

# On the Practice and Exploration of Family Investigator System and Its Effect

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## Abstract

Since the reform of family trial, some courts around China have explored and tried to apply the family investigator system to judicial practice, in order to properly handle family cases, realize family judicial specialization and maximize the interests of minor children. Reviewing the practice and exploration of family investigator system in China in recent years, it has achieved phased results. In order to further promote the modernization process of family rule by law, we should continue to conduct detailed research on the family investigator system, inventory the existing results, sum up the successful experience, and provide path suggestions for the construction of the family investigator system in China.

**Keywords:** family investigator, family trial, family justice, family justice reform

Family is the cell of society, and family adjudication is the basis of civil adjudication, which plays an important role in maintaining marital and family stability, protecting the legitimate rights and interests of minors, women and the elderly in accordance with the law, and promoting core socialist values and traditional virtues of the Chinese nation. (Du, W.-H., 2016) In recent years, with the increasing legal awareness of citizens and the continuous rise of family conflicts, the number of family disputes has increased year by year, and family disputes have become more and more complex. Therefore, in order to cope with the complex family disputes, properly resolving family disputes is of great significance to maintain social stability. In 2016, the Supreme People's Court issued opinions on The Reform of Pilot Methods and Working Mechanisms for Family Adjudication, requiring the introduction of family investigators and other methods. With the advancement of family judicial reform, the family investigator system has been actively explored in all parts of the country, achieved phased results, and accumulated rich practical experience.

## 1. The Family Investigator System

The family investigator system is not the first system in China. It originates from the family procedure law outside China. The family investigator system first came into being in Japan. It was established to conduct necessary investigations for the mediation and trial of juvenile and family affairs, and the family investigator was required to put forward scientific opinions on the handling of cases. Later, the system was used for reference in South Korea, Taiwan and other countries or regions. Among them, Taiwan introduced the legal experience of Japan in the reform of family adjudication, established the family investigating officer system, and made detailed provisions on this system in Article 18 of the "Family Incident Law". (Note 1) The Supreme Court in 2018 issued "about further deepening the reform of the family trial method and the working mechanism of opinion (try out)" stipulated in article 15: "the family in the process of trial, for matters need to be further identified, the people's court may on its own investigation, can entrust relevant organizations to investigate, also can entrust the family investigators to investigate the specific facts." Combining with the legislation, the author believes that the family ombudsman system refers to the family by court commissioned special investigators, by investigation, visits and so on a variety of ways to understand the related marriage, family, psychological status, such as specific facts, and to the court to issue a written report, as the case in court statement investigation, put forward Suggestions for the court to settle disputes, a system of reference. As the family trial has both judicial and social functions, judges need to consider the solution of conflicts from a social perspective and pay attention to the social effects of the case trial in addition to dealing with legal relations, so the family investigator system highlights its important value and significance.

## 2. Judicial Practice of Family Investigator System in China

For many years, the focus of civil and commercial trial reform in China has been on the traditional civil and commercial field, but the family trial has not been paid attention to. At the end of the 20th century, the family trial reform of local courts emerged. In the 21st century, the reform of family trial has been carried out on a large scale, and the family investigator system has been innovatively introduced into the trial of family cases by courts around the world under such a background, and has been applied in concrete practice.

### 2.1 *The Practice of Juvenile Judicial Reform*

Before the reform of the way and working mechanism of family justice, the Supreme Court did not propose to establish a family investigator system in family justice. Some courts learned from the social investigation system in China's juvenile justice reform, also known as the social observation nurse system. At first, the social investigation system was applied to juvenile criminal cases, and those who participated in the social investigation were called social observation nurses. As early as 1988, the Shanghai Changning District People's Court formulated the first relatively complete Rules for the Trial of Juvenile Criminal Cases in China, which stipulated the work of social investigation and required the social investigation of nine aspects, including the adverse experience and family situation of minors, before the court session. (Liu, M., 2020) In October 1995, the Changning District Court introduced social investigation reports into the trial of juvenile criminal cases. Since January 2000, social investigations have been carried out by the district youth protection Office instead of the judge. The social investigation system of juvenile criminal cases should be subject socialization, content openness and procedure standardization. (Zou, B.-H., 2009)

