

Objectives and Impetuses for Legal Reforms — Legal Reform Experience in the People's Republic of China

Zhang Yuying

Northwest University of Political Science and Law, Xian, Shaanxi, People's Republic of China; zhangyuying818@163.com

ABSTRACT

Legal reform is a method of continuous improvement and promotion of laws. In order to promote legal reform, it is necessary to research and learn about excellent legal reform experiences. The People's Republic of China (PRC) legal reform experience is worth studying and learning about because the PRC has rich reform achievements. There are two important factors contributing to the success of the PRC legal reform. One is that the PRC establishes correct and reasonable legal reform objectives, and the other is that the PRC provides impetuses for legal reform. Therefore, this paper will analyze the above two legal reform experiences to help other countries complete legal reforms.

Keywords: Legal reform, People's Republic of China, Legal Reform Objective, Legal Reform Impetuses, Legal Reform Experience

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Цель и движущая сила правовых реформ: опыт правовых реформ КНР

Чжан Юйин

Северо-Западный университет политики и права, Сиань, провинция Шэньси, КНР; zhangyuying818@163.com

РЕФЕРАТ

Правовая реформа является методом постоянного совершенствования и развития законов. Для продвижения правовых реформ необходимо проводить исследования и анализировать успешный опыт их проведения. Опыт правовых реформ в Китайской Народной Республике заслуживает внимания и изучения, поскольку КНР достигла выдающихся результатов в области реформ. Существует два важных фактора, способствующих успеху правовых реформ в КНР. Во-первых, КНР ставит правильные и разумные цели правовых реформ и, во-вторых, создает стимулы для их проведения. В данной статье проводится анализ двух вышеупомянутых составляющих, что может помочь другим государствам в проведении их правовых реформ.

Ключевые слова: правовая реформа, Китайская Народная Республика, цель правовой реформы, движущая сила правовых реформ, опыт правовых реформ

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Legal reform is a process of continuous self-innovation and improvement of the law system in the PRC. Since the founding of the People's Republic of China, legal reform has kept pace with the development of Chinese society [1, p. 267]. The law with Chinese characteristics has been continuously enriched and improved during more than 40 years of Reform and Opening -up in the PRC. The legislative, law enforcement, judicial and

other legal activities have been insisting on self-innovation and improvement. The PRC obtains a lot of legal achievements from legal reforms because of many important factors. This article will discuss the two of them: correct and reasonable legal reform objectives and impetuses for legal reform in the PRC. The above two legal reform experiences will help other countries build correct and reasonable legal reform objectives and get impetuses for legal reform. Ultimately, the PRC legal reform experiences will help other countries complete legal reforms.

1. Literature review

Legal reform is a tortuous and lengthy process. At the same time, legal reform is continuing in the PRC. However, there are few relevant academic views on legal reform objectives and impetuses. Regarding the goal of legal reform, a few scholars believe that the legal reform objective is equal to the law value, such as fairness and efficiency. Qian Hongdao (2002) pointed out that legal reform should adhere to fairness and take efficiency as the legal reform objective [2, p. 7]. On the legal reform impetuses, Wang Xizin (2008) believes that the legal reform impetuses come from the top-down government, but the people should be encouraged to promote legal reform [3, p. 90].

2. Raising of research questions

Legal reform is a method of continuous improvement and promotion of laws. Further, legal reform is a force for national and social progress. Actually, a country is necessary to research and learn about excellent legal reform experiences from other countries for promoting legal reform. The PRC legal reform experience is worth studying and learning about because the PRC has rich reform achievements. Correct and reasonable legal reform objectives and impetuses for legal reform in the PRC are two important factors for legal achievements from legal reforms.

Currently, the research and opinion are not perfect. Firstly, regarding reform objectives, scholars do not clarify its concept and mistakenly equated legal reform objectives with law values. Secondly, regarding legal reform impetuses, in fact, the legal reform impetus is not the government. The government is the executor of legal reform.

Therefore, this paper will explore the following questions: What are the legal reform objectives? Why can the PRC come up with correct and reasonable legal reform objectives? What is the legal reform impetus in the PRC? Why could the PRC get sufficient legal reform impetuses?

The answers to these questions will tell other countries: How could a country establish correct and reasonable legal reform objectives? How could a country get sufficient legal reform impetuses?

3. Experience in Correct and Reasonable Legal Reform Objectives in the PRC

3.1. *What are the legal reform objectives?*

Through the research on the history of legal reform in the PRC, this paper argues that the concept of a legal reform objective consists of three parts:

First, a legal reform objective is an expectation of legal reform. Therefore, the establishment of a legal reform objective is the beginning of legal reform. Only when the objective is correct and reasonable can we formulate and implement the correct and specific legal reform plan and obtain good legal reform results.

