

Harmonious Society and the Changes in Concepts of Local Legislation

L'ÉVOLUTION DU CONCEPT DE LÉGISLATION LOCALE DANS UNE SOCIÉTÉ HARMONIEUSE

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Abstract: Local legislation is an important part of a national legislative system. Facing the conflicts and contradictions among multiple interest groups in modern society, the role that local legislation should play in the construction of a harmonious society is especially crucial. The development of practice needs changes in concept; concept is the instruction of legislation and scientific concepts are the basis and premise for the harmony of local legislation. In formulating the harmonious socialist society, the development of local legislation requires new concepts; therefore, the concepts of local legislation, with the considerable enlargement of local legislative right, are changing from subordination to autonomy, from economic legislation to diversifying legislation.

Key words: harmonious society; concepts of legislation; legislative power; autonomy

Résumé: La législation locale est un composant essentiel du système de législation nationale. Face aux conflits de multiples groupes d'intérêt de la société moderne, il est important de mettre en valeur la législation locale dans la construction d'une société harmonieuse. Le développement de la pratique demande une évolution de concept. Le concept est le guide de législation et un concept scientifique est la base et la condition de l'harmonie de la législation locale. Dans la construction d'une société socialiste harmonieuse, le développement de législation locale exige une mise à jour de concept et le concept de législation locale devrait être élargit avec le pouvoir législatif local. La législation locale devrait passer de subordination à l'autonomie, du modèle de législation économique au modèle de la législation diversifiée.

Mots-clés: société harmonieuse; concept de législation; droit de législation; autonomie

“The problem in formulating harmonious society, as for the nature, is not to formulate a society without any interest conflicts or contradictions, but on the basis of interest conflicts and contradictions, to formulate a society which can coordinate, integrate or control interest conflicts and contradictions.” (LI, 2005) Facing the conflicts and contradictions among multiple interest groups in modern society, the role

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of local legislation is especially crucial. The status of local legislation in formulating harmonious society will be analyzed in the following parts. The paper will demonstrate the changes in concepts of local legislation in three aspects: the considerable enlargement of local legislative right, local legislative concepts changing from subordination to autonomy, and from a focus on economics to a variety of legislation.

1. THE CONCEPT OF SEPARATION OF POWERS: CONSIDERABLE ENLARGEMENT OF THE LOCAL LEGISLATIVE POWER IN THE PREMISE OF A UNIFIED LEGAL SYSTEM

Since Reform and Opening up, in the promotion of economic reform, the relationship between central and local has changed, which gradually destroys the relationship pattern in centralized system. Since 1978, the thinking of reform in the relationship between central and local has been mainly decentralization to the right, which changed the previous first tier legislative system exclusive to the central government, and clearly prescribed the second tier legislative system including both the central and local. In the July of 1979, Local Organizations Act was passed, which gave the provincial People's Congress and its Standing Committee the power of local laws and regulations; in the December of 1982, Local Organizations Act was relatively amended, which prescribed that the People's Congress and its Standing Committee of capital cities and major cities approved by the State Council may, in light of specific circumstances and the actual needs of the cities, formulate the draft of local laws and regulations; in the December of 1986, Local Organizations Act was amended again, which prescribed that, under the condition of not contradicting with the Constitution, laws, administrative regulations and local laws and regulations, the People's Congress and its Standing Committee of capital cities and major cities approved by the State Council can formulate local laws and regulations. In 1984 and 1988, according to the city population, comprehensive economic strength and the level of modernity, the State Council successively approved 18 "relatively large cities" for three times, and then gave them the power to make local laws and regulations. In 1992, when Deng Xiaoping visited southern China, he pointed out in his speech that the aim of reform was to establish a socialist market economic system. The 14th National Congress of the Communist Party of China clearly stated the point to establish socialist market economic system in our country, which re-formed the economic foundations for the properly formulation of the relationship between the central and local. In 1993, the constitutional amendment put such contents as "our country takes socialist market economy" and "our country strengthens legislations on economy and improves macro-control" in the nation's basic law. In 1994 and 1996, Shenzhen, Xiamen, Shantou and Zhuhai were given the right to formulate local laws and regulations, which indicated the expansion and extension of local legislative power in our country.

Form the developing history of the central-local relationship, it is seen that, with the development of central-local legislative relationship, decentralization has been existing, and there has never been high and total centralization. "Total centralization and total decentralization are the two extremes of ideal. Legal community should have a minimum limit of centralization and decentralization of the maximum limit; otherwise it will tend to collapse. (Kelsen, 2003) The formulation of local legislation and the change of central-local legislative relationship from centralization to decentralization, especially the decentralization after Reform and Opening up, have their ulterior motives, i.e. the market-oriented economy urgently calls for response from local legislation.

