

On the Constitutionalization of Chinese Citizens' Environmental Rights

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Abstract. The citizen's environmental right is an important part of the modern legal system. It aims at protecting the basic rights and interests of citizens, promoting environmental protection and sustainable development. The right needs to be effectively guaranteed and implemented through laws, policies and social actions. Environmental rights have been gradually accepted by all countries in the world. Although the idea of environmental rights into the constitution has a long history, it has a different era significance in the present. The construction of a beautiful new China and a beautiful new world requires the promotion and protection of environmental rights in the Constitution. In the new era, China still faces severe ecological and environmental problems at home and abroad. In order to effectively solve the environmental problems facing China, fulfill the state responsibility for environmental protection and the task of The Times for environmental governance, the Constitution should stipulate citizens' environmental rights.

Keywords: Citizens' Environmental Rights; Constitutional Protection; State Obligations; Environmental Protection.

1. Introduction

Constitutional protection of citizens' environmental rights is an objective requirement of the strategy of "building an ecological civilization" and a constitutional commitment to implement "Beautiful China". In recent years, environmental issues have received unprecedented attention. To regulate citizens' environmental rights from the constitutional level is a response to the needs of the contemporary environmental era, and can provide certain social value for citizens' environmental rights. It can also provide a strong guarantee for the survival and development of citizens in a beautiful environment, protect the integrity of the ecological system, and better protect the environmental rights of citizens.

2. Overview of Citizens' Environmental Rights

2.1. Definition of Civil Environmental Rights

Citizens' environmental rights are not clearly defined in law. As a legal right, some scholars believe that the environmental right as a legal right is derived from the legal obligation. It is argued that the existence of environmental protection obligation is to protect or promote the environmental interests of the right holder, and that the environmental interests or welfare enhanced by legal obligations have ultimate value, thus it can be deduced that environmental rights exist as rights. Some scholars also argue that environmental interests are expressed as environmental rights in law, and that environmental interests are objective interests that exist universally in real life. The most direct expression of environmental interests in legal texts is "environmental rights". As an independent right, environmental rights are caused by the independence and particularity of environmental interests themselves. As long as there is a de facto interest relationship, the interest relationship adjusted by law is the relationship between rights and obligations, and the expression of environmental interests in law should be environmental rights. This paper holds that citizens' environmental rights are recognized by law, and citizens' individual rights to use appropriate environment and resources to produce, live or maintain life processes.

2.2. Characteristics of Citizens' Environmental Rights

First, it is human-centered. The core of citizens' environmental rights is people-oriented, focusing on protecting citizens' rights to subsistence, health and development, and ensuring that citizens live in a healthy, safe and pollution-free environment. Citizens' right to the environment means that the state and society must take measures to prevent pollution, damage or other harmful effects of the environment and ensure that citizens' rights to life and health are effectively protected.

Second, public participation. It is mainly reflected in the provisions and practices of laws and policies to ensure that environmental policies and measures are more just, reasonable and scientific. The right of public participation is clearly defined and guaranteed in the law, and the opinions and suggestions of the public are fully taken into account in the formulation and implementation of environmental decisions, ensuring that citizens have the right to participate in decision-making related to the environment, including participating in the decision-making process of environmental impact assessment, planning permission and project approval. Public hearings may be organized to solicit opinions before decisions are made to ensure that the public's voice is fully heard.

Third, sustainability. Citizens' environmental rights not only focus on current environmental issues, but also include the protection of the environmental heritage of future generations, focusing on long-term sustainable development and ecological balance. The implementation and protection of citizens' environmental rights have a long-term perspective and planning to ensure the sustainable use of environmental resources and ecological balance. The right is to achieve a balance between economic growth, social progress and environmental protection through the principles and goals of sustainable development, ensuring the efficient use of resources and the healthy functioning of the ecosystem.

Fourth, complexity. Citizens' environmental rights involve multiple fields, multiple stakeholders and multiple rights, and are highly complex and multi-dimensional. On the one hand, due to the impact of the natural environment and the aggravation and complexity of global environmental problems, the protection and implementation of citizens' environmental rights are facing greater challenges and pressures. On the other hand, the impact of social and economic factors, such as the level of economic development, technological progress and resource allocation. These factors affect the cognition, demand and practice of citizens' environmental rights, increasing the complexity of the protection and implementation of rights and interests.

