**The Constitution of China and Its Political System**

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I. The Historical Evolution of China’s Constitution

(I)The Common Program as A Temporary and Transitional Constitution

The victory of the Chinese People’s War of Liberation in 1949 marked the end of an era. In January 1949, Chinese Communist Party issued an announcement to be put forward during the peace talk with KMT. The second and third items of the announcement demanded the abolishment of the constitution and laws made under KMT regime. One month later, the Central Committee of Chinese Communist Party issued its Directive on the Abolishment of the Code of Six Laws and the Establishment of Judicial Principles in the Liberated Areas, indicating clearly that all laws and regulations made by the KMT government were hereby invalid.

On September 29, 1949, one day before foundation of the People’s Republic of China, the First Plenary Session of the Chinese People’s Political Consultative Conference adopted the Common Program, which served as a temporary and transitional Constitution for the beginning of new China.

The Common Program outlined the nature, task, and the guidance of the newly-born country in the form of fundamental law. Its legislative purpose made it clearly that with regard to legal system, the newly-born People’s Republic would “abolish all the laws, regulations and judicial systems established by the anti-revolutionary KMT government which aimed to oppress people, and build up new laws, regulations, and judicial systems to protect people.”

From foundation of new China to 1954, the Common Program served as constitutional law which became legal basis of new China. Based on the Common Program, the Central People’s Government took a great number of effective measures in restoring national economy, suppressing all anti-revolutionary forces and safeguarding sovereign integrity of new China.

(II) The Four Constitutions in the History of China(PRC)

I. The Birth of the First Constitution of PRC(the Constitution of 1954)

In January 1953, the Committee for Drafting of the Constitution of the People’s Republic of China was set up, with Mao Zedong as its chairman. Through one year’s efforts, with more than 150 million citizens’ participation, the first constitution was created on September 29, 1954, during the first plenary session of the First National People’s Congress.

The first constitution had four chapters and contained a total of 106 articles. Those were, the first chapter, General Principles, providing for the nature of state, the political and economic systems, and the principles on the relationship between various nationalities; the second chapter, the Structure of State, providing for the structure and the division of state power; the third chapter, the Fundamental Rights and Duties of Citizens, stipulating in its first article that “All citizens are equal before the law”; the fourth chapter, referring to National Symbol, providing for national flag, national emblem and capital.

The first constitution of PRC, deeply influenced by the Soviet Constitutions, was regarded as a socialist constitution. It affirmed the basic principles and system of new China as a socialist country, providing the legal basis for the legal construction of new China with more impact on today’s situation.

ii. The Constitutions of 1975 and 1978

In lack of legal tradition, from 1957 on, at the beginning of extra-leftism, the principles stipulated by the Constitution of 1954 were neglected and impaired .In 1966, the Cultural Revolution broke out, all legal orders based on the Constitution of 1954 were destroyed in order that Liu Shaoqi, national president at that time, could not use the provisions relating to his post in the Constitution of 1954 to protect his personal rights.

On the basis of theory of class struggle, in January 17, 1975, the constitution which reflected the successful results of “the Cultural Revolution” was adopted in the first session of the Fourth National People’s Congress. It only included a total of 30 articles with deletion of “all people are equal before the law” confirmed in the Constitution of 1954. It emphasized the importance of class struggle, with the authorization which gave full play to the Revolutionary Committee at various levels.

In 1976, “Gang of Four” was overthrown, however, the influence of extra-leftism route continued to run. In March 5,1978, another constitution in the extra-leftism color came out, adopted in the first plenary session of the Fifth National People’s Congress. It focused on such a doctrine that the continuous revolution under proletarian dictatorship should be preserved, although it paid a little attention to the modern construction of socialist China. The socialist legal principle wasn’t respected consciously.

Both the Constitution of 1975 and the Constitution of 1978 didn’t play an effective role in the field of legal construction with the high limitation of legal principle. They deviated from the rail drawn up in the Constitution of 1954, leaving a lot of experiences for lesson.

iii.The Best Constitution of PRC(the Constitution of 1982)

Since 1978, the reform has become the main topic in political life in China. The basic principle about socialist legal construction was put forward in the third plenary session of the Central Committee of Chinese Communist Party.

From September 10, 1980, the Committee of Constitutional Revision was set up by the third plenary session of the Fifth National People’s Congress based on the proposal made by the Central Committee of Chinese Communist Party. Through two years’ efforts , with 400 million citizens’ participation, the best constitution since 1949 was born in December 4,1982, in the fifth plenary session of the Fifth National People’s Congress.

The Constitution of 1982, it contains four chapters , a total of 138 articles, referring to the basic system and the basic task of state , inheriting much more principles from the Constitution of 1954 , regarded as the most comprehensive constitution since the establishment of new China, still in force. Its chapters refer to the following aspects:

Preamble

Chapter One - General Principles

Chapter Two - The Fundamental Rights and Duties of Citizens

Chapter Three - The Structure of the State

Section I The National People's Congress

Section II The President of the People's Republic of China

Section III The State Council

Section IV The Central Military Commission

Section V The Local People's Congresses and Local People's Governments at Various Levels

Section VI The Organs of Self-Government of National Autonomous Regions

Section VII The People's Courts and the People's Procuratorates

Chapter Four - The National Flag, the National Emblem and the Capital

As a summarization of characteristic of the Constitution of 1982, supremacy of the Constitution is of its doctrine based on which the People’s Congress System is arranged completely. It points out the running direction to the modernization of China at the deep bottom of legal construction. In its preamble, it promulgates that “This Constitution, in legal form, affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the state; it is the fundamental law of the state and has supreme legal authority. The people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and institutions in the country must take the Constitution as the basic standard of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation. “

(III) Amendments to China’s Constitution of 1982 and Their Significance

Since the birth of the Constitution of 1982, except that it plays a good role in supporting the socialist legal construction of China, it suits the needs of reform, inter alia, fit for the requirement of economic reform. Such characteristic can be found in the process of constitutional revision.

