

A Literature Research and Analysis of China's Education Legal System in the Recent Decade

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Abstract

This paper aims to conduct an overall teasing of the correlated literature about China's education legal system in the recent decade,¹ and makes current research situations of education legal system clear, with longitudinal and horizontal analysis of the system. By this we intend to have a clear understanding of the overall situation and the deficiency of the researches and come up with corresponding advice for improvement.

Key words: Education laws; Law system; Higher education

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INTRODUCTION

Education law is an inter-discipline subject using both of the research methods and knowledge of pedagogy and jurisprudence, and mainly focus on the education issues. In China, the study of education law became a hot issue in the recent decades as an emerging research field. The main components are divided into three parts: the first is the basic principles of education law including the system and status, right to education, education equality of education law in legislation; the second is process of building and implementing education legislation,

covering the research of legal process in different kinds of schools; the last is, the education law would like to pay attention to the legal relationship between internal and external of schools, such as rights and obligations of students and teachers, the juridical status of teachers and right protection. The literature review would help to consummate the research.

1. ANALYSIS OF CURRENT SITUATIONS OF RESEARCH

Authoritative journals about researches of education legal system mainly appear in *Chinese Education Law Review* and *Researches on Development of Education*. Besides these two, journals like *Peking University Education Review*, *Tsinghua University Educational researches*, *Chinese Journal of Education* also involve the issue of education legal system. We select specially articles which appear in these six journals from 2002 until nowadays¹ that talk about correlated education legal system and try to give an analysis.

Levels of education which are investigated are as follows, in which figure higher education and the undefined² appear most frequently (see Table 1)

And Ranges of study are as follows (Table 2), in which figure we could see that the legal system is most researched into, besides this, equality of education, the juridical person system and right relief are all paid attention to by scholars. Especially the macro level of research makes up more than one thirds in the overall researches. And fewer researches are conducted into education legal responsibility which includes the accountability system. Also, less researches are conducted which relate to the legislation and perfection of special laws.

¹ The literature review from 2002 to 2012

² The content is not limited in what kind of school

Table1
Levels of Education

Valid	Levels of education			
	Frequency	Percentage	Valid percentage	Cumulative percentage
Higher education	56	27.6	27.6	27.6
Private education	34	16.7	16.7	44.3
Community education	1	.5	.5	44.8
Special education	4	2.0	2.0	46.8
Undefined	51	25.1	25.1	71.9
Pre-school education	6	3.0	3.0	74.9
Compulsory education	26	12.8	12.8	87.7
Vocational education	9	4.4	4.4	92.1
Secondary education	7	3.4	3.4	95.6
Intermediary organizations	4	2.0	2.0	97.5
Lifelong education	5	2.5	2.5	100.0
Total	203	100.0	100.0	

Table2
Ranges of Study

Valid	Ranges of study			
	Frequency	Percentage	Valid percentage	Cumulative percentage
Legal responsibilities	12	5.9	5.9	5.9
Legal institutions	62	30.5	30.5	36.5
Legal person system	19	9.4	9.4	45.8
Educational supervision and administering education according to law	13	6.4	6.4	52.2
Equality of education	28	13.8	13.8	66.0
Others	45	22.2	22.2	88.2
Right relief	17	8.4	8.4	96.6
Special laws	7	3.4	3.4	100.0
Total	203	100.0	100.0	

And the cross-mapping is as follows (Table 3):

Table 3
Levels of Education and Ranges of Study

	Levels of education * Ranges of study								
	Ranges of study								
	Legal responsibilities	Legal institutions	Legal person system	Educational supervision and administering education according to law	Equality of education	Other	Right relief	Special laws	Total
Higher education	1	25	4	3	4	8	11	0	56
Private education	0	9	13	2	1	6	0	3	34
Community education	0	0	0	0	0	1	0	0	1
Special education	0	1	0	0	2	1	0	0	4
Undefined	10	4	2	8	9	12	6	0	51
Pre-school education	0	2	0	0	2	1	0	1	6
Compulsory education	1	15	0	0	4	3	0	3	26
Vocational education	0	2	0	0	0	7	0	0	9
Secondary education	0	1	0	0	6	0	0	0	7
Intermediary organizations	0	1	0	0	0	3	0	0	4
Lifelong education	0	2	0	0	0	3	0	0	5
Total	12	62	19	13	28	45	17	7	203