Second, legal reform objectives are beacons in the legal reform processes. The success of legal reform is neither instant nor plain sailing. Various difficulties or problems

often arise in the process of legal reform, but the PRC experience proves that if there are correct and reasonable reform objectives, people will have direction and guidance when solving specific problems and difficulties.

Finally, the legal reform objective is the basis to consolidate and enhance the results of legal reform. After the specific legal reform plan is completed, the country needs to judge whether the reform results meet the standard and decide to further deepen the relevant legal reform or not according to the reform objectives.

The PRC always pays attention to the establishment of legal reform objectives. So in each stage of legal reform, the PRC likes to set corresponding objectives. In the latest stage of legal reform, the PRC overall reform objective is to establish a system of socialist rule of law with Chinese characteristics and build a country of socialist rule of law [4, p. 5]. At the same time, the PRC established specific judicial reform objectives and legislative reform objectives for the overall legal reform objective.

3.2. Why can the PRC come up with correct and reasonable legal reform objectives?

Through a study of legal reform experience in the PRC. This article declares three reasons.

3.2.1. Legal reform objectives are in line with national conditions in the PRC

President Xi Jinping emphasized that the basic national conditions of a country determine what kind of rule of law path a country will take and what kind of rule of law system it will build [5, p. 110]. Reviewing the history of the PRC legal reform, it is easy to find that at different stages, macro-level legal reform objectives are different in the PRC. In the initial stage, the PRC proposed to establish a socialist legal framework system based on actual national conditions¹. After Reform and Opening-up, the PRC put forward the higher and more detailed legal reform objectives: rule of law, law-based governance, carrying out administration in accordance with the law, ensuring that laws are put in place, observed, and strictly enforced and that anyone who violates the law is held to account [6, p. 5]. In recent years, according to the PRC existing basis, the PRC put forward establishing a system of socialist rule of law with Chinese characteristics and building a country of socialist rule of law [4, p. 5]. All in all, the macro-reform objective at each stage is put forward based on the basic national conditions and actual conditions at that time.

In addition, when the PRC set the objective of reforming departmental laws, it also fully considered the PRC national conditions and actual conditions. For example, financial law reform: at the beginning of this century, in order to join the World Trade Organization (WTO), the PRC proposed the objective of gradually revising financial law. This reform provides a legal basis for reducing financial market access restrictions. In recent years, with the development of the PRC financial market, the types of financial products have been continuously innovated and increased. In order to ensure the healthy operation of the market, the PRC put forward a new objective: promulgating relevant laws and regulations such as the Futures Law, the Fund Law, and the Financial Stability Law.

3.2.2. The PRC uses the right theories to set legal reform objectives

The PRC always uses the theory of socialist rule of law with Chinese characteristics to guide the establishment of legal reform objectives. The theory of the socialist rule of

¹ See the Resolution of the Eighth National Congress of the Communist Party of China on Political Reports. "The state must gradually and systematically formulate complete laws as needed. All state organs and state personnel must strictly abide by the state's laws, so that the democratic rights of the people are fully protected by the state".

law with Chinese characteristics is a combination of the Marxist theory of the rule of law with the actual situation and the traditional legal culture in the PRC. It is emphasized that the theory of socialist rule of law with Chinese characteristics is not static. On the contrary, with the reform and development of the PRC, the content of this theory is constantly expanding and deepening.

Why does the socialist rule of law theory with Chinese characteristics guide the PRC to set correct and reasonable legal reform objectives? The rationale is that this theory points out the direction of legal reform and answers important questions related to reform. For example, the objective of establishing a system of socialist rule of law with Chinese characteristics and building a country of socialist rule of law comes from Xi Jinping's Thought on the rule of law [7, p. 15]. At the same time, Xi Jinping Thoughts on the Rule of Law also answer a series of questions related to legal reform, such as why the PRC needs law-based governance of the country and how to achieve law-based governance of the country in the new era [8, p. 12].

The legal reform objectives of the PRC law department also use many emerging legal theories or interdisciplinary theories. For example, when setting the legal reform objective of the Tort Liability Law (the Tort Liability section in the Civil Code) passed in 2009, the PRC uses the law and economics theory.

Consequently, the socialist rule of law theory with Chinese characteristics, emerging legal theories and interdisciplinary theories provide a solid theoretical foundation for setting legal reform objectives.

