

Study on the Legislative Authority Allocation between China's Central and Local Authorities

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Abstract:

China has a unitary state system, dominated by the legislative power of the National People's Congress (NPC). With the twice revisions of the Legislative Act of the People's Republic of China, it is apparent that the delineation of legislative powers between governments at different levels has been more detailed. However, in practice, there still are some overlaps in the scope of China's central and local legislative matters, a lack of clarity between the legislative authority of the local provincial People's Congresses and their Standing Committees, and imperfections in the mechanism for resolving conflicts between local laws and administrative regulations, among other problems. This article mainly collects domestic and foreign representative literature by using the literature analysis method, historical research method, and comparative research method, to analyze the causes of the problems in the division of legislative competence of central-local authorities in China while considering the perspective of development and changes, and to propose practical solutions based on the history and the future development trend. Through research and analysis, this article points out some suggestions for the division of China's legislative competence from three main aspects, based on the relationships between the NPC and the local People's Congresses, the delimitation of the National People's Congress and its Standing Committee, and the relationship between departmental rules and local regulations.

Keywords: Legislative competence, division of competence, legislative law, Chinese law

1. Introduction

The plan to build the rule of law in China (2020-2025) pointed out the importance of enhancing on theoretical research in terms of the rule of law with Chinese socialist characteristics. In which an improvement of theoretical studies on the socialist rule of law framework was required based on China's national conditions and actual practice, and a wish to build a theoretical system and discourse system for the rule of law which can reflect China's socialist nature and Chinese, practical, and contemporary characteristics. Besides, it was that 'organizing and promoting the institutions of higher learning, scientific research institutes, as well as legal experts and scholars, to strengthen theoretical research on the rule of law with socialist characteristics in China, so as to provide doctrinal support for the construction of the rule of law in China' was mentioned in that document. Moreover, There is an important part, appropriately allocating legislative powers to central and local governments, when constructing a

socialist rule of law system with Chinese characteristics, and is of significance to that. The basic national conditions of China has been changing, from the promulgation of the Legislative Act of the People's Republic of China to the present after two amendments, the provisions on the exclusive legislative matters of the central government are also under constant modification and exploration, this topic will provide a theoretical basis for exploring the boundaries between the division of central and local legislative competence.

This article will form a theoretical framework for the study of the legislative authorities divisions by sorting out the modes, standards, and ways of central legislative power division and the historical development of the division of central legislative power in China. Furthermore, it will focus on the boundaries between the NPC and the local People's Congresses' legislative powers, the allocation of legislative duties between local People's Congresses and their Standing Committees, the positions of rules issued separately by State Council and the local governments in

law. After analyzing and summarising the reasons for existing problems when distributing legislative powers between these central-local governments in China, it finally concludes with some advice in three areas.

2. Modalities, Criteria, And Methods For The Division of Legislative Competence

2.1 . Modalities of central-territorial relations and the division of legislative competences among countries

Around various models of central-local relations in different countries, academics have carried out in-depth studies, which mainly summarize two main modes, namely as the agency type and the cooperative type. Agency type means that the central government controls the legislative power, which is a top-down 'one-way' legislative system. Contrarily, in the cooperation model, the central-local governments relationship is more similar to the relationship between the collaborators, and there is a non-confrontational legislative power between them[1]. Furthermore, the academics proposed that, based on two different models of central-local relations, the mode of division of legislative matters can mainly be divided into the following two types: the administrative division of labour and the statutory division of power. However, in many countries, the method in which legislative affairs are distributed between the central and local authorities cannot be simply characterized as one certain pattern. In practice, there are often composite models in which two division modes are mixed in different proportions[1].

2.2 . Criteria and methodologies for dividing the legislative competence

2.2.1 Criteria:

There are two main academic points of view regarding the criteria for the division of legislative competence between the central and local authorities. Four criteria are involved in the first opinion: the nature of the matters to be adjusted, the importance of the matter to be adjusted, the scope of influence of the matter to be adjusted, and the mechanism of legislative adjustment. This point is mainly used for the delimitation of the central government's exclusive legislative matters[1]. Some scholars suggested that the exclusive legislative matters adjusted by central authorities should be national in nature and can only be regulated by central legislation. Besides, the importance and influence of these affairs need to be reflected in the

unified rules formulation across the country[2].

The second view consists of three criteria: the importance of the matter, the influence of the matter, and the double criterion of the importance and influence of the matter[3]. According to the Legislation Act 2020 and the newly amended 2015 Legislation Act, China still retains the degree of importance as the main criterion for the affairs division[4]. However, an opinion was pointed out by some scholars that it may be clearer and more reasonable to use scope of influence as the main criterion for classification than the degree of importance[2]. In addition, some scholars have also argued from the historical and practical perspectives the importance and necessity of introducing the influence as a criterion of division under the premise of adhering to the unified legislation of the central government in China[1].