i.Amendments of 1988

For the sake of utilizing the land better, on April 12,1988, Amendments to the Constitution of 1982 were adopted by the Seventh National People’s Congress at its first session. The main purpose of these amendments aimed at allowing the legitimate existence of private economy and permitting the legitimate transference of land, in such a special policy which can stimulate the market economy.

ii. Amendments of 1993

In 1992, Deng Xiaoping published his famous remarks in the south China. The dispute about the differences between socialism and capitalism has been clarified. The Socialist Market Economy has been affirmed as the basic form of economy necessary to the socialist construction. The fourteenth plenary session of the National Congress of Chinese Communist Party adopted such a doctrine. For adapting to the requirement of developing Socialist Market Economy and providing constitutional basis for it, on March 29, 1993, several amendments with regard to guaranteeing Socialist Market Economy were set into the Constitution of 1982.Of these amendments, the foundation of “state-run enterprise” was replaced with that of “state-owned enterprise”; the traditional “planned economy” in the Constitutions of China since 1954 was changed as “socialist market economy”; moreover, the conception of “rural people’s communes and agricultural producers’ cooperatives” was abolished and replaced with that of “responsibility system in rural areas, mainly the household contract responsibility system with remuneration linked to production” etc.

iii.Amendments of 1999

On March 15, 1999, the Constitution of 1982 was amended again in the second plenary session of the Ninth National People’s Congress. The focus of the amendments this times is on enhancing the importance of socialist legal principle of “rule of law”, promoting constitutional statue of non-public ownership and so on. All amendments of 1999 derive from the demand for the deep reform in the field of socialist economy, politics and social safeguard.

iv. Amendments of 2004

On March 14,2004, last amendments were adopted by the Tenth National People’s Congress at its second plenary session. Of those amendments, the conception of human rights had been inserted into constitutional context at the first time, in form of such stipulation that “ The State Respects and Guarantees Human Rights”. It is a constitutional milestone on which the Constitution of 1982 has been in conformity with the requirement of international protection of human rights.

Until now, there are 31 amendments to the Constitution of 1982 which is the alive constitution confronting a lot of new situations emerging at the beginning of the 21st century. The Constitution of 1982 , as a comprehensive fundamental law in contemporary China, will lead China into a new era which implies socialist state of “rule of law”.

II. The Characteristic of the People’s Congress System

On the basis of the present Constitution of China, the People’s Congress System is the fundamental political system in China. It differs quite from Constitutionalism and Parliamentalism in the Western World in some sense. Its value in the aspect of legitimacy is the mixture of Constitutionalism and Parliamentalism. It has its own characteristic in the field of organizing state organs and allocating state powers.

(I) What’s the People’s Congress System?

According to Article 2 and Article 3, the People’s Congress System contains the following three principles:

i.All Powers in the People's Republic of China Belong to the People.

The above-mentioned principle is equal to the people’s sovereignty with its special contents, i.e., “The National People's Congress and the local people's congresses at various levels are the organs through which the people exercise state power.” ”The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law.”

ii. The State Organs of the People's Republic of China Apply the Principle of Democratic Centralism.

Such a principle mainly refers to the following contents stipulated in article 3 of the Constitution of 1982 , that is , “The National People's Congress and the local people's congresses at various levels are constituted through democratic elections. They are responsible to the people and subject to their supervision.” “All administrative, judicial and procuratorial organs of the state are created by the people's congresses to which they are responsible and by which they are supervised. “

iii. The Divisions of Functions and Powers between the Central and Local State Organs Are Guided by the Principle of Giving Full Scope to the Initiative and Enthusiasm of the Local Authorities under the Unified Leadership of the Central Authorities.

Moreover, autonomy under the principle of “rule of law” can be conceived as an important component in the People’s Congress System. It mainly is applied to all autonomous regions including national autonomous areas and special administrative regions.

(II) The Structure of the State Organs

i. The Structure of the Central Government

(i) The National People’s Congress

1,The Characteristic of the NPC

According to article 57 of the current Constitution, “The National People's Congress of the People's Republic of China is the highest organ of state power”. It doesn’t look like the parliament in the Western World, the state powers exercised by the NPC are those of the synthetic state powers, that means, including all kinds of state powers, inter alia, legislative ,administrative and judicial power etc. In the special term of constitutional sciences in China, the NPC can exercise four sorts of state powers, i.e., (1)legislative power; (2) power to appoint and remove personnel ;(3)decisive power to important state affairs;(4)supervisory power. Such four kinds of state powers are different from separation of power (check and balance)in the Western World.

2,The Organization of the NPC

According to the current Constitution, The National People's Congress is composed of deputies elected from the provinces, autonomous regions and municipalities directly under the Central Government and of deputies elected from the armed forces. All minority nationalities are entitled to appropriate representation. Its permanent body is the Standing Committee of the National People's Congress. Election of deputies to the National People's Congress is conducted by the Standing Committee of the National People's Congress. The number of deputies to the National People's Congress and the procedure of their election are prescribed by law.

The Standing Committee of the National People's Congress is composed of the following:

the Chairman;

the Vice Chairmen;

the Secretary-General; and

the members.

Minority nationalities are entitled to appropriate representation on the

Standing Committee of the National People's Congress.

The National People's Congress elects, and has the power to recall, members of its Standing Committee.

No one on the Standing Committee of the National People's Congress shall hold office in any of the administrative, judicial or procuratorial organs of the state.

The Standing Committee of the National People's Congress is responsible to the National People's Congress and reports on is work to the Congress.

The National People's Congress establishes a Nationalities Committee, a Law Committee, a Finance and Economic Committee, an Education, Science, Culture and Public Health Committee, a Foreign Affairs Committee, an Overseas Chinese Committee and such other special committees as are necessary. These special committees work under the direction of the Standing Committee of the National People's Congress when the Congress is not in session.

The special committees examine, discuss and draw up relevant bills and draft resolutions under the direction of the National People's Congress and its Standing Committee.

The National People's Congress and its Standing Committee, when they deem necessary, appoint committees of inquiry into special questions and adopt relevant resolutions in the light of their reports.

