A Study on Development Dimension and Framework of Litigation Law Based on Times Analysis

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ABSTRACT: In recent years, China has made rich research achievements in litigation law. From macro aspect, new concept system and litigation idea are being constructed with efforts; from micro aspect, actual investigation has been conducted into the specific system and procedures implementation of litigation law. During the process of investigation, relative scholars have found that litigation law has been extended in research method and range to varying degrees, of which outstanding achievements has been made in model innovation of the basic theory of litigation law, court mediation function and value innovation. However, during the process of constant transformation of litigation law, due to limitation of the development and progress of the times, many tasks of epochal character in litigation law have not been overcome. Therefore, this essay, based on epochal character, studies the development dimension and framework of litigation law.

INTRODUCTION

Currently, the development and progress of litigation law cannot be separated from cultivation and accumulation of the long development of the times. So, it is necessary to do time-period analysis of litigation law. During this process, researchers of litigation law should promptly comb and summarize the current development and achievements of litigation law to set clear goals for the long-term development of litigation law. At the same time, with the change of time, great accomplishments have been made in litigation law. The introduction and amendment of Property Law, Corporation Law and Securities Law improved the follow-up work between security function of procedural law of litigation law and substantial law. Meanwhile, in terms of research status of litigation law, research fruits of practical significance and academic perspectives of innovation spirit have appeared. Relative scholars have ploughed the field of research areas and topics of litigation law. Based on above research achievements, this essay studies at different levels the development dimension of the basic theory and legal proceedings of litigation law in order to improve the research level of our litigation law.

2. Literature Review

With the booming of economy, rich achievements have been made in researches on litigation law. X Zhang (2010), when studying administrative litigation law, found that ECB depended significantly upon law-enforcement of courts, which led to the mutual benefit relationship between ECB and courts. This relation pushed the further development of litigation law of ECB [1]. In terms of researches on the field of litigation law amendment, O Klepper (2012), when studying litigation law amendment of China, pointed out that the process of amendment of litigation law in China should comply with the principles, such as exclusion of illegally obtained evidence in criminal court, early inquiry of lawyers, tolerance and concealment among relatives as well as effective protection of witnesses [2]. Moreover, during the process, China should put delivery control and undercover investigation, system of trial by default and presumption of crimes into the referential standards of amending litigation law. Besides, scholars of various fields have expressed their opinions on amendment areas of criminal, civil and administrative litigation laws. Ma Huaide (2010), when studying administrative litigation law amendment, found that although administrative litigation law played a great role in carrying out the administration according to law and improving law system, a series of issues appeared at the same time. Therefore, relative legislative branches need to...
improve and amend the administrative litigation law [3]. Wang Yaxin (2010), when studying the amendment of civil litigation law, found that through procedures differentiation of civil litigation law, first instance proceeding issue should be specified during the amendment [4]. Liao Zhonghong (2012), and Li Hao (2011), when analyzing the new revision of Civil Litigation Law of 2012, compared law-making stipulations about small litigation of countries all over the world and found that rationality and scientificity of one-final trail applied to small litigation should be studied [5,6]. Xiong Yuemin (2013), when analyzing Decision on Amendment of Civil Litigation Law of the People’s Republic of China, pointed out that this amendment of civil litigation law involved many problems, such as basic principles, specific system and procedures setting, and further indicated that the important task of current legislative branches was to provide theoretical explanation in accordance with legislative intent for running of new law [7]. Chao Zhixiong (2013), when analyzing the third party in civil litigation law, pointed out that introduction of the third party discharging the judgment into Civil Litigation Law, could effectively avoid benefit lost of the third party [8]. Ying Songming and Jiang Ming’an, through their speeches, pointed out that current Administrative Litigation Law exposed many problems, could not be adapted to demands of the times and developing situation and cried for amendment and improvement [9,10]. Chen Weidong (2012), when studying Criminal Litigation Law, thought that pretrial conference system of criminal litigation law after amendment undertook justice and efficiency and promoted the further development of criminal litigation law [11]. Pan Chongyi (2012), when commenting on Draft of Amendment of Criminal Litigation Law, thought that above draft could embody a concentrated reflection of progress and development of Chinese system of criminal litigation law, further improve concept and type of evidence and push the overall development of litigation law. At the same time, he indicated that discussion of amendment of administrative litigation law had become a hot topic of theoretical cycle and practice department [12]. X Sun (2013), when studying litigation law, analyzed the current situation of Chinese criminal litigation law, and pointed out that juridical practice of Chinese criminal litigation law was questioned, which led to legislative field’s discussion of impact of criminal litigation law on the second instance, thus pushing the reform of Chinese criminal litigation law [13]. Huang Taiyun (2013), when studying definition of amendment f criminal litigation law, analyzed revision of criminal litigation law in 2013, and thought that all practice departments across the country should study and implement the criminal litigation law after amendment, know the legislative background and amendment process of revision of criminal litigation law, and exactly understand legislative spirit and explain core content of criminal litigation law after amendment [14]. Chen Guangzhong (2013), through discussion on several issues during amendment of Criminal Litigation Law, found that there existed many disputes in theoretical and practical application of the principle of evidentiary adjudication, and this law content should be amended [15].

