

Constitutional Supervision and Interpretation in the People's Republic of China

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I. INTRODUCTION

According to article 62 of the Chinese Constitution of 1982 ("1982 Constitution"), the National People's Congress ("NPC") has the power "to supervise the enforcement of the Constitution."¹ Article 67 stipulates that the NPC's Standing Committee has the power "to interpret the Constitution and supervise its enforcement."² Thus, the NPC and its Standing Committee share the power to exercise constitutional supervision, whereas the Standing Committee alone wields the power of constitutional interpretation.

In characterizing the subject of my research, I have chosen to use the term "constitutional supervision" rather than "constitutional review," a term more commonly used in Western countries. This distinction is based on the vast differences between the organizing political principles of China and those of Western countries.³

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1. Constitution of the People's Republic of China, art. 62, para. 2 (adopted Dec. 4, 1982), translated in *Constitution of the People's Republic of China* (Foreign Languages Press, 2d ed. 1990) [hereinafter 1982 Constitution].

2. Id. art. 67, para. 1.

3. Although "constitutional supervision" and "constitutional (or judicial) review" both comprehend the activities involved in implementing constitutions, they have different connotations. In Chinese, the word "supervision" has historically expressed a vertical power relationship where a master exerts strong power over underlings. "Review," on the other hand, has a more egalitarian significance. Between reviewers and those reviewed, there exists a relatively equal and independent relationship.

In addition, supervision is broader than review. Supervision can include review, but is not limited to it. Besides examining cases that have been brought to it for review, a supervisory body can also take the initiative to review and investigate cases on its own. The scope of supervision is therefore broader than that of review. I maintain that the Chinese system fits a "supervision" model of constitutional review, rather than the judicial review standard common in the West.

One of the reasons that I believe that the "constitutional supervision" model is more appropriate in China is that the guiding political principle of China is democratic centralism. Under such a system the NPC is the state's most powerful body. It is not the equal of any other governmental body, and it is vested with the power to supervise all other governmental bodies. The

Section II contains a brief chronological synopsis that shows how the various Chinese constitutions since 1954 have dealt with the subject of constitutional supervision and interpretation. Section III explores the elements and boundaries of constitutional supervision and interpretation, and their applicability in contemporary China. Section IV is a brief history of actual instances of constitutional supervision and interpretation in China. In Section V, I trace the various attempts of China's leaders and legislators to establish a constitutional supervisory organ in China. Section VI concludes with my analysis of the political, legal, and constitutional issues currently confronting those interested in establishing a system of constitutional supervision.

II. THE DEVELOPMENT OF CONSTITUTIONAL SUPERVISION AND INTERPRETATION AUTHORITY

The first Constitution of the People's Republic of China was formulated in 1954.⁴ Subsequently, three major revisions to the Constitution were made in 1975, 1978 and 1982.⁵ In each of these revisions, different rules concerning constitutional supervision and interpretation were adopted.⁶ This process of revision reflects, to a certain degree, a developing understanding of constitutional supervision and interpretation on the part of the framers of the several Constitutions.

In establishing the political system, the 1954 Constitution conferred power over the state to the NPC, the powers of the Standing Committee remained relatively minor.⁷ The 1954 Constitution stipulated that the NPC would "supervise the enforcement of the Constitution."⁸ There were no clear provisions on constitutional interpretation, and one

Western concept of judicial review, on the other hand, contemplates an equal distribution of governmental power between the various branches. Theoretically, no one branch can accumulate all governmental power, and no one branch is vested with unequal supervisory powers.

4. Constitution of the People's Republic of China (adopted Sept. 20, 1954), translated in Constitution of the People's Republic of China (Hong Kong University Press, 1956) [hereinafter 1954 Constitution].

5. 1982 Constitution, *supra* note 1; Constitution of the People's Republic of China (adopted Mar. 5, 1978), translated in Constitution of the People's Republic of China (Foreign Languages Press, 1st ed. 1978) [hereinafter 1978 Constitution]; Constitution of the People's Republic of China (adopted Jan. 17, 1975), translated in Constitution of the People's Republic of China (Foreign Languages Press, 1st ed. 1975) [hereinafter 1975 Constitution].

6. 1982 Constitution, *supra* note 1, arts. 62, 67; 1978 Constitution, *supra* note 5, arts. 22, 25; 1975 Constitution, *supra* note 5, art. 18; 1954 Constitution, *supra* note 4, arts. 27, 31.

7. 1954 Constitution, *supra* note 4, arts. 27, 31.

8. *Id.* art. 27, para. 3.

assumes that the drafters intended that such a power be exercised mainly by the NPC.

The 1975 Constitution was drafted during the latter part of the Cultural Revolution, a period during which respect for legal documents in China reached an all-time low. The 1975 Constitution was very simplistic, as was its articulation of the powers of the NPC. It did not provide any specific provisions on the supervision or interpretation of the Constitution.

The 1978 Constitution was drafted immediately after the end of the Cultural Revolution. Those in power hoped that the new Constitution would restore order and help to rebuild the political system of the 1950s, which had been dismantled during the Cultural Revolution. This Constitution was for the most part a reestablishment of the 1954 Constitution. However, although the provision allowing the NPC to supervise the Constitution was unaltered,⁹ the 1978 Constitution contained a notable addition: a provision granting the NPC's Standing Committee the power to engage in constitutional interpretation.

The 1982 Constitution was implemented after the Third Plenary Session of the Eleventh Central Committee.¹⁰ By this point, the Chinese people had undergone thought liberation campaigns and had finally broken through the shackles of the Cultural Revolution. People reached firm conclusions regarding the events in China since 1949, particularly with respect to their own experiences during the Cultural Revolution, and a great deal of political reform was initiated. One of the major reforms was an important increase in the constitutional authority of the Standing Committee of the NPC. It was hoped that the Standing Committee's frequent activity would serve as a catalyst for NPC work.

