

The Improvement of Enterprises' Environmental Responsibility Based on A Comparison Between Chinese and Japanese Legislation

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Abstract. As a country whose environmental protection legislation develops relatively late, environmental problems have occurred frequently in recent years, especially those related to enterprises' environmental protection responsibilities. Through the comparison of environmental legislation and the legislative differences on corporate environmental responsibility between China and Japan, this paper aims at figuring out what deficiencies exist in Chinese environmental legislation. Some suggestions on China's future environmental protection legislation concerning the advantages of Japanese environmental legislation will be given.

Keywords: Environmental protection legislation, Environmental protection responsibility of enterprise, Japan, China.

1. Introduction

In the period of economic revival after World War II, Japan's rapid economic growth brought great damage to the environment, which prompted the formulation of Japan's initial environmental protection law (for example, the Regulations on the Prevention of Public Hazards in Workshops formulated in 1949 and the Regulations on the Prevention of Public Hazards in Enterprise Sites formulated in 1951). It indicates that in the initial environmental legislation, Japan has already taken the environmental responsibility of enterprises into account. In the 1960s, the "four major public hazards" that caused a sensation all over the world occurred in Japan. Thus, Japan strengthens its environmental policy. The Basic Law for Environmental Pollution Control, legislated in 1967, was among the first "basic laws" in Japan, stating basic policy frameworks such as the role of different actors [1]. At present, Japan has strict and modern environmental legislation and infrastructure in the field of the environment [2]. The difference between corporate environmental responsibility and environmental legislation is mainly determined by the speed and degree of industrial development in various countries. China's industrial development started relatively late. After the founding of the People's Republic of China, China focused on the development of agriculture and start to develop industry in the late 1950s. Due to certain damage to natural resources, fragmented environmental legislation was established, such as the Interim Regulations on Mining in 1951 and the Measures for Land Acquisition for National Construction in 1953.

On 24th June 2014, a written decision of administrative penalty was given to Rixing (Zhong Shan) Electric Appliance Co., Ltd. Rixing electric (Zhongshan) Co., Ltd., established on 31st December 1993, is a solely Japan-owned enterprise but was located in Guangdong province, China. The business scope includes the production and operation of various special electrical parts. According to Article 44 of the Measures for the Environmental Management of New Chemical Substances, China's environmental protection law and regulation, if the production or import of new chemical substances in the previous year is not reported as required, the Department of Environment and Conservation shall order it to amend and is liable on conviction to a fine under 10,000 RMB. After investigation and verification, Rixing electric appliance (Zhongshan) Co., Ltd. failed to report the actual production or import of new chemical substances approved for registration in 2012, so it was required to correct it as soon as possible and fined 10,000 RMB (Administrative Punishment Decision [3]. The pollution haven hypothesis states that the production of pollution-intensive products will move from countries

with higher environmental standards to countries with lower standards [4]. As a developing country that attaches great importance to environmental protection, Japanese multinational corporations in China were still be fined for violating environmental responsibility protection regulations.

So, the article will focus on comparing the differences of regulations of the environmental responsibility of corporations in Japan and China and analyzing the shortcomings of Chinese environmental protection law. At the end of the article, suggestions on how to improve the environmental law of China will be given.

Table. 1 Current legislation in Japan and China regarding to enterprises' environmental responsibilities

Content Name of law	Date of issue	Number of articles	Attributes of clauses	Legal responsibilities	Intensity of punishment
The Environmental Protection Law of the People's Republic of China	26 th Dec 1989	Article 6 Article 8 Article 25 Article 27 Article 31	Directional legislation	Article 35-40	Not specific- Punishments are mainly fine with no specific account along with restraining order or disciplinary sanction or compulsory execution
Environmental Basic Law of Japan	19 th Nov 1993	Article 8	Practical legislation	Not mentioned	-
Law of the People's Republic of China on Prevention and Control of Water Pollution	11 th May 1984	Article 11 Article 20-24 Article 32 Article 40 Article 45	Directional legislation	Article 93-95	Not strict- Punishments are mainly fine along with instruction to rectify or restraining order.
Water Pollution Control Act of Japan	25 th Dec 1970	Article 1 Article 5 -section 9 Article 11 - section 2 Article 12 (2)- (4) Article 13 (1)- (3) Article 14(4)	Practical legislation Directional legislation	Article 19 Article 20 Article 30-35	strict- he punishments are strict which include both criminal penalty and fine. Especially for article 34, which regulates that both the corporation and individual should be punished.
Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution	5 th Sep 1987	Article 7 Article 18-20 Article 24 Article	Directional legislation	Article 108 Article 109 Article 111 Article 117 Article 122 Article 123	The subject of punishment is clear. The punishments are mainly fine along with punishments under other departmental laws.