From above analysis, it can be seen that there are more researches on amendment of litigation law and significant achievements has been made in amendment and improvement of litigation law. However, researches on the development and framework of litigation law based on times analysis are relatively fewer. To sum up, this essay elaborates the development dimension of litigation law through analysis of innovation of the basic theory of litigation law and reconstruction of legal proceedings of litigation law.

3. Innovation of Basic Theory of Litigation Law Based on Times Analysis

3.1 Innovation of Basic Model of Litigation Law

Currently, discussion of basic model of litigation law has been the main part of researches and obtained certain achievement. On the one hand, from the angle of rights allocation, innovation of litigation law model is more inclined to strengthen the rights of parties concerned. Meanwhile, the basic model of litigation law, through constant innovation and increasing limits given to the rights of courts, promotes the more harmonious relationship between jurisdiction and litigation right. Specific manifestations: 1. Courts strengthen the burden of proof of parties concerned, at the same time correspondingly weaken courts’ right of investigation and collecting evidence, which make the boundary between jurisdiction and litigation right more reasonable; 2. Courts recognize at a deeper level the effect of litigation, proposition and request of parties concerned on adjudication of courts, then use dialecticalism of litigation system of civil law countries for reference and further intensity the mutual restraint between jurisdiction and litigation right. On the other hand, with the constant innovation of basic model of litigation law, harmonious litigation model has been gradually accepted by the public. The main concept of this
model breaks through the former model which purely resolves disputes at the procedural level, takes litigation as social benefit and focuses entirely on settling the disputes of parties concerned, then making social relationship at a harmonious state. At the same time, harmonious litigation model, from value orientation, enables to form a mutual promotion relationship between judges and parties concerned, driving the launch of legal proceedings.

3.2 Innovation of Court Mediation Function and Value

With constant development of the times, great changes have taken place in court mediation function and value of litigation law, which has become part of major content in innovation area of litigation law. The major function of courts has been shifted from settlement of disputes, social contradictions and conflicts to guarantee of procedural liberty of parties concerned, judges’ pursuit of correctness and high efficiency of closing cases and helping courts and parties concerned to shake off very complicated legal proceedings. Meanwhile, innovation of court mediation function is mainly reflected in constitution, and structural elements and running process of mediation system determine its inevitable existence in China’s society. Moreover, with the innovation of court mediation function and value, many different models have emerged in court mediation. For example, the big mediation model provides a diversified dispute settlement mechanism for China at transitional period, and plays a role in stabilizing social order and promotes the further development of Chinese society. In addition, with the rise of court mediation system, judicial and political-legal model of China at transitional period has constantly changed and developed to be more reasonable and formal. Innovation achievements of court mediation function and value are more and more highlighted.

3.3 Innovation of Basic Problems of Action and Right of Action

With the change of times, basic theoretical researches on action and right of action are increasing, and researches and division of action and right of action are more and more elaborate. Specifically, civil law countries divide action in traditional litigation law theory into three types, action of performance, action of confirmation and action of formation. Moreover, our traditional litigation law theory also accepts this division. But scholars of our country innovate action of formation, and change its name to action of alteration. At the same time, our country also has changed the content of action of formation, and believes that the major task of action of formation is to confirm whether right of formation proposed by the plaintiff exists or not and clearly define legal relationship after confirmation of right of formation. In addition, scholars of our country innovate the theory of action and right of action, and point out that it is necessary to fully understand the value of system of action and right of action for adequate preparation for improvement of all legislative work. Moreover, as for additional issues of action in second instance procedure which violate the basic theory of litigation law, our scholars have added corresponding limiting conditions to further study theoretical problems about action and right of action in litigation law. For example, the defendant agrees that the new action added by the plaintiff is as the same as the old action and the action added by the plaintiff should belong to action of confirmation.

3.4 Innovation of Right to Choose the Proper Procedure in Litigation Law

In the system of litigation law, right to choose procedure of action is closely related to litigation contract. Therefore, relative scholars have done detailed researches on right to choose the proper procedure and make some innovations by combination of the development of the times. Scholars have done researches on rights to choose and dispose procedure, and pointed out that these two rights overlap and redefined the right to choose proper procedure. And it is believed that the right to choose proper procedure is to separate links and content involving procedure disposition in disposition right from it, and absorb partial content of this disposition right to form a right combined with actual situations. At the same time, scholars have done researches on the legal meaning of right to choose proper procedure from multiple aspects and pointed out that versatility of the right to choose proper procedure highlights the dominant position of procedure of parties concerned, humanize procedures running of litigation law and improve both parties’ convince on judgments. What’s more, legislative branches, by combination with change of the times, and different situations, have done classified settlement of legal proceedings of cases in litigation and made specific classification. For example, procedure stipulations such as permission of non-open trials by both parties, addition of judicial simple procedure and small litigation, have further made legal proceedings more flexible and efficient and increasingly complied with litigation purposes, and innovated in content and applicable
range of right to choose proper procedure to a certain degree.