Among other changes, the 1982 Constitution provided that the NPC would have the power "to supervise the enforcement of the Constitution,"¹¹ and that the Standing Committee of the NPC would "interpret the Constitution and supervise its enforcement."¹² In effect,

9. Compare 1954 Constitution, *supra* note 4, art. 27 with 1978 Constitution, *supra* note 5, art. 22.

10. Guanyu Zhonghua Renmin Gongheguo Xianfa Xiugai Caoan de Baogao (Report on the Proposed Revised Draft of the Constitution of the PRC) (promulgated Nov. 26, 1982), [hereinafter Report], reprinted in Zhonghua Renmin Gongheguo Renmin Daibiao Dahui Wenxian Ziliao Huipian 1949-1990 (Collection of Documentary Materials of the National People's Congress of the PRC, 1949-1990) 113-21 (Zhongguo Minzhu Fazhi Chubanshe 1990) [hereinafter Collection].

11. 1982 Constitution, *supra* note 1, art. 62, para. 2.

12. *Id.* art. 67, para. 1.

the power of constitutional supervision was transferred to the Standing Committee.

The preamble of the Constitution states that the Constitution:

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.¹³

Article 5 of the Constitution stipulates that:

No laws or administrative or local rules and regulations may contravene the Constitution. All state organs and military forces, all political parties and social organizations, all enterprises and institutional organizations must abide by the Constitution and the law. All acts in violation of the Constitution or the law must be investigated.¹⁴

These provisions provide a reliable legal foundation for the creation of a system of constitutional supervision.

The 1982 Constitution quite clearly addresses the issues of constitutional supervision and interpretation. This is the result of the profound lessons of the Cultural Revolution. Chinese leaders, theoreticians, legal scholars and practitioners intensely studied the Cultural Revolution and its destruction of the Constitution. Drawing from a considerable understanding of the legal system, they recognized that only through reinforcing constitutional supervision could the repetition of historical tragedies such as the Cultural Revolution be avoided in the future.

However, it is one thing for state leaders and legal circles to recognize the importance of constitutional supervision; implementing effective systems of constitutional supervision and interpretation is an entirely separate matter. Although in recent years there have been incessant calls within society to strengthen constitutional supervision and

13. *Id.* preamble.

14. *Id.* art. 5.

interpretation,¹⁵ in practice, constitutional supervision and interpretation has not effectively been carried out. Practical problems abound in the development of constitutional supervision, including questions related to popular sentiment, lack of information, constitutional theory, organizational structure, and China's political system.

III. THE CURRENT STATE OF CONSTITUTIONAL SUPERVISION AND INTERPRETATION IN CHINA

As noted above, China's appreciation for constitutional supervision grew out of the bitter experiences and historical lessons of the Cultural Revolution. The 1982 Constitution contained two broad stipulations regarding the principle of constitutional supervision,¹⁶ but supplied no detailed implementing provisions.

A. *The Debate Surrounding Constitutional Supervision*

In order to establish China's system of constitutional supervision, constitutional theorists and NPC practitioners have conducted theoretical research on the following questions since 1982: (1) what violates the Constitution; (2) what is the substance of constitutional supervision; (3) is the Chinese Communist Party subject to constitutional supervision; (4) who supervises; (5) how are constitutional violations reviewed; and (6) how are constitutional violations dealt with.

15. In recent years more than one hundred articles have been published on subjects relating to constitutional supervision, including proposals for the establishment of a constitutional supervisory organ, demands that the CCP abide by the Constitution, and discussions on violations of the Constitution. See generally Cai Dingjian, China's Constitutional Supervision System, 3 Chinese Legal Stud. 1989; Dong Chengmei, A Preliminary Enquiry of the Organization of Constitutional Review Bodies, 5 Nat'l People's Congress Photocopied Documents 1987; Wang Shuwen, A Discussion on the Guarantee of the Implementation of the Constitution, 6 Chinese Legal Stud. 1992; Wu Jialin, Discussion on the Necessity and Feasibility of Establishing a Constitutional Supervisory Organ, 2 Legal Commentary 1991; Zeng Heng, Discussion on the Organization of the National People's Congress Standing Committee's Constitutional Supervision of the Communist Party, 1 Legal Stud. Q. 1987; Zhang Shangzhou, The Communist Party Must Operate Within the Limits of the Constitution, Theory and Practice in China's Socialist Legal System, 1987; Wang Liming, Some Jurists' Proposals for the Establishment of Special Constitutional Supervisory Organs, People's Daily, Dec. 11, 1988.

16. See *supra* note 6.

1 Defining Constitutional Violations

The functions of constitutional supervision encompass examining, preventing, correcting, and punishing acts that violate the Constitution. One of the major problems of the implementation of constitutional supervision is clarifying what exactly constitutes an unconstitutional act. Controversy in this area has focused on two major points: (1) who can commit an unconstitutional act, and therefore be subject to supervision; and (2) whether it is possible to violate the Constitution indirectly

a. Capacity to Commit an Unconstitutional Act

One viewpoint holds that in the spirit of the preamble and article 5 of the Constitution, all governmental organs, political parties, social organizations and citizens that violate the principles and specific provisions of the Constitution have, in effect, violated the Constitution and are therefore subject to prosecution. Another viewpoint holds that an unconstitutional act is any action that destroys the state's democratic system and that infringes upon citizens' rights. Under this theory, since only governmental organs, political parties, social organizations, and high-ranking officials are capable of activities and legislation that could seriously damage the Constitution, only they can commit unconstitutional acts.

The differences between the two perspectives revolve around two main points: whether or not ordinary citizens can commit unconstitutional acts, and whether or not political parties, in particular the Chinese Communist Party ("CCP"), can be subject to constitutional review. The first position suggests that those subject to constitutional supervision constitute a very broad base, encompassing not only governmental organs, but also political parties, social organizations and individual citizens. The second position holds that governmental organs, political parties and social organizations are subject to constitutional supervision, but citizens are not. One final theory holds that only governmental organs, especially central state organs, can commit unconstitutional acts, and that political parties and citizens cannot be considered as subjects of constitutional supervision.¹⁷

17 The answer to the question of whether individuals can violate the Constitution depends upon one's understanding of the Constitution and upon whether one believes that the preamble is legally effective. If the Constitution is a document that merely regulates the scope and exercise of

There are a variety of arguments asserting that citizens cannot commit unconstitutional acts. The first argument reasons that the Constitution standardizes and restrains the power of the state, and specifically regulates the separation of powers and modes of operation of governmental organs. It is not an ordinary law that standardizes the permissible activities of ordinary citizens. Any regulation of the fundamental rights and duties of citizens that is found in the Constitution is included expressly to protect the individual from state infringement of his or her rights. This type of regulation is different from, and does not involve, the mandating of specific standards of conduct for individuals. Governmental organs and those individuals wielding state power can conceivably commit unconstitutional acts; citizens cannot.

