

## Discussion on Constitution Supervision of Chinese Local People's Congress: The Way out of the Nominal Constitution Supervision in China

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### Abstract

Due to the vague rules of Chinese constitution on constitution supervision of Chinese local people's congress, there is an argument in the academic world on whether local people's congress has the constitution supervision power. To figure out whether Chinese local people's congress has the constitution supervision power, we cannot just read the text of the Chinese Constitution. We need to make comprehensive analysis on the relationship between the power of central and local governments, the purpose of constitution draft, and the objective reality so that to form a well structured realistic basis for the operation of constitution supervision system. Of course, the constitution supervision power cannot be obtained by every local people's congress. The constitution supervision power of local people's congress is not the final say and it is different from the constitution supervision power of the national people's congress and its standing committee.

**Key words:** Chinese local people's congress; Constitution supervision; Constitution supervision power

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Constitution supervision is one of the most important achievements during the modern constitution practice and development. It is a constitutional institution aiming at protecting the carry out and implementation

of constitution by using certain methods to examine legislations of the legislative body and whether the conducts of related organs, organizations, or civil servants follow the regulations of constitution. Besides, constitution supervision has the power to deal with and punish conducts that go against constitution. Constitution supervision is not only a way of practicing constitution, but also a significant system for protecting the operation of constitution. Effective constitution supervision can directly practice constitution and also could provide guarantee for valid abidance of constitution and other constitution practicing methods. Constitution supervision comes out with the start of constitution and practice of constitution. It is the most fundamental supervision system of modern country supervision system. Constitution supervision is the start point of constitutionalism. Constitution has no practical legal effect without constitution supervision and taking about constitution will make no sense. From the understanding about constitution supervision of different constitution scholars, it is very easy for us to see the significance of constitution supervision to constitution abidance and practice. Although constitution supervision is a comprehensive supervision system, this paper considers the main subject of constitution supervision is the premise of setting up and investigating constitution supervision system. The first constitution of the People's Republic of China clearly stipulates the main subject of constitution supervision and the current Constitution has further enriched and completed this stipulation.

According to Article 62 and Article 67 of Chinese constitution, the national people's congress and the Standing Committee of the National People's Congress are the main subjects of constitution supervision which is specific. Article 99 of Chinese constitution provides that **Local people's congresses at different levels ensure the observance and implementation of the Constitution, the statutes and the administrative rules and regulations in their respective administrative areas.**

Due to the ambiguity of this regulation, in the theoretical field, there are different understandings about the subject of Chinese constitution supervision. One of them thinks that the supervision subject specified by the constitution should be and only be the national people's congress. Any other organs or organizations which are dependent from the national people's congress and its standing committee do not have the power of constitutional review. Another point of view thinks that the subject of Chinese constitution supervision cannot only be the national people's congress and its standing committee. It should contain various local people's congress. Because the Constitution clearly states that local people's congresses at different levels ensure the observance and implementation of the Constitution which means the Constitution gives the constitutional review power to local people's congress. No matter there is any practice or movement in real life, we can get it clearly from theory that this arrangement creates convenience for people to report and accuse cases violating of the Constitution, could overcome various difficulties brought by the condition that constitutional review power is held too much by the supreme supervision organ, and also is useful for releasing the responsibilities of the national people's congress and its standing committee. There is also a view thinks that although local people's congresses do not have the constitution supervision power, the Constitution authorizes them help the national people's congress and its standing committee carry out the supervision of the Constitution. The bone of various contentions and arguments is whether local people's congresses have the constitution supervision power. This paper thinks we should to answer this question by investigating the following three aspects.

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## 1. THE RELATION BETWEEN THE POWER OF THE CHINESE CENTRAL GOVERNMENT AND LOCAL GOVERNMENTS