Market economy is a rational economic action. The increasing development of market makes economic actors pursue maximum benefits under the self-profit motive, (the local can be an economic actor in the development of market economy) and learn to policies rationally in distributing and using controllable resources. When market actors consciously seek maximum benefits, they will seek protection for their own. Laws and regulations will be the best way; therefore, stakeholders will use legislation to ensure the ration in the distribution and utilization of resources. In the past 30 years since the beginning of Reform and Opening up, differentiation of social structure in China continues to deepen.

Stakeholders are diversifying and different classes and social groups begin to have different interests. From the Gini Coefficient of our country, it can be seen that the wealth gap among the stakeholders has enlarged and has the trend to continue to enlarge. Slowing down the speed of the enlargement and shrinking the wealth gap are the most important tasks in constructing a harmonious society. Diversified interests in market economy need effective adjustments within the legislative norms. Unified market economic regulations cannot satisfy the requirements of diversified interests. "The supplies and demands for different laws are various. Legislative norms vary in different areas, industries and organizations, i.e. legislative right forms different relationships by surrounding different subjects, and then the local government and legislative body can get more concessions and preferential policies from the central. This is essentially a 'right of game'" (ZHAO, 2003). Local legislation has made up for this shortfall. In market economy, Deng Xiaoping encouraged some people to get rich first, which would finally promote the majority of the people to become rich. This economic strategy began from some southern and coastal areas. Those places were given special preferential policies and autonomy. Under the principle of unity to the central legal system, local autonomous legislation protects the fruits of reform and promotes the development of market economy. Local legislation is objective and active. In Weber's point of view, if the aim, measures and relative consequence are considered and measured rationally, the action is the kind of action in which "aim fits reason". Each action has its own given motives and subjective meanings. Trying to understand this, we must begin with the actors. It is obvious that the eastern and western, southern and northern areas in our country are different, but we cannot reject the developing steps of market economy. Under the market regulation of free competition among equal actors, backward areas are at a disadvantage in the competition. Combining, such objective factors such as resources, historical traditions, foundation and concepts constrain their economic development. Our country's western development strategy and the revitalization of northeast old industrial base development plan are to promote regional advantages and avoid weaknesses in market economy; meanwhile, those places are provided with relative autonomy and preferential policies.

The practice of changes in central-local legislative power indicates that, decentralization does not result in the danger of "local separatists"; on the contrary, local legislation has played a good example and provided rich legislative experience for the central. As it says, if the leader becomes incompetent and lazy, the subordinates will become lazy and then nothing can get developed. Kong An in Han Dynasty explained it as follows: "Everyone becomes incompetent, focusing on details and avoiding grand strategies. If the emperor does this, the ministers will be slack and lazy, and then the whole country is lifeless." (HUO, 2003) Therefore, decentralization can promote the initiatives of both the central and local, which is very crucial. The problem in decentralization is not to give or withdraw powers, but how to give the power to the local very well. The enlargement of local legislative power does not mean the more the better or the bigger the better in power, but it does mean to fully promote the autonomy of local legislation so as to adapt to economic development and to improve social welfare.

2. CREATIVE CONCEPT: THE FOCUS OF LOCAL LEGISLATION CHANGES FROM SUBORDINATION TO AUTONOMY

As for the relationship between the national legislation and the local legislation, unitary state and federal state hold different views on central and local relationship and the nature of local legislative power. The relationship between national legislative power and local legislative power in unitary state is subordinate. "Local legislative power must obey the central legislative power; local legislation must be reported to the State Legislature to get approval or record; the exercise of local legislative power shall not conflict with national legislative power, otherwise the state legislature has the right to revoke, or local legislation itself is invalid." (ZHOU, 1998) However, the relationship between national legislative power and local legislative power is half autonomous and half subordinate. "National legislative power and local legislative power are relatively independent and constrain each other, mostly national legislative power constraining local legislative power...national legislative and local legislative powers within the legislative competence exercise their own legislative power under the prescription of the

Constitution....no matter national legislation or local legislation, they must try to unify the national and local interests and ensure the interests for both sides. However, by compression, national interests take precedence over local.... national legislative power in certain matters, certain procedural is constrained by the local legislative power.” (LIU & HUANG, 2004) As a centralized unitary country, the relationship between national legislative power and local legislative power in our country is mainly subordinate at present.