3,The Term and Method of Activity of the NPC

(1) The Term

The National People's Congress is elected for a term of five years.

The Standing Committee of the National People's Congress is elected for the same term of the National People's Congress; it shall exercise its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress.

The Chairman and Vice Chairman of the Standing Committee shall serve no more than two consecutive terms.

(2)The Method of Activity

The National People's Congress meets in session once a year and is convened by its Standing Committee. A session of the National People's Congress may be convened at any time the Standing Committee deems it necessary or when more than one-fifth of the deputies to the National People's Congress so propose.

When the National People's Congress meets, it elects a Presidium to conduct its session.

The Chairman of the Standing Committee of the National People's Congress directs the work of the Standing Committee and convenes its meeting. The Vice Chairmen and the Secretary-General assist the Chairman in his work.

The Chairman, the Vice Chairmen and the Secretary-General constitute the Council of Chairmen which handles the important day-to-day work of the Standing Committee of the National People's Congress.

4,The Power of the NPC

According to article 62 of the current Constitution , The National People's Congress exercises the following functions and powers:

(1) to amend the Constitution;

(2) to supervise the enforcement of the Constitution;

(3) to enact and amend basic laws governing criminal offenses, civil affairs, the state organs and other matters;

(4) to elect the President and the Vice President of the People's Republic of China;

(5) to decide on the choice of the Premier of the State Council upon nomination by the President of the People's Republic of China, and on the choice of the Vice Premiers, State Councilors, Ministers in charge of ministries or commissions, the Auditor General and the Secretary General of the State Council upon nomination by the Premier;

(6) to elect the Chairman of the Central Military Commission and, upon the Central Military Commission;

(7) to elect the President of the Supreme People's Court;

(8) to elect the Procurator General of the Supreme People's Procuratorate;

(9) to examine and approve the plan for national economic and social development and the report on its implementation;

(10) to examine and approve the state budget and the report on its implementation;

(11) to alter or annul inappropriate decisions of the Standing Committee of

the National People's Congress;

(12) to approve the establishment of provinces, autonomous regions, and municipalities directly under the Central Government;

(13) to decide on the establishment of special administrative regions and the systems to be instituted there;

(14) to decide on questions of war and peace; and

(15) to exercise such other functions and powers as the highest organ of

state power should exercise.

By the way, according to article 58, The National People's Congress and its Standing Committee exercise the legislative power of the state. As to the NPC, the procedure of making law is different from making constitution.

Amendments to the Constitution are to be proposed by the Standing Committee of the National People's Congress or by more than one-fifth of the deputies of the National People's Congress and adopted by a vote of more than two-thirds of all the deputies to the Congress.

Laws and resolutions are to be adopted by a majority vote of all deputies to the National People's Congress.

Moreover, the NPC has the power to remove from office the following persons based on article 63:

(1) the President and Vice President of the People's Republic of China;

(2) the Premier, Vice Premiers, State Councilors, Ministers in charge of

ministries or commissions, the Auditor General and the Secretary General of

the State Council;

(3) the Chairman of the Central Military Commission and other members of the Commission;

(4) the President of the Supreme People's Court; and

(5) the Procurator General of the Supreme People's Procuratorate.

According to article 67, The Standing Committee of the National People's Congress exercises the following functions and powers:

(1) to interpret the Constitution and supervise its enforcement;

(2) to enact and amend laws, with the exception of those which should be enacted by the National People's Congress;

(3) to partially supplement and amend, when the National People's Congress is not in session, laws enacted by the National People's Congress provided that the basic principles of those laws are not contravened;

(4) to interpret laws;

(5) to review and approve, when the National People's Congress is not in session, partial adjustments to the plan for national economic and social development or to the state budget that prove necessary in the course of their implementation;

(6) to supervise the work of the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate;

(7) to annul those administrative rules and regulations, decisions or orders of the State Council that contravene the Constitution or the law;

(8) to annul those local regulations or decisions of the organs of state

power of provinces, autonomous regions, and municipalities directly under the Central Government that contravene the Constitution, the law or the administrative rules and regulations;

(9) to decide, when the National People's Congress is not in session, on the choice of Ministers in charge of ministries or commissions, the Auditor General or the Secretary General of the State Council upon nomination by the Premier of the State Council;

(10) to decide upon nomination by the Chairman of the Central Military Commission, on the choice of other members of the Commission, when the National People's Congress is not in session;

(11) to appoint or remove, at the recommendation of the President of the Supreme People's Court, the Vice Presidents and Judges of the Supreme People's Court, members of its Judicial Committee and the President of the Military Court;

(12) to appoint or remove, at the recommendation of the Procurator General of the Supreme People's Procuratorate, the Deputy Procurators-General and procurators of the Supreme People's Procuratorate, members of its Procuratorial Committee and the Chief Procurator of the Military Procuratorate, and to approve the appointment or removal of the chief procurators of the people's procuratorates of provinces, autonomous regions, and municipalities directly under the Central Government;

(13) to decide on the appointment or recall of plenipotentiary representatives abroad;

(14) to decide on the ratification or abrogation of treaties and important

agreements concluded with foreign states;

(15) to institute systems of titles and ranks for military and diplomatic

personnel and of other specific titles and ranks;

(16) to institute state medals and titles of honor and decide on their conferment;

(17) to decide on the granting of special pardons;

(18) to decide, when the National People's Congress is not in session, on the proclamation of the state of war in the event or an armed attack on the country or in fulfillment of international treaty obligations concerning common defense against aggression;

(19) to decide on general mobilization or partial mobilization;

(20) to decide on the imposition of public emergency throughout the country or in particular provinces, autonomous regions, or municipalities directly under the Central Government; and

(21) to exercise such other functions and powers as the National People's

Congress may assign to it.

(ii) The State Council

1, The Characteristic of the State Council

According to article 85 of the current Constitution , the State Council, that is, the Central People's Government of the People's Republic of China ,is the executive body of the highest organ of state power; it is the highest organ of the state administration.

According to article 92 of the current Constitution, the State Council is responsible and reports on its work to the National People's Congress, or when the National People's Congress is not in session, to its Standing Committee.