It is not hard to conclude from the cross-mapping that, in the recent decade, researches on issues about education legal system has the following characteristics: Firstly, the levels of education researched are multiaspect, which mainly are compulsory education, higher education and private education, etc.. Main attention is paid to the issue of transformation of private education and public schools, that is, researches on the juridical person system and the property rights problem in Chinese colleges and universities, also guarantee of students' rights and relief for those whose rights are violated are paid attention to. Secondly, the legal relationships between schools, the government, teacher and students are more stressed.

Specialists call for equality of education and a preferential guarantee for the disadvantaged, and they also appeal to guarantee every citizen's right to education at the levels of the government and the Constitution. In terms of legislation and perfection of special laws, they have offered numerous proposals, too.

2. MAIN CONTENTS OF RESEARCH

2.1 A Theoretical Analysis of the Education Legal System

2.1.1 Basic Principle of the Education Legal System

The basic thinking of modern educational system is based on a clear understanding of the relationship between right of running schools and ownership, firstly we need to know the relationship between the government, the society and the school and maintain a parity relation between the government and the school. Also we need to establish an administrative principle of bureaucracy and construct a normative educationmarket.

The education legal system includes system of the compulsory body and system of the right body. Firstly we must make sure to establish the principal values of justice and equality, the value orientation of educational legislation is public in nature, this means the responsibilities and effects education has to make both the society and the individual benefit, this legislation should follow the requirements of rational, beneficial to the public welfare, fair and open in nature. Secondly, fairness of education includes equal rights to education and equal educational opportunities, etc., these are embodied by fairness of the chance of schooling, the learning process, the learning result and the learning effect, i.e. social status. Fairness and justice are the principal value objectives that education legal system pursues, and this system must stick to a fair ethical orientation, to realize it, we must start from these aspects like design, arrangement, function, evaluation and correction of the educational system.

2.1.2 Change and Innovation of the Education Legal System

Modern educational system has the functions of freedom, ethics and order. The essence of transformation of the

educational system is to establish a modern education system that adapts to the modern society. And the pattern of innovation is government-leading institutional innovation, independent institutional innovation by the school and institutional innovation in educational practices. The excellent environment derived from educational system innovation is mainly embodied through mobilizing the enthusiasm and creativity of the majority of educators in educational system innovation and policy innovation. However, educational traditions are important method and mean for education system innovation, so the essence of transformation of the education system is a process of conflict of internal educational interests and readjustment of it. Besides, Chinese higher education system change mainly relies on transplanting the higher education systems of other countries'. Due to the constraints derived from the government's strong control, we need to have creative ideas for our higher education if we want to break through the reliance and constraints during the change, and also we need to relocate the role of the government, perfect the multi-supervision mechanism, thus providing colleges with more autonomy in running school.

2.2 China's Current Main Education Legal System

2.2.1 Pre-School Education Legal System

First of all, pre-school education is basically beneficial to the public welfare in nature, scholars' discussion is mainly about rapidly pushing the process of pre-school education legislation, this includes: The government should guarantee every pre-school-stage child's right to education, and make sure that migrant workers' children have an equal access to pre-school education, preferentially guarantee right to education of those disadvantaged in rural areas.