Later, the social guard system was extended to the area of juvenile justice. The juvenile comprehensive tribunal of Shenzhen Bao'an District People's Court has introduced the social observation protection system in the process of hearing juvenile people's cases, and hired social observation protection workers to carry out social investigation, psychological evaluation and observation protection on the minors involved, so as to maximize the interests of the minors. (Zou, B.-H., 2009) In the society to protect the member system, some belong to the household survey content, such as, tending, custody, to visit children in parental rights dispute cases such as housekeeping, the society to protect the member accepts the commission of the court for minors family, life, learning and growth environment investigation, report to the court. From the social view nurse system in juvenile justice reform, we can see that it has involved part of the family investigation, and the practical exploration of juvenile justice reform provides some practical experience for the introduction of family investigator system in family justice reform.

### 2.2 *The Pioneering Practice of Family Trial Reform in Local Courts*

With the innovation and reform of the family trial, the courts boldly explore the introduction of the family investigator system in judicial practice.

In 2013, the Bao'an District People's Court of Shenzhen took the lead in introducing the family investigator system in China. The court selected 76 family investigators from the cadres of the organs, lawyers of the community, and people's mediators recommended by the judicial offices in each neighborhood. Outside in the process of trial, to find out the trial of the case facts, Bao'an district court attorney, community mediators such as housework investigator team, through on-the-spot visit neighbors, ask case the parties and their relatives and friends, to the relevant authority investigation way to find out the facts, such as formation of household survey report, the reference for the judge to judge. From 2013 to June 2018, the family investigator system was applied to more than 70 family cases. (Note 2)

In July 2014, Xuzhou then the whole city court housework work regulation article 9 juvenile justice court before the report, put forward reference after two years of practice, after many links and hierarchical reasoning, set in July 2016 the household survey work rules (trial) ", and then apply the housework investigator system case of dozens. (Note 3)

On April 8, 2015, the Haishu District Court of Ningbo city, Zhejiang Province introduced the family investigator system. The main method is that in the trial of family cases, the court envoys designated public welfare organizations to appoint appropriate people as family investigators to carry out social investigations in family cases and return visits after the judgment. And under specific circumstances as the agent of a party involved in a case involving a person with limited capacity for civil conduct or a person without capacity for civil conduct. In October of the same year, the court formally wrote the family investigator system into the Family Case Trial Procedures, clearly regulating the duties of family investigators. In addition, Haishu District Court recruited family investigators from retired senior comrades from local public security agencies, courts, procuratorates, justice bureaus and other professional organizations, college teachers and law students from Ningbo University. In

May 2017, on the basis of the actual operation of family investigators in the past two years, the hospital issued the Working Rules for Family Investigators, which further summarized and standardized the system. (Note 4)

In 2015, the Court of Jiangnan District, Nanning city, Guangxi Province also established a family investigator system, and held a family investigator appointment ceremony in Boluoling Community on November 6. The 4 family investigators appointed this time are all cadres and masses of Boluoling community. They are familiar with social conditions and public opinions, have rich experience in mass work and society, and have the ability to make judgments and propose dispute solutions when dealing with various family disputes. Later, Jiangnan District Court also formulated the "Work Regulations of Family Investigators of Nanning Jiangnan District People's Court" to standardize the nature of the work of family investigators, job responsibilities and matters for attention. (Note 5)

In March 2016, The Family Juvenile Case Center of Liuzhou, Guangxi formulated and promulgated the Working Regulations for Family Investigators, and trained the grid family investigators of seven streets in Liubei District of Liuzhou city.

Through the practice and exploration of the above courts, it can be seen that the local courts have made bold innovation and introduced the family investigator system first, which has achieved good results and accumulated rich practical experience for the national family judicial trial reform.

### *2.3 Reform of the Way and Working Mechanism of National Family Adjudication*

From December 23 to 24, 2015, the Supreme People's Court held the eighth National Conference on Civil and Commercial Trials in Beijing and formed the "Minutes of the Eighth National Conference on Civil and Commercial Trials (Civil Part)". (Note 6) Among them, regarding the trial of marriage and family dispute cases, it is proposed that "good trial of marriage and family cases is of great significance for carrying forward socialist core values and traditional virtues of the Chinese nation, transmitting positive energy, promoting family tradition construction, and maintaining the stability of marriage and family. We should pay attention to exploring the working rules of family adjudication and actively and steadily carry out the pilot reform of the way and working mechanism of family adjudication." This is the first time that the national judicial work conference and documents explicitly proposed "to carry out the pilot reform of family adjudication methods and working mechanism". The reform of family trial also promoted the practice of family investigator system.