		37 Article 43-48 Article 52 Article 55 Article 58 Article 60 Article 79 Article 80			
Air pollution prevention and control law of Japan	10 th June 1968	Article 1 Article 17(2) Article 17(14) Article 18(33) Article 18(37)	Directional legislation	Article 25 Article 25(2) Article 33-37	strict- he punishments are strict which include both criminal penalty and fine. Especially for article 36, which regulates that both the corporation and individual should be punished.

2. Comparison between different regulations

The above chart indicates that there are big differences in environmental legislation in China and Japan. And the differences are mainly reflected in the legislative system, the adjustment way of enterprise environmental legal responsibility, and the intensity of punishment after the violation.

2.1. Legislative purposes and the legislative system

The purpose and spirit of legislation are the important parts of the law. In Article 1 of the Water Pollution Control Act, it is stated that the purpose of the Act is “provisions shall be made on the liability of enterprises for damages caused to human health when sewage and waste liquid are discharged from factories and business places, so as to protect the interests of victims.” In Article 1 of the Air Pollution Prevention and Control Law of Japan “In the case of human health damage caused by air pollution, the enterprise’s liability for damages shall be recognized to protect the interests of the victims.” At the beginning of the law, it directly points out that one of the purposes of this law is to regulate the liability for damages of enterprises. Additionally, the environmental protection efforts of enterprises are included in criteria in stock market valuation, which to some extent encourage firms to promote environmental conservation activities. All of these shows that Japan attaches great importance to the environmental protection responsibility of enterprises [6].

It is written in Article 3 of Law of the People’s Republic of China on prevention and Control of Water pollution that “The prevention and control of water pollution should adhere to the principles of prevention first, the combination of prevention and control and comprehensive treatment, give priority to the protection of drinking water sources, strictly control industrial pollution, urban domestic pollution and prevent and control agricultural pollution Non-point source pollution, actively promote the construction of ecological treatment projects, and prevent, control and reduce water environmental pollution and ecological damage.” It is emphasized that the purpose of this law is to prevent water pollution. However, the regulation of corporate responsibility on environmental

protection is not mentioned. It shows that Chinese legislators had relatively weak awareness on this part.

Besides the differences in the spirit of environmental protection law in Japan and China, there are also differences in the environmental protection legislative system between China and Japan. At present, there are 12 environmental protection laws in Japan and the basic environmental law is the leading guide of them. Although from the legal form perspective, it is the same as the general law and it is not the superior law of other laws, it is essentially superior to other laws in the field it covers, and other environment-related laws are guided by it [7]. In Japan, the central government always cooperates closely with local governments to jointly manage the environment and regulate corporate environmental responsibility. Most of the regulatory administration is carried out by local governments. Local governments can establish regulations that are more stringent than national regulations [1]. This mode of central-local cooperation is more conducive to the implementation of laws and regulations.

In China, environmental law is regarded as an independent legal department, basically relied on the Constitution for the protection and improvement of the environment. The Environmental Protection Law of the People's Republic of China is the core of all the environmental protection laws and legislation. However, the problem is that its status as a departmental law is too low. As a departmental law, compared with other departmental laws, such as civil and commercial law, criminal law and procedural law, the status of environmental law is too low. Although the environmental protection law is the basic law of the environmental law system, it has not been upgraded to the basic law of the country, which to some extent shows that the state has not paid high attention to environmental legislation [8].

2.2. Adjustment methods and litigation

There are differences in adjustment methods. Japan regulates the illegal acts of enterprises, individuals, and regulators with the combination of administrative law, criminal law, and civil law. However, in China, it mainly focuses on regulating the illegal subjects (enterprises or individuals) with the adjustment of administrative law. The concept of environmental crime is emphasized in Japan's environmental legislation. For example, Article 30 to 33 in Japan's Water Pollution Control Law refers to the penalties that will be imposed after violating relevant laws and regulations. Criminal environmental law in China's environmental legislation is not mentioned. Even if it is mentioned, the punishment is very light, and the deterrence is poor [9].

