

# Literature Review on Current Situation Analysis and Countermeasures of Education legislation in China

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**Abstract:** *In this paper, literature analysis and comparative analysis are used to systematically sort out the research literature on China's education legislation. Based on the advanced search conducted by CNKI with "Current situation of education legislation" as the title and key word, with unlimited time range and all source journals, a literature review on education legislation research was conducted, and 43 literatures were retrieved. Combining with these related papers, this paper emphatically analyzes the present situation and existing problems of China's education legislation, and at the same time focuses on new ideas, new ideas, new trends and new methods of education legislation research in the new era, combs and sums up the summative, forward-looking and responsive research of current China's education legislation, and puts forward corresponding countermeasures for future education legislation, aiming at promoting the perfection and perfection of China's education legislation.*

**Keywords:** *Education Legislation, Current Situation, Prospects*

## 1. Introduction

Since the founding of the People's Republic of China, China's educational legal system has experienced the development process of initial stage, stagnation, recovery and prosperity. In the ups and downs of China's education legislation, the legalization of policies, systematization of laws and centralization of rights together constitute the three major driving factors of the evolution of education legislation, and have also become the main experience of education legal system construction since the founding of New China, forming many important theoretical consensus. However, there is still a certain gap between China's education legislation and the goal of educational modernization. Looking back and sorting out the development and changes of educational law, revealing the trajectory, characteristics and influencing factors of its institutional changes, so as to explain and solve practical problems in a more targeted manner, should become a direction for the efforts of educational law academia and even the entire educational theory community.

## 2. Research Status of Current Education Legislation

After years of hard work, China has gradually established the basic framework of education law system, which is based on the education provisions in the Constitution, with 18 education administrative regulations and more than 200 education administrative regulations as the main body, supplemented by numerous local education laws and regulations, and reflects the great achievements of education legislation. This is a major progress in the governance of education by law in my country, and it has laid a solid foundation for the legalization of education. Due to the lack of profound legal tradition in our country, the history of modern legal system construction is quite short, so the foundation of education legislation is extremely weak, and many deficiencies are inevitable. By using the method of literature analysis and comparative analysis, I systematically sort out the research literature on China's education legislation. Combined with these relevant papers, I summarize the current situation and existing problems of my country's education legislation, mainly in the following aspects:

### 2.1 Incomplete Legal Norms and Low Quality of Legislation of Education

Legal norms generally consist of legal conditions, codes of conduct and legal consequences, which can exist in different provisions of the same legal document or in different legal documents. In countries with relatively perfect education legislation, the most ideal expression mode is generally

adopted in the writing of educational legal norms, that is, what to do, how to do, who is responsible and how to punish are stipulated in the same law, and clear requirements are set in what can be done and what can not be done, which is complete and convenient to operate. Shu Ying, Li Ciping and others put forward that, by contrast, China's current educational legal norms are incomplete. Mainly manifested in: First, many laws and regulations lack specific and clear codes of conduct, such as the second paragraph of Article 12 of the Compulsory Education Law of the People's Republic of China, which stipulates that the growth ratio of the state's financial allocation for compulsory education should be higher than the growth ratio of the regular financial income, and the average educational expenses according to the number of students in school should be gradually increased. This paragraph has no specific provisions on the growth ratio of financial allocation and the growth ratio of the average educational expenses per student, which is not convenient for implementation and supervision and inspection (Shu Ying, 2008) Second, some legal norms lack clear legal consequences. For example, the Compulsory Education Law of the People's Republic of China lacks norms on providing legal protection for those who receive compulsory education (Shu Ying, 2008). 2. Language expression technology is still immature. Some languages in education laws and regulations are too general and vague, such as the provision that "running a school for profit is not allowed", which is ambiguous and confusing. Or it is not concise and standardized enough, for example, the entanglement of Articles 7 and 8 of the Teachers' Law is an example; Or simply copy, for example, the Higher Education Law completely copied some provisions of the Education Law, and the Interim Measures for the Implementation of Academic Degrees Regulations copied a large number of provisions of the Academic Degrees Regulations; The special expression of "Dan Shu" is rarely used, so that the legal norms are not comprehensive enough (Li Ciping, 2005). All these have led to the lack of response and some operability of education laws and regulations.