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The Constitution of China provides that all state power belongs to its people. The organs which are responsible for carrying out people's power are the national people's congress and its standing committee. The national people's congress is the highest organ of the state power and its standing organ is the national people's congress standing committee. The national people's congress and its standing committee have the legislation power. All administrative, judicial and procuratorial organs of the state are created by the people's congresses to which they are responsible and by which they are supervised. This regulation is similar with the principle of parliament supremacy in most western countries. Although there is no express term in the Constitution, from the principles of popular sovereignty and representative democracy the principle of limited authority can be inevitably obtained

from which the principle of power separation can also be deduced. The relationship between the central government and the local governments is actually the relationship of power divisions. It is in fact how to realize reasonable distribution of the state power between the central government and local governments and so that they could function effectively in their extent of jurisdictions separately. Chinese Constitution stipulates in this aspect that the division between the power of the central and local governments follows the unified leadership of the Party and give full play to local governments' initiative and enthusiasm. This principle admits or strengthens the necessity of the centralized and unified leadership of the Party and at the same time admits the specific characteristics and relative independence of the local governments. The two parties are unity of opposites. The centralized and unified leadership of the Party is the need for maintaining national unity and the full play of local governments' initiative and enthusiasm is the guarantee for effective implementation of central governments' policies and regulations. It is not reasonable to use one aspect to deny the other.

In order to realize and guarantee the centralized and unified leadership of the Party, Chinese Constitution adopts the fundamental discipline in power division that everything concerning about the state sovereignty independence and unity and affairs that require nationwide accordance all fall into the scope of the central government's power region which should be carried out by central state organs on behalf of the nation. The legislative power and the decision making power on important nationwide affairs are conducted by the national people's congress. The state council has the highest administrative power of the state; the Supreme People's Court has the highest judicial authority of the state; the Supreme People's Procuratorate has the highest legal supervision power, etc.. In addition, the Constitution has also stipulates a series of fundamental principles to guarantee the centralized leadership of the Party, for example the four cardinal principles, the principle of national equality national unity, Committed to an independent foreign policy of peace and the Five Principles of Peaceful Coexistence, and the one nation, two systems policy and so on. The first chairman of the People's Republic of China Mao Zedong pointed out in his article *Ten Major Relationships* that "The relationship between the central and local is a contradiction. To resolve the contradiction, it should be noted at the current situation that we should expand local governments' power when strengthening the centralized leadership of the Party. Give more independence to local and let them do more which is more beneficial for constructing our powerful socialist country. Our country has such a large territory with an enormous population in complexity, it is much better to have both the central and the local enthusiasm than just have one of them." In order to make full use

of local governments' activity and enthusiasm, Chinese Constitution has allocated different local governments to arrange their own practical situations to carry out laws of the country and regulations of the central government. Every local government has power to decide important local issues and manage local politics, economics, culture, and social affairs within the scope of the Constitution and Law. In addition, provinces, autonomous regions, Direct-controlled municipalities, cities of the provinces and autonomous regions, and the relatively large cities ratified by the State Council have the power to formulate local regulations according to local situation to specified national laws and central policies and thus make them carried out better. On the grounds of Constitution and Law, local people's congresses as the local power organs execute local power. It can also organize other state organs to carry out local affair management power. Other local organs are responsible for local people's congresses and get supervised by it. As the highest standard of a nation, the Constitution of course deserves great maintenance and guarantee of the local people's congresses which has made the constitution supervision the most important aspect of local people's congress in executing their power.

## 2. THE PURPOSES OF CONSTITUTION DRAFTING

The "All state power belongs to the people" principle is built up on the "popular sovereignty" political theory which can also be said another expression of the theory. It is one of the fundamental principles of Chinese Constitution. The direct reflection of this principle in China is the system of people's congress. The people's congress's system follows the principle that all state power belongs to the people; the people's congress acts as the main body and as the core of the state organs system to protect people in realizing their rights of the state. The people perform states' power via national people's congress and different levels of local people's congress. They elect directly or indirectly the representatives for them to perform their state rights. Of course, instead of performing the national power on their own, the people's representatives realize the power by organizing national people's congress and local people's congress. They can only exercise state power practically by state organ the only means. According to Chinese Constitution, people as the subject of state power exercise their power through the national people's congress and local people's congress which means people elect directly or indirectly the representatives to perform state power. In accordance with the regulation, the state power exercised by the people via state organs has been divided into two parts. One part is directly exercised by the people's congress which is shown as the function and power authorized by the

