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The Chinese Characteristics of the Constitutional Review System: Looking Back, Examining and Forward-looking

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Abstract: Constitutional censorship as establishing the constitutional authority, supervise the constitution of the important system, in China has actually after decades of experience and development of evolution, and in the mechanism design, practical operation embodies the strong Chinese characteristics, for the world's constitutional censorship provides the Chinese wisdom and China. Taking time as the clue, this paper introduces the origin and current situation of China's constitutional review system, and tries to provide the improvement and development ideas of the constitutionality review system in China.

Keywords: Constitutional Review Mechanism; Constitution Implementation; Constitutional and Legal Commission; Chinese Characteristic System; National Governance.

1. Introduction

The report presented at the 19th CPC National Congress stated the importance of strengthening the implementation and oversight of the Constitution, promoting constitutional review, and safeguarding the authority of the Constitution [1]. This is the first time the constitutionality review concept in the party's report, reflect the party central committee of the constitutionality review and attention, to establish and improve the constitutionality censorship with Chinese characteristics provides the outline drawing led type of political guarantee, it also quickly inspired scholars to explore and thinking about the constitution of the supervision system of enthusiasm and confidence, research results in this area proliferated. The 20th National Congress of the CPC reiterated the significance of enhancing the implementation of the Constitution [2]. In order to implement the spirit of the Party's 20th Congress on improving and strengthening the filing and review system, the first Session of the 14th National People's Congress held on March 13,2023 adopted the Decision on Amending the Legislation Law of the People's Republic of China, which clarified the requirements for establishing and improving the linkage mechanism for filing and review. Since 2017, China's constitutionality review system has entered the "fast track" of development, and the research on the constitutionality review system with Chinese characteristics has also reached unprecedented prosperity, the "constitutional review era" in China has come [3].

As a forward-looking top-level design of promoting the rule of accordance by the Constitution, the constitutional review system carries the lofty historical mission of guaranteeing and supervising the implementation of the Constitution, and its importance is self-evident. How to make the constitutionality review the predecessor as western imported system can safely in the vast Chinese constitutional soil seeding, run, how to build the system of design as far as possible system complete, smooth cohesion, sound function, how to balance the rights and responsibility between the subjects test the legislators of legal wisdom. Therefore, this paper extracts and summarizes the Chinese characteristics contained in the constitutionality review of China, which not only reveals the painstaking attainments of the legislators, but also expects to have a meager benefit to the future system construction.

2. Origin: The Constitutional Review System and the Boundaries between the Related Categories

In order to study the constitutional review system in China deeply, we have to trace its original source back. Although different countries have different names and contents for the system of "constitutional review", their origin is that different legal countries have similar exploration experiences in the language of "constitutionality review". In British and American law countries, the exploration of constitutionality review (mostly known as "unconstitutional review") was first reflected in the case of Marbury v. Madison in 1803, and the basis and premise of the establishment of the review of the law; in the continental law system, Germany was the example, its main meaning was to examine whether the law and other norms contradict the Constitution, to ensure that the law is consistent with the constitution, and to eliminate any normative documents that contradict the Constitution[4]. Germany and the United States, although the national conditions, law system, the constitutionality review historical background is different, but they have quite different meaning -- all show to safeguard basic human rights, restrict the competent authority of equitable judicial art and system design, embodies the similar constitutional concept and constitutional task, means is different, the purpose is the same, the result is similar[5] .There is no doubt that the purpose of establishing the unconstitutional censorship system in Germany and the United States is something that we should accept and must accept. If we don't from the perspective of safeguard rights, restrict power, cannot really build a constitutionality censorship system with Chinese characteristics, it is difficult to truly implement constitutionality review mechanism, and achieve its due effect, it is difficult to smooth through the constitutional

system of "Chinese" throes and adaptation period, to achieve the goal of "soft landing". After all, from the common human nature basis, the design of the power system also shows the common nature that makes people foresee.