Local legislation is both subordinate and autonomous. In our country, local legislation must be uniform in the central legal principle. Local legislation and administrative regulations shall not contravene the laws, but follow the lower level law not inconsistent with the principles of higher legislation, and local legislation should implement, reflect the spirit of the central. At the same time, the constitution prescribes that the local “can formulate local laws and regulation according to the specific situation and actual need”, which gives local legislation autonomy. For a long time, influenced by traditional concepts, when the local is formulating local laws and regulations, it pays too much attention on the central legislation. Most of the content of local legislation is the duplication of central legislation, lack of autonomy and initiative, and local legislation is not enough aware of innovation. Legislative autonomy produces leading and innovative effects. In such a big country, it is impossible to carry on without a unified focus on the legal system and legislative focus, and it is also impossible without the special interests for some of the local. If the local legislation is simple repetition of the central legislation and it is monotonous, what is the necessity and meaning to empower local legislative power? Combining principles and regulations of the central and local conditions can make local legislation pioneering, creative and effective. In addition, coastal cities, economic zones, special administrative regions, autonomous regions, and the uniqueness of the special autonomous regions within the principle of "two systems in one country", have made a single legislative system can not adapt to our changing times. It is necessary to decentralize authority appropriately in legislation. Take the legislation of some economically backward western provinces as examples. They take long-term resource-based enterprises as the backbone of economic development and their processing industries and high-tech industry fall behind. Their conditions to attract investment are not as good as the eastern provinces', and they generally have more financial problems. In such conditions, if we still do not "decentralize" authority in the development and usage of local resources, it will definitely lead to enlargement of economic development gap with other regions, which is a vicious circle, and thus leads to a more serious problem of social insecurity. Therefore, it is an objective and essential requirement for the economic development of such regions by using autonomous legislation to guide their actions and maximize their advantages and minimize weaknesses.

We cannot deny that the present development of China's economy is the result of decentralization in reform. Innovation on local legislation maintains its vigor and reflects its value relative to the central legislation. The local legislative innovation's success is the guarantee for sustained, stable and rapid growth of the national economy. In the practice of legislation, local legislation is not only unprecedented, and within the exclusive competence of central legislative power, it “formulates laws first”. For instance, in the early 1980s, Shenzhen piloted the new regulation to collect land use fees. In the January of 1988, Shenzhen first promulgated “Regulations on Land Administration of Shenzhen Special Economic Zone”, which clearly stated that land use right may be sold, then transferred for mortgages, which led to the 1988 amendment to Article 10 of the Constitution. State-owned land paid-transfer system began to put into effect within the whole country and it promoted the reform and economic development. Zhuhai Municipal People's Government in 1988 issued the "Interim Measures for Co., Ltd. in Zhuhai ", for the first time to regulate establishment of the Corporation, and effectively promote the development of Corporation. There is another example. In 1994, Shenzhen issued the "Residential Property Management Regulations", which firstly opened the process of standardization and modernization of Urban Property Management. It was approved and swiftly spread, and then laid the foundation for promulgation and implementation of the 2003 "Property Management Regulations". Local legislation opened up a large number of "experimental fields" for the development and improvement of central legislation in its development. The achievements of reform and innovation provide a legislative blueprint and framework for the central legislature. It is the privilege of local legislative power and legislative innovation illustrate the charm of local legislation. Therefore, we will not only see the aspect that local legislation subordinates to the central legislation and the local legislation is a supplement and test field for the

central legislation, but also recognize the autonomy of local legislation. "The task of local legislation is to solve local problems, in particular, focus on those problems that should be solved by legislative solution, but cannot be solved by the central legislation or it is inconvenient for the central legislation. Local legislation can or should have distinctive local characteristics. One of its basic principles is from the actual local conditions, preserving the local characteristics (ZHOU, 2005).