2.3. Basic Contents of Citizens' Environmental Rights

First, the right to a healthy environment. The right to a healthy environment is an important aspect of citizens' environmental rights. It is mainly concerned with ensuring that people live in a healthy, safe and sustainable environment. Citizens have the right to live in an environment that is pollution-free, free of harmful substances and conducive to good health. This includes protection of air quality, water quality, soil pollution and other aspects to ensure that people's basic health and right to subsistence are not infringed upon.

Second, the right to participate in environmental decision-making. The right to participate in environmental decision-making is the right of citizens to participate in the decision-making process in environmental management and protection. The core of this right is to ensure that the public has a voice and influence in policy making, project approval and other related decisions involving environmental issues. The right is twofold. One is to know and access environmental information. Citizens have the right to know, access, disseminate and use information related to the environment in order to better understand and participate in environmental protection activities. The second is participation in the environmental decision-making process. Citizens have the right to participate in the formulation, implementation and supervision of environmental policies, exercise their rights and safeguard their vital interests.

Third, the right to judicial relief. With rights, there is relief. The right to judicial relief of environmental rights means that when citizens or organizations are harmed by environmental pollution, destruction or other related environmental problems, they can seek protection and compensation for their legitimate rights and interests through judicial channels. When a citizen's environmental rights are infringed upon, he or she should have the right to bring a lawsuit to the court and ask the state to protect his or her environmental rights and interests according to law, which is an inevitable requirement of social justice and the development of the rule of law.

3. Current Constitutional Protection of Chinese Citizens' Environmental Rights

Article 9 (2) of the Constitution states: "The State guarantees the rational use of natural resources and the protection of precious animals and plants. The appropriation or destruction of natural resources by any organization or individual by any means is prohibited." Article 26 stipulates: "The state protects and improves the living environment and the ecological environment, prevents pollution and other public hazards, and organizes and encourages afforestation and the protection of forest trees." The above two articles are the main constitutional provisions of Chinese citizens' environmental rights, which stipulate the state's overall policy on ecological and environmental protection and serve as the basis and basis for various environmental legislation in China. At the same time, these provisions provide a strong guarantee for the provisions on environmental rights and environmental obligations in the environmental law, and point out the direction and objectives for the establishment of specific environmental laws and regulations. In contrast, the two constitutions of China stipulate that the provisions on environmental protection are not included in Chapter II of the Constitution, "The Basic Rights and Obligations of Citizens", but in the general Theses.

Taking Article 26 of the current Constitution as an example, this article only proves the constitutional status of citizens' environmental rights by means of constitutional interpretation and comparative analysis, but does not directly stipulate citizens' environmental rights. From the specific content of this article, "living environment and ecological environment" can radiate to the whole natural and social fields, and extend the state's obligation to protect citizens' survival and living environment in all aspects. Therefore, Article 26 of the Constitution can be regarded as the general provisions of the state's environmental protection obligations. Moreover, the environmental protection stipulated in Article 26 has been widely recognized as a basic state policy. What is different is that as a basic state policy, it is quite different from the traditional constitutional norms.

The article's basic state policy can be seen from the effect of the Constitution. At present, the academic circles have the following views on the constitutional effect of the basic state policy: First, the policy clause. That is, the basic state policy provisions stipulated in the Constitution are only directional instructions, which have no guiding effect on general laws and regulations, and generally do not have the binding force of legal norms. The second is constitutional entrustment. This view is an amendment to the principle clause theory, which holds that the basic state policy exists in the Constitution clause and has the effect of urging the legislator to make legislation. The third is the national objective clause. This theory is similar to the constitution entrustment theory, which holds that the realization of norms needs the concrete legislation of the legislature. The difference between it and constitutional entrustment is that the state objective clause is more dynamic and purposeful. Fourth, institutional guarantee. It holds that when the contents of basic state policies are stipulated or confirmed by the text of the Constitution, they have the effect of clearly guiding the operation of state power and institutional development. Fifth, the people's public law rights. This theory holds that basic state policy provisions directly create rights that the people can exercise.

In the above views, this article agrees to define the constitutional effect of the basic state policy of environmental protection by institutional guarantee. Article 26 of the Constitution adopts expressions such as "State protection and improvement", "organization and encouragement", and analyzes from the mode of "basic rights-state obligations", the corresponding category of state environmental obligations is citizens' constitutional environmental rights, which conforms to the expression mode

of state obligations corresponding to basic rights. Through the state obligation, the institutional guarantee echoes the citizens' urgent request for enjoying a good environment, has the function of promoting the realization of citizens' basic rights, and implies the corresponding relationship between basic rights and state obligations to the basic categories of the Constitution. Therefore, Article 26 of the Constitution of China should be used as an institutional guarantee to realize its constitutional effect.

