

A Brief Analysis of the Post-Legislative Evaluation Mechanism and the Present Situation in China

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Abstract. Post-legislative assessment is an important institutional guarantee for China to develop and improve the legal system. In view of the fact that Chinese legislative work has changed from quantity to quality, the establishment of Chinese post-legislative evaluation system is conducive to the objective and scientific analysis of Chinese law, and provides practical experience for the revision and abolition of legal work, thus ultimately improving the quality of legislation in our country. At present, the systematic construction of the post-legislative evaluation system in China is lacking, the evaluation subject is single, the evaluation criteria are missing, and the identification of the facts is inconsistent with the subjective and objective judgment of value judgment. Therefore, China should establish a unified post-legislative evaluation system across the country, improve the linkage mechanism between post-legislative assessment and legal amendment, and achieve the unification of the purpose and result of post-legislative assessment.

Keywords: Post-legislative evaluation, Legislative quality, Situation analysis.

1. Introduction

Since the reform and opening up, in order to solve the chaotic situation caused by the lack of law, China has started the work of creating a large number of laws. The law of our country has experienced the process from nothing to existence, from rough to fine. On March 2011, China announced that it has achieved the goals and tasks of the legal system as scheduled. The legislative work in our country has changed from the quantitative central type to the quality central type, that is, from the emphasis on the wide range and the number of laws to the emphasis on the effectiveness of the law. Although the legislative practice centered on the number of legislations plays an important role in the construction of the rule of law in our country, the quality of legislation produced after the legislation has become increasingly prominent. Therefore, legislative evaluation is imperative. Through legislative evaluation, the quality of legislation can be effectively guaranteed and legislative decisions can be improved. At present, our country has not yet formed a sound legislative evaluation system, the evaluation subject is single, the evaluation object is non-importance, the evaluation criteria are missing, and the evaluation results are out of line with the legislative amendments. Therefore, our country must establish a set of effective post-legislative evaluation systems based on the Constitution and laws.

2. Theoretical basis for post-legislative evaluation

2.1 Definition of post-legislative assessment

Evaluation refers to the professional evaluation activities of a specific program and plan by the evaluation subject for certain purposes, following certain procedures, principles and standards, and using objective scientific methods. The first to use assessment methods is the field of economics. People judge their competitiveness by considering the input-output ratio and work efficiency of a company. In the 1970s, Western countries were affected by the bloated administrative agencies, and the performance appraisal movement was introduced into the field of public administration. As one of the means of public management, legislative work also vigorously promotes the evaluation work. As the name implies, post-legislative assessment is the application of the principles and methods of assessment in the legislative field.

The so-called post-legislative assessment refers to whether or not the legislator, law enforcer, relevant personnel and other assessment subjects, in accordance with certain constitutional and legal standards, have promulgated or implemented laws, administrative regulations, local regulations, and departmental regulations that are whether unconstitutional, effective, overall quality, whether ultra vires authority and so on the condition carries on the analysis and the appraisal. Through the post-legislative assessment, analyze the current status of the current legislation and existing problems, trying to explore the causes of these problems, as a basis for the revision and improvement of the law.

2.2 Reasons for the rise of post-legislative assessment

In the long history, every country will experience the process of legal system from initial establishment to gradual development and improvement. The work of the legislature of each country matches the tasks of the times that the country is currently facing. Generally speaking, in a period when the rule of law is relatively weak, the main task of the national legislature is to build a country's legal framework as quickly as possible, formulate basic legal norms, and provide basic legal sources for the whole society. When a country's basic legal system has been established and has been in operation for a period of time, some legal norms may have many contradictions with social practice. Therefore, reassessing this part of the law to provide a scientific basis for future revision and improvement of the law appears to be especially important. At present, Chinese legislative work is facing the problem of secondary legislation, which is to modify and improve the existing legal system.

"The function of the law is to regulate and reconcile the various complex and conflicting interests. The task or role of the legal or legal order is to recognize, determine, realize and protect the interests." The legislature strives to build a legal system that can solve as many problems as possible in social life and provide the people with predictable legal regulations. As Aristotle's discussion of the rule of law, "The rule of law should have two meanings: the law that has been enacted is universally obeyed, and the law that everyone obeys should itself be a well-established law." Law as a society norm, with universal binding and coercive power. Despite this, the law still has its own limitations. The legislative intent of the legislator is the rule of good law. However, the original intention of this legislation is difficult to achieve. The legislator's personal cognition level, life situation, work experience, and education level will directly affect his participation in legislative work. It is precisely because each legislator has a different understanding and view of social life that legal pluralism becomes possible. At the same time, the rapid changes in social life have also brought great difficulties to legislative work. Legislation is an extremely complex task that takes a lot of time. But with the development of time, many legislative drafts that have been formed may no longer meet the needs of social development. For example, with the rapid development of Internet technology companies, the original personal information protection laws and regulations must be adjusted accordingly. Therefore, the lag of the law is an unavoidable problem. And this lag, of course, will have adverse consequences for the operation of the law, and may even be incompatible with social development. The post-legislative evaluation is to test the effectiveness of the current legal norms, so that the law can overcome its inherent hysteresis characteristics and reduce the distance between the law and the society.

