

# On Status and Authority of Constitution in China's Legal System

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**Abstract.** The fundamental law in the legal system of a country is constitution which has sovereign legal status and legal force. It is a core law in national legal system. So, it should own supreme legal authority. Other laws, regulations and policies in a country should not conflict with the constitution, or else they will be invalid. Besides, legal liability will be investigated according to the constitution. Thus, this paper will carry out detailed analysis of the status and authority of the constitution in China's legal system so that our constitution can really reflect lofty legal status and improve its authority in legal system. Finally, the country can be ruled by the constitution.

## Introduction

The current constitution issued in 1982 is revised on the basis of the constitution in 1954 and officially passed by five sessions of National People's Congress. The constitution plays a great role in constructing socialism with Chinese characteristics and also has great impetus for legal construction. However, the core and leading status of Chinese constitution in socialist legal system is not fully reflected, for the authority of the constitution fails to fully display in China's legal system. Therefore, this paper will discuss the status and authority of the constitution in China's legal system again and put forward some measures to boost authority of the constitution so as to make the constitution become the fundamental law in the ruling by law. .

## Analysis of status of the constitution in China's legal system

Legal system refers to an organic entirety formed through combining various laws and regulations with all kinds of fundamental laws as main framework under the ruling by the constitution. Its basic component is legal department. In the whole legal system, the constitution is a main legal department and owns sovereign legal status. It plays a macroscopic leading and adjustment role for formation of the whole legal system. Other legal departments must be based on the constitution, abide by and obey the constitution. Generally speaking, during construction of China's legal system, the constitution has such functions as control of legislative authority and effects on balanced development of legal system. What's the status of the constitution in China's legal system? To be more specific, the constitution has such status in China's legal system:

(1) It is the legislative basis of legal system. Construction of China's legal system must be based on the constitution as the fundamental law and main basis. It is required to find out legality basis from the constitution. So, the constitution is legislative basis of China's legal system. General legal texts in China indicate "this law is legislated in accordance with the constitution". Some compare the constitution to the mother law which can derive many sub-laws. The mother law is the foundation of national laws and regulations. It can be domestic legal basis or foreign legal basis. Although some hold different opinions on the constitution as the mother law, we basically approve the expression of Mr. Wu Jialing. In his opinion, the constitution stipulates legislative principle of a country, but it cannot replace common legislation. From this perspective, the constitution is legislative basis and fundamental standard of common legislation. Common legislation shall be formulated and implemented according to the principle and spirit of the constitution. The constitution is the root of all common laws. Only the common laws complying with the principle and spirit of the constitution own legitimate foundation. This means the constitution has the lofty status and outmatches other common laws.

(2) It is the efficacy foundation of legal system. The constitution occupies an important position

in China's legal system. In China, efficacy foundation status of the constitution is mainly reflected in Legislative Law. It gives detailed provisions and descriptions of legislation limits of authority and thus provides reliable legal basis for giving play to the efficacy of legal system. Specifically speaking, in accordance with Legislative Law, the constitution possesses the highest legal force in China. Any law cannot conflict with the constitution. In essence, the provisions on legal force of the constitution in Legislative Law actually explain and provide the relationship between the constitution and common law. The constitution is the legislative basis of all other common laws. Legislation of any common law must be based on the provisions in the constitution. Legislation should be conducted according to the constitution. This means the constitution and common laws are authorization relationship. After the constitution authorizes common laws, common laws can gain legality qualification. In actual legal system, the constitution owns the peculiarity of finally authorizing standards. This is consistent with the essence of the constitution as the mother law. Such expression method is more accurate. It provides common laws with ultimate legal basis and it is legislative basis and legal foundation of all common laws. Of course, in actual legislative practice, authorization function of the constitution also will be limited, i.e. the constitution can negatively decide some contents in laws and positively provide some contents in future laws. It thus can be seen that the constitution has the highest legal force in China's legal system; all laws violating the constitution are invalid. It provides legislative basis for common laws and it is also the efficacy foundation of common laws. Meanwhile, it provides an examination standard for formulation of common laws and really reflects host law value of the constitution.

(3) It is value basis and foundation of legal system. This means external form and internal value orientation of Chinese common laws must accord with the requirements of the constitution. This requires actual legislation standards should be taken during formulating China's common laws, instead of formalistic standards. This is because formalistic standards only mechanically apply norms authorized by the constitution, lack practical spirit of the constitution and cannot fully reflect real value of the constitution. If we distinguish whether common laws accord with provisions of the constitution according to actual standards, we should judge from constitutional spirit, principle and specific text. To be more specific, we should judge whether legislative spirit of common laws and constitutional spirit are consistent, whether legislative contents of common laws and constitutional principle are basically consistent and whether articles of common laws and constitutional provisions are consistent. Generally speaking, common laws must regard the constitution as value basis and core. In case of any inconsistency, the constitution should prevail, for the constitution cannot be altered at will or be abandoned. The fundamental objective is to guarantee human right. So, constitutional spirit, principle and text are the standards to judge whether common laws violate the constitution. Constitutional spirit is the highest-level efficacy foundation. Constitutional principle is the core of the value. Legal force of constitutional text is the lowest. When we examine common laws, we should examine from the lowest to the highest.

### **Analysis of authority of the constitution**

The constitution has the sovereign legal status in China's legal system. Its authority is self-evident. Which aspect is its authority reflected in? Specific analysis is as follows:

(1) Authority in the aspect of morality and justice. The constitution is legal basis established out of the idea of reason and represents nature and justice. So, the constitution as the foundation of law and order is often based on human nature. Its basic core idea is to protect nature, justice, human right of freedom and respect. This does not mean the constitution itself has the authority in the aspect of morality and justice. It must regard morality and justice as the root of legislation. Only in this way, the constitution has absolute authority. Regardless of capitalist country or socialist country, the authority of the constitution in the aspect of morality and justice must be valued and implemented. An excellent constitution should own stability and durability and can be implemented as the law of nature without the need of great change. However, Chinese constitution is changed frequently and seriously damages the authority of Chinese constitution.

