

Research on Legislative Flexibility Mechanism

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Abstract—The legislative flexibility mechanism is the latest result of combining the methodology of Marxist scientific research with the construction of the rule of law in China. Legislative workability is a unique power given to national autonomous areas and special economic zones by laws. Regarding the nature of legislative workarounds, there is relatively little discussion in the academic community, and there is no direct analysis and definition of them. Due to the ambiguous legal provisions, in practice, people have always had different views on the scope of the legislative negotiation flexibility. In addition, due to the imperfect system and insufficient theoretical research, it is inevitable that the legal and effective exercise of the legislative adaptation power will be greatly influenced. How to make legislative adaptations reflects in all aspects of social development, that is, how to implement legislative adaptations, how to make legislative adaptations concrete, institutionalized, and operationalized, etc. This requires in-depth research. This article attempts to explore how to make research on legislative accommodation and clarify the related issues of legislative accommodation.

Keywords: *legislative adaptation, scope of jurisdiction, jurisprudence*

I. INTRODUCTION

On July 24, 2019, the ninth meeting of the Central Committee of Comprehensive and Deepening Reform was held, and the meeting reviewed and approved the "Opinions on Supporting Shenzhen to Build a Pioneering Model Zone of Socialism with Chinese Characteristics". In the eighteenth lecture of the "Opinions", the central government again mentioned that "Shenzhen must make full use of the legislative power of the SAR" and the policy has given Shenzhen a legislative flexibility. The Fourth Plenary Session of the 19th CPC Central Committee further emphasized the need to "improve the legislative system and mechanism." This shows that the central government attaches great importance to legislative adaptation. However, how to work around? What are the basis, boundary, procedure and effectiveness of the workaround? Throughout practice, the NPC Standing Committee's authorization decision does not provide clear scope for the scope of legislative adaptation. The theoretical community has insufficient research on the basic legislative theory, and the relevant cognition of legislative adaptation is ambiguous, which in turn affects the legislative adaptation. Exercise properly. How to make legislative negotiation and adaptation concrete, institutionalize, and operationalize, etc. requires in-depth analysis and exploration.

II. OVERVIEW OF LEGISLATIVE ADAPTATION

The so-called "flexibility", Ci Hai's annotations are "flexible and informal," and the explanation of "Modern Chinese Dictionary" is "to make non-principle changes according to different situations." The word "flexible" first appeared in the cloud of "Yi Ci": "Poor changes, poor changes, long general", which means that when things reach the end, changes will occur. As long as changes occur, the development of things will remain accessible, and keeping it open will keep things long. In modern day-to-day use, "adaptation" often refers to the fact that, when dealing with affairs, you don't stick to the routine, and you can flexibly deal with it according to the special needs of the situation. "Adaptation" in the legal field means that the subordinate law can change the provisions of the superordinate law, and makes the same matters different from the superordinate law. In order to understand legislative adaptation, we must first understand the concept of "adaptation". After clarifying the concepts, we must conduct an inquiry research on the legislative adaptation mechanism, and clarify the ontology, value theory, and methodology of the legislative adaptation mechanism to improve the theoretical character of the legislative adaptation mechanism. , Exploring the law of the legislative workaround system, pointing out the form of the legislative workaround mechanism, combing the implementation mode of the legislative workaround mechanism, designing an evaluation index system for the legislative workaround mechanism, conducting model analysis and empirical research on the legislative workaround mechanism, and providing ideas and suggestions for the legislative workaround mechanism.

III. SCOPE OF LEGISLATIVE ADAPTATION

At present, various circles have not reached a consensus on where the boundaries of legislative adaptation are, which ones can be adapted and which cannot be adapted. Liu Shuguang, director of the Shenzhen Municipal People's Congress Law and Work Committee, believes that the boundary of the SAR's legislative adaptation should be defined by three principles: First, it must follow the Constitution and must implement the party's guidelines and policies; second, it must follow the legislative purpose, guiding ideology, and guidelines of laws and administrative regulations. Some basic principles stipulated by the General Principles and the basic system embodying these basic principles; the third is that the adaptation should represent

and follow the development direction of China's rule of law construction. Reform and innovation should not only be to solve local unique problems, but can represent the direction of perfecting laws and regulations, and can be copied and promoted. Professor Huang Yaying believes that, from the perspective of legislative technology, it is possible to adopt the deactivation of the upper-level method, and then formulate regulations to make adaptations, which can reduce resistance from the department. There are three forms of adaptation: first, to fill the gaps with advance legislation; second, to refine the existing laws. Some systems mentioned in some laws and regulations but not specified (such as the ship registration system) can be formulated through local legislation. Special regulations form a complete system; the third is a narrow-range modification, such as an increase in the amount of punishment.