2,The Organization of the State Council

According to article 86 of the current Constitution, the State Council is composed of the following:

the Premier;

the Vice Premiers;

the State Councilors;

the Ministers in charge of ministries;

the Ministers in charge of commissions;

the Auditor General; and

the Secretary General.

The Premier assumes overall responsibility for the work of the State Council.

The Ministers assume overall responsibility for the work of the ministries and commissions.

The organization of the State Council is prescribed by law.

The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of the local governments at various levels, and the revenue and expenditure of all financial and monetary organizations, enterprises and institutions of the state.

3, The Term and Method of Activity of the State Council

(1) The Term

According to article 87, the term of office of the State Council is the same as that of the National People's Congress.

(2) The Method of Activity

According to article 88, The Premier directs the work of the State Council. The Vice Premiers and State Councilors assist the Premier in his work.

Executive meetings of the State Council are to be attended by the Premier, the Vice Premiers, the State Councilors and the Secretary General of the State Council.

As for the function of ministries and commissions, Ministers in charge of the ministries or commissions of the State Council are responsible for the work of their respective departments and they convene and preside over ministerial meetings for general and executive meetings of the commissions to discuss and decide major issues in the work of their respective departments.

4, The Power of the State Council

According to article 89 of the current Constitution, the State Council exercises the following functions and powers:

(1) to adopt administrative measures, enact administrative rules and regulations and issue decisions and orders in accordance with the Constitution and the law;

(2) to submit proposals to the National People's Congress or its Standing

Committee;

(3) to formulate the tasks and responsibilities of the ministries and commissions of the State Council, to exercise unified leadership over the work of the ministries and commissions and direct all other administrative work of a national character that does not fall within the jurisdiction of the ministries and commissions;

(4) to exercise unified leadership over the work of local organs of state administration at various levels throughout the country, and to formulate the

detailed division of functions and powers between the Central Government and the organs of state administration of provinces, autonomous regions, and municipalities directly under the Central Government;

(5) to draw up and implement the plan for national economic and social development of the state budget;

(6) to direct and administer economic affairs and urban and rural development;

(7) to direct and administer the affairs of education, science, culture, public health, physical culture and family planning;

(8) to direct and administer civil affairs, public security, judicial administration, supervision and other related matters;

(9) to conduct foreign affairs and conclude treaties and agreements with foreign states;

(10) to direct and administer the building of national defense;

(11) to direct and administer affairs concerning the nationalities and to

safeguard the equal rights of minority nationalities and the right to autonomy

of the national autonomous areas;

(12) to protect the legitimate rights and interests of Chinese nationals

residing abroad and protect the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad;

(13) to alter or annul inappropriate orders, directives and regulations issued by the ministries or commissions;

(14) to alter or annul inappropriate decisions and orders issued by local organs of state administration at various levels;

(15) to approve the geographic division of provinces, autonomous regions and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties, and cities;

(16) to decide on the imposition of public emergency in parts of provinces, autonomous regions, and municipalities directly under the Central Government;

(17) to examine and decide on the size of administrative organs and, in accordance with the law, to appoint or remove administrative officials, train them, appraise their performance and reward or punish them; and

(18) to exercise such other functions and powers as the National People's

Congress or its Standing Committee may assign to it.

Moreover,based on the current Constitution, the ministries and commissions issues orders, directives and regulations within the jurisdiction of their respective departments in accordance with the law and the administrative rules and regulations, decisions and orders issued by the State Council.

Under the direction of the Premier of the State Council, the auditing body

independently exercises its power of supervision through auditing in accordance with the law, subject to no interference by any other administrative organ of any public organization or individual.

(iii) The Supreme People’s Court

1,The Characteristic of the Supreme People’s Court

According to article 127 of the current Constitution, the Supreme People's Court is the highest judicial organ.

The Supreme People's Court is responsible to the National People's Congress and its Standing Committee on the basis of article 128.

2,The Organization of the Supreme People’s Court

According to the current Constitution and laws concerning the organization of the Supreme People’s Court, there are the President , the Vice Presidents and Judges of the Supreme People's Court, members of its Judicial Committee in the Supreme People’s Court.

3,The Term of the Supreme People’s Court

According to article 124, the term of office of the President of the Supreme People's Court is the same as that of the National People's Congress. The President shall serve no more than two consecutive terms.

4,The Principle of Activity of the People’s Courts

According to the current Constitution, the principles of activity of the people’s courts at various levels are as the following:

(1) Except in special circumstances as specified by law, all cases in the people's courts are heard in public. The accused has the right to defense.

(2) The people's courts exercise judicial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual.

(3) Citizens of all nationalities have the right to use the spoken and written

languages of their own nationalities in court proceedings. The people's courts

and people's procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages commonly used in the locality.

In an area where people of a minority nationality live in a concentrated

community or where a number of nationalities live together, court hearings

should be conducted in the language or languages commonly used in the locality; indictments, judgments, notices and other documents should be written, according to actual needs, in the language or languages commonly used in the locality.

(4) The people's courts, the people's procuratorates and the public security organs shall, in handling criminal cases, divide their functions, each taking responsibility for its own work, and they shall coordinate their efforts and check each other to ensure the correct and effective enforcement of the law.

(iv)The Supreme People’s Procuratorate

1, The Characteristic of the Supreme People’s Procuratorate

According to article 129, the people's procuratorates of the People's Republic of China are state organs for legal supervision.

The Supreme People's Procuratorate is the highest procuratorial organ.

The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee.

2,The Organization of the Supreme People’s Procuratorate

According to the current Constitution and laws concerning the organization of the Supreme People’s Procuratorate , there are the Procurator General of the Supreme People's Procuratorate, the Deputy Procurators-General and procurators of the Supreme People's Procuratorate, members of its Procuratorial Committee in the Supreme People’s Procuratorate .

3,The Term of the Supreme People’s Procuratorate

The term of office of the Procurator General of the Supreme People's Procuratorate is the same as that of the National People's Congress; the Procurator General shall serve no more than two consecutive terms on the basis of Article 130 of the current Constitution.