A second argument contends that the Constitution is the state's basic law: it has the highest legal effect, its articles are held as guiding principles, and it regulates the nation's fundamental systems and policies. The Constitution is "supreme" and is "the law of laws." It is the basis for the formulation of all other laws, regulations, and standards in the nation. In essence, violation of the Constitution damages the state system and the effectiveness of the Constitution. Ordinary citizens are incapable of creating this degree of danger; indeed, such danger can emanate only from governmental organs, social organizations, and national leaders.

Third, to consider ordinary citizens as constitutional violators obscures the demarcation between violations of the Constitution and violations of ordinary laws. This serves to diminish the status of the Constitution as the supreme law of the land.

There are also several arguments in favor of the notion that citizens are capable of committing unconstitutional acts. First, the Constitution stipulates:

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

state power while it safeguards the fundamental rights of citizens, then citizens cannot be the subjects of unconstitutional acts. The provisions of the Constitution only set standards for the highest level of governmental organizations. While citizens are required by the preamble to abide by the Constitution, the preamble essentially articulates a hope that citizens will respect, protect and safeguard the Constitution, and in the process safeguard their own rights. In China, citizens cannot violate specific provisions of the Constitution, however they can violate a tenet of the political system regulated by the Constitution. This, however, constitutes not a legal question, but a political question.

Constitution as the basic standard of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation.¹⁸

The use of the phrase "the people" indicates that everyone is capable of violating the Constitution.

Second, since the rights and duties of citizens are stipulated by the Constitution, their actions can be found to be unconstitutional. Also, the violation of an ordinary law can be seen as an indirect violation of the Constitution.

Third, acknowledging that ordinary citizens can be violators of the Constitution helps to educate citizens and to establish a concept of constitutionalism.

My personal belief is that the arguments in favor of holding that citizens are capable of committing unconstitutional acts are inadequate and do not conform to the spirit of the Constitution.

b. Direct and Indirect Violations of the Constitution

Is the scope of unconstitutional acts limited to actions which directly violate the Constitution or should it also include actions that indirectly violate the principles or spirit of the Constitution? Some scholars assert that direct violation of the Constitution can be committed only by a very limited range of parties, whereas a much broader range of actors could commit indirect violations.¹⁹ If we advocate that only direct violations of the Constitution are unconstitutional, then the possibility that individual citizens could be subject to constitutional supervision is eliminated. If we accept that indirect violations of the Constitution should be subject to review, then we must accept that citizens can violate the Constitution. The provisions of the Constitution do not directly limit citizens' actions, whereas the provisions of ordinary laws do. The preamble to the Constitution, however, mentions ordinary laws in relation to national objectives, duties, policies and principles. If

18. 1982 Constitution, *supra* note 1, preamble.

19. See generally, Xiao Jinquan, Initial Discussion on Constitutional Violation, Collection of Theses on the Constitution (1983); Hu Jinguang, Initial Inquiry into the Object, Means and Treatment of Constitutional Violation Investigation in this Country, 1987 *Xuexi yu Tangsou* [Study and Exploration] 6; Qu Jianlong, Initial Inquiry into the Issue of Constitutional Violation in this Country, 1988 *Shaanxi U. J. (Phil. and Soc. Sci. ed.)* 3.

the preamble is legally binding, then actions which violate it are unconstitutional.

The leading viewpoint on this issue holds that in terms of constitutional supervision, unconstitutional acts should include only direct violations of the Constitution. Indirect violations are punishable by ordinary laws, and are not significant enough to warrant constitutional supervision.

2. The Substance of Constitutional Supervision

Constitutional supervision relates to what types of activities the NPC and the Standing Committee can engage in while carrying out constitutional review. It is widely held that three central tasks comprise constitutional supervision.²⁰ First there is the constitutional review of legal documents. This includes the review of legal or regulatory documents which may contravene the Constitution, and in the event that an unconstitutional enactment is discovered, the altering or voiding of such document. Second is the review of unconstitutional acts by state leaders, which includes the investigation and determination of responsibility of leaders who overstep their constitutional authority, who are derelict in their duties, or who engage in any other acts that might damage the Constitution. The final task of constitutional supervision is to decide jurisdictional disputes. This involves constitutional supervisory organs ruling on the jurisdictional controversies that arise when state organs fulfill their constitutional duties.

3. Constitutional Supervision of the Chinese Communist Party

Recent research on constitutional theory and on the NPC system has focused much discussion on the question of whether it is possible to impose constitutional supervision over the CCP and its leaders.²¹ An increasing number of constitutional theorists, political scientists, and NPC personnel believe that there is substantial theoretical support for the idea that it is necessary to implement constitutional supervision over the CCP

20. See Cai Dingjian, *The National Supervision System*, at 119-20 (1991); He Huahui, *On Constitutional Supervision*, 1982 *Wuhan U. J.* 1.

21. See generally, Liu Hengxuan et al., *The Party Must Abide by the Constitution and Laws*, *Collection of Theses on the Constitution* (Law Press 1984); Zeng Heng & Zhong Ming, *On the Constitutional Supervision of the Party Organization by the Standing Committee of the NPC*, 1987 *Faxue Jikan* (Legal Study Q.) 1.

This view is mainly premised on a clause of the preamble of the 1982 Constitution that provides that all political parties are obliged to obey and honor the Constitution.²² Article 5 states that: "all state organs and military forces, all political parties and social organizations, all enterprises and institutional organizations must comply with the Constitution and the law. All activities violating the Constitution and the law have to be followed by an investigation."²³ Here, "all political parties" would necessarily include the CCP. According to article 5, the CCP is duty-bound to comply with the Constitution and other laws, hold the Constitution as the main standard of its activities, and submit to investigation.

Indeed, the Party Constitution explicitly states that the Party must act within the confines of the law and the Constitution.²⁴ This demonstrates CCP acknowledgment of the fact that the Party could potentially be the subject of constitutional supervision. In addition, it also indicates CCP acceptance that there is sufficient support in law and theory to justify the implementation of such supervision.