The author believes that the power and scope of legislative adaptation should follow the following four points:

First, the Constitution stipulates the fundamental system of the state, the basic state policy, and the basic rights and obligations of citizens. It is the fundamental law of the country, the foundation of national unity, and the unity of all nationalities. It has the highest legal effect. Local legislation must fully comply with the provisions of the Constitution and must not be modified.

Secondly, special regulations made to localities in laws or administrative regulations cannot be modified by localities. This is because the special provisions for localities in laws or administrative regulations have taken into account the special circumstances of the locality, and have comprehensively balanced the overall interests of the country and the actual local conditions, and of course they should not be modified. Some regulations, although not made directly or specifically for the locality, if national unified regulations have been taken into account in the central legislation after taking into account local conditions, local governments should follow the provisions of the central legislation, and local regulations should not be made in accordance with central legislation.

Third, Article 8 of the Legislative Law concerns matters concerning the exclusive legislative power of the National People's Congress and its Standing Committee. Local laws and regulations cannot make creative provisions, let alone adapt them. It should be noted, however, that some of the legislative matters involved in Article 8 of the Legislative Law are not completely inaccessible to the SEZ legislation. For example, Article 8 (8) stipulates the "Basic Civil System" and Item (9) stipulates the "Basic Economic System and the Basic Institutions of Finance, Customs, Finance and Foreign Trade". The legislative power of the "basic system" in related fields is vested in the National People's Congress and its Standing Committee, while special systems in related areas that are not in the scope of the basic system can still make provisions. Does the provision of Article 8 of the Legislative Law mean that the special economic zone legislation cannot stipulate national affairs (central authority)? The author believes that such a conclusion cannot be reached.

Because Article 8 of the Legislative Law only provides for the exclusive legislative powers of the National People's Congress and its Standing Committee, it does not stipulate that all national affairs are reserved by the central legislation. According to Article 73 (2) of the Legislative Law, even in the case of national affairs or shared affairs between the central and local governments, local governments can still legislate. As special local legislation with higher autonomy than general legislation, special economic zone legislation should not be restricted by local affairs. In addition, the relationship between the central and local governments in our country is undergoing a period of drastic changes and adjustments. The functions of the central and local governments at the same level are "upper and lower", national affairs (central affairs), local affairs (local affairs), and the boundaries of shared affairs (shared powers) are not clear. If the legislation of the special economic zones is limited to local affairs, it will greatly limit the space in which they can play a role.

Fourth, the principles or basic principles of laws and administrative regulations cannot be modified. The principle of law is the basic principle of law, which provides the basis, origin or starting point for specific rules. The principle or basic principle of a law or administrative regulation is its most core content and is the embodiment of the basic spirit of the law or administrative regulation. Some of the principles of laws or administrative regulations are clearly stipulated, while others need to be refined from the relevant rules, and there is some room for interpretation. In identifying and balancing the principles of the law, a dynamic position is needed, and one cannot be overly attached to the subjective intentions of the legislator. Because country is in an era of great changes, and legislation were enacted in the early days of reform and opening up, or even before reform and opening up, many ideas no longer meet the needs of our country's economic and social development. To the maximum extent permitted, mix the principles of the Constitution, the new ideas, and strategies of the party's central government, avoiding the stigmatization.

In addition, Article 72 of the Legislative Law restricts the legislative power of cities with districts to matters such as urban and rural construction and management, environmental protection, historical and cultural protection, etc. The author believes that this restriction applies only to general districts. It's not applicable to the city where the special economic zone is located.

IV. RESEARCH CONTENT OF LEGISLATIVE ADAPTATION

The object of this study is the issue of legislative workaround. The main contents include the ontology, value theory, methodology, evaluation theory, and practice theory of the legislative adaptation mechanism, exploring the substantive connotation, characteristics, and requirements of the legislative adaptation mechanism, studying the logical ideas, laws, and evaluation standards of the legislative adaptation mechanism, combining with foreign countries practice of legislative adaptation, drawing on foreign experience on legislative adaptation, putting forward

countermeasures and suggestions on legislative adaptation mechanism in China, and clarifying the practical path of legislative adaptation.