2.2.2 Methods:

Regarding the methods for dividing the central and local legislative matters, the understanding in the academic community is not very consistent, and there are mainly three kinds of statements: dichotomy, trichotomy, and quaternary. The trichotomy method on the division of China's central and local legislative power is similarly supported by most Chinese scholars, dividing China's central and local legislative affairs into central exclusive legislative matters, central and local joint legislative matters, and local affairs legislative matters[2].

Furthermore, there are two different approaches to defining these three categories of matters. On the one hand, three different classifications are implied in the first account. The first one consists of a combination of division in principle, specific enumeration and exclusion. The second one requires that matters are divided in principle, partial enumerating and listing by exclusion method. The last one is maintaining the status quo[5]. On the other hand, the second approach contains two classifications, i.e., a specific enumeration of exclusive central legislation matters, and a principle provisions of local legislative affairs following the current principle set up in the Constitution and local organizational laws; a specific enumeration of the legislative competence of both the central government and the local government[6]. Analyzing the Chinese Legislative Act of the People's Republic of China 2015, it can be concluded that China's laws now mainly enumerate the exclusive legislative matters of the central government, and adopt a combination of enumeration and exclusion in the way of matters definition[4].

3. Historical Evolution of Legislative Competence Division in China

3.1 The First Stage

The history of the development of legislative law in China can be divided into four main stages, and the first stage is after the 1954 Chinese constitution promulgation and before the execution of the Organic Law of the People's Congresses and Local People's Governments at all levels of the People's Republic of China 1979, it was the NPC exercising the legislative power of the country as the sole legislative authority[7].

3.2 The Second Stage

The second stage was from 1980 until the appearance of documents for promulgating the Legislative Act of the People's Republic of China in 2000. After the constitutional reform in 1982, the Standing Committee of the NPC was able to enact laws out of the basic laws. Besides, the ministries and commissions of the State Council formulated rules and regulations in obedience to the laws and administrative regulations. Meanwhile, the Standing Committee of the provincial, autonomous regions and some of the larger municipalities' people congress, could draft the local laws and regulations. During that period, the limits of local legislative power were expanded[7].

3.3 The Third stage

The third stage was up to the amendment of China's Legislation Act in 2015. At that time, a more comprehensive basis for the enactment of local laws and regulations, autonomous ordinances and individual ordinances, as well as various rules and regulations was provided by the Legislation Act of the People's Republic of China 2000. The legislative work had a basis on which to build at this stage[8].

3.4 The Last Stage

The fourth stage is from 2015 to the present, when all municipalities with districts were granted the right to enact local legislation after the amendments to the Legislation Law in 2015 as well as the Constitution in 2018, which greatly increased the number of legislative subjects and the number of legislation has grown dramatically[8].

4. Existing Problems and The Causes

4.1 Division of legislative competence of the People's Congresses and their Standing Com-

mittees at the central and local regions in China

Some scholars have listed eight areas of exclusive legislative matters of the NPC and its Standing Committee, which also may not be regulated or changed by the administrative regulations and local ordinances generally[2].

1 Matters relating to State sovereignty.

1 Matters relating to citizens' basic rights and duties.

1 Matters relating to the essential political system of the State.

1 Matters relating to the fundamental national legal system.

1 Matters relating to a State's rudimentary economic system.

1 Matters relating to the system of basic national administrative systems.

1 Matters relating to language and writing, etc., which need to be regulated by the State and which are provided in the Constitution.

However, it was pointed out by some academia that the central authorities in China should follow the principle of the minimum when legislating, further reducing the scope of their legislative matters to the exclusive affairs and those that require to be unified formulated by national rules, so as to reasonably decentralize and stimulate the enthusiasm of local legislation in practice[2]. However, when certain matters are related to national sovereignty but contain many local characteristics, it is necessary to reconsider their positions[9]. Meanwhile, it is not possible to continuously reduce the number of exclusive central legislative matters, however, legislators should take into account the purpose and impact of the legislation[10]. Therefore, it would also be more appropriate for the central government to regulate certain matters which are involved the exclusive central legislative matters but may spill over to society as a whole, or that may give rise to vicious competition in society.