People who oppose the idea of constitutional supervision over the CCP are unable to provide strong theoretical arguments supporting their position, and only emphasize the rather thorny point that such a system would be a practical impossibility.²⁵ They argue that the CCP is the state's leading political party, and that it exercises control over the NPC in many ways. Its activities reach beyond the realm of the state system, and its authority is therefore greater than that of the NPC. The NPC is simply unable to conduct constitutional supervision over the CCP.

Those who advocate the imposition of constitutional supervision over the CCP have considered this problem, and have proposed a compromise. It is clear to them that in formulating the scope and method of constitutional supervision, great caution will be required in order to limit supervision over the CCP to the examination of documents drafted

22. 1982 Constitution, *supra* note 1, preamble. See also *supra* text accompanying note 14.

23. 1982 Constitution, *supra* note 1, art. 5.

24. Constitution of the Communist Party of China (adopted Sept. 6, 1982), general program, para. 19, in *Quanmian Kaichuang Shehui Xiandaihua Jianshe de Xin Juman*, reprinted in *Collection*, *supra* note 10, at 411.

25. See generally, Wu Wentai, *Discussions of Several Issues on the Relationship Between the Party Organizations and the NPC*, in *On the Construction of the NPC System* (1990).

by the Party organization that are suspected of violating the Constitution.²⁶ In cases where the Party was found to have violated the Constitution, constitutional supervisory organs would only be able to advise Party organs to change or abolish the unconstitutional document. However, the supervisory organ would not be able to revise or abolish the document on its own. Thus, correcting CCP violations of the Constitution would be in the hands of Party organs themselves.

4. Constitutional Supervisory Organs

Whether and how to create a special constitutional supervisory organ are questions which have been widely studied by legal theorists and practitioners. Although the Constitution stipulates that the NPC and its Standing Committee both have the power to implement constitutional supervision,²⁷ there are practical problems. The Standing Committee meets only once every two months (for about seven to ten days),²⁸ and already carries a large caseload. It could not feasibly undertake the daily task of constitutional supervision. However, the Standing Committee has comparatively more time to engage in constitutional supervision than the NPC, which meets only once a year for approximately half a month.²⁹ What is required is a special organ whose function is to conduct review of constitutional violations.

In recent years, there have been increasingly strong demands for the NPC to revise the Constitution or to otherwise establish a constitutional supervisory organ. There are numerous theoretical conceptions of how to implement constitutional supervision, including:

- (1) Establishing a constitutional committee (or constitutional supervisory committee) that would be parallel to the NPC's Standing Committee and subordinate to the NPC. This

26. See generally, Cai Dingjian, *Discussion on the Constitutional Supervision System in Our Nation*, 1989 *Faxue Yanjiu* (Legal Stud.) 3; Guang Lei, *Initial Discussion on Constitutional Supervision of Party Committees by the NPC and its Standing Committee*, in *Reinforcing the Construction of NPC System During the Reform* (1988); Yang Quanming, *On Sanctions Against Constitutional Violation*, 1988 *Sichuan Normal U. J.* (Soc. Sci. Ed.).

27. 1982 Constitution, *supra* note 1, arts. 62, 67.

28. See Mao Zhuxi, Zhou Enlai, Liu Shaoqi, Zhu De Lun Wo Guo Renmin Daibiao Dahui Zhidu (Chairman Mao, Zhou Enlai, Liu Shaoqi and Zhu De on the National People's Congress System of Our Country), reprinted in *Collection*, *supra* note 10, at 24, 33. Although the duration of Standing Committee meetings is not stipulated by law, they customarily last seven to ten days.

29. *Id.*

committee would be able to supervise the constitutionality of the legislative, administrative and judicial functions of all government organs, including those of the NPC's Standing Committee. However, many scholars believe that because the Constitution stipulates that the power of constitutional supervision is to be exercised by the Standing Committee, there is very little probability that this type of supervisory organ could be established. In order to establish a constitutional supervisory organ that is independent of the Standing Committee, the Constitution would have to be revised. And even if this type of constitutional supervisory body were installed, it would still be very difficult to effectively exercise constitutional supervision over the Standing Committee.

(2) Establishing a constitutional supervisory committee under the control of the NPC, which would be in the hands of the Standing Committee when the NPC was not in session. Such an organization would assist the Standing Committee in its constitutional supervision work. This organ would not be able to exert constitutional supervision over the Standing Committee itself, it could only do supplementary work. It would mainly be engaged in the constitutional review of administrative, local, departmental, and other rules and regulations. This committee would submit documents to the Standing Committee for investigation if unconstitutionality was suspected. Legal scholars and practitioners believe that this type of supervisory organ is more practical and feasible, as it would require no revision of the Constitution or reform of the current system.³⁰

(3) Establishing a constitutional court that is independent of the NPC and its Standing Committee. This rather idealistic proposal contemplates the establishment of such a court, where the members are elected by the NPC, and which is composed of seasoned politicians and authoritative jurists. It would not be affiliated to the Supreme People's Court, and would assume

30. See 1982 Constitution, *supra* note 1, art. 70 (stipulating that the NPC may establish "other special committees as necessary").

specific responsibility for reviewing unconstitutional acts. This proposal faces difficulties similar to those faced by the first proposal — it is outside the current constitutional system, and therefore has a slim chance of realization.

(4) Finally, there are a few theorists who claim that the power of constitutional supervision should reside with the Supreme People's Court, and that the Supreme People's Court should concurrently investigate violations of the Constitution. This argument is difficult for most people to accept because there is theoretically no separation of powers in China and the Supreme People's Court is obliged to recognize the superior authority of other organs of state power. As a practical matter, it would be very difficult for the Supreme People's Court to review unconstitutional acts committed by superior organs of state power.³¹

5. Methods of Reviewing Violations of the Constitution

In reviewing unconstitutional acts, theoreticians believe that it is necessary to combine the principles of abstract review and concrete review. There are three specific channels, *ex ante* review, *ex post* review, and the hearing of accusations.

a. *Ex Ante* Review

Certain laws and regulations should be reviewed before they are formally promulgated. Article 116 of the Constitution states:

The people's congresses of 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

31. *Id.* arts. 3, 128.