China has not yet established an environmental public interest litigation system. According to the current environmental protection law and relevant laws, only when the citizens' rights are damaged can they bring a lawsuit against environmental destroyers and claim compensation. If the enterprise discharges pollutants illegally or destroys the ecological environment, the public can only report and complain to the relevant departments, instead of bringing the case directly to the court [8]. On November 13, 2005, an explosion at a petrochemical plant in China's northeastern Jilin Province resulted in the release of 100 tons of toxins into the Songhua River. In the immediate aftermath of the explosion on November 13, factory officials denied that pollutants had entered the Songhua as a result [10]. After this shocking event, the joint prosecution of 20 enterprises in Harbin, the environmental public interest litigation filed by three professors and three graduate students of Peking University, and the litigation filed by some Harbin residents in their name were rejected by the court. This pollution accident not only shows that China has single claim responsibility for environmental laws but also reflects that China's current environmental law is not strict enough for enterprises and environmental supervision.

In Article 5 of Japan's Administrative Case Procedure Law, Japan divides administrative litigation into appeal litigation, Party litigation, public litigation, and organ litigation. According to this article, the public litigation is not limited to the relief of the plaintiff's rights and interests but includes the litigation requesting to correct the acts of state organs or public organizations that do not comply with the law. Public litigation has the nature of objective litigation and can be regarded as a form of

administrative public interest litigation [11]. Although the traditional theory of Japanese law does not agree that individual citizens can file administrative litigation for the damage they suffered in public hazard events, with the deterioration of public welfare infringement, Japan has gradually broadened the plaintiff qualification. In practice, it has emerged as a plaintiff to bring a cancellation action against the administrative licensing act for damage to environmental interests.

2.3. The attribute and intensity of legal responsibility and punishment

Environmental protection problems have complex attributes, and the legal attribute of regulating environmental protection responsibility is not single. Therefore, we should explore the integrity of a country's environmental protection legislative system from the perspective of interdisciplinary law.

In Japan's environmental legislation, Japan has very clear punishment provisions for enterprises that violate relevant environmental laws and regulations. The procedure is clear in terms of disputes, damage compensation and expenses. For example, the Water Pollution Control Act of Japan clearly stipulates different penalties for violation of different provisions of this law. The punishments for polluters are relatively strict, and also involve criminal law, for instance "to be sentenced to fixed-term imprisonment of not more than one year or a fine of not more than 1000,000 yen", "to be sentenced to fixed-term imprisonment of not more than six months or a fine of not more than 500,000 yen", "to be sentenced to fixed-term imprisonment of not more than three months or a fine of not more than 300,000 yen". In Japan, the punishment provisions for environmental crimes can be found in Criminal Law, Public Nuisance Crime Act, and Provisions on Environmental Administrative Penalties [12]. Meanwhile, Japan has its unique adjustment method, called the double punishment standard. not only legal persons but also individuals would be punished if a breach of law happens. For example, Article 34 of the Water Pollution Control Act of Japan stipulates that "when the legal representative, legal person or individual agent, employer and other employees violate the above four articles on the business of the legal person or individual, in addition to punishing the perpetrator, the legal person or individual will also be fined in the corresponding articles." This double punishment standard has a great deterrent to enterprises and can make enterprises better aware of their environmental protection responsibilities.

Although China also has penal provisions on environmental infringement in the Criminal Code, its role may not meet the standards as expected. At present, China's environmental problems are becoming more and more serious, but the function of criminal law does not perform well. Take air pollution as an example, China has suffered serious air pollution for a long time, which has seriously infringed on the human right of living in a clean atmospheric environment. However, the scope of punishment for air pollution crimes in the Criminal Law is not clear, so that corresponding measures cannot be taken for serious pollution of the atmospheric environment [12]. At the same time, China's environmental punishment is relatively light. For instance, in Article 93 of Law of the People's Republic of China on Prevention and Control of Water Pollution: "After the occurrence of a water pollution accident, if an enterprise or institution fails to start the emergency plan for a water pollution accident in time and takes relevant emergency measures which lead to the serious result, it shall be fined no less than 20000 yuan but no more than 100000 yuan." However, if the emergency plan fails to carry out, it would not only cause large damage to the citizens but may also bring extra difficulties and money to the later govern. Therefore, the punishment is relatively too loose. Compared with developed countries, China's compensation standard for environmental damage is also relatively low. The punishment standard for water pollution does not exceed one million generally, and there is almost no specific criminal legislation on water pollution prevention and control which results in the indifference of multinational enterprises on environmental protection of the host country- China [13].