As the concept of "constitutionality review" was put forward for the first time in China's official documents, it sets the tone and guides the direction for China's research on whether the legal review objects conform to the Constitution. However, before that, in addition to the constitutional review, there are many definitions of overlapping terms are repeatedly mentioned by the academic community, "almost reached a state of high multidisproportionality" [6]. In the complicated Chinese vocabulary, why is the constitutionality review finally established as the directional concept of constitutional research in China? What is its superiority in terms and its higher adaptability to China's judicial practice? These questions should be based on a comparative analysis of other terms. "Constitutional supervision" first occupied the mainstream of language in China, and became a popular word in constitutional research for a period of time. However, soon, with the influence of neighboring countries and regions, the constitutional supervision was gradually abandoned by the academic circle due to its unclear meaning and vague meaning, followed by the rise of "unconstitutional examination". In fact, the review of unconstitution is two sides of the constitutionality review. The meaning of "unconstitution" implies the advance assumption of the unconstitution of the review object, which is suspected of preconceived and negative nature, and does not meet the requirements of the review object before the review. Later, the "constitutional review" was soon respected in the theoretical circle due to its "clever language strategy", and was officially favored due to its established, moderate and easily accepted tendency, which was finally confirmed in political documents. As a major constitutional theory and practice and system innovation, constitutionality censorship has a strong political, theoretical, scientific, so must distinguish it from other concepts, firmly grasp the concept of "constitutionality review" discourse power, make the socialist rule of law with Chinese characteristics theory guidance, lead the key role of constitutionality review in China [6].

3. Looking Back: The Emergence and Change of the Constitutional Review System in China

From the common program to the 1982 constitution, the exploration of constitutional development in the twists and turns, and gradually strengthen its political, popular, scientific, characteristic, practical, powerful against the "constitution western center", namely the Chinese constitution development in the perspective of passive object, is "subordinate European system", is "following the example of the world, the world as the standard to consider China has reached what degree"[7]. At the same time, it constructs the "constitutional view of the People's Republic" with the Chinese people as the main body, so as to establish the historical "plot line" of "self-centered", which jumps out of the trap of the western evaluation system [8]. As one of the studies of the constitution in China, the constitutional review system and its evolution process is closely related and inseparable from the development of the constitution.

The 20th century is known as the "century of constitutional review", and the study of the constitution and the restriction of the power organs has advanced rapidly. In other countries focus on control, limit, and show the state institutions and power under the background of extreme distrust, China's constitutionality censorship and evolution reflects the natural confidence of power, and reflects the rich Chinese characteristics of -- How to tame power, not how to constrain it.[9]. The mainstream view holds that China's constitutional review system with real modern significance starts from reform and opening up, and constantly adjusts under the promotion of practice, which is the product of mutual game, mutual checks and balances and mutual run-in of all forces. The Constitution of 1982 states that " all laws, administrative regulations and local regulations shall not contravene the Constitution.", Once again emphasized the fundamental law of the Constitution, and clarified the functions and powers of the National People's Congress and the Standing Committee of the National People's Congress in Articles 62 and 67 respectively, thus opening the first examination of the constitutionality in modern China in the form of the Constitution. In fact, at the beginning of the system design, there are many scholars proposed to learn from other countries constitutional supervision / unconstitutional review system, but are not adopted by legislators, but establish the current constitutionality review system, namely to the National People's Congress and the standing committee of the National People's Congress as the main body, abstract constitutional review for content, ruling, and the constitutional review system of the country. Admittedly, it contains the political considerations to create the constitutional censorship system in the context of Chinese affairs, but in its fundamental way, it is determined by the fundamental political system of our country. In the western countries represented by the United States and Germany, under the background of the system of horizontal decentralization and mutual restraint of various organs, the power of unconstitutional examination is exercised by the judicial organs or independent organs specially set up by them, which jointly contend, supervise and restrain the highest legislative power, showing a circular state of power. And under the power of the people's congress system, each authority vertical responsibility, the highest authority in the top position, no one state organ can parallel checks and balances, more beyond its, presents the pyramid power state, which become the current constitutionality review system of endogenous factors.

