's Republic of China on the Protection of the Rights and Interests of the Elderly*, revised in 2013, incorporated "going home often" into legislation for the first time. Article 18 prescribes that family members shall care for the elderly's spiritual needs and shall not neglect or desert them; family members living separately shall often visit or greet the elderly, whereby spiritual support became an independently-filable litigation claim. Articles 13 and 27 require family members to give emotional care while satisfying the elderly's living needs. Article 14 explicitly stipulates that supporters bear the obligation

of spiritual comfort. Such provisions elevate "spiritual comfort" from the moral dimension to the legal dimension and promote the shift of elderly support from "material supply" to "care and affection."

3.2.3. Relevant provisions in other laws

Paragraph 2, Article 26 of the *Civil Code of the People's Republic of China* clarifies that adult children shall perform obligations to support, assist, and protect their parents, and "assistance" may cover spiritual support. Although Paragraph 2, Article 1067 directly governs alimony payments, support obligations include economic support, daily care, and spiritual comfort, offering indirect safeguards for spiritual support. The *Criminal Law of the People's Republic of China* regulates acts of refusal to support, battering, and maltreatment of the elderly through the crimes of abandonment and maltreatment. Its connotation may embrace spiritual support and spiritual maltreatment so as to protect the elderly from spiritual harm [15].

4. Dilemmas in judicial protection of spiritual support for the elderly in China

4.1. Ambiguous performance modes for spiritual support obligations

Although Articles 14 and 18 of the *Law of the People's Republic of China on the Protection of the Rights and Interests of the Elderly* stipulate that children bear the obligation of spiritual comfort and shall "often visit or greet the elderly", no clear criteria are given for the frequency of "often" and modes of "visiting or greeting" [16–17]. In judicial practice, judges interpret the above-mentioned provisions in multiple ways. Performance modes include in-person visits, inspections, condolences, phone calls, WeChat communications, and companionship. Frequency is usually defined by monthly, quarterly, or annual visit counts, holiday visits, or co-residence. Sample judgments contain diverse stipulations such as "visits every half-month," "at least two visits each month," "one visit during each Spring Festival," "one visit per quarter plus one phone call every week." The ambiguity of such provisions makes it hard to effectively safeguard the elderly's right to spiritual support, and clarifying their connotation is urgently needed.

4.2. Remedy-related dilemmas for the right to spiritual support

Difficulties in evidence collection. Spiritual support involves non-material content such as emotional exchange and psychological comfort, which are hard to quantify and preserve as evidence. Oral promises can hardly be proven afterward. For example, in Case (2022) Jing 03 Min Zhong No. 4597, the claim for one weekly visit was dismissed due to lack of valid evidence. Cases touch upon family privacy, and the elderly have weak awareness and capacity for evidence collection. Article 96 of the *Judicial Interpretation of the Civil Procedure Law of the People's Republic of China* restricts judges' ex officio evidence collection to scenarios concerning national interests or public interests, leaving limited room for judges to collect evidence on their own initiative [18].

Difficulties in judicial enforcement. According to a 2023 report by *Legal Daily*, the actual performance rate of judgments on spiritual support stands below 30 %. On the one hand, performance supervision is absent. No follow-up visits are arranged after court judgments, and obligors tend to slack off gradually. For instance, in the 2007 Hai'an Case in Jiangsu Province, although the court upheld the claim, the son never paid any visit [19]. On the other hand, legal consequences for non-performance are not clearly defined, so judgments lack deterrent force [20]. Obligors may incur judicial liabilities only under circumstances such as maltreatment or abandonment.

5. Optimization of judicial protection paths for the elderly's right to spiritual support in China

5.1. Clarify performance modes for obligors

First, set performance modes and minimum frequency requirements according to the actual distance between children and their elderly parents. For children living in the same city, no fewer than one visit per month with total in-person companionship of no less than six hours can be stipulated; for children living in other cities, frequency shall be determined by geographic distance. Second, enrich the connotation of "going home often." Elderly people with mobility capacity shall be allowed to take the initiative to apply for reunions with their children. Grandparental visits shall be guaranteed: supporters and their spouses shall not refuse or obstruct grandchildren from visiting the elderly [21]. Third, local governments shall formulate implementing rules in light of local demographic conditions and folk customs. For example, the *Guizhou Provincial Regulations on Elderly-Care Services* stipulate that employees shall enjoy accompanying leave when their parents or supported elderly people are hospitalized: only-child employees are entitled to up to 15 days per year, while non-only-child employees are entitled to 7 days [22]. Regions that have issued relevant regulations shall further refine them; regions without such enactments shall incorporate spiritual support into local legislation in a timely manner.

5.2. Improve judicial remedy channels

Add pre-proceedings. Disputes over elderly support resemble divorce cases in that maintenance of family kinship shall be emphasized. Mediation-before-litigation shall be promoted nationwide [23]. Pre-litigation mediation can reduce cases entering judicial procedures, save judicial resources, prevent adversarial lawsuits from aggravating family conflicts, and facilitate mutual understanding between parties from the perspective of kinship and ethics so as to repair damaged family relations.

Resolve difficulties in evidence collection. Provide one-on-one litigation guidance and psychological support for elderly litigants with insufficient legal knowledge. Adjust burden-of-proof allocation in view of disparities in parties' evidence-collecting capacities so as not to impose excessive evidential burdens on the elderly. Empower judges to investigate facts in the parties' communities, among relatives, and at their work units under given circumstances. Conduct specialized training to enhance the professionalism and impartiality of trials.

Explore supervision mechanisms for obligation performance. Establish a follow-up-visit mechanism. After case filing and document archiving by courts, grass-roots mass-autonomous organizations shall be entitled to participate in follow-up visits, regularly collect information on the elderly's psychological conditions and obligation performance, and feed such information back to courts [24]. Urgent cases shall receive timely and repeated follow-up visits. For example, Article 14 of the *Xinjiang Uygur Autonomous Region Regulations on the Protection of the Rights and Interests of the Elderly* prescribes that where supporters fail to pay visits for three consecutive months, entrusted caregivers or elderly care institutions may put forward suggestions to the supporters' employers, village committees or neighborhood committees, and relevant departments shall urge the supporters to pay visits within five working days.

Gradually tackle enforcement difficulties. Adopt a combination of rigid and flexible enforcement approaches. Grass-roots autonomous organizations shall supervise performance and produce follow-up-visit materials for courts to assess performance status. Build a spiritual support credit-reporting system: record non-performance of obligations in bad-faith credit files, and impose restrictions on exit from the country and high-consumption activities when necessary; such records may be deleted after obligations are

performed for a certain period. Flexible measures such as internal circular criticism by employers may be adopted. Compulsory enforcement means that restrictions on personal liberty and property confiscation shall be applied cautiously and conditionally so as to continuously improve the social practical effects of judicial protection for "going home often" provisions [25].

6. Conclusion

Provisions on spiritual support represent the emotional essence inherited by Chinese civilization for thousands of years. They are not cold legal articles, but daily-life-embedded solicitude and mutual understanding and respect between generations. Against the backdrop of intensifying population aging, they are not merely an upgraded interpretation of "the elderly being provided for," but also a warm remedy for social problems such as empty nest predicaments and inter-generational estrangement. At present, although the right to spiritual support has been incorporated into the rule-of-law framework, judicial protection still faces numerous obstacles. It is believed that with the steady advancement of a rule-of-law society, the protection system for the elderly's rights and interests will become more comprehensive and complete.

Disclosure statement

The author declares no conflict of interest.

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