A. Theoretical research on legislative negotiation and adaptation

It inquires into the legislative negotiation and adaptation system, and studies the legislative negotiation and adaptation proposition from a philosophical perspective. It clarifies the essential connotation of legislative negotiation and adaptation, including "negotiation" and "adaptation" signifiers and referents, it clarifies the boundary of legislative negotiation and adaptation, sorts out the related results and theoretical basis of legislative negotiation and adaptation, and integrates legislative negotiation and adaptation Theoretical system.

B. Research on legislative consultation and alternative forms

Legislative coordination and adaptation are mainly reflected in the form of statutory laws, such as autonomous regulations, separate regulations, modifications and supplementary regulations, in accordance with the authority of the national constitution and laws, and the political, economic, and cultural characteristics of the region. Non-principal changes in national laws, administrative regulations and local regulations. The legislative adaptation here is a special activity in which a specific subject formulates, recognizes, or modifies national laws and regulations based on certain authorizations and uses certain technologies.

C. Model analysis of legislative negotiation and adaptation

This study intends to build a theoretical model of legislative negotiation and adaptation, analyze the mechanism, cause variables, intermediate variables, restraint variables, and outcome variables of legislative negotiation and adaptation, and find out the driving factors and retarding factors of legislative negotiation and adaptation, to promote it. We need legislative consultation and reasonable implementation of workarounds.

D. Research on methodology of legislative negotiation and adaptation

Legislative coordination and adaptation are part of the national legislative power system and have the characteristics of legislation. Therefore, the methods and techniques of legislative coordination and adaptation can be followed but different from local legislation. The study found that there are roughly four steps to legislative negotiation and adaptation: first, to clarify the foundation, second, to grasp the direction, third, to establish a flexible project, and fourth, to dare to innovate. This study will gradually explore specific methods and operational methods of legislative negotiation and adaptation.

E. Comparative study of legislative negotiation and adaptation

This study intends to compare the local legislative negotiation adaptations in China with the foreign legislative negotiation adaptations, explore different legislative negotiation and adaptation mechanisms, and try to analyze ways and methods to form coordinated and unified legislative negotiation and adaptations to improve the efficiency of legislative consultations and adaptations.

F. Research on the evaluation index system of legislative negotiation and adaptation

Legislative consultation and adaptation is a process, and it is a long-term process. An evaluation index system is needed to evaluate and promote this work. Legislative consultation and adaptation are often difficult to implement, not specific enough, and difficult to grasp. This research will improve the evaluation index system through investigation and consultation.

G. Research on the legislative negotiation and the practical path of adaptation

Through in-depth theoretical research and consultation, exploring operational and reproducible models of legislative negotiation and adaptation practice methods, sorting out the paths and problems of legislative negotiation and adaptation, and summarizing past legislative negotiation and adaptation practices and experiences. Using the standards and boundaries of legislative consultation and adaptation to compare and clean up the legislative consultation and adaptation. It achieves legislative negotiation and adaptation. Proposing targeted opinions and specific countermeasures and suggestions for legislative consultation and adaptation, for the reference of decision-making departments and practical departments.

H. Empirical research

Selecting a legislative negotiation and adaptation system, conducts empirical research, test theories and models, and improving and modifying evaluation indicators.

The focus of this research lies in the theoretical research of legislative negotiation and adaptation mechanisms, revealing the mechanisms and laws of legislative negotiation and adaptation, drawing up an evaluation index system for evaluating legislative negotiation and adaptation, combing and integrating previous legislative negotiation and adaptation measures and experiences, and exploring new Legislative Consultation and Adaptable Practice Path of the Times. The difficulty lies in that "legislative consultation and adaptation" has the characteristics of principle and abstraction, it is difficult to make it concrete and operational, and it is difficult to formulate pertinent evaluation standards, and it lacks a reference model of experience. The exercise of legislative consultation work is not sufficient. The number of legal adaptations is small and the content is single. In the practice of legislative negotiation adaptation, the initiative is not strong. Most negotiation adaptations reflect passive

negotiation adaptations, and the effect is not obvious. The breakthrough of this study becomes a difficult point. It will be more difficult to collect data and process more difficult data.