2.3 Subject of post-legislative assessment

Articles 17 and 18 of the State Council's "Promoting the implementation outline of Administration according to Law in an All-round way" in 2004 provided the basis for the establishment of the post-administrative legislation evaluation system in China. The introduction of this outline has responded vigorously to the current phenomenon of spurt legislation in China, and provided legal support for the realization of the scientific and effective legislation. In the post-legislative evaluation, the evaluation subject refers to both the legislator and the law enforcement person who have certain state functions, and the relevant people who are interested in the ordinary people. As lawmakers, legislators have participated in the process of research, text writing, discussion, revision, and review and approval throughout the formulation process. They have a deep understanding of existing laws and

are familiar with the legislative intent of legal provisions. Third-party evaluation agencies can stand on an objective and neutral standpoint to evaluate whether the original intent of legislation is consistent with judicial and law enforcement practices, and can effectively deal with the drawbacks of self-evaluation. Ordinary people are directly regulated by laws, and participating in legislative evaluation can enhance the effectiveness of evaluation.

2.4 Post-legislative assessment model

The post-legislative assessment can be divided into periodic assessments and irregular assessments according to the evaluation initiation time. The so-called regular evaluation refers to the legislative organ or the legislative evaluation organ stipulated by the law, after a certain law is implemented for a period of time, it evaluates the legal practice in this period. Some laws set a sunset clause when they are enacted, and it is necessary to complete the assessment work before the expiration of the sunset clause and make a judgment on whether to continue the law. The so-called irregular evaluation means that with the development of society, the legislative evaluation agency initiates the evaluation process for some legal norms that are obviously not suitable for social life, collects opinions from all parties in the society, and conducts a comprehensive test of the effectiveness of the law.

3. The current situation of Legislative Evaluation in China

Judging from the current practice of central and local legislative work in our country, which has always attached importance to the formulation of laws, and spent a lot of manpower and resources on how to formulate a good law, but the application of the law is of little concern. Legislation work ends when the law is passed, and there is a lack of follow-up research on the application of the law in the future. Although the organs of power at all levels are responsible for supervising the implementation of the law, they all combine this kind of supervision with the purpose of ensuring that "law enforcement must be strict and law is inevitable", rather than systematically considering the quality of the law. Since 2000, the Legal Committee of the Standing Committee of the Shandong Provincial People's Congress has begun to evaluate the local regulations in Shandong Province. Our country has set off a post-legislative assessment campaign. Despite this, our country's post-legislative evaluation work has just started, and a set of mature and perfect evaluation models has not yet been formed, and the models in different regions are not the same. There is a lack of a unified system at the national level.

3.1 Lack of systematic construction

At present, the practice of post-legislative evaluation conducted in various parts of our country lacks a unified evaluation standard in terms of evaluation subjects, evaluation criteria, and evaluation contents. The post-legislative evaluation is based on different legal levels, and some are based on policy documents. Some are based on departmental regulations (such as the "Post-assessment measures for regulations and normative documents of the Ministry of Land and Resources" issued by the Ministry of Land and Resources on July 26, 2010), at the constitutional and legal levels (such as the "Legislation Law", "Organic Law") There is a lack of corresponding regulations on the Constitution and laws. This has led to the post-legislative evaluation work in some areas, but some of them are post-legislation evaluations, which are carried out for the sake of development. The development of the relevant evaluation system does not take into account the long-term, but is established for the purpose of temporary achievements. The effect can be imagined. In addition, although the evaluation subject has been established in some places, it has not been clearly defined by the supervisory authority, which has led to a vague state of post-legislative supervision and control mechanism.