3. THE FOCUS OF LEGISLATION: CHANGING FROM ECONOMIC LEGISLATION TO DIVERSIFIED LEGISLATION

With the gradual development of market economy, the People's Congresses and their Standing Committees at all levels which has legislative power to try to develop economic legislation of which they are in urgent need. Particularly since 1993, the goal of the local government was always to develop market economy and local legislation focused on economic legislation. The central and local has developed a large number of economic laws and regulations. Until the end of 1998, the whole country has drawn 6,311 local laws and regulations, 302 autonomous regulations, 207 separate regulations and 9692 local regulations (LI, 1999). According to rough statistics, economic laws and regulations accounted for more than half of the total number of valid laws and regulations. In 2000 alone, 31 provinces (autonomous regions and municipalities) have developed 603 local laws and regulations (including the amendment, repeal and regulatory issues), and 335 of which are about economic development, taking 55.6% in all. Such as Jiangsu, in order to adapt to the requirement in establishing the socialist market economic system and further accelerate the pace of economic legislation, from 1993 to 1997, Jiangsu Provincial People's Congress developed and approved a total of 76 economic laws and regulations, accounting for 55% of total legislation. In the legislative process, the Standing Committee held priority consideration on the economic legislation. They paid close attention to developing measures for implementation of the major economic laws promulgated by the state. Take Yunnan as another example. From 1981 to 1999, the Provincial People's Congress and its Standing Committee formulated and revised 263 local laws and regulations. From the December of 1982 to the May of 2000, the provincial government made 334 rules and it gave top priority to economic legislation. From 1992 to the end of 1999, according to the statistics before the enactment of "Legislation Law", the Shenzhen Municipal People's Congress and its Standing Committee have formulated 144 laws, the government has formulated 120 rules and regulations, of which 90% are about market economy and urban management legislation. From 1993 to 1997, Zhejiang People's Congress and its Standing Committee have formulated 157 local laws and regulations, economic regulations accounted for 50.3% of the legislation.(ZHANG, 2003) From all the above examples, it is seen that in order to adapt to the development of market economy and accelerate economic growth, laws has protected economy. Economic legislation bears the brunt of all laws and its achievements are impressive.

However, problems have appeared. The economic legal norms seem relatively effective, but they are not enough to adjust the conflicts and contradictions of interest. Social problems successively emerge in economic development, which challenge the previous legislative concepts and purposes. How to play the legislative adjusting function the interests and to ensure its protection for economic development has become a practical problem that legislators can not avoid. From the central to local legislation, lawmakers have started to change the existing legislative ideas. While strengthening the formulation of economic legal norms, they have begun to reinforce legislation in other areas. Since 1997, there have been 964 local laws and regulations on social security and local government regulations, among which (including old-age insurance, unemployment insurance, medical insurance and industrial injury insurance, etc.) there are 58 local laws and regulations and 499 government regulations. There are 22 local laws and regulations and 4 government regulation on protection of legitimate rights and interests of minors; 22 laws and regulations and 20 government regulations on old people's legal rights protection; 13 local laws and regulations and 89 government regulations on the protection of rights of persons with disabilities; 92 local laws and regulations and 20 government regulations on the livelihood and minimum wages security; 16 local laws and regulations and 9 government regulations on legal aid. (CUI, HE, et al.,

2006) Let's look at the legislation of Changchun in the past 10 years. The lowest percentage of social legislation accounted 34.5% of the total number of annual legislation in 1998, up to 58.0% in 1997. (CUI & SUN, 2005) "In China, local legislation in the nearest decade took social legislation, such as environmental and ecological protection, development and utilization of natural resources, labor and social security and other social services, as the main content and all those gradually occupy an important position in local legislation." (ZHOU, 2003). This will undoubtedly be a general trend of legislation in future. In order to build a harmonious society, we must comprehensively and in-depth fulfill the basic strategy of creating a body of law by which the nation is governed and create favorable legal environment. Legislation is a key part in the construction of a legal system. A harmonious society is the harmony of people, people and nature, and man and society. In economic society, we do need a lot of economic laws and regulations to maintain market order and protect the rights of stakeholders. When economic legislation dominates the main position in legislation, other rules have to give place to the economic legislation. "In such legislative ideas, the unity of people emerges. People not only become economic men in economy, but in all aspects of social life, especially in legislation. They are turned into 'one dimensional men' and economy is the yardstick." "In such ideas, the true character of the legislation and the rich diversity is gone, and they turn into the shadow of economy, picking up the pace of economy. Such legislation in a certain sense, is also known as the 'one-dimensional legislation'". However, now we need not only economic legal norms; more importantly, we need legislation on social security, environmental conservation, human science and education and protection of the democratic rights of citizens. Legislation should achieve the organic unity of economic and moral interests of man. In multiple conflicts of interest between stakeholders and value choice in the struggle for advantage, laws and regulations on social security, environmental conservation, human science and education, protection of democratic rights of citizens and etc. undoubtedly complement the weaknesses of economic legislation in the pursuit of economic interests, and become legislative supplements in controlling and balancing interests. Terms of the relationship between man and nature, people take the advantages of nature, modify nature but also destroy the original nature, destroy the environment by which we human beings survive. When building a harmonious relationship between human and nature in a harmonious society, we shall pay attention to the need of environment protection to maintain the sustainable development of the natural environment, and achieve intragenerational equity and intergenerational equity. In the relationship between man and society, the social existence of the "disharmony" phenomenon is the contradiction between economic base and the superstructure. Building a harmonious society, we must continue to adjust conflicts, formulate laws and regulations on social administration, economic development, social security, social development and spiritual civilization construction.

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