In April 2016, the Supreme People's Court issued opinions on Pilot Reform of Family Adjudication Methods and Working Mechanism, which clearly proposed that "various methods including family investigators should be introduced to explore the cooperation of relevant public welfare service institutions and personnel in the investigation and trial of family cases." A total of 118 courts across the country became pilot courts. Later, courts across the country explored the introduction of family investigator system in the process of family adjudication. For example, in 2017, the Higher People's Court of Guangdong Province promoted the family investigator system across the province, which was the first promotion of the family investigator system at the provincial level. In order to promote the fair and efficient adjudication of family disputes, Guangdong High People's Court and Guangdong Women's Federation jointly formulated and issued the Opinions on the Establishment of family Investigator System, which made clear provisions on the source, selection and professional training of family investigators. (Note 7) In addition, in order to further standardize the family investigator system, Guangdong High People's Court has specially issued the Work Regulations for Family Investigators in Guangdong Courts (Trial), which is the first applicable in the whole province in China, and has unified provisions on the employment, management, work development and performance security of family investigators. (Note 8) Zhenjiang runzhou district people's court in Jiangsu province also has enacted the "Zhenjiang runzhou housework trial of the people's court rules, the interim measures for Zhenjiang runzhou district people's court housework investigators and other documents, to the family to institutional guarantee, pilot trial reform exploration on the family system of investigators have achieved good results. (Note 9) The above practices are the epitome of the national courts' practice and exploration. Courts around the country have the courage to explore and practice, and have actively summarized the phased results since the pilot reform, which has accumulated rich practical experience for the comprehensive implementation of the family investigator system.

The two-year pilot reform has expired. In order to summarize the pilot experience and further deepen the pilot reform of family adjudication methods and work, the Supreme People's Court issued the Opinions on Further Deepening the Reform of Family Adjudication Methods and Work Mechanism (Trial) in 2018. In articles 15 to 27, the selection, duty, time limit, scope, methods, validity of family investigation report, avoidance and obligation of family investigator are stipulated, and some experience in pilot work is confirmed in system.

### 3. The Effect of the Practice and Exploration of Family Investigator System in China

Family court over the reform of trial process, actively explore, on the one hand, is to learn from the advanced idea of leading the court and ripe experience, and on the other hand according to their own housekeeping within their respective jurisdictions case characteristics gradually grope for your own judgment rule and the present situation of trial mode and working mechanism, innovation, together for the family system of investigators tired valuable practical experience. Therefore, we need to base ourselves on the reform work of various places and take stock of the periodical results of the reform of the family investigator system.

#### 3.1 *The Family Investigator System Is Taking Shape and the Rule System Is Becoming More and More Complete*

The continuous deepening of the reform of family justice and the introduction of the family investigator system make the concept of "family investigator" more and more known to everyone. "Issued by the Supreme Court in 2018 on further deepening the reform of the family trial method and the working mechanism of opinion (try out)" sums up the practical experience of pilot reform, the main content of the system of housework, investigators made the basic rules, as a local court for household survey and the family trial provided a clear direction, you can see, The family investigator system has begun to take shape in Our country.

In addition, pilot courts around the country have successively formulated and promulgated a number of documents such as "Family Case Trial Rules", "Interim Measures for Family Case Investigators" or "Work Procedures for Family Investigators" to provide institutional guarantee for the pilot reform of family trial. More complete system of rules of these regulations, covered from before litigation to v, from the case the trial to execute all the process, for it housework judicial organization and the family investigators such as support staff to carry out the judicial work provides a clear and definite behavior basis, the standardization of the work for the family trial run and housework investigator system provides an important institutional guarantee to perform.