Committee of the National People's Congress for approval
before they go into effect³²

Articles 7 and 38 of the Organic Law of the Local People's Congresses and the Local Governments stipulate that in relatively large cities, if the people's congresses and their respective standing committees receive State Council approval, they shall be entitled to enact local regulations. These regulations must be submitted to the standing committees of the provincial and autonomous region's people's congresses for approval before they are effective.³³

The aforementioned provisions are in accordance with the concept of constitutional review, and documents for approval need not be submitted to any other organ or individual. This process is statutory and constitutes a form of abstract pre-enactment review

b. Ex Post Review

Review of the constitutionality of laws and regulations that are already in effect can be conducted in two ways, through active and passive review. As noted above, both the Constitution and the Organic Law of the Local People's Congresses and the Local Governments stipulate that regulations relating to the autonomy of autonomous prefectures and counties must be submitted to the standing committees of the provincial people's congresses for approval, and must be reported to the Standing Committee of the NPC for the record.³⁴ In addition, all local regulations enacted by provincial and municipal people's congresses and their standing committees must also be reported to the NPC's Standing Committee.³⁵ According to the minutes of the Second Session of the Seventh NPC's Standing Committee, the specific committees concerned should review the constitutionality and legality of all regulations which are reported to the NPC for the record.³⁶ These types

32. *Id.* art. 116.

33. *Zhonghua Renmin Gongheguo Difang Geji Renmin Daibiao Dahui he Difang Geji Renmin Zhengfu Zuzhifa* (Organic Law of the Local People's Congresses and the Local Governments of the People's Republic of China), arts. 7, 38 (adopted July 1, 1979, revised Dec. 2, 1986), reprinted in *Collection*, *supra* note 10, at 293 [hereinafter *Organic Law*].

34. 1982 Constitution, *supra* note 1, art. 116; *Organic Law*, *supra* note 33, arts. 7, 38.

35. *Id.*

36. *Qi Jie Quanguo Renda Changweihui Gongzuo Yaodian* (The Main Points of the Work of the Standing Committee of the Seventh National People's Congress) (promulgated July 1, 1988), reprinted in *Collection*, *supra* note 10, at 346.

of review are all active, in that the higher governmental organs are expected to actively consider the constitutionality of the legislation in question. The effectiveness of this type of review, however, is questionable. Because it is exercised after the promulgation of the law or regulation in question, it cannot possibly affect the law's implementation. At present this type of review work has not been adequately developed.

In contrast, it is theoretically acceptable that when relevant departments discover laws and regulations that are suspected of conflicting with the Constitution, they can submit an opinion regarding the questionable legislation to a constitutional supervisory organ and request a review of the document's constitutionality. This is a more passive process, and in general, this type of investigation could be requested only by organs that possess the power to present cases to constitutional supervisory organs.

c. The Hearing of Accusations

According to article 41 of the Constitution, "citizens of the People's Republic of China have the right to make to relevant state organs complaints and accusations against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty"³⁷ One expert contends that this provision can be interpreted to mean that citizens have the right to make accusations of unconstitutionality, and that China ought therefore to establish a system of constitutional litigation.³⁸ Under such a system, citizens would have the right to go through the process of submitting accusations of constitutional violations to the constitutional supervisory organ, which would have the duty to accept and review the accusations according to law. Of course, the establishment of such a constitutional litigation system would require the adoption of strict screening procedures in order to restrict the potential for overloading the system.

The difference between constitutional review and constitutional litigation is that the former is initiated by statutory or authoritative organs, while the latter is filed by victimized citizens or social organizations.

37. 1982 Constitution, *supra* note 1, art. 41.

38. Wu Xieying et al., *Lun Zhongguo de Xianfa Susong Zhidu* (On China's Constitutional Litigation System), 1989 *Zhongguo Faxue* (China Legal Stud.) 5.

6. Measures Against Unconstitutional Actions

In terms of the punitive powers of constitutional supervisory organs, several measures could theoretically be taken against unconstitutional acts. Unconstitutional laws and regulations may be modified or amended, and state leaders who commit constitutional violations may be recalled or removed.³⁹

a. The Modification or Annulment of Unconstitutional Laws, Regulations and Normative Documents

Article 62 of the Constitution stipulates that the NPC has the power to alter or annul inappropriate decisions of the Standing Committee of the NPC.⁴⁰ Article 67 provides that the NPC's Standing Committee has the power to annul those administrative rules, regulations, decisions, or orders of the State Council that contravene the Constitution or the statutes.⁴¹ The Standing Committee also has the power to annul those local regulations or decisions of the organs of state power of autonomous regions and municipalities directly under the central government that contravene the Constitution, statutes or administrative rules and regulations.⁴²

b. Recalling or Removing State Leaders Who Have Committed Unconstitutional Acts

Article 63 of the Constitution stipulates that the NPC has the power to recall or remove the following persons from office: the President, the Vice-President, the Premier and other members of the State Council, the Chairman and other members of the Central Military Commission, the President of the Supreme People's Court, and the Procurator-General of the Supreme People's Procuratorate.⁴³ Furthermore, according to sections 11 and 12 of article 67, the NPC's Standing Committee also has the power to remove judges of the Supreme People's Court and procurators of the Supreme People's Procuratorate.⁴⁴ Causes for these

39. 1982 Constitution, *supra* note 1, arts. 62, 63, 67.

40. 1982 Constitution, *supra* note 1, art. 62.

41. *Id.* art. 67.

42. *Id.*

43. *Id.* art. 63.

44. *Id.* art. 67.

officials' removals are not furnished in the Constitution, but it may be deduced that unconstitutional actions should be one of the main reasons.

IV INTERPRETATION OF THE CONSTITUTION

As indicated above, the question of whether the NPC's Standing Committee has the power to exercise constitutional interpretation has gone through many stages, from the basic stage of ambiguous pronouncement to the more effective stage of express regulation. However, in order for the power of constitutional interpretation to be fully realized in China, further development must occur.

To my knowledge, up to the present date the NPC's Standing Committee has not yet explicitly exercised the power of constitutional interpretation. However, according to research that I have conducted, in practice the NPC and its Standing Committee has effectively exercised what may be considered constitutional interpretation. Consider the following instances described below

During the Twenty-Third Session of the First Standing Committee of the NPC in 1955, the issue was presented of whether the membership of local people's congresses should be limited to members of the same respective levels of the National People's Congress.⁴⁵ This resolution was made in accordance with article 63 of the 1954 Constitution.⁴⁶ It was decided that heads of various levels of government should be elected from their respective levels within the people's congresses, and that with limited exception, the same rule would govern deputy heads of government.