Currently, main problems for the development of the cause of pre-school education: Firstly, there is a serious shortage of administration for pre-school education, this then results in a shortage of effective guarantee; there is also a serious lack of funds for its development, fundamental changes have taken place in terms of the system of running a school and the system of investment to kindergartens, and it is an urgent need to establish a new system for pre-school education in the process of establishing the social public service system. Secondly, the teachers' status is not well recognized, their treatments could not be well guaranteed, this teaching team is instable, and due regulations and protections are lacking in terms of conditions, rights and conductions while various social forces run schools. The focus of legislation then is to clearly define the nature and status of pre-school education and the government's responsibilities, also the administrative system, the investment system, the school-running system, the teaching team building, the supervision and evaluation system and the accountability

system should all be well considered. It is advocated that we take a development course which is government-leading, jointly invested by the government and the society, beneficial to the joint development of public and private education. Also it is advised that we should establish and perfect the guarantee system for the development and improvement of pre-school education, regulate kindergartens' charging standards, rapidly popularize and advance the education in rural areas, increase the investment amounts, adjust the current allocation pattern of finance and strive for the teachers' improvement.

2.2.2 Compulsory Education Legal System

In the recent ten years, the compulsory education legal system is mainly about revision of outdated law entries and implementation and perfection of new ones. The new *Compulsory Education Law* has made some breakthroughs in these five areas: free tuition, the government's duties, the administrative system, the teachers' duties, and the regulatory mechanism. Among them, education as a human right stays as the spiritual essence of the new law. In terms of institutional arrangement, the law mainly centers on establishing a set of operable accountability system to guarantee realization of right to education, especially for those disadvantaged children. In terms of institutional perfection, it is recommended that we should (a) balance allocation of the resources, (b) establish and perfect the public finance system which guarantees the balanced development of compulsory education, (c) implement a system of regular flow of teachers, (d) establish and perfect the system which involves detection and evaluation of teaching quality for compulsory education, (e) establish and perfect the recruitment and test system, (f) perfect the accountability system.

Scholars hold that under the Appointment System, teachers who are engaged in compulsory education are still national public service personnel in legal status, and meanwhile they have professional autonomy. The school shall educate to administer and protect the pupils in terms of their relationship, and the pupils have their own right and duty as an educational receiver. However, realization of pupils' rights (especially the juvenile) requires potent support and protection from the nation, the family, the school and the society. Besides this, this law should stick to the principle of proximity for schooling-age pupils, in terms of choosing a school and tuition fees, we should make the explanations clear and detailed and formulate correlated standards.

2.2.3 Higher Education Legal System

Basic higher education legal system includes the system of academic education, the system of self-study exam, the degree system and the continuing education system.⁸ Researches about this kind of legal system mainly center on academic freedom, right to education, right to education and legal status of these colleges.

Colleges set realization of public interests as their goal; they perform public functions and exercise public rights. Based on this, their legal status is defined as public corporation. In *Research on the Legal Person Governance Structure of Chinese Public Higher School* and *Research on the Public Legal Person Status of Higher School*, Lao proposes establishing the public legal person status of higher school and its governance structure. Power division between higher schools and the government, right relief for teachers and students in higher school, supervision and control of the running of higher school are also included in his writing. Scholars are trying to explore a new self-governance model which is different from administrative governance with the hope of providing clues to high school de-administration and setting up of a modern college system.

Key to the legal status of public school teachers is whether they are civil servants or laborers. These teachers are public service personnel whose work has special professionalism, and their rights and duties and management are specially regulated by pedagogic laws. The legal status of teachers depends on the characteristics of this profession and teachers' position in specific legal relationships which involve the relationship between the government, school and the students, this status varies with the current legal relationship. College students' legal status includes administrative legal relationship and civil legal relationship, non-equivalence between these students' civil rights and duties is a problem that we should solve, the right balance mechanism is free from rule of law and supervision, colleges are over-mighty, and both of these are also problems. Administrative legal relationships mainly focus on regulating and keeping the normal educational order in schools, whereas enough attention has not been paid to methods of maintaining students' rights and interests, student management simply in administrative ways still is a common practice.