### ***2.1.1 Untimely Legislation and Poor Operability of Educational Laws and Regulations***

The promulgation of the Ministry's education law will inevitably require the timely formulation of the corresponding education administrative regulations, implementation rules or specific regulations, and it should be highly operational, so that the education law can be truly implemented, otherwise, it may make the education law exist in name only, resulting in the situation that it is difficult to abide by the law. Zhan Zhongle, Shu Ying, Li Ciping, Gao Jinling and others pointed out that in this respect, China's education laws and regulations were not enacted in time, and the operability was not strong. The main problems are as follows: First, the legislation is not timely, for example, the Compulsory Education Law came into effect on July 1, 1986, while the Detailed Rules for the Implementation of the Instrument Education Law was only released on February 29, 1992; Again, the Law of Imitating Teachers came into effect on January 1st, 1994, while the Detailed Rules for the Implementation of the Law of Imitating Teachers was only released on October 6th, 1995 (Shu Ying, 2008). The legislative starting point of education is low, the debts are high, and the legislative speed is slow. Up to now, there are still many educational legal relations that need to be standardized and adjusted urgently, and there are some legislative gaps, and the legal scope is not complete (Li Ciping, 2005). Second, the operability is not strong. Although compared with the education laws with more qualitative norms and less quantitative norms, the education laws and regulations are more specific, but the contents are abstract and difficult to operate. Education and education legislation practice failed to promote each other. China's educational law has a low starting point, a short history, and is subject to underdeveloped educational legislation practice. Its progress is particularly slow, and its immature state is not only difficult to meet the urgent needs of theoretical guidance of educational legislation practice, but also easy to form a vicious circle with educational legislation practice (Gao Jinling, 2004).

The normative system of education law is not perfect, and the slow pace and inefficiency of traditional legislation can hardly meet the urgent demand of education modernization for the rule of law, which is more prominently reflected in five aspects: preschool education, examination, school, lifelong education and family education. For example, as the main body of running schools, schools play multiple roles in social life, and their legal relationships with the government, teachers and students are complicated. However, there is no School Law to specifically define the boundaries of rights (powers), obligations and responsibilities of schools (Zhan Zhongle, 2019).

### ***2.2.2 Weak Internal Coordination of Educational Legal Norm System***

The so-called "educational legal system" should not only have the completeness of legal texts with different levels of effectiveness in form, but also achieve coordinated interaction and organic connection in substantive content, and pay more attention to the quality and effectiveness of laws while increasing the number of educational legislation. After years of efforts, China has made remarkable progress in the education legislation system, which is closely related to the improvement of the quality

and authority of laws and regulations. However, the coordination within the educational legal norm system is weak. Zhan Zhongle, Shu Ying, Li Ciping, Chen Lipeng and others have made an analysis from the following aspects:

The perform of some educational legislative power is somewhat chaotic. For example, there is a phenomenon of encroachment of educational legislative power between "People's congresses" at all levels and their standing committees, among which most of the local people's congress standing committees exceed their own authority; The core position of power organs in education legislation is somewhat misnamed, and the role of administrative departments in legislation is too obvious, even usurping the host's role; There are also many inadequacies in the exercise of the right of legislative planning. Some administrative agencies or subordinate departments go beyond their authority to make legislative planning, instead of just putting forward relevant suggestions (Li Ciping, 2005).

Laws, regulations and rules promulgated in different periods coexist, and there are many problems such as "conflicts and fights are inconsistent", "overlapping and duplication are uncoordinated" and so on. For example, in order to fully guarantee the welfare of teachers' occupation, the Teachers Law requires that teachers' salary level should not be lower than or higher than the average salary level of "national civil servants"; The "Compulsory Education Law" that was subsequently promulgated compared the regulations on teachers' salary levels with "local civil servants", and the requirements should not be lower than the latter, which led to the region and the school stage becoming an important factor affecting teachers' salary income. If the salary level of civil servants in a certain place is lower than the national average, the primary and secondary school teachers who apply the Compulsory Education Law will not only have lower incomes than similar teachers in other regions, but may also form a larger relationship with teachers in other schools in the region. This kind of regulation is obviously not conducive to teachers in the compulsory education stage in this area (Zhan Zhongle, 2019).

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With the increase of educational legislatures, the staggered time of legislation, especially the lack of coordination among various legislatures, causes the conflict between laws and regulations to intensify day by day. This includes some contradictions between educational legislation and other administrative legislation and civil and commercial legislation, as well as conflicts within educational legislation. For example, legislation on compulsory education, higher education and private education all have this phenomenon (Li Ciping, 2005).

### **3. Future Prospects of China's Educational Legislation**

Looking back at history is to mirror the future. Against the background of the above-mentioned problems in China's education legislation, it has become a major mission for the development of China's education rule of law to comprehensively build an education legislation system with scientific content, complete supporting facilities, strict procedures and effective operation. The author believes that by summarizing the above research questions, the research objectives that this research strives to achieve are as follows:

#### ***3.1 Legislative Technology: Learn from The Achievements of Foreign Educational Legislation, and Strive to Improve the Legislative Technology.***

Summarize the experience and lessons of domestic education legislation, learn from the achievements of foreign education legislation, and strive to improve the legislative technology. After 50 years of practice and exploration, China's education legislation has a lot of experience waiting for people to sum up, and there are also many lessons for us to learn. At the same time, in some developed countries abroad, due to the long history of legislation and the relatively perfect education legislation, there are many achievements worth learning from. Bringing active and favorable factors into education legislation is of great significance for improving the technology and quality of education legislation, speeding up the process of education legislation and promoting the integration of education legislation with international standards.