V. SUMMARY OF RESEARCH ON LEGISLATIVE ADAPTATION

Judging from the distribution of the literature, the research on the coordination and adaptation of legislation started mainly after the promulgation of the Legislative Law in 2000, "Legislative coordination and adaptation" are the unique powers granted by national laws to national autonomous areas and special economic zones. Article 66, paragraph 2 of the "Legislative Law" states: "Autonomous regulations and separate regulations may adapt to the provisions of laws and administrative regulations in accordance with the characteristics of local ethnic groups, but shall not violate the basic principles of laws or administrative regulations, And the provisions of the Law on Regional National Autonomy and other relevant laws and administrative regulations specifically make provisions for national autonomous areas." "The legislative coordination and adaptation have yielded rich results, such as Wu Zongjin's "Theory and Practice of the Ethnic Legal System "(1998), Deng Shibao, "Legal Thinking on Authorized Legislation" (2002), Han Jiyou and Xu Xiaoguang, "Unification Power and National Legal System Unification" (2005), Song Fangqing, "Exploration of Chinese Legislative Adjustment Power" (2008), Sun Lijun, "Law Adaptation Practice Problems and Cause Analysis "(2013), Sun Guangning, "Expansion and Adaptation of Guiding Cases to Legal Rules "(2014), Yin Yegui, " Authorization Legislation from the Perspective of Comprehensively Deepening Reform "(2015), and Li Shulin, " On the Adaptation of Ethnic Legislative Power Understanding "(2016), Liu Gaolin, " A Preliminary Study of Local Legislative Coordination "(2017), Research on Yu Xun's "First Try First" (2017), Li Yingwei "Reflection and Reconstruction of Legislative Adaptation in Ethnic Areas in the New Era" (2019), etc.

There have also been many achievements in this regard abroad. For example, P. Nonnet, P. Selznik, *Law and Society in Transition* (2002), Gedo Calabressi, *Common Law in the Era of Enactment* (2006), Eric A Mna, Stig Munding's "New Ideas towards Local Autonomy?" — Recent Places in Government Legislation from a Comparative Perspective (2005), Chiba's "Legal Diversity" (2017), etc., as well as Rolfriedrich von Hayek, Lawrence M. Freeh Deman, Steven J. Burton, Clifford Giltz, Arnold Toynbee, etc. have all conducted theoretical explorations of legal negotiation work. Due to different contexts and national conditions, foreign achievements can be used for reference, but It also has to go through the process of digestion and absorption in China.

In short, from the existing literature, there are too many people, too few thoughts and innovations, too many qualitative studies, too few quantitative studies, too many theoretical explanations, and few practical empirical evidences. The author believes that research should adhere to the combination of qualitative and quantitative, theoretical

research and practical empirical research, grounding, innovation, exploring the theoretical logic, evaluation indicators and practical paths of legislative negotiation and adaptation, and strive to make legislative negotiation and adaptation concrete and institutional. The reform and operation make the research on legislative negotiation and adaptation to be continuously deepened, detailed and scientific.

VI. THE VALUE OF LEGAL ADAPTATION IN THE NEW ERA

Wang Yongjing, a doctor of constitutional and administrative law at Wuhan University, said: "In terms of the substance and procedure of legislation, Shenzhen has trained a large number of local legislative talents and accumulated a wealth of legislative experience. Secondly, the SAR's legislative power has given Shenzhen a pioneering role in piloting the rule of law innovation and building China The dynamics and power base of the model cities have created a good atmosphere of democracy and the rule of law."

At present, under the "four comprehensive" strategic layout and "five-in-one" overall layout, the historical mission of implementing the new development concept of "innovation, coordination, green, openness, and sharing" and carrying out reform and innovation continues. In the case of special economic zones, an important experience of China's reform is to conduct experiments, reduce risks, summarize experiences, and go from point to surface. China is now in the historical period of comprehensively deepening reforms. The reforms are being carried out in an all-round way, with multiple breakthroughs and deep advances, and efforts are made to enhance the systemic, integrated, and synergistic nature of the reforms. Although the country's special policies for special economic zones have been reduced, the advantages of innovation and its special role in reform and opening up still exist. In order to implement the new development concept, and for forward-looking and leading reform measures, the SAR can use its legislative flexibility to take the lead in promulgating, sum up and accumulate experience in practice, learn from lessons, and be a good pathfinder for institutional changes across the country. In the context of comprehensively advancing the rule of law, major reforms must be based on the law, and reforms must be promoted on the track of the rule of law in order to bring together legislation and reform decision-making. In order to complete the reform and innovation tasks it has undertaken, the SAR needs legislative power in special economic zones more than ever before. The future reform and innovation of the SAR cannot be separated from the guidance and guarantee of the legislation of the special economic zone. In the case that there are not many special preferential policies in the SAR, the biggest feature of the SAR and its special feature lies in its legislative power. Using the legislative power of the SAR to promote institutional innovation, promote opening up, implement new development concepts, carry out legislative experiments, and create a "typical sample" of the organic combination of reform and the rule of law is precisely the value and function of the SAR.