2.2.4 Vocational Education Legal System

Obviously adequate attention has not been paid to vocational education-oriented legal system, in which both government-driven upper laws and specific laws need improvement. Most researches in this area are related to institutional transition and reform, and it constitutes an initial groundwork for the framework of research. Main problems occur in these two areas: quality of education and equality of education. Scholars believe that we should improve the quality to realize equality of education, proper theoretic foundations and compatible institutional building is also crucial. The formation of a system contributes to the functions of vocational education, and effectiveness of this system is closely related to the realization of these functions. It is commonly believed that a vocational legal system which is based on social equality and fully explores human resources is what we need.

2.2.5 Adult Education Legal System

We must admit that currently a standardized system for researches in this area has not come into being, and connotation of the system has not been defined, contents of the system are not clear yet. The core is to regulate the quality of adult education by means of the system to realize equality of education. Also some scholars propose that we categorize adult academic education into higher education.

Main problems existing in the current system are: (a) there are too many educational organizations and there are not enough barriers to entry (b) quality of education could not be guaranteed (c) norms for academic education are not strictly observed (d) supervision is lacking in the process (e) the aim and direction of school-running is sometimes violated due to some economic interests. Some suggestions for the reform of this adult academic education are as follows: (a) cancelling adult recruitment, merging it with formal recruitment (b) Integrating aspects of this education and retaining the Self-study Higher Education Examination (c) transforming educational organizations engaged in adult academic education into continuing education ones, making it beneficial to the lifelong education system.

2.2.6 Private Education Legal System

According to the *Private Education Promotion Law*, there are several problems facing private education: unclear property relations, improper institutional establishment, imperfect systems of governmental support and financial aids, unscientific design of legal liability.

The transformation of private education faces the following problems: It is in an unequal legal status, an institutional framework has not been set up for the classification and management of for-profit and non-profit schools, there is a need to perfect the aid system, the system involved in protection of students' interests, the national supervision system, the legal liability system and the system related to organization of private schools, also we need to do more for the classification, management of non-profit and intermediary organizations. A new mode is to develop private education using the resources derived from public education. In terms of strategies for reform and selection of system, current researches mainly center on the following: (a) transformation (b) existing schools set for the public while the increased set for the private (c) school-running involving multi-agents and cooperation (d) agency by agreement plus governmental procurement. Property right stays in the center of legal systems for private education, and key factors of institutional arrangement are to make incentive policies clear and recognize that private schools are "public industry". The investor has rights to return and to distribution of residual properties while the schools are in existence.

It is a fact that teachers of private schools are not equal in legal status with teachers of public ones. The basic

connotation of equal legal status for all teachers is that teachers of private schools are also holders of the same rights as public schools' teachers, when obstacles are encountered in the process of implementing their rights, we should provide aid and guarantee indiscriminately.

2.2.7 Intermediary Education Organization Legal System

The legal status of intermediary education organizations mainly depends on the mode of establishment and source of funds. According to existing researches, we normally hold that these organizations come in three types: The first is governmental organization, the second is academic organization, which is a kind of autonomous university consortium, and the third is non-governmental organization. In terms of the norms involved in this legal system, firstly, we need to do legislative regulation, strengthen qualification certification, implement institutional registration and clearly define these organizations' status as a legal person; secondly, we need to formulate regulations and make clear these organizations' nature, principle, status and function, as well as form of operation and legal responsibilities. Setting conditions and examination and approval procedures are also indispensable, the relationship between these organizations and the administrative organs then especially should be clear, too; thirdly, we need to formulate regulations of conduction and strengthen the main body's function, for example, whether it is appraisal certificate or communication of information.

2.2.8 Other Education Legal Systems

2.2.8.1 Lifelong Education Legal System

The lifelong education system is all components and segments of nature of education, types of education, and modes of education and contents of education. This education system is not equal to the traditional education system, it is not an expansion of the original school system, nor is it lifelong management. The implementation of lifelong education is closely related to the participation of national administrative forces and the administrative organs guarantee all citizens' right to education.