4. Inspection: The Basic Elements and System Status Quo of the Constitutional Review in China

4.1. The Subject of the Constitutional Review System

China's Constitution clearly stipulates that the NPC has the full right to review the constitutionality. In order to further promote the constitutionality review work, the National People's Congress has established the Constitution and Law Committee by amending the Constitution, which is responsible for promoting the implementation of the Constitution, conducting the interpretation of the Constitution, cooperating with the publicity of the Constitution and so on. However, due to various reasons, the function positioning of different subjects in the constitutionality review mechanism is still not clear enough, and some provisions are even

inconsistent. Therefore, it is necessary to clarify the functions and powers of the entities involved in constitutional review and establish and improve the relevant system connection mechanism to effectively implement, promote, and enhance the constitutional review system. At present, the subjects related to the constitutional review work mainly include the submission subject (the starting subject) and the power subject (the review subject).

4.1.1. The Requesting Subjects

The requesting subject, also known as the initiating subject, refers to the institution, organization or individual that bears the supervisory function and has the right to initiate or propose to initiate the constitutional review, and is the "night watchman" of the review object. The life and the authority of the Constitution lies in the implementation, which is also the meaning of the existence and development of the constitutional review system. The ineffective constitution will just like the water without a source or a tree without roots, lack the vitality of the law. As a socialist country under the people's democratic dictatorship, the people are the masters of the country, and they naturally have the right to file a request for constitutionality review. To include the people in the scope of the rights subject for constitutionality review, in addition to the nature of the country and the people, the following considerations: First, to make up for the lack of motivation of the constitutionality review authority to start the review process. Although the legislation law of the People's Republic of China (hereinafter referred to as the "legislation law") gives some authority to initiate the constitutionality review requires power, but from the perspective of the actual operation of the clause, with review state organs for various factors, in the face of possible unconstitutional situation, tend to be conservative and robust, which makes the constitutionality review start effect by negative influence. This can also be seen in the launch of the constitutional review system in China. Therefore, the Legislation Law sets the people's right to propose proposals in the form of law, and provides a strong external impetus for the launch of the constitutional review system. As an individual citizen who is obviously in a weak position compared with the state organs, they is the most direct and active rescuer and defender when their rights and interests are infringed, and has the potential to become the fulcrum of Archimedes. In addition, other state organs, social organizations, enterprises and institutions also enjoy the right to review and recommend proposals. In many subjects have to review advice at the same time, we should also see clearly that our country subject for passive review did not set limits and threshold, also did not bring suggested procedures and processes to make detailed provisions, for the right to implement remains to be further in the subsequent provisions and perfect legislation.

4.1.2. Subject of Power

The power subject of the constitutionality review system is also known as the review subject, which refers to the specific institution with the power of constitutionality review, and is also an important element of the implementation mechanism of constitutionality review. Under the current constitutionality review system in China, the constitutionality review is carried out by the cooperation of "constitutional organs" and "non-constitutional organs", with different respective functions and positioning and different scope of power. The subjects holding the power of constitutionality examination include the National People's Congress, the Standing Committee of the National People's Congress, the National Congress of the Party and its Central Committee, which each exercise the power to examine laws and regulations in the field.

(1) National level: the NPC and the NPC Standing Committee

The fundamental political system of China determines that the subject of the constitutional review power in China is limited to the highest power organ and the highest power organ of the party, excluding the judicial and administrative organs. The power of constitutionality review at the national level is the first and most basic power of review. As mentioned above, different from other countries the power of circular operation mode, power operation mode in our country, the National People's Congress as the highest authority of our country, has the highest power, no doubt became the leading authority of the leading authority, and mainly produced by the internal committee of the National People's Congress -- constitution and law committee. The working mode and functions of the NPC determine that it is difficult for it to complete the heavy and complicated examination work alone. Therefore, the Standing Committee of the NPC has actually become the main body of examination, but its power level is lower than that of the NPC, and the object of examination is limited to administrative regulations, local regulations, autonomous regulations and separate regulations. In this regard, the work report of the NPC Standing Committee pointed out in 1998: " It is an important power of the NPC Standing Committee to review the constitutionality of normative documents such as administrative regulations and local regulations.”.