#### ***3.2 Legislative Layout: Establish and Improve the Educational Legal Norm System***

At present, China has a relatively complete education law standard system in form, with a relatively large number, clear effectiveness rank and comprehensive adjustment contents, but the internal cohesion, coordination and complementarity are still not perfect. This will easily lead to unclear boundaries, overlapping structures, mutual constraints and even conflicts between different normative texts. It is urgent to solve the systematization problem to ensure that the whole educational legal normative system has a reasonable macroscopic structure, complete texts in the middle view and cohesion, coordination, mutual protection and mutual promotion in the micro view.

#### ***3.3 Legislative Content: Strengthening Procedural Law and Right Relief System***

From the content of legislation, there are two legislative forms: substantive legislation and procedural legislation. The rule of law in education is both substantive rule of law and procedural rule

of law. It is necessary not only to determine the rights (powers), obligations and responsibilities of all parties in the legal relationship in education, but also to provide channels for right relief and dispute resolution. It is necessary not only to pay attention to perfecting substantive rules, but also to strengthen the norms of procedural law. In the initial stage of education, most of the legislation was stipulated by substantive law, which was quite unfamiliar with the concept of procedural rule of law, and did not pay enough attention to rights relief and procedural norms. It was precisely because of the lack of procedural provisions that the implementation of substantive provisions was ineffective and the content was empty. With the continuous introduction of education laws and the gradual strengthening of the concept of procedural justice, the procedural provisions in education legislation are gradually increasing. What is more representative is that "the principle of due process" was put forward for the first time in Article 55 of the Regulations on the Management of Students in Colleges and Universities revised in 2005, and the procedural rights of the students involved, such as statements and pleadings, were clarified. Although these contents are only aimed at the disciplinary areas of students, they are of great significance in the development of the whole education law.

### ***3.4 Legislative Way: Coordinate Efforts to Promote the Simultaneous Reform and Release of Legislation and Waste***

From the perspective of development, education legislation should insist on legislation, reform, abolition and interpretation, especially under the premise of limited national legislative resources, and it is necessary to carry out the revision of education law, the collation of education regulations and the compilation of seal characters of education code in time according to actual needs. On the one hand, China's education laws are formulated according to the principle of proceeding from reality and the needs of education reform and development. With the development of education and the deepening of education reform, some contents of the education laws that were made before may be out of date. Therefore, relevant departments should make timely amendments and supplements. On the other hand, China's education regulations cover all aspects of education, with a large number. According to relevant data, there are no fewer than 100 kinds of regulations issued by the national education administrative department since the founding of the People's Republic of China. Education regulations are highly targeted and numerous, which has its positive side, but it also has its negative side. Too many education regulations sometimes make people feel at a loss. Therefore, it is necessary to sort out some outdated and unnecessary rules and regulations in time, and earnestly carry out the seal writing work of the education code, so as to eliminate the overlapping, contradiction and confusion of the education laws and regulations, and make the education law systematic and consistent.

## **4. Conclusion**

To sum up, we can find that since the founding of New China, the improvement of education legislation is inseparable from the development and progress of education through the research. Only by taking root in the practice of education modernization and realizing its healthy growth in the balance of policy and legality, unity and systematization, rights and power can we better promote the reform and development of Chinese education through legislative evolution. Like other legal departments, the study of educational law issues has never been inseparable from the historical research paradigm. A systematic analysis of the experience and problems of the evolution of educational legislation is especially helpful for the theoretical deepening and institutional improvement of educational law. We look forward to the establishment of an education legislation system with scientific content, complete supporting facilities, rigorous procedures, and effective operation as soon as possible, so as to achieve good law and good governance in the field of education, and play a leading and guarantee role in the realization of the goal of educational modernization.

## **Acknowledgments**

This article is the phased results of the first batch of industry-university cooperation collaborative education projects in 2021 of the Department of Higher Education of the Ministry of Education (Project Number:202101050005); 2020 Guangdong Technology College Key Scientific Research and Cultivation Project (Humanities and Social Sciences) (Project Number: 2020GKJZD005); 2021 Education and Teaching Reform project of Guangdong Institute of Technology (Project Number: JXGG202152)

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