4. Reconstruction of Legal Proceedings Based on Times Analysis

4.1 Reconstruction of Jurisdiction System of Litigation Law

Jurisdiction system of litigation law is the basis of reasonable division of court jurisdiction and governs the requirements of prosecution, so it is called threshold of litigation law. Comparatively speaking, rating jurisdiction standard of our litigation law is not clear with poor operability. So our scholars have done constant researches on jurisdiction system of litigation law to reconstruct it. When reconstructing the jurisdiction system of litigation law, first of all, determine basic and intermediate people’s courts as courts of first instance, governing most cases of jurisdictions; determine superior people’s courts as courts of transitional trial and Supreme People’s Court as court of final trial, hearing cases which basic, intermediate and superior courts could not make judgments; secondly, adopt the standard of combination of litigation disputes and case types to mark off different jurisdiction levels of courts of first instance. Finally, in the event of additional or changed claims by the plaintiff, which leads to his litigation beyond jurisdiction of the original court, this court should, in accordance with request of parties concerned, submit the case to the next-level people’s court with jurisdiction. Through above practice, jurisdiction system of litigation law has been modified and significantly reconstructed combined with overall consideration of jurisdiction, responsibilities of courts at all levels and case nature.

4.2 Reconstruction of Litigant System of Litigation Law

Litigant theory is closely related to litigation theories of litigation structure, right of action and judgment. Problems of parties concerned involve substantial law and procedural law. Therefore, litigant system is faced with complicated situation. Based on above analysis, our litigation law field reconstructs the litigant system, focusing on manifestation of litigation rights of parties concerned in some special disputes and determination of positions, rights and obligations of parties concerned of different types. Moreover, scholars of our country relocate the range of parties concerned in the field of litigation law. Previously, capacity of parties concerned is rights owned by any natural person, legal person or other organizations, and litigation subjects of different types have the same capacity of parties concerned. However, among the group of parties concerned, capacity of some special populations is different or limited. For example, when babies are taken as parties concerned, their capacity is treated differently for they are not subjects of parties concerned. So, in order to protect the rights and interests of babies, scholars of our country authorize babies with capacity and qualification of parties concerned from the legal angle by combination with epochal character. For another example, for the dead, rights of parties concerned can not be treated as the same. After death of natural persons, some marks leave, and involve rights of parties concerned. Thus it is required to give capacity of parties concerned to the death within certain range. Above cases further indicate that certain innovation achievements have been made in litigant system of litigation law during the development of the times.

4.3 Reconstruction of Evidence System of Litigation Law

Evidence system is part of core content of litigation law and taken seriously by research field of litigation law and has become the research topic of litigation law. Since coming into 21th century, certain achievements have been made in reconstruction of evidence system and rules. From the aspect of evidence system theory, relative scholars generally believe that there exists a mutual coordination, effect and adaptation between evidence system and litigation system, and litigation model obviously determines evidence system. Therefore, in reconstruction of evidence system, our country has adopted judicial organization system with joint hearing by both professional judges and common jurors and focused on actual trial results of cases. At the same time, types of evidence have been redefined, especially for additional types of evidence. For example, the legality of expert testimony has been defined in details. According to the article 61 of Evidence Regulation, parties concerned can apply to people’s courts for 1 or 2 people with specific knowledge to appear in court for explanation of specialized issues of cases. This action indicates that evidence system of litigation law have constantly changed with the development of the times.

4.4 Reconstruction of Group Action System of Litigation Law
With the development of economy, group disputes are increasing, and establishing and improving settlement mechanism of group disputes has become research focus. Based on above analysis, our country uses advanced group action system of America for reference to redefine and study it. On the one hand, use Equity Law of Class Action enacted by America for reference to improve rules of jurisdiction and reconciliation, and stipulate how to change abuse of class action and further specify abuse of protection area of consumers in class action. On the other hand, for group action system is a legal system involving many social factors, counter-productive effects may occur during its reconstruction. So, our country takes influencing factors of all aspects into consideration in order to avoided detours in our reconstruction of group action system. In addition, certain achievements have been made in reconstruction of group action system, such as definitely guaranteeing rights owned and responsibilities undertaken by litigation group in litigation law.

5. Conclusion

In recent years, certain achievements have been made in litigation law both from macro and micro level. From macro level, litigation law actively constructs new concept and litigation idea; from micro level, basic problems such as rights to choose proper procedure and action and right of action, have been innovated, and certain reconstruction and modification have been conducted into jurisdiction system, rights of parties concerned, evidence system and group action system. Moreover, in research method, empirical investigation has been intensified and certain empirical research results have emerged. However, this essay has its shortcomings about combination of substantial law and procedural law and division of dispute types of cases and hopes that litigation law researches based on times analysis could attract enough attention from scholars.

6. REFERENCES