In addition, the constitutional review of laws enacted by the National People’s Congress (NPC) and its Standing Committee to determine their constitutionality falls under the self-supervision of the NPC and its Standing Committee. This review process is directly conducted by the NPC. Article 108 of the Legislative Law stipulates specific regulations regarding this matter.

(2) Ruling party level: the National Congress of the Party and its Central Committee

The power of constitutionality review in the ruling party embodies the logic of power ownership in the context of socialism with Chinese characteristics. As a major strategic plan made by the CPC Central Committee since the 18th CPC National Congress, it demonstrates the great determination and strong confidence of the CPC Central Committee to severely punish corruption and purify the political environment within the Party. General Secretary Xi Jinping has stressed that strict Party governance depends on education and institutions. Both flexibility and rigidity must work together and at the same time, and closely integrate ideological Party building with institutional Party governance. It can be seen that the system construction of the Communist Party of China is placed in an unprecedented important position, and the review of its constitutionality and legality is also increasingly necessary. When the constitutional examination of party laws and regulations has become more and more the most typical, the most prominent and the most Chinese characteristic research perspective of the constitutionality review mechanism in China, the theoretical and practical circles have ignored the relationship between the CPC and the constitutional supervision intentionally or unintentionally for various reasons[10].'"Leadership of the Party' never means that the ruling party can be above the Constitution and the laws, and all political parties, including the CPC, must abide by the Constitution and the

laws.[11]"Therefore, the inclusion of the CPC National Congress and the Central Committee within the scope of the subject of constitutional review is in line with the requirements of national legal system construction, which also is a vivid demonstration of comprehensive, in-depth and scientific consideration.

In a word, while improving the power of the NPC and its Standing Committee to review the constitution at the national level, we should also further promote the research process of constitutional review of the party laws and regulations, so as to make them an important part of the development of China's Constitutionality review system

4.2. The Object of the Constitutional Review System --Takes the Law of the SAR as an Example

There is an original and internal deduction law between the object of constitutionality review and the power of constitutionality review. The boundary of the object of constitutionality review will directly affect the design and structure of the constitutional review system. In the world, at present in addition to the American type of judicial review mode, the ordinary court has the right to through specific cases to review, explain the constitution, the German constitution court, French constitution committee, or the National People's Congress constitution and law committee, in the object of the constitutionality review, had to abstract review the constitutionality of norms. In addition to the law, the decision of the National People's Congress and its standing committee, special administrative region legislation, whether party regulations in the constitutionality review object category still vary, is not conclusive, administrative regulations, local regulations, autonomous regulations and separate regulations as review object has been as a fixed law. To avoid repetition, it's not described in this article.

It is worth discussing that, in the context of the "one country, two systems" system, whether the laws of Hong Kong and Macao should also apply the constitutional review system? The article believes that the implementation of a constitution in three different laws is a constitutional problem with Chinese characteristics, and the constitutional review system of the application of special administrative region laws is a practical and legal basis.

First of all, the implementation of the Constitution has actual needs in the judgment process of the judicial organs in Hong Kong and Macao. According to relevant data, from the return of Hong Kong and Macao to June 1,2021, the courts in Hong Kong and Macao have implemented the Constitution in at least 52 judgments (38 in Hong Kong and 14 in Macao). In these cases of applying the constitution, It can be divided into the following three types: first, the Constitution serves as the basis for specific cases, Specific cases in which, Refers to cases directly involving the relationship between the Central Government and the Special Administrative Region, A total of 9 copies, Accounting for 17.3% of the total sample volume; Second, the Constitution serves as the basis for judging on specific issues, The so-called specific problem, It means that the case on its face may be an ordinary civil or administrative lawsuit, However, the trial derived "major constitutional issues" in the implementation of the Constitution, 21 judgments of this kind, For 40.4%; Third, the Constitution, as an auxiliary material to the interpretation of legal provisions, Such cases do not involve major constitutional issues at both the factual and legal level, The court implements the Constitution based on clarifying the meaning of specific normative provisions in the basic law or administrative law, 22 judgments of this kind, Accounting for 42.3%[12]. From the above data, we can see that the application of the Constitution in Hong Kong and Macao is a real situation, rather than academic assumptions and utopia.