4,The Principle of Activity of the People’s Procuratorates

In the light of the current Constitution, the principles of activity of the people’s procuratorates are as the following:

(1) The people's procuratorates exercise procuratorial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual.

(2) Citizens of all nationalities have the right to use the spoken and written

languages of their own nationalities in court proceedings. The people's courts

and people's procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages commonly used in the locality.

In an area where people of a minority nationality live in a concentrated

community or where a number of nationalities live together, court hearings

should be conducted in the language or languages commonly used in the locality; indictments, judgments, notices and other documents should be written, according to actual needs, in the language or languages commonly used in the locality.

(3) The people's courts, the people's procuratorates and the public security organs shall, in handling criminal cases, divide their functions, each taking responsibility for its own work, and they shall coordinate their efforts and check each other to ensure the correct and effective enforcement of the law.

(v) The President of PRC

1,The Characteristic of the President of PRC

In light of the constitutional tradition, the function of the head of PRC can be shared by the Standing Committee of NPC and the President of PRC.

2,The Qualification , Organization and Term of the President of PRC

(1) The Qualification

According to article 79 of the current Constitution , citizens of the People's Republic of China who have the right to vote and to stand for election and who have reached the age of 45 are eligible for election as President or vice President of the People's Republic of China.

(2) The Organization

According to the current Constitution, The President and the Vice President of the People's Republic of China are elected by the National People's Congress.

The President and the Vice President of the People's Republic of China exercise their functions and powers until the new President and Vice President elected by the succeeding National People's Congress assume office.

In the event that the office of the President of the People's Republic of China falls vacant, the Vice President of the People's Republic of China succeeds to the office of President.

In the event the office of the Vice President of the People's Republic of China falls vacant, the National People's Congress shall elect a new Vice President to fill the vacancy.

In the event that the offices of both the President and the Vice President of

the People's Republic of China fall vacant, the National People's Congress shall elect a new President and a new Vice President. Prior to such election, the Chairman of the Standing Committee of the National People's Congress shall temporarily act as the President of the People's Republic of China.

(3) The Term

The term of office of the President and Vice President of the People's Republic of China is the same as that of the National People's Congress, and they shall serve no more than two consecutive terms.

3,The Power of the President of PRC

The President and the Vice President of PRC can enjoy the following functions :

(1) The President of the People's Republic of China, in pursuance of the decisions of the National People's Congress and its Standing Committee, promulgates statutes, appoints or removes the Premier, Vice Premiers, State Councilors, Ministers in charge of ministries or commissions, the Auditor-General and the Secretary-General of the State Council, confers state medals and titles of honor; issues orders of special pardons; proclaims a state of public emergency; proclaims a state of war; and issues mobilization orders.

(2) The President of the People's Republic of China receives foreign diplomatic representatives on behalf of the People's Republic of China and, in pursuance of the decisions of the Standing Committee of the National People's Congress, appoints or recalls plenipotentiary representatives abroad, and ratifies or abrogates treaties and important agreements concluded with foreign states.

Moreover, the Vice President of the People's Republic of China assists the President in his work.

The Vice President of the People's Republic of China may exercise such functions and powers of the President and the President may entrust to him.

(vi) The Central Military Commission

1,The Characteristic of the Central Military Commission

In article 93 of the current Constitution, the Central Military Commission of the People's Republic of China directs the armed forces of the country.

In article 94, the Chairman of the Central Military Commission is responsible to the National People's Congress and its Standing Committee.

2,The Organization of the Central Military Commission

According to article 93, the Central Military Commission is composed of the following:

the Chairman;

the Vice Chairmen; and

the members.

The Chairman assumes overall responsibility for the work of the Central

Military Commission.

The term of office of the Central Military Commission is the same as that of the National People's Congress.

By the way, based on the “State Defence Law “ and “Legislation Law”, the Central Military Commission can have the power to enact the military regulation and rule.

ii. The Structure of the Local Government

(i)The Local People’s Congresses at various levels

1,The Characteristic of the Local People’s Congresses at various levels

People's congresses are established in provinces, municipalities directly under the Central Government, counties, cities, municipal districts, townships, nationality townships, and towns.

Local people's congresses at various levels are local organs of state power.

2,The Organization of the Local People’s Congresses at various levels

Local people's congresses at and above the county level establish standing committees.

Deputies to the people's congresses of provinces, municipalities directly

under the Central Government and cities divided into districts are elected by

the people's congresses at the next lower level; deputies to the people's

congresses of counties, cities not divided into districts, municipal districts,

townships, nationality townships, and towns are elected directly by their constituencies.

The number of deputies to local people's congresses at various levels and

the manner of their election are prescribed by law.

The standing committee of the local people's congress at and above the county level is composed of a chairman, vice chairmen and members, and is responsible and reports on its work to the people's congress at the corresponding level.

A local people's congress at or above the county level elects, and has the

power to recall, members of its standing committee.

No one on the standing committee of a local people's congress at or above the county level shall hold office in state administrative, judicial and procuratorial organs.

3,The Term of the Local People’s Congresses at various levels

The term of office of the people's congresses of provinces, municipalities

directly under the Central Government and cities divided into districts is five

years. The term of office of the people's congresses of counties, cities not

divided into districts, municipal districts, townships, nationality townships,

and towns is five years too.

4,The Power of the Local People’s Congresses at various levels

Local people's congresses at various levels ensure the observance and

implementation of the Constitution and the law and the administrative rules and regulations in their respective administrative areas. Within the limits of

their authority as prescribed by law, they adopt and issue regulations and examine and decide on plans for local economic and cultural development and for the development of public services.

Local people's congresses at and above the county level shall examine and approve the plans for economic and social development and the budgets of their respective administrative areas and examine and approve the reports on their implementation. They have the power to alter or annual inappropriate decisions of their own standing committees.

The people's congresses of provinces and municipalities directly under the Central Government and their standing committees may adopt local regulations, which must not contravene the Constitution and the law and administrative rules and regulations, and they shall report such local regulations to the Standing Committee of the National People's Congress for the record.