#### 3.2 *Change in the Concept of Family Adjudication*

In the past, the concept of family adjudication was relatively backward, which often focused on litigation efficiency, identification of identity relationship and property division, and paid less attention to the repair of marital relationship and emotional repair of the parties involved in family disputes. In the pilot reform process, local courts have changed their work philosophy, guided by eliminating confrontation, repairing relations and realizing family harmony, focusing on the judicial function of emotional healing, extending the function of family adjudication from identity and property interests to personality, safety and emotional interests, and commissioning family investigators. Focus on the investigation of the parties' personal experience, family situation, marriage situation and psychological status, so as to make the case closer to the truth, pay attention to the extension of the service after the conclusion of the case, really solve the dispute, avoid the transformation and escalation of conflicts and disputes. (Ding, B.-T., 2000) All these effectively protect the interests of vulnerable groups such as minor children, the elderly and women, and are more conducive to resolving conflicts and disputes thoroughly and building a harmonious society. Zhenjiang runzhou district court, for example, since the pilot staff actively to the parties to family investigation or review work of more than 560 times, to the community court conciliation or organization of more than 120 times, reception of the relatives and friends more than 4000 people, through a large number of investigation and mediation work, work for the next sentence and help solve contradiction laid a good foundation. (Ding, B.-T., 2000)

#### 3.3 *Significant Changes Have Been Made in the Building of Professional Teams, and the Linkage Platform Has Begun to Take Shape*

In practice, courts throughout the country have focused on building a team of professional family investigators to assist family judges in investigating the facts of cases. The family investigator system of various courts covers the recommendation, selection, management, use, security and other aspects of family investigator, and has carried out a comprehensive and whole-process standard requirements for the work of family investigator. In addition, some courts have also established a system of grading the establishment and use of family investigators. For example, Guangdong High People's Court set up a system of grading and using family investigators for the first time in China, considering the fact that the personnel in Guangdong province are highly mobile. Family investigators appointed by Guangdong High Court can be used by courts at all levels of the province.

"Explore realize organic combination of specialization and popularization, to promote construction of resolving family disputes in a broader range community", the trial court in employment housework when investigators, usually from the All-China Women's Federation, people's mediators and efficient judicial offices, community workers, community hanging point enthusiastic crowd of grassroots groups such as lawyers, community selection, make linkage platform around the court, The family trial will be combined with social resources and social forces

to optimize the division of labor and form an effective social synergy. The linkage platform has begun to take shape, and the prevention, investigation, trial and resolution of family disputes will be truly implemented. (Note 10)

### *3.4 Appropriately Strengthened the Intervention of Powers in Family Cases*

The family investigator system is the specific application of the doctrine of authority inquiry in family proceedings. (Li, H.-X., & Liu, Z.-Q., 2016) The doctrine of power discovery refers to that a judge can collect facts and evidence according to his power, not limited to the facts and evidence claimed by the parties. (Chen, L., 2017) The family is the foundation of the country and society, and family cases have the nature of social public welfare. The adjudication results of family cases will affect social order. If there is deviation, "the direct effect is to lead to confusion of identity relations, affecting the legitimate rights and interests of the third party outside the case, and the indirect effect is to endanger social order and bring potential crisis to the national stability". (Guo, M.-S., 2005) Therefore, the trial of family cases can not completely implement the parties' autonomy of will, and on the basis of protecting the parties' procedural interests, the family system should be properly intervened. And housework investigator system Settings, appropriate to strengthen the family authority intervention case, for the case facts is not clear, it will entrust the family investigators in-depth investigation, the investigation, facts surrounding the range of both investigation legal facts, but also the fact of life or social facts; We should also investigate the psychological facts, and on this basis, see the whole picture of the case, so as to discover the real problems hidden behind, and provide constructive opinions for the judge. (Jiang, Y., & Feng, Y., 2014)

### *3.5 It Meets the Practical Needs of Diversified Settlement Mechanism for Family Disputes*

The multi-attribute of social conflicts and disputes and the people's multi-demand for the way to solve the disputes determine that we must improve the multi-resolution mechanism of conflicts and disputes, especially family disputes. The practical experience of courts around the country shows that the introduction of the family investigator system can not only support the reform of family adjudication and resolve family disputes, but also better protect the legitimate rights and interests of minors, women and the elderly. The family investigator system provides auxiliary support for the introduction of diversified dispute resolution mechanism, and can flexibly mobilize social forces to join in the settlement of family disputes. It is an organic combination of specialization and popularization, and meets the realistic needs of diversified dispute resolution mechanism.