Secondly, the implementation of the Constitution of the HKSAR also has its legal basis. Both the Basic Law of Hong Kong and the Basic Law of Macao exist as the lower law of the Constitution, and should be constrained and regulated by the fundamental law of the Constitution, but there is no law above or equal to the constitutional status. Previously, many scholars have described the Basic Law of Hong Kong as a "small constitution" of Hong Kong to emphasize the importance of the Basic Law in the judicial field of Hong Kong. However, there is no doubt that this expression may bring public misunderstanding and the abuse of power by the judicial organs, which will affect the central government's exercise of the legal control power in Hong Kong, making the tension within the compound constitutional structure more tense and the "centrifugal force" stronger [12]. On 18 November 2019, a ruling by the First Court of the High Court of the Hong Kong Special Administrative Region caused a nationwide uproar: One of the rulings declared certain provisions of the Hong Kong Emergency Regulations Ordinance invalid due to non-compliance with the Hong Kong Basic Law. The ruling exposed the Hong Kong judicial organs 'misreading and misjudgment of the laws of the special administrative region, which is considered an unlawful ruling, and the Standing Committee of the National People's Congress also has the constitutional power to supervise and correct it. Strictly speaking, the judicial review power of the HKSAR is not the unconstitutional review power, but the judicial review belongs to the legality review, and the "constitution" of the constitutional review refers to the Constitution rather than the basic law. The implementation of the Constitution in the SAR should maintain a modest attitude and should be applied only when the basic Law mechanism still cannot resolve conflicts and disputes, otherwise it will have a negative impact on the full exercise of the autonomy of the SAR.

4.3. The Characteristics of the Constitutional Review System

(1) Organic unity of political function and legal function

The constitution is the product of the co-evolution of political system and legal system, which makes the constitution have the dual attributes of politics and law, and also determines the nature of constitutionality review as a system based on the constitution and legal norms has the organic unity of legal and political functions.

First, the function of the rule of law. Because the constitutionality review is to guarantee the constitution, set up the constitutional authority, the maintenance of the dignity of the constitutional law mechanism, therefore, the rule of law function is its primary function, constitutionality review also needs to follow the general rule of law, and specific through rights and constitutional protection, judicial function and legislative function of detailed analysis [13]. At the same time, some scholars have put forward ideas for improving the draft law, the specific review mechanism of the law, and the linkage between the people's Congress and the courts at all levels.

Second, the political function. Different from western countries, political characteristics occupy a considerable

position in the implementation of China's Constitution. Here, the constitutional issue is often considered as a political issue, and politicized implementation is the main way to implement the Constitution in China [13]. The reason why the theory and the academic circles can once again blow the wind of "constitutionality review" is largely due to the guidance and guidance made by the CPC Central Committee in the report of the 19th CPC National Congress. In terms of the restriction of constitutionality review, the authority supervises the executive organ from top to down. Through the implementation of the constitutional review system, the legal and democratic political decisions can be transformed into legal decisions, and the political decisions can be expressed in the legal system.