The unbalanced economic and social development of various regions in China requires that the central and local enthusiasm must be brought into full play. The advantages of central legislation are higher authority, unity, and stability. However, central legislation also has its disadvantages. Some of them cannot fully meet the special needs of localities in space, and some of them cannot be adjusted in time to meet the development of the situation. Therefore, on the one hand, the central legislation must not be too detailed. It must reserve space for local innovation. On the other hand, it must allow specific regions to conduct legislative experiments, especially the establishment of limited breakthrough regulations for central legislation. The value of the local legislative power (the right to work around) is mainly that it allows local legislation to take the lead in breaking through when the superior law is rigid and outdated. The local legislative power is not only a requirement of local economic development, but also plays a role as an experimental field for national legislation, and has played an important role in the construction and improvement of the socialist legal system with Chinese characteristics.

A. Easing the legislative tasks of the legislature

With the breakthroughs in economic aggregates in various places, the formation of characteristic industrial structures, the improvement of infrastructure, the initial formation of a new market system, the entry of urban residents into a well-off society, and the comprehensive progress of social undertakings, social relations have become increasingly complex and complicated. New phenomena have emerged in finance, environmental protection, aviation, welfare, unemployment and so on. As a result, there has been an increase in social relations and social phenomena that require legal adjustment. However, relying on the legislation of the National People's Congress and its Standing Committee alone is difficult to adapt to the needs of the rapid development of local economy and society. Therefore, it is necessary to authorize local legislative power. The authorization of legislation is more flexible and simpler, and it also eases the National People's Congress and its Standing Committee's legislative tasks.

B. Facilitating the realization of specific and professional legislative tasks

In the context of the rapid development of the local economy, special affairs and special services are required. Special and specialized laws must be combined with local economic development experience and tested in practice to adapt to the rapid development of the local economy. However, the NPC deputies and members of their standing committees come from all over the country. It is impossible to fully understand the particularity and professionalism of the locality, which determines that the locality has its own legislative power and facilitates the implementation of special and professional legislative tasks.

C. Making up for the shortcomings of the current legislative system

China is a country with a vast territory and complex national conditions. In combination with the actual needs of local development, we can make full use of local special authorized legislative powers, and we can make local adjustments to their adaptation conditions while maintaining the current legislative system without fundamental changes. . This is conducive to accumulating legislative experience and can prepare the ground for the formulation of more mature, complete and stable laws.

Some people think that the right of adaptation to local legislation violates the principle of equality. However, the principle of equality does not simply require exactly the same treatment. The essence of the principle is "the same situation is treated equally, and different situations are treated differently." The state grants local special legislative powers in order to give full play to the local special endowments and advantages, and uses its experience as a reference and reference for national legislation. This precisely reflects the essence of this principle of equality, so it is in line with the principle of equality. No conflict. From another perspective, the reform experiment itself has the risk of failure, and it cannot completely treat local legislative experiments as general policy preferences. The right of adaptation is not a patent of local legislation. In addition to the special economic zones, the right to formulate autonomous regulations and separate regulations in ethnic minority areas in China also includes the right to adapt to legislation. The existence of local legislative power is the need for the division of labor between central and local governance. Local legislative power is the institutional guarantee for local governments to play an active role and better perform their governance functions. Legal adaptation is conducive to improving the quality of legislation and reducing the cost and risk of legislation. It is conducive to promote local government competition and promote institutional innovation.

VII. CONCLUSION

Local legislative power is a special and important manifestation of China's legislation, and its fundamental feature is the legislative flexibility. In the critical period when socialism with Chinese characteristics entered a new era, and in the new historical stage of vigorously promoting comprehensively deepening reforms and administering the country in accordance with the law, the continued existence of local legislative power still has important value. All localities should make full use of the legislative powers conferred by the state within the legal limits, and provide legal protection for comprehensively deepening reforms, and escort economic development.

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