(2) Authority in politics. The largest authority of the constitution lies in that the government

should be subordinate to it. In this way, the constitution can further limit the power. Thus, the constitution has higher authority than any other political rights. In China, from the perspective of constitution development course, setback phenomenon also appears in some stages of Chinese constitution. Even so, the constitution is still constitutional legislation reflecting democratic awareness of a country and a nation. It has social foundation, i.e. market economic system and mature power operation mechanism. The constitution should be the pursuing objective in political life.

(3) Authority in law. The constitution must own supreme legal force in the process of ruling by law. All national institutions, political organizations and individuals must completely obey the constitution. General laws must regard the constitution as legislative basis, or else the constitution will be regarded as void law. The constitution should be the right declaration deed of all citizens. It needs certain rational government to implement it and the constitution should become the constraining force of government behaviors and legal protectors of social civic rights. Legal authority of the constitution is generally implemented by special judicial organs. Great legal force of the constitution generates through application in practical life.

### **Approaches to improve authority of the constitution in Chinese legal system**

Chinese constitution has been amended many times, so its authority in Chinese legal system is greatly influenced. This is because the authority of Chinese constitution is influenced by traditions of law system. Chinese political party system also proposes challenges to the authority of Chinese constitution. Constitution supervision mechanism is not perfect and sound enough. In addition, social development and changes also cause that the authority of Chinese constitution is greatly weakened. Therefore, we must take certain measures to practically boost authority status of Chinese constitution in legal system. The specific approaches are as follows:

(1) Strive to enhance constitution awareness of all citizens. Although the constitution is the highest legal core of China, due to influences and restraints by many reasons, the authority of the constitution in China is not promoted comprehensively. So, Chinese Communist Party (CCP) as the leading core of China should practically improve constitution awareness of all citizens. This requires that any behavior of Chinese Communist Party should start from the constitution. Chinese Communist Party should consciously accept supervision and restraint of the constitution. All activities of CCP should be based on the constitution. CCP constitution and all activities of the Party should be within the scope of the laws. In particular, all CCP members and cadres should consciously maintain relevant provisions of the constitution. Moreover, CCP should establish legal awareness that everybody is equal before the law, firmly oppose and avoid all kinds of special privilege thoughts and behaviors, comprehensively boost constitution awareness of all citizens, make citizens fully experience right guarantee brought by the constitution and realize that the constitution is indeed important legal guarantee for their legal interest. In this way, the constitution can really become the legal standard obeyed by citizens. And, citizens can generate awe mentality for the constitution from the heart. This obviously improves the authority of the constitution.

(2) Energetically drive judicialization course of the constitution. This means implementation of the constitution should start with lawsuit system to make the constitution really walk on the way of judicialization so as to realize judicialization development course. Constitutional judicialization means relevant laws, regulations and standards in the constitution gain universal approval and respect in judicial field and also should be admitted and implemented by courts. During legal construction of socialism with Chinese characteristics, constitutional judicialization requires China starting from guaranteeing citizens' lawful right to gradually establish and perfect a constitution judicial system suitable for Chinese political system and social system within existing national systems and really promoting the constitution to enter judicial adjudication field. China also should set up special constitution courts in courts at each level to mainly handle doers or organizations violating the constitution so as to make the constitution really undertake judicial work. Besides, procedural law of the constitution should be formulated and implemented correspondingly so that people have the basis to follow in the course of constitutional judicialization and have specific steps

to implement.

(3) Establish and perfect liability system for violation of the constitution. Improvement and enhancement of authority of the constitution should also start from responsibility determination and examination of violation of the constitution. Special constitutional review organs should be set up to examine and judge some laws, regulations and administrative acts and give certain legal responsibility punishment. In Chinese existing constitution, we should change those laws, regulations and judicial resolution conflicting with constitutional spirit according to practical situations and social situations. In fact, Chinese existing constitution has amended some improper parts. Thus, we know the constitution forms a restively perfect judicial review system through providing interpretation of the constitution and revocation of the provisions on violation of the constitution. It should be said that the constitution plays a significant role in maintaining China's political stability and ruling by law. But, since Chinese constitution is changed too frequently in the development process, it still remains improving. The behaviors violating the constitution still happen to some different extents. Thus, we need to further promote constitutional legalization and specialization development course.

## **Conclusions**

In general, the constitution has incontrovertible lofty legal status in Chinese legal system and is the core of the whole legal system. It plays a leading role for other common laws. However, since Chinese constitution is not authoritative enough due to the impacts of many factors in the development process. Thus, we should improve constitution awareness, perfect liability system of the constitution, energetically promote judicialization course of the constitution and make it more professional and legalized.

## **References:**

- [1] Abu Zhaozai et al., Constitution [M]. Translated by Zhou Zongxian et al., Beijing: China University of Political Science and Law Press, 2006:43
- [2] Hu Jingguang, Han Dayuan, Constitution of China [M]. Beijing: Law Press, 2004:137
- [3] Lin Laifan, From constitution norms to standard constitution [M]. Beijing: Law Press, 2001
- [4] Xie Weiyan, On judicialization of constitution [J]. Journal of Southwest University for Nationalities (Social Science Edition), 2000(12)
- [5] Constitution [M], Zhou Yezhong, Higher Education Press, Peking University Press, 2000