## **4. Perfect the Construction of the Family Investigator System Path**

Current pilot it is actively introduce the family system of investigators, to explore the practice and obtained a certain result, but from the point of practice, there are still some problems, for example, the family system of investigators as chores in the process of judicial reform new thing, it is still in the early stages of independent exploration, the family system of investigators did not can form system, standardize the procedure rules; The starting mechanism of family investigator system is not clear; The lack of professionalism of the family investigator. In order to better construct the family investigator system, this paper will put forward the following path suggestions for perfecting and constructing the family investigator system:

### *4.1 Clarify the Legal Status of the Family Investigator System*

The practice of the family investigator system in China follows the path of "mobilization by the Supreme People's Court and self-exploration by courts around the country". Although some results have been achieved, it lacks top-level design and clear legislative provisions. (Ge, H.-B., Yang, L., & Yang, C.-J., 2021) The Opinions of the Supreme People's Court on Further Deepening the Reform of Family Adjudication Methods and Working Mechanism (Trial), which stipulates the contents of the family investigator system, is only a judicial interpretation document with low effectiveness. In the period of social transition, family disputes are becoming more and more complicated, and dispute resolution methods tend to be diversified. In order to deal with the complicated family disputes, it is necessary to specialize and codify the family procedure legislation, and it is also necessary to stipulate the family investigator system in legislation, so that it has an independent and effective legal status. (Ge, H.-B., Yang, L., & Yang, C.-J., 2021) Only when the legal system of family investigator is formally established in China can the family investigator participate in the family lawsuit have legal legitimacy. To establish the family investigator system in China, it is necessary to regulate the family investigator system at the legislative level, clarify the legality of the family investigator system, and make provisions on the selection, procedure, nature of the investigation report, adoption standard and avoidance procedure of the family investigator system, so as to make the family investigator system have laws to follow.

### *4.2 Improve the Starting Mechanism of the Family Investigator System*

At present, the initiation standard of the investigator system mainly depends on the judge's personal judgment. Family disputes have strong emotional and ethical attributes, and the occurrence of disputes is the accumulation

and outbreak of long-term contradictions. As the extensive socialization of the judicial function of the court system, it is still worth considering under what circumstances the family investigator can initiate the investigation. (Ge, H.-B., Yang, L., & Yang, C.-J., 2021) As the family investigator system is set up to find out the causes of family disputes and put forward suggestions for the settlement of disputes for the judge, the investigator has obvious characteristics of neutrality, assistance and initiative, which determines that the family investigator can be commissioned to start the investigation procedure, or can start the investigation procedure according to the application of the parties. Therefore, in the future, it is still necessary to clarify the scope of application of the family investigator system and establish a unified starting standard for family investigation of different types of family cases. Establish a mechanism for the parties to independently apply for the start of the procedure, to provide conditions for the parties to apply for the start of the family investigation system.

#### 4.3 Strengthen the Selection and Management Training of Family Investigators

Although the team of family investigators has been established and has played a certain role in handling family disputes, the recruitment criteria of family investigators in the pilot courts are mostly based on legal knowledge, mass work ability and social experience. However, the value of the family investigator system is largely reflected in the use of life experience, sociology, psychology and pedagogy and other aspects of knowledge to investigate "life facts", "social facts", but also to investigate "psychological facts", so as to see the whole picture of the whole family case. (Ge, H.-B., Yang, L., & Yang, C.-J., 2021) Based on the particularity of family cases, the family investigator system should be designed to take into account the diverse needs of family case handling. A more scientific and perfect professional selection mechanism should be established, and a team of full-time investigators should be set up to recruit professionals from different aspects and improve the professionalism and professionalism of the team. At the same time, we can integrate social resources and establish a part-time investigator system to absorb more people with professional skills. Minors, the elderly and women are often vulnerable groups in family disputes, so we should focus on recruiting professionals with psychology, sociology and protection of rights and interests of women and children into the team of family investigators, such as psychological consultants and teachers, so as to enhance the social effect of family investigation.