That same year, the participants at the Twenty-Sixth Session of the First Standing Committee of the NPC debated whether the presidents of the local people's courts and the procurator-generals of the local people's procuratorates could concurrently be members of the people's

45. Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Difang Geji Renmin Weiyuan Hui de Zucheng Renyuan Shifou Xianyu Benji Renmin Daibiao Dahui Daibiao Wenti de Jueding (Decision of the Standing Committee of the NPC on the Question of Whether or Not the Rank of Representatives to the National People's Congress Should be Limited to Their Original Rank at Various Levels of Local People's Congresses) (adopted Nov. 8, 1955), reprinted in Collection, *supra* note 10, at 247.

46. 1954 Constitution, *supra* note 4, art. 63.

congresses.⁴⁷ This is a supplementary interpretation of provisions of the 1954 Constitution, which broadly stipulated the organization of local judicial bodies.

Also in 1955, at the Thirtieth Session of the First Standing Committee of the NPC, it was decided that in the event that both the Chairman and Vice-Chairman of the PRC were on vacation, the Chairman of the NPC would act for the Chairman in receiving foreign diplomatic representatives.⁴⁸ This decision represents an example of the Standing Committee interpreting and defining the authority of the Chairman of the NPC.

Although each of the above incidents could be considered examples of the Standing Committee engaging in constitutional interpretation, the Standing Committee has never declared in so many words that it was actually exercising constitutional interpretation. Furthermore, because the 1954 Constitution did not stipulate that the Standing Committee had the power of constitutional interpretation, it cannot definitively be said that the above are instances of constitutional interpretation. In fact, it was due to the practical need for the establishment of a permanent organ responsible for constitutional interpretation that the 1978 Constitution gave the power of constitutional interpretation to the Standing Committee.⁴⁹

Since the 1950's, the NPC's Standing Committee has made two resolutions addressing the interpretation of ordinary laws. The first was in 1955, when the Seventeenth Session of the First NPC's Standing Committee passed a resolution regarding the problems of legal interpretation.⁵⁰ The second was in 1981, when the Nineteenth Session

47. Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Difang Geji Renmin Fayuan Yuanzhang Renmin Jianchayuan Jianchazhang Kefou Jianren Geji Renmin Weiyuanhui de Zuzhi Chengrenyuan Wenti de Jiejue (Decision of the NPC's Standing Committee on the Question of Whether Presidents of Local People's Courts at Various Levels May Concurrently be Members of the Various Levels of People's Congresses) (adopted Nov. 10, 1955), reprinted in Collection, *supra* note 10, at 248.

48. Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Zai Zhonghua Renmin Gongheguo Zhuxi he Fuzhuxi Xiujia Huozhe Waichu Qijian You Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Yuanzhang Jieshou Waiguo Shijie de Jueding (Decision of the Standing Committee of the NPC on the Question of Whether the Chairman of the Standing Committee of the NPC May Receive Foreign Diplomats When the Chairman and Vice-Chairman of the PRC are on Vacation or Abroad) (adopted Dec. 28, 1955), reprinted in Collection, *supra* note 10, at 309.

49. 1978 Constitution, *supra* note 5, art. 25.

50. Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Jieshi Falu Wenti de Jueyi (Resolution of the Standing Committee of the NPC on the Question of the Interpretation of Laws) (adopted June 23, 1955), reprinted in Collection, *supra* note 10, at 308.

of the Fifth NPC's Standing Committee resolved to strengthen work on the interpretation of law.⁵¹ These two resolutions emphasize the NPC's desire to reinforce the development of legal interpretation and define the scope of the Standing Committee's power to interpret the laws of China. The 1981 resolution states that the Standing Committee has the power to interpret or make supplementary provisions when laws are ambiguous or incomplete.⁵² Thus, the Standing Committee interprets laws in two ways: on one hand it explains or defines unclear legal provisions, on the other hand it may augment existing legislation when the law is incomplete. The Standing Committee therefore wields significant power with regard to the interpretation of law. Of course, it must be remembered that the two above-mentioned resolutions relate to the interpretation of ordinary laws, and they are not directly applicable to the interpretation of the Constitution. If they were to apply to the Constitution, the Standing Committee would then have the power to amend and supplement the Constitution, a potentially dangerous result.

It is interesting to note that since the 1982 Constitution gave the power of constitutional interpretation to Standing Committee of the NPC,⁵³ instances of actual interpretation have decreased. There are three main reasons for this:

- (1) The Standing Committee does not take the matter seriously and is not adept at utilizing the relevant methods of constitutional interpretation. With regard to several problems that require constitutional interpretation, the Standing Committee has either not exercised its power of constitutional interpretation, or only adopts "internal interpretations."⁵⁴

51. Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Jiaqiang Falu Jieshi Gongzuo de Jueyi (Resolution of the Standing Committee of the NPC on the Problem of Strengthening Work on the Interpretation of Laws) (adopted) June 10, 1981, reprinted in *Collection*, *supra* note 10, at 320.

52. *Id.*

53. 1982 Constitution, *supra* note 1, art. 67.

54. "Internal interpretation" occurred when several localities encountered problems implementing the Constitution. They submitted written or oral requests to the Standing Committee of the NPC. After having examined the problem, the Standing Committee, or one of its leaders, would deliver a written or oral answer.

One specific example of such a problem was raised by article 87 of the 1982 Constitution, which stipulates that the Premier of the State Council cannot serve for more than two consecutive terms in office. However, it once happened that an incumbent Premier's term of office started not at the beginning of the Sixth Session of the NPC, but in the middle of the session. After review, the Standing Committee decided that in this case, entering office in the middle of a session would

(2) The Constitution is like any other law in that only when it is consistently in use are legal interpretation problems inevitably raised. When the Constitution is set aside, practical problems requiring interpretation cease to arise.

(3) The NPC's Legal Work Committee's treatment of constitutional questions is inadequate. In 1979, the Standing Committee of the NPC established a Legal Work Committee. This committee has treated and solved problems submitted to it regarding constitutional interpretation as ordinary legal problems.