3.2.3. Legal reform objectives respect people's interests

One of the objectives of the PRC legal reform is to meet the people's needs for democracy, rule of law, fairness, justice, and security. Therefore, when setting up the objectives of legal reform, the PRC always adheres to the people-oriented and integrated the people's thoughts and needs into the reform objectives. The judicial reform objective in the PRC is a successful example. In the 1980s, the PRC started a new judicial system reform, and numerous judicial reforms always insisted that the people's interest is first. In 2004, the PRC put forward the reform objective: perfecting the system of people's assessors¹. In 2013, the PRC proposed a "doubling plan" to double the number of people's assessors within two years. In recent years, the PRC even made it a key objective of judicial reform to "strive to make the people feel fairness and justice in every judicial case" [10, p. 91]. Today, the PRC judicial system reform is beginning to show good results, and people's satisfaction with the judiciary is being continuously improved [9, p. 4].

4. Experience in Impetuses of Legal Reform in the PRC

4.1. What is the impetus of legal reform in the PRC?

This paper argues that the impetus for legal reform in the PRC is the "people". The "people" refers not only to legal professionals but also to all Chinese. There is no doubt that legal professionals will provide professional advice and guidance for legal reform. At the same time, the legal reform will enter a virtuous circle, if the PRC gets understands, supports, and advocates for the process and results of legal reform from all Chinese.

4.2. Why could the PRC get sufficient reform impetuses?

¹ See "Decision of the Standing Committee of the National People's Congress on Improving the People's Assessor System" on August 28, 2004.

In order to have sufficient reform impetuses, the PRC is increasing the training of “people” in the law.

On the one hand, in order to have sufficient professional support for legal reform, the PRC pays attention to cultivating professional legal talents. During Reform and Opening-up, the PRC quickly established a large number of law schools. These law schools lay the foundation for training professionals. Today, the PRC has cultivated a large number of legal professionals, including legal theoretical talents, legal practical talents, international legal talents and interdisciplinary legal talents. As of February 2022, the total number of lawyers in the PRC has reached 576,000, and the highest number of judges in the past ten years has reached 200,000¹. These professional legal talents are driving the PRC legal reform. However, the PRC continues to explore a legal talent training model in line with the actual situation, in order to provide a steady stream of the impetuses for further legal reforms.

On the other hand, in order to enter a virtuous circle of legal reform, the PRC has been strengthening its efforts to popularize legal knowledge. In practice, the PRC increases the speed and depth of legal reform for establishing a system of socialist rule of law with Chinese characteristics and building a country of socialist rule of law. In order to allow all Chinese to understand and support the current legal reform, the PRC is doing activities such as bringing legal knowledge to the community and campuses, and writing basic legal knowledge into textbooks for primary and secondary schools. In addition, the PRC is using online social media platforms to publish legal reform information, in order to let people know the progress of legal reform immediately. For example, the PRC timely discloses legal reform information through Douyin (Tiktok) and Weibo. At present, these measures help people to learn about a lot of legal reform information and legal knowledge.

5. Research Conclusions and Countermeasures

5.1. *Research conclusions*

5.1.1. Through the analysis of the history of legal reform in the PRC, this paper states that the concept of a legal reform objective in the PRC includes three parts: 1) A legal reform objective is an expectation for legal reform; 2) A legal reform objective is a beacon in a reform process; 3) A legal reform objective is a basis for consolidating and enhancing the results of legal reform. The reasons why the PRC can set correct and reasonable legal reform objectives include: 1) Legal reform objectives are in line with national conditions; 2) The PRC uses correct theories; 3) Legal reform objectives respect people's interests.

5.1.2. The article identifies that the impetuses for legal reforms come from “people”. “People” not only refers to legal professionals but also includes all Chinese. In order to have sufficient reform impetuses, the PRC increases legal training for people.

5.2. *Countermeasures*

According to the PRC legal reform experience, if a country wants to set correct and reasonable reform objectives, it needs to achieve: legal reform objectives are in line with national conditions; uses correct theories; legal reform objectives respect people's interests. Also, in order to have sufficient reform impetuses, a country should increase legal training for people.

¹ Sources of data: February 7, 2022, “Relevant Departments of the Ministry of Justice Answers Reporters’ Questions about the Construction of the National Lawyer Integrity Information Publicity Platform”; July 25, 2013 National Court Team Building Work Conference.

Legal reform is a tortuous and lengthy process. At the same time, legal reform is continuing in the PRC. The PRC will insist on summarizing experience and continue to improve legal reform in the future.

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About the author:

Zhang Yuying, Ph.D. in Law (Doctor of Juridical Science), Lecturer, School of Economic Law, Northwest University of Political Science and Law, Xian, Shaanxi, People's Republic of China; zhangyuying818@163.com

Об авторе:

Чжан Юйин, доктор юридических наук, преподаватель института экономического права Северо-Западного университета политики и права (Сиань, провинция Шэньси, Китайская Народная Республика); zhangyuying818@163.com