(2) A flexible way of adopting consultation instead of accountability

For a long time, for the normative legal documents with problems, the relevant authorities have adopted the flexible treatment method of "greeting in advance", rather than rigid cancellation or judgment of invalid. Two sessions in 2017, deputy director of the legal work committee of the NPC Standing Committee Xu Anbiao said when a reporter asked, there is no "public cancellation" case, "but we from the record review agencies since its establishment in 2004, through communication and consultation, urged the constitutional authority to correct laws and regulations, judicial interpretation accumulated hundreds of"[14]. Thus, the treatment mode of "weak review" has a deep historical soil in China. In judicial practice in China, the reasons for reviewing through flexible treatment are mainly for the following reasons: First, to maintain the relative stability of power. Such a result will adversely affect the authority and the external image of the authority and hinder the promotion of follow-up work; second, Chinese traditional culture emphasizes "harmony for all", "forgive others" and "courtesy", even after examination, we should pay attention to remind and urge first, with friendly consultation instead of direct accountability. This flexible treatment method has indeed achieved good results in China's practice. At the beginning of 2018, the Standing Committee of the National People's Congress first issued a "letter of supervision" to correct illegal documents, which also reflects that the "rigid supervision" of the NPC has been significantly strengthened in recent years [15].

4.4. Problems Existing in the Operation of China's Current Constitutional Review System

As China's constitutional review work is still in the process of continuous progress, the current legislative provisions are still very limited, many procedures and implementation rules have not been fully established, and it is urgent to be further improved and optimized. Specifically, the current review of constitutionality in China can be divided into two levels: institutional mechanism and legal dilemma.

4.4.1. System and Mechanism Level

Firstly, the retrospective force problem is pending.

Because the constitutionality review will directly affect the existence and abolition of the law in force, it is closely related to the effectiveness of the judicial judgment in specific cases. If the NPC and its Standing Committee still maintain the law after careful and comprehensive consideration, is the decision of the NPC and its Standing Committee confirming the invalidation of the law retroactive in previous cases? If one size fits all is regarded as not retroactive from beginning to end, is it too arbitrary to affect the case justice and the stability of the legal order? The current legislation has not yet responded to this, and the relevant subjects are also cautious. "Since the effectiveness issue involves major legal principles, it should be stipulated by the law, which can be considered as a whole when revising the supervision Law and other laws, which is not stipulated for the time being.[16]" But it is foreseeable that the pending problem of retrospective force is bound to bring trouble to judicial practice.

Secondly, the nature of the state organ to review: duty or power?

As mentioned above, the Legislation Law gives The State Council, the Central Military Commission, the National Supervisory Commission, the Supreme People's Court, the Supreme People's Procuratorate and the standing committees of the people's congresses of provinces, autonomous regions and municipalities directly under the Central Government the power to request constitutionality review of relevant subjects. On the surface, the provisions seem to be more inclined to the authorized provisions of the law, and the exercise is arbitrary and selective, but from the analysis of its internal attributes, if it is completely regarded as a power rather than a duty, will it cause the state organs to delay in the filing of constitutional review requirements? For the "requirement", which is obviously mandatory, should obligations be stipulated for relevant state organs in accordance with the consistency of power and responsibility? All of this is about the specific application of the system.

Thirdly, a mechanism for disclosing the review results has not yet been established.

In the operation process of the constitutional review system, a series of follow-up problems will be extended. After the subjects of the review go into the internal operation procedures of the constitutionality review process, there are only the provisions that the Commission to report the work to the NPC Standing Committee, and no requirement to disclose the results to the public. Under the case that the constitutionality review opinions are not made public and the contents of the work report are not disclosed, it is difficult for the public to judge whether the enacting authorities have revised and corrected them in accordance with the review opinions. As the result of the constitutionality examination is a major legal and political matter that may touch the legal effect within the administrative division or even the whole country, the whole society should enjoy the right to know and the right to supervise. Therefore, the establishment of a perfect information disclosure rules is of great significance for the transparent, efficient and scientific operation of the constitutional review system.

4.4.2. Legal Dilemma Level

For one thing, The self-examination paradox. as mentioned above, the attribute of China's fundamental political system determines that China should adopt the form of a single state structure, that is, the legislative power[17] and the constitutional review power belong to the same subject. This guarantees the authority of the legislature, and to some extent reduces the impact of the "anti-majority problem" faced by western countries. However, this localized constitutional review system based on the principle of "parliamentary supremacy" will inevitably fall into the dilemma of "self-censorship"[18]. In the judicial field, one of the basic principles of the rule of law is that "no one can be a judge of his own case", and the system design should be as reasonable

and scientific as possible, in order to reduce the negative effect of "self-censorship" to a certain extent.