4. The Necessity of Incorporating Chinese Citizens' Environmental Rights into the Constitution

4.1. Requirements for the Improvement of the Environmental Protection System

The establishment of citizens' environmental rights is of great significance to the improvement of the national environmental protection system. At present, China has basically established an ecological and environmental protection system, but the whole legal system of environmental protection is still to be improved, and the environmental right, as the source of rights, is still lacking in the environmental protection system. Because the environmental right has not been clearly established, it is difficult for all laws and regulations on environmental protection to connect and coordinate with each other to form a unified body, that is, the entire environmental protection system does not have the core it should have. From the perspective of China's legislative practice, the newly revised environmental law has greatly increased the importance of environmental protection, but the environmental right that connects the entire environmental legal system has not been established, which makes it difficult for the legal system of environmental protection to play a synergistic role. Without the establishment of the environmental right in the Constitution, it is difficult for the basic Law of the environment to stipulate the environmental right. Therefore, China needs to establish citizens' environmental rights, make environmental protection laws and regulations supported by higher laws, and promote the coordination of environmental protection regulations and policies to form an environmental protection system centered on environmental rights.

4.2. The Lower Law Follows the Requirements of the Upper Law

Without the authorization of the upper law, the lower law generally cannot create rights, especially this kind of universal environmental right. At present, due to the lack of perfect construction of the environmental protection system of citizens' environmental rights in China, local legislation on environmental protection has been greatly reduced. Moreover, China's provisions on environmental rights first appear in local legislation, and a large part of environmental legislation comes from local environmental legislation. In addition to laws, rules and regulations at the national level, all localities have formulated environmental laws and regulations in line with local environmental protection in light of local actual conditions, making up for the deficiency of environmental legislation. Some regions have carried out local pilot projects in combination with their own regional characteristics, which has promoted the overall innovation of environmental protection legislation. However, without the guidance of the upper Law, local legislation is still not unified and standardized. In addition, the current environmental problems are becoming more and more prominent, the grassroots have an urgent need for environmental governance, and the environmental rights of the general public urgently need to be protected. Therefore, the upper law is in urgent need of improvement to meet the needs of the lower law. Only when citizens' environmental rights are stipulated in the Constitution can local legislation have a real legal basis.

5. The Mode Choice of Chinese Citizens' Environmental Right into the Constitution

From the perspective of the modes of enacting environmental rights in various countries around the world, there are mainly three modes, namely, explicitly stipulating environmental rights in the Constitution, only stipulating the state's environmental protection duties, and protecting environmental rights through constitutional interpretation or judicial practice. This paper holds that

the mode of incorporation of Chinese citizens' environmental rights into the constitution should choose the mode clearly stipulated in the Constitution, and explicitly write citizens' environmental rights into the constitution, emphasizing the protection of citizens' environmental rights.

In terms of choosing the mode, the mode of judicial protection of environmental rights is difficult to cover all environmental interests and form systematic legal norms of environmental protection from the practice of protecting environmental rights in China and other countries in the world. The model of constitutional interpretation, taking Article 26 of the Constitution as an example, which is an important provision for the protection of citizens' environmental rights, can only be interpreted as an objective legal norm pointing to state obligations by using the method of system interpretation. Therefore, on the basis of affirming the constitutional status of citizens' environmental rights, it is the best choice to realize the constitutional protection of environmental rights by amending the Constitution and adding an independent environmental rights clause.

In terms of the specific design of the Chinese citizens' environmental right clause, by drawing lessons from foreign countries and their own constitutional practice, the citizens' environmental right should be clearly stipulated in the "Basic rights and obligations of citizens" in Chapter II of the Constitution, and specifically stipulated before the obligations of citizens' exercise of freedom and rights in Article 51 of the Constitution. From the perspective of the provisions on the basic rights of citizens in China's current Constitution, they mainly include the "right to freedom", namely, the right to equality, the right to vote, freedom of speech, publication, freedom of assembly, association, procession, demonstration, freedom of religious belief, freedom of the person, personal dignity, freedom of correspondence, the right to complain, accuse and report as stipulated in Articles 33 to 41 of the Constitution; And "social rights", namely, labor rights, social security rights, education rights, cultural rights, women's rights, marriage and family rights, etc. as stipulated in Articles 42 to 50 of the Constitution. From the nature of citizens' environmental rights, this right is a typical social right, and it is most appropriate to add a new clause on environmental rights after article 50. Stipulating it in this position not only clarifies the constitutional status of environmental right as a basic right, but also highlights the basic role of good environment on citizens' personal dignity.