Local people's congresses and their respective levels elect and have the

power to recall governors and deputy governors, or mayors and deputy mayors, or heads deputy heads of counties, districts, townships and towns.

Local people's congresses at and above the county level elect, and have the power to recall, presidents of people's courts and chief procurators of people's procuratorates at the corresponding level. The election or recall of chief procurators of people's procuratorates at the next higher level for submission to the standing committees of the people's congresses at the corresponding level for approval.

The standing committee of a local people's congress at and above the county level discusses and decides on major issues in all fields of work in its administrative area; supervises the work of the people's government, people's court and people's procuratorate at the corresponding level; annuls inappropriate decisions and orders of the people's government at the corresponding level; annuls inappropriate resolutions of the people's congress at the next lower level, decides on the appointment or removal of functionaries of state organs within the limits of its authority as prescribed by law; and, when the people's congress at the corresponding level is not in session, recalls individual deputies to the people's congress at the next higher level and elects individual deputies to fill vacancies in that people's congress.

(ii) The Local People’s Governments

1,The Characteristic of the Local People’s Governments

Local people's governments at various levels are the executive bodies of

local organs of state power as well as the local organs of state administration

at the corresponding levels.

Local people's governments at various levels are responsible and report on their work to the state administrative organs at the next higher level. Local

people's governments at various levels throughout the country are state

administrative organs under the unified leadership of the State Council and

are subordinate to it.

2,The Organization of the Local People’s Governments

Governors, mayors and heads of counties, districts, townships and towns assume overall responsibility for local people's governments at various levels.

Auditing bodies are established by local people's governments at and above the county level.

3,The Term of the Local People’s Governments

The term of office of local people's governments at various levels is the same as that of the people's congresses at the corresponding levels.

4,The Power of the Local People’s Governments

Local people's governments at and above the county level, within the limits of their authority as prescribed by law, conduct administrative work concerning the economy, education, science, culture, public health, physical culture, urban and rural development, finance, civil affairs, public security, nationalities affairs, judicial administration, supervision and family planning in their respective administrative areas, issue decisions and orders; appoint or remove administrative functionaries, train them, appraise their performance and reward or punish them.

People's governments of townships, nationality townships, and towns execute the resolutions of the people's congress at the corresponding level as well as the decisions and orders of the state administrative organs at the next higher level and conduct administrative work in their respective administrative areas.

Local people's governments at and above the county level direct the work of their subordinate departments and of people's governments at lower levels, and have the power to alter or annul inappropriate decisions of their subordinate departments and of people's governments at lower levels.

Local auditing bodies at various levels independently exercise their power of supervision through auditing in accordance with the law and are responsible to the people's government at the corresponding level and to the auditing body at the next higher level.

5,The Autonomous System at the Bottom of City and Village

According to the current Constitution, there are autonomous units below the township and town in rural areas and below the city district divided into different Streets in municipal areas.

The residents' committees and villagers' committees established among urban and rural residents on the basis of their place of residence are mass organizations of self-management at the grass roots level. The chairman, vice chairmen and members of each residents' or villagers' committee are elected by the residents. The relationship between the residents' and villagers' committees and the grass roots organs of state power is prescribed by law.

The residents' and villagers' committees establish committees for people's

mediation, public security, public health and other matters in order to manage public affairs and social services in their areas, mediate civil disputes, help maintain public order and convey residents' opinions and demands and make suggestions to the people's government.

(iii) The Local People’s Courts

According to the current Constitution and laws, the people’s courts can be established at or above the county level. There are a lot of special judicial tribunals below the county level. The people’s courts at the county level take charge of case of the first instance .The Supreme People’s Court is the highest court in China which can have power to make the final decision and judgement. There are a lot of special people’s courts just like the military court, the forest court and the marine affair court etc.

(iv) The Local People’s Procuratorates

According to the current Constitution and laws, the people’s procuratorates can be established at or above the county level. The people’s courts at the county level take charge of case of the first instance .The Supreme People’s Procuratorate is the highest procuratorate in China. There are a lot of special people’s procuratoirate just like the military procuratorate etc.

iii. Autonomous Areas

(i)The Autonomous Unit

1,National Autonomous Region;

2,National Autonomous Prefecture;

3,National Autonomous County;

4,National Autonomous Town and Township .

(ii)The Organs of Self-Government of Autonomous Areas

According to article 112 of the current Constitution, the organs of self-government of national autonomous areas are the people's congresses and the people's governments of autonomous regions, autonomous prefectures and autonomous counties.

In the people's congress of an autonomous region, prefecture or county, in

addition to the deputies of the nationality exercising regional autonomy in the

administrative area, the other nationalities inhabiting the area are also entitled

to appropriate representation.

Among the chairman and vice chairmen of the standing committee of the people's congress of an autonomous region, prefecture or county there shall be one or more citizens of the nationality or nationalities exercising regional autonomy in the area concerned.

The chairman of an autonomous region, the prefect of an autonomous prefecture or the head of an autonomous county shall be a citizen of the nationality exercising regional autonomy in the area concerned.

(iii) The Autonomous Powers in Autonomous Areas

1, The Principle of the Autonomous Power

The organs of self-government of autonomous regions, prefectures and counties exercise the functions and powers of local organs of state as specified in Section V of Chapter Three of the Constitution. At the same time, they exercise the power of autonomy within the limits of their authority as prescribed by the Constitution, the Law of the People's Republic of China on Regional National Autonomy and other laws and implement the laws and policies of the state in the light of the existing local situation.

2,The Autonomous Power to Legislation

The people's congresses of the national autonomous areas have the power to enact regulations on the exercise of autonomy and other separate regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The regulations on the exercise of autonomy and other separate regulations of autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval before they go into effect. Those of autonomous prefectures and counties shall be submitted to the standing committees of the people's congresses of provinces of autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record.

3, The Autonomous Power to Administration

The organs of self-government of the national autonomous areas have the power of autonomy in administering the finances of their areas. All revenues accruing to the national autonomous areas under the financial system of the state shall be managed and used by the organs of self-government of those areas on their own.