For another, Maintaining the centralized and unified leadership of the Party and the correct exercise of the examination authority. as the only ruling party of the People's Republic of China, the Communist Party of China conducts centralized and unified leadership over China, "the party, government, military, civilian, east, west, north, south, the Party leads everything". Constitutionality review organs and the legislature must adhere to the leadership of the party, in the face of constitutional review the system of profound political factors, censorship in the unified leadership of the party, do correct, effectively exercise the power of review and interpretation, to prevent the thinking due to political factors, dare not don't really carry out constitutionality review activities, is also our country constitutionality review must face and careful consideration.

5. Foresight: The Perfect Idea of Building a Constitutional Review System with Chinese Characteristics

In recent years, with the increasing research popularity of the topic of constitutionality review, the academic community has spread all the views on improving the constitutionality review system in China. Based on the shortcomings of the current constitutional review system proposed above, the author comprehensively discusses the perfect ideas and opinions of academic scholars as follows.

5.1. Thinking of Improving the System and Mechanism

5.1.1. Retroactive Power of the Constitutional Review

There are several opinions on the retrospective power of constitutional review.

First, "the formulating organ shall revise the statement", that is, the formulating organ shall revise the original normative documents by itself. In practice, China's constitutionality review organs have never carried out rigid review. Generally, they communicate and coordinate with the review organs and the formulation organs, and the formulation organs revise and abolish the normative documents after reaching a consensus. Therefore, some scholars believe that the normative documents modified by the enacting organs themselves can avoid the problem of retroactivity [19].

Second, "case analysis theory", that is, the case measurement model. At present, it is difficult to make unified provisions on the retroactivity of the revocation decision in the record review. For the retrospective activity of the revocation of normative documents, it is necessary to comprehensively consider the interests of all parties, social interests and the influence on the stability of the legal order [20].

Third, "Basically not retroactive", that is, from the perspective of protecting the stability of the law and order, it is effective before the legal consequences, regulations, judicial interpretation and other normative documents are corrected [21].

Fourth, "Non-retroactive principle but retroactive principle is an exception". Some scholars believe that in the future, it is necessary to specifically stipulate the retroactive force of the revocation decision, and to distinguish different situations [22].

Fifth, "It is said on the principle of retroactive but not retroactive." From the perspective of whether the retrospective effectiveness of judicial judgment and other acts based on invalid norms, some scholars have put forward this view [23].

Sixth, "No retroactive is the principle, progressive retroactivity is the exception." The discussion of the retrospective activity and the retrospective activity of law is not a problem at all. China's flexible processing procedure cannot be a shield to avoid the retrospective activity of constitutional examination [24].

5.1.2. The Exercise of the Right of Claim for Examination by Specific State Organs

There are different opinions on the nature of the right of constitutionality. The mainstream theory holds that more emphasis should be placed on the responsibility of the claim rather than as a power that can be done or not. "In nature, the examination requirement is the public power of a specific state organ, so it is formal, public determination and mandatory, and will inevitably have the consequences of the start of the examination process."[25]Therefore, when facing the right of claim granted by the competent authority, it should be regarded as an obligation to be exercised, otherwise it will face the risk of malfeasance.