3.2 Evaluation subject single

Post-legislative assessments are closely related to the interests of all sectors of society. In the current post-legislative evaluation law practice in various parts of China, most of the evaluation bodies are the local people's congress standing committee legal committee or the government legislative affairs office. Although this provides valuable experience for future legislative work, such an internal evaluation behavior is difficult to achieve open and fair, and the assessment process is prone to intrinsic thinking, it is difficult to make a breakthrough. For example, in 2005, the Standing Committee of the Shanghai Municipal People's Congress decided that the post-legislative evaluation of the "Regulations on the Protection of Shanghai's Historical and Cultural Areas and Excellent Historical Buildings" was an assessment of the legislature; the Inner Mongolia Autonomous Region People's Congress Standing Committee's Legal Work Committee on the Inner Mongolia Autonomous Region Labor and Social Security Supervision The assessment of the Regulations belongs to the evaluation of the work organization of the Standing Committee; in 2008, the Shanghai Municipal People's Congress Standing Committee entrusted the Institute of Law of the Shanghai Academy of Social Sciences to conduct an evaluation, which belongs to commissioned evaluation .

Rousseau pointed out that "the legislative power belongs to the people and can only belong to the people. The sovereigns have no other power than the legislative power." Therefore, it is necessary to include the ordinary people in the evaluation subject. In practice, although some areas require civic participation, they often lie in form, lack response to the opinions of the masses, easily dampen the initiative of the masses, and lack the necessary punishment measures for violations of the will of the masses. For post-legislation assessments with clear interests, most of the places use the form of convening forums and hearings. However, it is not a clear question of how the specific convening procedures are carried out. Whether the convener is widely representative has become a major problem. Moreover, the nature of the symposium and hearing is not clear, and whether its opinions are ultimately reflected in the post-legislative evaluation report, there is a lack of supervision and punishment mechanism for the implementation subject. In addition, there is also doubt as to whether the interested person can be the subject of evaluation, that is, whether it can be objectively evaluated.

3.3 Lack of evaluation criteria

At present, most of our country's post-legislative evaluation adopts qualitative analysis method from a micro level to a specific law. This evaluation mode is easily influenced by subjective factors, lacks the objectivity and scientificity of evaluation, and is not considered in the national macro perspective. For example, in 2008, the Ministry of Finance's assessment of the National Agricultural Comprehensive Development Funds and Project Management Measures mainly included whether there were conflicts with other laws and regulations; the economic and social benefits achieved; and whether the established systems and concrete measures were Appropriate; whether it can be applied equally to all types of executives, etc. In 2010, Harbin City's post-legislation evaluation of the "Harbin City Liquor Monopoly Management Measures" focused on the implementation effect and existing problems of this method, as well as the problems existing in the legislative technology. Zhengzhou City's post-legislative assessment of the "Measures for the Administration of Parking Lots in Zhengzhou City" in 2010 focused on the rationality and appropriateness of the rights, obligations and legal responsibilities established; Feasibility and maneuverability of the established main system or prescribed management measures. It can be seen that the post-legislative assessments of various regions and departments have different focuses, or focus on the problems of the assessment objects in the legislation itself, or focus on the problems existing in the implementation process, or the right to establish the assessment of the reasonableness of the obligation.

The classification of standards is also not uniform in academic circles. Some scholars believe that post-legislative evaluation indicators include: Criterion of purpose, criterion of legality, criterion of technicality. The criterion of purpose is to examine whether the purpose of the legislation is scientific and reasonable, and whether it can achieve the legislative purpose in the process of implementing the regulations; the criterion of legality is used to examine whether the entities and procedures of the

legislation comply with the provisions of the law; the criterion of technicality mainly examines the completeness, coordination and maneuverability of laws and regulations from the point of view of narrow legislative techniques. It must be pointed out that the key to whether a law can be consciously obeyed by the people lies in whether the law is formulated in line with people's expectations and whether it is consistent with the realistic social concept. From the perspective of the overall legal system, we should take legislative technology, legislative language and legislative idea as the evaluation criteria to examine the self-perfection of legal norms. Also pay attention to examine whether the provisions for the general public to understand and use.

Since ancient times, people have been relentlessly pursuing good laws. However, there are many more or less problems in the laws created in the law-making movement in China. At present, our country urgently needs to improve the quality of legislation as much as possible, and post-legislative evaluation is an important means to improve the quality of legislation. From a global perspective, the post-legislative evaluation theory is relatively complete and has a wealth of application practices. However, in China, it is a newly emerging system. The domestic research on it is still not very deep. Although some localities have carried out certain practices, they are not very deep-going. Therefore, our country needs to further explore the post-legislative evaluation system, further summarize the current practical experience in various parts of our country, and prepare for the establishment of a post-legislative evaluation system nationwide.

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