Following the Eighth National People's Congress, the NPC's Standing Committee announced its desire to strengthen work on constitutional interpretation.⁵⁵ Since that time, the administrative body of the Standing Committee has been exploring ways in which to enhance the NPC's power of constitutional interpretation. In addition, it has been attempting to establish a set of procedures for constitutional interpretation. While legal procedures would solve the problem of how to allow the Standing Committee to regularly exercise its constitutional interpretation powers, a specialized organ that would coordinate this specific work also must be created. The tasks of constitutional interpretation and constitutional supervision are similar and related. Therefore problems arising in both mechanisms should be solved in a similar manner. Unfortunately, China lacks the practical experience in the techniques and processes of constitutional interpretation that many foreign countries already possess. Research into these problems is currently underway

V EFFORTS TOWARD ESTABLISHING CONSTITUTIONAL SUPERVISORY ORGANS

The question of whether or not to establish a constitutional supervisory organ is a central problem in the current Chinese effort to

not count, and that for purposes of this rule, the Premier's term of office would start from the Seventh Session of the NPC. Because the decision was internal and confidential, neither an official nor an unofficial resolution or declaration was promulgated. Other similar cases have been treated in the same manner, but will not be examined here.

55. See generally The Agenda of the Eighth Session of the NPC's Standing Committee, reprinted in The Standing Committee of the National People's Congress' Report of 1993 (1993).

improve the system of constitutional supervision. The state's policy-makers have consistently considered this problem in the past ten years. During the period when the Constitution was being amended in 1982, some people actively advocated the establishment of a special constitutional supervisory organ that would uphold the implementation of the amended Constitution.⁵⁶ Their position was influenced by the deep historical lessons that were learned during the Cultural Revolution, a period in which the 1954 Constitution was virtually trampled upon. They sought to learn from the experiences of those foreign countries that had established special supervisory bodies to review and implement their constitutions.⁵⁷ Advocates asserted that there is a natural tendency in the progression of constitutional development to establish such organs. It was thought that in China such a supervisory organ should take the form of a constitutional supervisory committee or a constitutional court, rather than be limited by the supervisory and investigatory methods of the Supreme People's Court. The reason for this is that the Supreme People's Court is subordinate and responsible to the NPC and its Standing Committee.⁵⁸ Moreover, because the Supreme People's Court's ordinary trial responsibilities were already quite burdensome, it would have been very difficult for the Court to also take on the heavy responsibility of constitutional supervision. It was believed that because of its critical significance, such a task should only be carried out by organs possessing very high authority to exercise power. The constitutional committee or constitutional court should therefore have been composed only of those who had the highest authority and status, because only they could take on the arduous responsibility of supervising the implementation of the Constitution.

However, despite all of the arguments in favor of the establishment of a constitutional supervisory organ, the majority of those involved in the 1982 revisions to the Constitution were opposed to the establishment of such a body.⁵⁹ Their arguments included the following:

56. My source for this information is an internal report on the reform/modification of the Constitution in 1982. At the time, the Secretary of the Committee on Constitutional Reform, as well as many legal scholars, pressed for the establishment of such an organ.

57. See generally Xiao Weiyun, *Wo Guo Xianxing Xianfa de Dansheng* (The Birth of the Current Constitution of Our Country) (1986) [hereinafter Xiao].

58. 1982 Constitution, *supra* note 1, arts. 3, 128.

59. Xiao, *supra* note 57. Xiao Weiyun was present and took part in these meetings.

(1) The establishment of a constitutional committee would not conform with democratic centralism, the organizational principle of the People's Congresses.⁶⁰ According to this principle, the NPC and its Standing Committee are the organs with the highest power in the state. If a constitutional committee with power equal to the NPC's Standing Committee were established, the NPC would have two permanent organs under it. And if these two organs were to hold contradictory opinions, very difficult problems would be raised. In addition, if the constitutional committee had the power to review the constitutionality of laws formulated by the Standing Committee, the Standing Committee would lose much of its relative power within the state, and could no longer be considered a part of the highest state organs.

(2) The establishment of a constitutional committee or a constitutional court could not resolve problems relating to the destruction of the Constitution, nor could it help to avoid the recurrence of such tragedies as the Cultural Revolution. The Cultural Revolution was not due to the lack of a constitutional supervisory organ, but rather to the fact that a minority of people controlled the Party and the state's highest powers. Therefore, the successful implementation of the Constitution should not depend on the establishment of a specific organ or a minority of people, but requires instead the fostering of socialist democracy and internal Party democracy. If the state can democratize politically, then the majority of people and Party members will in turn uphold and safeguard the implementation of the Constitution. The force of the people is the greatest safeguard for the implementation of the Constitution.

(3) Currently, there is no need to establish a specific organization to supervise the Constitution. However, there is a need to perfect the supervision of the NPC, the state's highest authority with regard to constitutional implementation. The present problem is that what ought to have been implemented has not been implemented, and what ought to

60. 1982 Constitution, *supra* note 1, art. 3.

have been taken care of has not been taken care of. It is therefore necessary to strengthen the organizational structure of the existing supervising organ, and to improve the quality and legal capacity of the supervisory officials.

Those who opposed the establishment of a special constitutional supervisory body claimed that such responsibility belonged to the NPC and its Standing Committee, because together they are the organs with the highest power and authority.⁶¹ It was thought that encouraging the NPC and its Standing Committee to carry out constitutional supervision would not only facilitate NPC development and unification of methods of constitutional supervision, but also would improve the present situation, in which the NPC seldom conducted constitutional supervision. In order for the constitutional supervision power of the NPC to be legitimate, the Constitution would have to mandate the creation of a special subcommittee of the NPC. This subcommittee would review the constitutionality of laws, statutes, and regulations, as well as uncover unconstitutional actions and report them to the Standing Committee.

The aforementioned theories were all presented during the process of revising the Constitution in 1982. During one internal meeting, a majority of those present opposed the creation of a special constitutional committee, and it was decided that such an idea would thereafter be repudiated.⁶²

The prospects for the establishment of a special constitutional supervisory organ were considered once again in 1987 during the drafting of the Thirteenth Chinese Communist Party Congress Report.⁶³ While the group drafting the Party report researched the problem of promoting socialist democracy, it was suggested that within the NPC there should be established a constitutional committee and a judicial committee. The constitutional committee would be responsible for advancing motions of constitutional interpretation to the Standing Committee or would be empowered by the Standing Committee to interpret the Constitution. The committee would review the constitutionality of state and local administrative regulations, deal with complaints concerning unconstitutional acts, and propose to the Standing

61. Xiao, *supra* note 57.

62. *Id.*

63. I personally participated in some of these discussions, which were internal and are ongoing. To this date, no published reports regarding these meetings have been released.