In terms of the specific design of the articles on the environmental rights of Chinese citizens, the provisions on the environmental rights of citizens are divided into two sections. The first paragraph stipulates that citizens enjoy the right to live in a good environment, that is, citizens' environmental rights are clearly defined; The second paragraph stipulates that the state shall undertake the obligation of environmental protection and governance, that is, the state obligation shall be clarified, but the citizen obligation shall not be stipulated. On the one hand, by emphasizing the state's environmental protection and governance, it shows that environmental governance and resource protection mainly depend on the active actions of the state, highlighting the state's obligations and the guarantee of citizens' basic rights. On the other hand, the purpose of the Constitution is to protect citizens' rights and limit the power of the state, and not stipulating citizens' environmental obligations is in line with the constitutional purpose of the state. In addition, Article 51 of the Constitution has already outlined the basic duties of citizens, and there is no need to stipulate them.

To sum up, Chinese citizens' environmental rights should be incorporated into the Constitution in an explicit manner, stipulating that in Chapter 2 of the current Constitution of China, "The Basic Rights and Obligations of Citizens," the first paragraph specifies citizens' environmental rights, and the second paragraph specifies the state's environmental protection obligations. While taking into account the constitutional system and basic rights, the constitutional protection of environmental rights should be carried out in a way that combines citizens' rights and state obligations.

6. The Development Path of Chinese Citizens' Environmental Rights into the Constitution

It is an important way for environmental protection to be incorporated into the constitution to stipulate environmental right as a basic right. However, the constitutional protection clause of citizens' environmental rights can only be stipulated in principle, and the determination of the constituent

elements of environmental rights and the specific arrangement of environmental protection system depend more on the promotion of related legal construction.

First, local legislation should be strengthened. Local legislation, as an important source of legal resources, is an important driving force for the incorporation of environmental rights into the constitution. The Legislation Law revised in 2015 expanded local legislative power, making it clear that cities with districts also have legislative power over a few matters, such as environmental protection. The implementation of local environmental legislation adapts to the situation of regional governance with complex environment, and is a kind of legislation with differences, locality and individuation. The legislative power in the Constitution coordinates the legislation of the central government and local governments. Through the interaction between local legislative practice and environmental protection needs, some universal and overall experience and practices can be summarized and upgraded into institutional and technical rule of law schemes.

Second, we should give full play to the role of case guidance. As a successful judicial practice in China, the case guidance system still has room for improvement in the environmental field. In practice, the Supreme People's Court should publicize more typical cases related to the environment to convey the basic concept of environmental judicial adjudication. In particular, in view of the growing environmental public interest litigation, the cases should play a guiding role and become an important reliance for the legislature to enact confirmatory legislation on judicial practice, so as to revise the constitutional concept and promote the generation and development of constitutional environmental rights.

Third, promote the review of constitutionality. Constitutionality review is one of the ways to interpret the constitution. Although the constitutionality review itself cannot directly derive the normative constitutional environmental right, it requires the state to establish various environmental protection systems and procedures to create the prerequisite for the realization of environmental right. The first is to require the state to protect citizens from other infringements from third parties, and to exclude other private law subjects from infringing upon citizens' environmental rights and interests in the trial of cases; The second is to require the constitutional environmental rights as the standard for the establishment of the environmental system to review and supervise the regulatory documents, to prevent the legislature and other subjects to improperly perform their duties, in violation of the Constitution and the basic principles and specific norms of the law on environmental protection.

7. Conclusion

Citizens' environmental rights are put forward with the development of social production, the deterioration of global environmental quality and the enhancement of human environmental awareness. With the development of economic society, environmental rights are gradually paid attention to. The incorporation of citizens' environmental rights into the constitution is an important embodiment of social progress and the construction of the rule of law. It provides a solid legal foundation and a strong legal guarantee for promoting social justice, protecting the ecological environment and realizing sustainable development. The establishment of this right requires the joint efforts and participation of all sectors of society to jointly promote the construction of ecological civilization and the harmonious coexistence between man and nature.

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