The scope of local legislation includes matters other than those covered by exclusive central legislation, which is mainly aimed to be a supplement, fill blanks in some areas not covered by central legislation and promote the practice of the core concepts of central legislation[11]. According to the relevant provisions, the spaces in which local governments can legislate can be classified as follows: executive legislation, legislation on local affairs, prior legislation, and enabling legislation[10]. Central legislative matters under Chinese legislative laws still remain

broad, to the extent that there is a certain degree of overlap between the basic laws and local laws, regulations, or other rules. Nowadays, local exclusive power for financial affairs legislation has been defined in China. Moreover, in accordance with the principles aiming to comprehensively promote the rule of law and maintain the unity of power and responsibility, there are some other local exclusive legislative affairs that should be further established to promote the modernization of the local governance system and its ability to govern. In addition, although local legislative authority has been expanding to take advantage of its strengths and make up for the lag in central legislation, it should always be subject to the constraints of the basic laws of China. Therefore, in principle, local legislative power should be subject to constitutional review, in order to fulfill the inherent requirements of ruling the country under the Constitution and ruling the country following the law while ensuring local initiative.

4.2 Boundaries of the legislative power between the provincial People's Congresses and their standing committees

Article 80, paragraph 1, of the Legislation Act of the People's Republic of China 2023 states that the People's Congresses of provinces, autonomous regions, and province-level municipalities directly under the Central Government and their standing committee members can formulate local regulations to meet the specific circumstances and practical needs of their administrative regions without contravening the Constitution, laws and administrative regulations.[4]. Besides, it is pointed out by Article 86 that local regulations prescribing matters of great importance in the administrative region shall be adopted by the People's Congresses (at the present level)[4]. The main purpose of the legislators in China is to restrictively confer on local People's Congresses the power to pass laws on some matters of particular importance for each region, without clearly entitling an exclusive legislative power to the local People's Congresses in respect of such matters[12]. It indicates that the Standing Committee of the local People's Congress can also manage such affairs and resultant legislative powers. In practice, it is the Standing Committees of the local People's Congresses always dominate local legislation, even replacing the local People's Congresses[12]. In order to ensure that local People's Congresses can represent public opinions better, play their real roles, and achieve the goal of maximizing the local vitality and promoting the construction of the

rule of law in China without contravening the National People's Congress leadership, the initiative of local People's Congresses in society development, projects drafting and deliberation and another process of local regulations formulation should be motivated rather than its committee.

4.3 Inadequate existing conflict resolution mechanisms between the State Council and local governments

From 1982 to the present, the number of local governments that have been granted the right to legislate on regulations has grown from 55 to 353. In China, there may be some conflicts between local government regulations and State Council departmental regulations. When conflict arises, both of them will be referred to a higher authority for review and ruling. However, some scholars pointed out that if both of them are flawed, local government regulations are more likely to fail because there is no superior law, and if both are rejected, there may be a legislative gap, which will lead to the lack of a mechanism for solving a specific problem[13]. Besides, in the absence of clear legislative power of local governments, the Legislation Act of the People's Republic of China 2023 intends to avoid these issues by utilizing the appropriateness review, which is a challenge for local legislators to make correct use of local legislation autonomy[14]. In addition, with the increase in the number of local subjects who have the power to make laws or regulations and the ensuing conflicts between them, the practicality of submitting to the NPC Standing Committee for adjudication is reduced[15]. Therefore, in order to overcome this dilemma, some legal interpretation documents on the corresponding conflict resolution mechanism can be issued, so that when the two conflict with each other, they can be avoided by insisting the principle that superior law is prior inferior law, the principle of closest connection, the principle of balance, etc., respectively in different situations and needs.

5. Conclusions

Through analyzing several versions of the Legislative Acts of the People's Republic of China and the development history of the Chinese government's legislative powers, this article finds that: the scope of the local People's Congresses and their standing committees' legislative competence is unclear and a resultant phenomenon of duplicating the legislation of the NPC; the local People's Congresses are unable to give full play to their roles as

representatives for the public; there is an inequality in the mechanisms for resolving conflicts between departmental regulations issued by departments under the State Council and local government regulations. The author provides some suggestions for resolving these problems, namely as a further study and clarification on the scope of the central government's exclusive legislative matters, an insistence on appropriate decentralization to motivate the local People's Congresses to play their roles, and a use of legal interpretation documents to make up for the shortcomings of the conflict resolution mechanism between departmental regulations and local laws and regulations.

However, due to the small number of existing studies on this topic and the fact that this article focuses more on analyzing the Chinese literature, which may result in less comprehensive outcomes. In the future, the content of the theoretical study and the research methods can be further expanded, such as drawing on advanced domestic and international experiences and conducting fieldwork on relevant issues, to improve the professionalism of the conclusion.

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