Constitution and laws; the other part is exercised by other organs which are authorized by the Constitution. Because every people's congress's power has decisive meaning in national political life, affairs concerning the fact that all powers belong to the people require people who own the national power to make their decision directly by drafting, amending, or abolishing laws and regulations or decision making in important affairs. Power that allocated for other organs is used for dealing with affairs carried out by the people's willingness. Organs that appointed for carrying out the people's willingness in China are: administrative organs, judicial organs, procuratorial organs and military organs. Apparently from the view of setting up these organs, they were built by the people's congress at the same level, that is to say, election, appointment, and deposition. Power owned by these organs derive from the appointment of the people by the Constitution, therefore, when carrying out their power, they are responsible for the authority at the same level and report their work. They are also supervised by the authority organ to guarantee the state authorities have direct influence and regulatory ability and also make sure those organs do not go against the willingness and benefit of the people. From the Constitution, the Legislative law, and the Organic Law of the Local People's Congresses and Local People's Governments of the People's Republic of China we can see that local people's congresses at various levels are local organs of state power which represent their own regional people's willingness and interests and in charge of execute the most important and most fundamental power of the region. Other organs must be organized by the people's congress at the same level and be supervised by the same level people's congress. Local people's congress makes decisions and resolutions to related departments' affairs locally and other organs have to execute. Based on the position of the local people's congress in local power system, Chinese Constitution stipulates Local people's congresses at various levels in the administrative area, guarantee of the constitution's legal administrative regulations comply with and execution. Local people's congresses at various levels within their respective administrative areas guarantee the compliance and execution of the Constitution, laws and administrative regulations. The Constitution is not only the concentrated reflection of the whole nation's people and also the local people's willingness. To guarantee the compliance and execution of the Constitution is the inevitable responsibilities of local people's congress. However, whether the Constitution could be carried out and observe locally bases on the fact that local people's has the constitution supervision power. As long as the Constitution clearly states that local people's congresses have the ability to guarantee the execution of the Constitution, it means that the Constitution admits the local people's congress's constitution supervision power.

### 3. REALITY AND PRACTICAL NEEDS OF CHINA

Owing to the fact that China has an enormous population, covers a vast geographic area and has many differences in regional economic and customs, the best choice for dealing with local affairs is to adopt the method that unified leadership combines with localization.

As for the local people's congress, no matter which level it belongs to, it is just the representative for local people's benefit and the only master of it is local people's willingness. Local people's congress should take full responsibilities for their local people. From the theoretical prospect, the local representative organ of a region knows the best of its local people's willingness and requests. The movement of the representative organ, the conduct of power, and important decision about certain affairs has close connection with its local people, and also has direct relation between them. The representative's own interest has been included in the interest of local people. Therefore, in order to realize the representative's interest, we must realize the interest of local people. From the above we can conclude that only local representatives that elected by its local people care and understand the most of its people's interest. They have the voice in decision making for local and regional affairs and issues. With the result that the local representative organ organized by its regional people is the best one to decide its regional affairs, make their decisions the most accurate and practical, and express in the largest extent the willingness of local people. The Constitution reflects the highest willingness of people. Local people's congress has the constitution supervision power can guarantee its local people's interest realize. Every level of local people's congress just complies with the people's willingness and interest living in its region and only deals with affairs concerning about its local region, on the other hand, only affairs that have direct relationship with its regional people's interest which does not mean the existence and activities are absolutely isolated. The people's interest of a certain region is partial interest in a larger scope which has to bow to the overall interests and general interests represented by the higher level representative organs. The overall and general interests represented by the higher level representative organs include the partial and local interests represented by lower level people's congress. The compliance of the lower people's congress is good for realizing their interest and benefit or to say to provide basic guarantee for the realization of partial interest. As a result, the longitudinal configuration of constitution

supervision could provide better performance of the Constitution's functions. It is not sufficient enough for the national people's congress to execute constitutional supervision. Because the focus of the national people's congress and its standing committee is national affairs, they might pay less attention to the Constitution execution locally which could be found in the current situation of Chinese constitution supervision. To explicitly authorize local organs of state power have the right to execute constitution supervision within it administrative region cannot only reduce the pressure of national constitution supervision organs and also adapt the timeliness of unconstitutional affairs.

In general, local people's congress should have the constitutional supervision power. It is because it is more useful for establishing the authority of the Constitution; it is helpful for strengthening local governments' and people's constitutional consciousness closely; and is also very conducive for dealing and preventing violations of the Constitution. However, local people's congress's constitution supervision power is different from the one of the national people's congress. And according to reality and feasibility, it is more appropriate for provincial level people's congress and its standing committee to hold the constitution supervision power. At the mean while, we should specify detailed content, scope, and effects and other aspects of local people's congress constitution supervision power by comparing with the power of the national people's congress.

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