Some scholars propose forming a huge network which involves full implementation of lifelong education in kindergartens all the way to colleges for the elderly and family education all the way to enterprise education. What we need to do is to formulate regulations and fit adult education into lifelong education, change the enclosed structure of schools and form an open and flexible educational structure. In terms of system selection as to allocation of resources, we should respect the basic rules while the market plays its role in the allocation of resources; a platform of system and resource is needed to provide public services; multiple participation and sharing from social organizations and individuals are advocated. Both a system of government purchase of service and

a mechanism of market pay need to be established; a mechanism for encouraging constitutional and individual investment should come into being, defects in the original national education system should be reformed and the two resource system should be mixed. Also it is recommended that the self-study examination system should be integrated into the lifelong education system and a learning society.

2.2.8.2 Community Education Legal System

Current researches on community education mainly focus on these five aspects: a) Theoretical framework, b) Development of practice, c) Experience summary, d) Construction of a learning community, e) Comparative analysis. There are relatively less literature works about the construction and advancement of community education legal system. A trend of standardized development of this kind of education has come into being with the government's policy promotion. As to our goal for community education, we intend to form a system of lifelong education and a learning society.

Some methods adopted by foreign countries provide us with a useful reference. There have been numerous detailed researches on and introductions to community college abroad which include its origin, development and curriculum system. Also we could get new insights from the leadership system, investment system, educational management and team building abroad in terms of community education. Certain countries have paid much attention to the related legislation, for example, proper laws are implemented to guarantee the completeness of related educational organizations and the effectiveness of education in countries like USA, Japan and Germany. The entity setting and legal construction of community education abroad provide a strong guarantee for all social members' lifelong education which is much worth learning.

2.2.8.3 The Disabled-Oriented Education Legal System

As to the disabled-oriented education, guarantee of disabled people's right to education and the realization of equality of education are the focal points. Although we have seen much improvement in terms of current development situations of the disabled-oriented education, much still needs to be done. The corresponding education system should be in accordance with the principles of equality of basic rights, equality of opportunity, compensation to guarantee equality of education. To realize educational empowerment for the disabled, we need to forge an ability-based education, stress the equality of effect and highlight subjectivity of the disabled while reinforcing the government's accountabilities, enforcing construction of schools and guiding social participation. What is of the same importance are perfection of related regulations and construction of a barrier-free social environment and a harmonious cultural

atmosphere. The government and scholars should be especially aware of defects in these laws and regulations and try to improve them as soon as possible.

3. FUNCTIONING OF THE EDUCATION LEGAL SYSTEM

3.1 Realization of Responsibilities

Scope of the subjects of responsibilities includes educational administrative organs, other administrative organs and their personnel, schools, teachers and students engaged in the teaching activities, parents of compulsory education-stage students and other guardians, other social organizations and citizens.

Outline for Medium and Long-term Educational Reform and Development Plan (2010-2020) clearly emphasizes the system building of educational supervision and accountability. Topics about the accountability system include: a) Researches on its implication and composition with the first involving responsibility, quota, performance, assessment and reward and the second involving the two parties and contents of the accountability. b) Researches on compulsory educational accountability system. c). Researches on the headmaster accountability system. c) Discussions about the power system, authority of the main body and functioning procedures of college accountability. College accountability aims at the entity of "college", its essence is not accountability of responsibility and it is a process of communicating with the outside and self-improvement during which colleges have a kind of "proof responsibility".

There are several defects in the accountability system actually: Firstly, empirical researches are lacking, secondly, commonly accepted types, levels and concepts have not come into being, thirdly, the system mainly focuses on introduction of Western experience and does not fit the current educational system.