The Legislation Law stipulates that at present, five state organs have the right to submit recommendations to the Standing Committee of the NPC [26]. It is worth noting that the provisions of the law term "may" rather than "should" to the subject request, and it is not clear which agency puts forward the review request on behalf of each agency [27]. Since the request of constitutionality review is not the only choice of the authority, nor is it the best choice, it leads to the phenomenon that the examination subject claim right stipulated in the Legislation Law is sealed in the "Safe Deposit Box" of the authority for a long time. Obviously, scholars have also paid attention to this problem, and expressed their opinions on how to solve the insufficient practicability of the constitutionality claim in their research. Associate professor Ma honlun said that "the constitutionality review right of specific state organs can be changed to the right to review recommendations", which will make "citizens' review recommendations will become one of the protagonists in the initiation process of constitutionality review"[27]. Professor Wang Jianxue believes that "ordinary litigants 'objections due to their rights infringement by laws and regulations can be filtered through the review of the presiding court and submitted to the Standing Committee of the National People's Congress through the Supreme People's Court, thus forming a' priority transfer mechanism for constitutionality review '"[28].

5.1.3. Establish a Mechanism for the Disclosure of Constitutional Review Results

The growing call for the disclosure of the constitutional review results will not only help the strengthening of the constitutional value in the eyes of the public and reflect the core essence of building the rule of law in China, but also effectively boost the public's confidence in the exercise of state power when the results of the review objects are not unconstitutional. The scope of disclosure specifically includes review opinions, review decisions, and changes in relevant contents. Because this point of view is rarely controversial, so i won't explore it in this article.

5.2. The Mitigation Path of Legal Tension

5.2.1. Self-Review and Rescue

According to China's national conditions and the current stage of democratic development, China has adopted a legislative review model for constitutional review, which is considered the most effective approach at present. In the face of the inherent legal dilemma of "self-censorship" that cannot be completely eliminated, scholars give their own mitigation suggestions. Professor Men Zhongjing said that "the principle of relatively independent review under the leadership of the Party should be" established ", and should run through the first, middle and second three stages of constitutional review [18]. Professor Li Zhong believes that China's constitutionality review should not include the way of revoking and declaring unconstitutional, but "can be solved by modifying the legal procedure and supplemented by necessary remedial measures", so as to achieve "not inferior to the judicial organ model and the constitutional court model"[29] Postdoctor Zhu Xuelei said, constitutionality consulting system, perfecting the review mechanism is beneficial to resolve identity competition, namely through the affirmation of other competent state organs to the effectiveness of the constitutionality review, to reduce the standing committee of the National People's Congress review published published the probability of the normative documents [30].

5.2.2. Reasonably Distinguish between Political Issues and Legal Issues

As the content of two categories, politics and law are prone to blur the concept of boundaries due to the characteristics of constitutionality review, but we should distinguish them as far as possible. The object of constitutional review is limited to the issues within the scope of the law, and does not completely include the political issues, otherwise the system will fall into the political trap and whirlpool. In this regard, the constitutional review system needs to establish a "filter screen" to distinguish between political issues and legal issues. Professor Hu Jinguang said, can through the legitimacy review priority principle, limited start constitutionality review procedure subject qualification, exhaust legal relief principle, the principle of national behavior from judicial review these four aspects to construct the filter mechanism, in order to effectively avoid the abuse of power and the waste of resources [31]. Associate professor Wang Wei put forward three criteria for the relevance of the case, the significance of the review object and the novelty of the review problem, so as to ensure the stability of the law [32]. Professor Lin Laifan proposed to integrate the judicial review mechanism into the filtering mechanism of constitutional review, and activate the "constitutionality review priority transfer mechanism" to make the specific review request be screened and filtered.

6. Conclusion

By introducing the order and context of-review-review-forward-looking, this paper roughly combs and analyzes the system of constitutionality examination with distinctive Chinese characteristics, and puts forward the points of the current constitutionality review system to be improved. A complete system is not achieved overnight, but needs mutual verification between theory and practice, and needs to be completed after a long and repeated polishing and study. Perfect and develop the constitutional censorship as about constitutional dignity and citizen interests, more on the premise of the centralized and unified leadership of the party, fully respect and consider the new era of socialist democratic politics with Chinese characteristics of national characteristics and cultural tradition, patient careful, actively yet prudently, continue to promote our constitutionality review institutionalization, specialization, standardization development, really let the constitution to protect everyone.

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