### 5. Conclusion

The whole, from the family in our country judicial reform practice of housework investigator system running situation, the main content of the family system of investigators are exploring process, under the framework of existing legislation in our country, introduce the housework ombudsman system can not only is good enough to support the family the judicial reform, resolve family disputes, protect the legitimate rights and interests of minors, women, and the old man, It can also flexibly mobilize social forces to join in the settlement of family disputes. It is believed that with the gradual exploration and practice of the family investigator system in the family trial, the function and value of the system will be further developed.

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## Notes

Note 1. Article 18 of Taiwan's 2012 Family Incidents Law stipulates: "The presiding judge or judge may, upon application or ex officio, appoint a family investigator to investigate the facts on a specific matter." The family investigation shall be reported in the preceding investigation. Before the presiding judge or judge considers the second investigation report as a judgment, the parties or interested parties shall be given an opportunity to present their opinions or debate. If the presiding judge or the judge deems it necessary, he may order the Family Investigation Officer to be present on the day of the period to present his opinion."

Note 2. See "Shenzhen Bao'an: Exploring New Samples of Family Trials," in the "Supreme People's Court of the People's Republic of China Website", <http://www.court.gov.cn/zixun-xiangqing-111301.html> (last visited on Dec.1, 2021).

Note 3. See Xuzhou Trial, No. 02, 2017: Practical Analysis of Family Investigators: Taking the Family Trial Practice of Xuzhou Court as a Sample, in "Xuzhou Intermediate People's Court Website", <http://xzzy.chinacourt.gov.cn/article/detail/2017/08/id/2952537.shtml> (last visited on Dec.1, 2021).

Note 4. See "Report on the Trial of Family Cases of the People's Court of Haishu District of Ningbo City (2015-2017)", published in "Ningbo Haishu District People's Court Website", [http://www.nbhsfy.gov.cn/art/2017/11/10/art\\_4428\\_168393.html](http://www.nbhsfy.gov.cn/art/2017/11/10/art_4428_168393.html) (last visited on Dec.1, 2021).

Note 5. See "Jiangnan District's First Family Investigator System", in Nanning Court Network, <http://nnzy.chinacourt.gov.cn/article/detail/2015/11/id/1745684.shtml> (last visited on Dec.1, 2021).

Note 6. This meeting was an important civil and commercial trial work conference held at the Fifth Plenary Session of the Eighteenth Central Committee of the Communist Party of China under the new situation of proposing the "13th Five-Year Plan". It is of great and far-reaching historical significance for the people's courts to take the initiative to adapt to the new normal of the new situation of economic and social development, give full play to the function of adjudication work, and provide a strong judicial guarantee for promoting the strategic layout of the "13th Five-Year Plan" and achieving the "first centenary goal" of building a moderately prosperous society in an all-round way. See the Notice of the Supreme People's Court on Printing and Distributing the Minutes of the Eighth National Court Work Conference on Civil and Commercial Trials (Civil Part) of the < in > 2016.

Note 7. The Guangdong Higher People's Court's "Opinions on Establishing a Family Investigator System" stipulates that the provincial women's federation organizations are responsible for establishing a team of family investigators and carrying out daily management and work coordination, and shall select cadres of the women's federation who are familiar with the situation at the grass-roots level, who are fair and upright, and who are good at doing mass work, as well as personnel engaged in women's work in villages and communities, to engage in family investigation. People's courts appoint qualified personnel as family investigators, include them in the roster management and use, and uniformly conduct professional training.

Note 8. See the Letter of the Higher People's Court of Guangdong Province on the Reply to Proposal No. 20190561 of the Second Session of the Twelfth CPPCC Provincial Committee, in "Guangdong Court Network", <http://www.gdcourts.gov.cn/index.php?v=show&cid=220&id=53864> (last visited on Dec.1, 2021).

Note 9. See also: "Report on the Work of Family Trials (August 27, 2018)", in "Zhenjiang Runzhou District People's Court Website", <http://zjrzyf.chinacourt.gov.cn/article/detail/2020/01/id/4772728.shtml> (last visited on Dec.1, 2021).

Note 10. See "China's Courts Will Carry Out Pilot Reform of Family Trials and Explore the Introduction of Family Investigators", in "Central Government Portal", [http://www.gov.cn/xinwen/2016-05/11/content\\_5072377.htm](http://www.gov.cn/xinwen/2016-05/11/content_5072377.htm) (last visited on Dec.1, 2021).

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