3.2 Right Relief

In recent years, researches on educational right relief mainly concentrate on the right to education. Legal relations in these kinds of disputes could be classified into educational administrative relationship, education service contract relationship and educational tort relationship according to the nature of dispute. Applicable relief methods to address these disputes include education administrative appeal, administrative reconsideration, administrative action and civil action. In order to improve right relief for college students, we are suggested to enlarge the range for education administrative reconsideration cases and refine the procedural provisions for education administrative actions. Based on these, we need to introduce settlement mechanism for non-litigation disputes, set up humanization processing's like

educational arbitration and educational mediation. The educational arbitration system could avoid the defects inherent in the systems of appeal and administrative reconsideration effectively and make up for the limitation of scope of cases and complexity of procedure inherent in the litigation system. Some suggestions for improvement of the college appeal system: Making clear the nature of in-school appeal, transforming administrative appeal into administrative reconsideration and figuring out the relationship between the three ways of relief: in-school appeal, administrative appeal and administrative action. Above all, the fundamental way is to perfect legislation for higher education.

3.3 Supervision of the Laws

We must recognize that there are several defects in the current supervision system: The nature and function of educational supervision organizations have not been classified; the supervision team's degree of specialization is low. We should be clear about the status of educational supervision as to legal principle and explicitly define its denotation and connotation. Also we should try to realize service-oriented transformation for this function of supervision and build a professional supervision team.

With the guidance of practice, it is suggested that we should sum up experience of our compulsory education and grasp the characteristics of advancing a balanced development of compulsory education. Also we should pay close attention to some "key" issues and form an environment which takes "balance" as its core with the hope of making the most of the two ways of guarantee, i.e. administrative supervision and educational supervision and mobilizing and encouraging the government to focus on the development of education. We hold these as true: the schools' potential of independent development should be fully explored, thus characteristic development based on balance could be promoted. The teacher's role should be fully affirmed and numerous measures should be taken to promote teachers' quality entirely. Based on the above, we hope to arrive at a focal transition from administrative supervision to educational supervision, advance selection of localization strategies which involve promoting connotation and advance the balanced development of local compulsory education firmly.

3.4 Administering Education According to Law

The essence of administering education according to law is the legal authority, legal procedure and legal conduction. We need to reconstruct the system of policy and legal support for our education and also reconstruct the power system of public education, i.e. the relationship between the government, schools and the society; we need to perfect the tax system and improve the legal person system for our schools; we need to cultivate a system of charitable trusts for school properties: We need

to establish government educational procurement system and the legal relief system while enforcing equality of education. In order to keep our education in accordance with law, it is suggested that: we should perfect the legal system and keep administration, supervision and accountability closely related to law.

Several problems we encounter for the current education legal system are: (a) the theoretic foundation is weak; (b) some legal concepts are improper, for example, the concepts of public school and private school are not scientifically defined; (c) the contents are vague and general, the regulations are not strictly enforced; (d) some legislations are in conflict, for instance, educational laws and certain department laws are in conflict and certain laws inside this system are in conflict; (e) absence of legislation, that is, legislation related to college legal system, right relief for teachers and students and specific examination legal system, etc..

It is recommended that we guarantee functioning of the education legal system from the level of the Constitution. The NPC and Standing Committee of the NPC is responsible for enacting laws related to the school, students and examinations. The State Council is responsible for abolishing and enacting related educational administrative regulations. The Ministry of Education is responsible for formulating various rules and enforcing educational administration. The basic trend for modernization of the educational system is: Setting basic public education even lifelong education as citizens' legal right while guaranteeing equality of education. Transforming the government's educational administration related functions. According to the requirements of a service-oriented government, the government should also perfect the public finance system and set up an educational expenditure guarantee system. The education legal system calls for government-leading, social participation, diverse modes of running school and scientific collocation of basic public service and non-basic public service.

CONCLUSION

Due to the fact that a normative system has not come into being as for our educational laws, things like the level, connotation and components of law are not clear yet. And almost all researches are correlated to the aforementioned aspects, for example, an overall legal construction for the lifelong education system. Legal relationships between community education, adult education and vocational education are not clearly defined, too. Besides, the accountability system is in its initial stage, what we need to do is to give a clear definition to overall content of the education legal system from the macro level and distinguish the legal issues which levels of education, nature of education, types of education deal with. In terms

of perfection of the legal system, on the one hand, we need to be clear about its legislative value theoretically, on the other hand, we should consider whether it is concrete or applicable from the level of operation of law.

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