The organs of self-government of the national autonomous areas independently arrange for and administer local economic development under the guidance of the state plans.

In exploiting natural resources and building enterprises in the national

autonomous areas, the state shall give due consideration to the interests of

those areas.

The organs of self-government of the national autonomous areas independently administer educational, scientific, cultural, public health and physical culture affairs in their respective areas, protect and sift through the cultural heritage of the nationalities and work for a vigorous development of their cultures.

The organs of self-government of the national autonomous areas may, in accordance with the military system of the state and practical local needs and with the approval of the State Council, organize local public security forces for the maintenance of public order.

The state provides financial, material and technical assistance to the minority nationalities to accelerate their economic and cultural development.

The state helps the national autonomous areas train large numbers of cadres at various levels and specialized personnel and skilled workers of various profession and trades from among the nationality or nationalities in those areas.

The state provides financial, material and technical assistance to the minority nationalities to accelerate their economic and cultural development.

iv. Special Administrative Regions

(i)The Domain of Special Administrative Regions

1,Hongkong Special Administrative Region;

2,Macao Special Administrative Region;

3,Taiwan Province and District.

(ii)The Main System in Special Administrative Regions

According to article 31 of the current Constitution, the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in light of specific conditions.

(III) The Relationship between the Central Government and the Local Governments

i.The General Relationship between the People’s Congresses at various levels and the People’s Governments , the People’s Courts and the People’s Procuratorates at various levels

According to article 3 of the current Constitution, All administrative, judicial and procuratorial organs of the state are created by the people's congresses to which they are responsible and by which they are supervised.

(i)The Relationship between the People’s Congresses and the People’s Governments at various levels

According to the Constitution and laws, the local people’s governments should be responsible to the people’s congresses at the corresponding level and the people’s governments at the next higher level.

All local people’s governments must be led by the State Council. Thereby, all local people’s governments must accept dual supervision from the people’s congresses at the corresponding level and the people’s governments at the next higher level.

(ii)The Relationship between the People’s Congresses and the People’s Courts at various levels

Generally Speaking, the people’s courts should be responsible to the people’s congresses at the corresponding level, but then, according to the Law of the People’s Court(article 35), the president and the other judges of the medium people’s courts in the provincial and municipal areas should be elected by the people’s congresses and their standing committees at the provincial level. Moreover, according to article 36, the president of the local people’s courts should be withdrawn upon the approval of the standing committee of the people’s congress at the higher level through the way by which the standing committee of the people’s congress at the corresponding level requests the people’s court at the higher level for report. Thereby, the people’s congress at the higher level may have certain power to supervise the people’s court at the lower level.

(iii)The Relationship between the People’s Congresses and the People’s Procuratorates at various levels

According to the Constitution and laws, the people’s congress can have the power to supervise the people’s procuratorate at the corresponding level(article 104 of the Constitution), but as a principle, the procurator general of the people’s procuratorate at the lower level should be appointed and removed upon the approval of the people’s congress at the higher level , the other members should be decided by the standing committees of the people’s congress at the higher level(article 22 of the Law of the People’s Procuratorate).Therefore, the people’s congress at the higher level can have the important power to direct the people’s procuratorate at the lower level.

ii. The Relationship between National People’s Congress and the Local People’s Congresses

According to the Constitution and laws, the Standing Committee of the NPC has the power(article 67(8)) to annul those local regulations or decisions of the organs of state power of provinces, autonomous regions, and municipalities directly under the Central Government that contravene the Constitution, the law or the administrative rules and regulations. The deputies of the people’s congress at the higher level must be elected by the people’s congresses at the lower level and should be supervised by the unites which elected them. Generally speaking, the relationship between the people’s congresses at the above level and at the below level may be regarded as mutual supervision and check.

iii.The Relationship between the State Council and the Local Governments

According to the current Constitution and laws, the State Council has the power to exercise unified leadership over the work of local organs of state administration at various levels throughout the country, and to formulate the detailed division of functions and powers between the Central Government and the organs of state administration of provinces, autonomous regions, and municipalities directly under the Central Government(article 89(4)). Therefore, the relationship between the State Council and the local governments belongs to the leading to led relationship.

iv.The Relationship between the Supreme People’s Court and the Local People’s Courts

According to the current Constitution(article 127), the Supreme People's Court supervises the administration of justice by the people's courts at various local levels and by the special people's courts. People's courts at higher levels supervise the administration of justice by those at lower levels. Hence, the relationship between the Supreme People’s Court and the local people’s courts rests with one of one-way supervision .

v.The Relationship between the Supreme People’s Procuratorate and the Local People’s Procuratorates

According to the current Constitution(article 132), the Supreme People's Procuratorate directs the work of the people's procuratorates at various local levels and of the special people's procuratorates at various local levels. People's procuratorates at higher levels direct the work of those at lower levels. Thus, the relationship between the Supreme People’s Procuratorate and the local people’s procuratorates belongs to one kind of leading to led relation.

(IV) The Legislative System in China

According to the current Constitution and Law of Legislation, the legislative system in China is composed of the following legal forms:

i. Constitution;

ii. Law ( the Fundamental Law and the Other Law);

iii. Administrative Regulation ;

iv.Local Regulation;

v. Regulation and Rule Adopted by the Ministry or the Special Committee;

vi. Regulation and Rule Adopted by the Local Government;

vii. Autonomous Regulation and Special Regulation ;

viii. Military Regulation and Rule;

ix.International Treaty and Agreement;

x. Authorized Legislation ;

As a legislative principle, legislative order should be set up on the basis of observing the doctrine “ the Constitution is over all legal forms and the legislation at the above level is over that at the below level”.