Committee resolutions on unconstitutional regulations and acts. The judicial committee, on the other hand, would mainly assist the Standing Committee in the implementation of legal supervision of judicial organs. Although the above proposal was not accepted by the draft report group of the Thirteenth Communist Party Congress, it was kept on the agenda for further discussion during the preparation of the First Session of the Seventh NPC.⁶⁴ At these later meetings, opinions on the establishment of a judicial committee were unanimous. However, the establishment of a constitutional committee was opposed by most of the more authoritative participants, including members of the NPC's Standing Committee. Their reasons for opposing such a committee echoed those put forward during the 1982 revision of the Constitution.

In view of this situation, the Central Committee of the CCP failed to ratify the proposal made by the First Session of the Seventh NPC to establish a constitutional committee. It did, however, approve the establishment of an internal Judicial Committee.⁶⁵

Although advocacy for the establishment of a constitutional supervisory organ has proven futile in the past, there has recently been a renewed interest in the establishment of such a body. A strong call to strengthen legal supervision has been raised by Chinese society and within legal circles. In 1990, leaders of the Central Committee of the CCP, in response to sustained and increasing pressure from the public, requested that the NPC, under the guidance of the Standing Committee, prepare a draft Law of Supervision.⁶⁶ The Executive Meeting of the Standing Committee entrusted its subordinates with the drafting of the law.

During the writing of the Law of Supervision, most drafters advocated the establishment of a constitutional supervisory committee which would serve as a special constitutional supervisory organ and which would assist the NPC and its Standing Committee in exercising their powers of constitutional supervision. It was decided that the functions of such a constitutional supervisory committee should include the following types of review:

1. Constitutional review of normative documents, which would include the review of all laws, administrative rules and

64. *Id.*

65. This is internal information that has not been promulgated publicly.

66. *Id.*

regulations, judicial and administrative interpretations of the law, local regulations, administrative regulations, and other related resolutions and decisions.

2. Review of unconstitutional acts committed by officials of the state organs. The targets of such supervision would be officials of the central government organs who are elected and appointed by the NPC and its Standing Committee.

3. Settlement of jurisdictional disputes arising among or between the various government organs. Jurisdictional disputes arise primarily when two or more central government organs disagree amongst themselves or with local governmental organs as to Constitutional jurisdiction.

The Constitutional Supervision Committee would have the power to interpret the Constitution, and would be a special organ established directly under the NPC. When the NPC was not in session, the Committee would be under the direction of the Standing Committee. The Committee would be established in such a manner so as to legitimize it within the structure of China's constitutional system.

Other suggestions were made during the drafting of the Law of Supervision. Some drafters advocated the establishment of a special committee under the NPC that would be composed of political and legal experts who were elected by the NPC. This committee would not be under the jurisdiction of the NPC's Standing Committee, and thus would be able to conduct any necessary constitutional supervision over the Standing Committee.

Others advocated the establishment of a working committee under the jurisdiction of the Standing Committee. This working committee would mainly be responsible for assisting the NPC Standing Committee in exercising its duties of constitutional supervision on a day to day basis.

Due to the complexity involved in establishing these two types of constitutional supervisory organs, a majority of the drafters disapproved the two motions. And because the Law of Supervision involves questions relating to the current political system, its advocates have encountered difficulty in incorporating it into the legislative agenda of the NPC.

VI. CONCLUSION

The strengthening and improvement of China's constitutional supervisory system has already moved from theoretical study to practice. The major problem that remains is how to establish a constitutional supervisory organ. In order to establish a real and solid constitutional supervisory organ in China, many theoretical and practical problems still need to be resolved. From a constitutionalism perspective, such an organ should review the constitutionality of legislative, administrative, and judicial actions. However, the Western conception of constitutional review is incompatible with the organization of China's government. The guiding principle of the Chinese Constitution is one of democratic centralism, not separation of powers.⁶⁷ The NPC is the highest organ of state power, and because all other state organs are generated by and supervised by the NPC, it is supreme.

If an organ independent of the NPC were established which had the power to review the NPC's legislation, regardless of whether it was called a constitutional committee or a constitutional court, it would inevitably contradict the principle of democratic centralism. The existence of such an organ would mean that the NPC would no longer be the highest organ of state power.

It is similarly impossible to establish a constitutional committee that is directly under the NPC, parallel to the NPC's Standing Committee, and with the power to exercise constitutional review over the Standing Committee's activities. This is because the Standing Committee, which is directly responsible to the NPC and is supervised by the NPC, is the highest organ of state power when the NPC is not in session. The authority of a constitutional supervisory organ could not possibly override that of the Standing Committee. Moreover, because the Constitution stipulates that the power to interpret the Constitution and to supervise its enforcement is exercised by the Standing Committee, establishing a constitutional supervisory organ that is independent of the Standing Committee and which has the power to supervise the Standing Committee would require changing the present Constitution.⁶⁸

Under the current constitutional structure, the only practicable solution is to create a special committee that is subordinate to both the NPC and its Standing Committee. Establishing such an organ would not

67. 1982 Constitution, *supra* note 1, art. 3.

68. 1982 Constitution, *supra* note 1, art. 67.

require amendment of the Constitution and would be within the jurisdiction of the NPC's authority. It is necessary to understand, however, that the power and authority of such a constitutional supervisory organ would therefore be very limited. The fact that it is subordinate to both the NPC and its Standing Committee excludes the possibility of its exercising supervisory power over the legislative actions of either of those bodies. Such an organ could only target for supervision the State Council and local organs of state power. It could make suggestions to assist the NPC and its Standing Committee in the exercise of their supervisory powers, but only those bodies would have the power to make final decisions and resolutions as to the constitutionality of certain acts.

China's will to strengthen constitutional supervision has been greatly aroused and many legal theorists as well as related government organizations have expended a great deal of effort toward the study and realization of this goal. It has become part of the agenda of many affected governmental departments. However, in order to establish a system of constitutional supervision in China it will be necessary to overcome many obstacles and to exert even more effort. The establishment of a real and solid system of constitutional supervision depends upon further reform of the political system.