3. Suggestions on how to improve the Chinese environmental legal systems

China's environmental law also has unique and innovative legal norms that are suitable for its national condition. For example, the "three simultaneous" system came into being in the 1970s. It

was elaborated in term 1 of Article 26 in Environmental Protection Law of the People's Republic of China that: installations for the prevention of pollution in a construction project must be designed, constructed and put into operation at the same time as the main part of the project.

Theoretically, the stipulation, it is strictly followed and exercised, will largely mitigate the excessive emission of pollutants [14]. But in effect, in light of the current environmental problems in China, there are still lots of legal gaps in environmental legislation left with a great possibility of improvement.

Legislation on environmental protection in Japan has an earlier, more comprehensive and mature development than in China. In Japan, it put particular emphasis on the enterprise's duty to protect the environment in legislation.

3.1 Transformation of the viewpoint of legislation

In September 2015, SDGs (sustainable development goals) were set out by the United Nations to build a sustainable world. It needs joint efforts from international cooperation, domestic support to operate, and participation of all kinds of bodies such as civil society groups, private companies, and experts [15]. Among these joint efforts, the most vital element lies in how to contribute and use the capital and technology possessed by enterprises to solve social problems. As a result, worldwide attention has been drawn to enterprises' duty on environmental protection. Although enterprises' environmental protection responsibility has already been included in current legislation in China, most of them are directional legislation with no specific punishments after breaching the law. More practical terms in environmental protection law should be added and the voices of social organizations and enterprises should be considered by the legislator. Currently, the Environmental Protection Law of the People's Republic of China falls behind the economic development and the need for environmental protection so that it has not been put into effect well as a guide for legislating on relevant specific law [16]. In conclusion, the Environmental Protection Law of the People's Republic of China is supposed to be entitled to what should be placed as a basic law. Meanwhile, it will be better to focus more on the collaboration between different departments when applying the environmental law.

3.2 Transform the Chinese current environmental legislation mode

It's urgent to improve China's current environmental public interest litigation system and support legally qualified environmental public interest organizations to file environmental public interest litigation against multinational corporations that damage the environment [13]. Expand the eligibility scope of the plaintiff. As a common resource, the environment is enjoyed and protected by all citizens. Once environmental pollution occurs, all citizens' rights related to health, property and enjoying a good environment will inevitably be infringed or threatened. If the victim is unable to file a lawsuit, the enterprise is likely to evade legal sanctions according to the principle in Chinese that "no suit if not bring". Moreover, due to the particularity of environmental infringement, environmental infringement is often indirect infringement. According to the traditional infringement theory, it is simply unable to protect the environment. Therefore, it is urgent to reconstruct the tort theory and expand the scope of the plaintiff, including the general public, social organizations and state organs [17].

Increasing environmental penalties and increasing the number of fines is also issues that Chinese legislator should consider. At present, although Chinese legislators have consciously added penalties related to environmental protection to the criminal law, as mentioned above, the effect is not very obvious. Legislators can refer to the penalties related to environmental protection in developed countries and introduce those suitable for China's national conditions into environmental penalties. The increase of environmental penalties may to a certain extent have a deterrent effect on some enterprises. At the same time, more explicit and strict provisions on corporate environmental protection responsibility should be included in the environmental law.

4. Conclusion

Through the study of China and Japan's environmental protection legislation, this paper explores that Japan pays more attention to the provisions of enterprises' environmental protection responsibility and set relatively severe punishment measures. By introducing criminal law, and double punishment system into environmental protection-related law, Japan has achieved the deterrence of environmental legislation and made enterprises consciously bear the responsibility of environmental protection. At the same time, Japan did a good job in public interest litigation. However, as a country that relatively late-developing of environmental legislation, it can't be denied that China has made great improvements in environmental legislation in recent years, but there are still many problems related to enterprise's environmental responsibility, legislative ideas, legislative system, legal adjustment methods, public interest litigation and punishment. It is hoped that China can learn from Japan and other developed countries in future environmental legislation in order to further improve environmental legislation.

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