III.Constitutional Protection of Human Rights

(I) The Methods of Constitutional Protection of Human Rights

In the Constitution of 1982, protection of human rights is regarded as protection of citizen’s constitutional rights and enforcement of citizen’s constitutional duties. Protection means the mixture and combination of safeguard and limitation. Right cannot be split from duty freely. Thereby, while a citizen enjoys constitutional rights, he or she must perform the relative constitutional duties, inter alia, without infringement on the interests of state , the collective and the other citizens as the manifestation of article 51 in Constitution of 1982 ,that is, “Citizens of the People's Republic of China, in exercising their freedoms and rights, may not infringe upon the interests of the state, of society or of the collective, or upon the lawful freedoms and rights of other citizens. “

(II) The System of Constitutional Rights and Duties

In the light of the Constitution of 1982, as a Chinese citizen, he or she can have the following rights:

(i) Political Rights

The citizen can have the right to vote and stand for election; freedom of speech, of the press, of assembly, of association, of procession and of demonstration etc.

(ii)Freedom of Religious Belief

No state organ, public organization or individual may compel citizens to believe in, or not believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.

(iii)Freedom of Personality

The citizen can have the right to the personal dignity, freedom of the residences, freedom and privacy of correspondence .

(iv)Supervisory Rights

The citizen can have the right to criticize and make suggestions regarding any state organ or functionary; the right to make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty.

(v)Social Rights

The citizen can have the right as well as the duty to work; the right to rest; retirement for workers and staff of enterprises and institutions and for functionaries of organs of state according to law; the right to material assistance from the state and society

(vi)Cultural and Educational Rights

The citizen can have the right as well as the duty to receive education; freedom to engage in scientific research, literary and artistic creation and other cultural pursuits.

(vii)Rights of Special Group

The state protects the rights and interests of women, applies the principle of equal pay for equal work to men and women alike and trains and selects cadres from among women; marriage, the family and mother and child are protected by the state.

In the light of the Constitution of 1982, as a Chinese citizen, he or she can have the following duties:

the duty to safeguard the unification of the country and the unity of all its nationalities;

the duty to abide by the Constitution and the law, keep state secrets, protect public property, observe labor discipline and public order and respect social ethics.

the duty to safeguard the security, honor and interests of the motherland; not to commit acts detrimental to the security, honor and interests of the motherland;

the sacred duty to defend the motherland and resist aggression;

the honorable duty to perform military service and join the militia in accordance with the law;

the duty to pay taxes in accordance with the law and etc.

It should be noted that in amendments to the current Constitution in 2004, the conception of human rights was incorporated into the constitutional context, that implies , one day constitutional protection will be applied to all natural residents in China .

IV. The Issues on Constitutional Reform in China

(I)Intensifying Constitutional Supervision

According to the Preface of the current Constitution, the Constitution,in legal form, affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the state; it is the fundamental law of the state and has supreme legal authority. The people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and institutions in the country must take the Constitution as the basic standard of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation.

It is stipulated in article 5, the Constitution cannot be contravened, that is ,

” No laws or administrative or local rules and regulations may contravene the Constitution.

All state organs, the armed forces, all political parties and public organizations and all enterprises and institutions must abide by the Constitution and the law. All acts in violation of the Constitution and the law must be investigated.

No organization or individual is privileged to be beyond the Constitution or

the law.”

In order to guarantee the enforcement of the Constitution, article 62 and 67 prescribe that the NPC and its Standing Committee have the power and obligation to supervise the implementation of the Constitution .It is reiterated in article 99 that local people's congresses at various levels ensure the observance and implementation of the Constitution and the law and the administrative rules and regulations in their respective administrative areas.

However, there isn’t any special agency which can take special charge of supervising the observance and implementation of the Constitution under the NPC or its Standing Committee except there are explicit stipulations on the powers owned by the NPC and it Standing Committee. The general method of supervision for the NPC and its Standing Committee is focused on the following three aspects:

i,Listening to the Report made by the State Council , the Supreme People’s Court and the Supreme People’s Procuratorate and the Other State Organs in its Session;

ii,Investigating the implementation of laws in conformity with the Constitution;

iii, Administrative regulations, local regulation and so on for record.

The laws enacted by the NPC or its Standing Committee , for protection of constitutional rights etc ,have not been concerned with supervisory method. Unconstitutionality is seldom used as the tool of valuing the significance of laws and regulations. The constitutional rights don’t possess the independent importance vis-a-vis the ordinary rights stipulated in laws enacted by the NPC and its Standing Committee. The Constitution hasn’t become the actual standard to value the behavior of state organs or citizens. Thereby, for the sake of improving the legal status of the Constitution, it is imperative that the NPC and its Standing Committee should set up certain agency which will undertake the concrete task of supervising the implementation.

(II) Making Constitutional Relations Smooth

Under the current Constitution, there are several basic constitutional relations which contradict one another, for example, the relationship between the NPC and the Constitution, the relationship between the NPC and its Standing Committee, the relationship between legislative powers and legislative organs, the relationship between authorized legislation and functionary legislation etc. Such relations influence the role of the current Constitution as well as the principle of “rule of law”.

(III) “Rule of Law”, ”Rule of Autonomy” and “Rule of Constitution”

According to the current Constitution, there exist four kinds of autonomy, that is, autonomy in nationality autonomous regions, residents’ autonomy in urban areas at the grass levels, villagers’ autonomy in rural areas at the grass level and autonomy enjoyed by special administrative regions etc. However, the original resource of autonomy isn’t so clear in the theoretical aspect. The autonomous power and form appears some indefinable, the status of “rule of law” looks ambiguous. The other misunderstanding opinion can be found in amendments of 1999, that is, “rule of law” has been affirmed inside the Constitution. But then, because article 5 of the current Constitution has promulgated that the state upholds the uniformity and dignity of the socialist legal system, the reason why amendments of 1999 review such stipulation isn’t so strong to support its scientific nature.

(IV) Implementation of International Convention on Human Rights

Until now , Chinese citizens cannot use the Constitution to protect his constitutional rights in courts directly. In October 1998, Chinese government signed ICCPR. Before approval of it, how to deal with the relationship between universal rights in international conventions on human rights and constitutional rights, inter alia, the difference between constitutional protection of human rights and protection of human rights based on the ordinary laws is a hard work to be done. We need to probe such intricate issues more deeply.