

The Realistic Demands of Codification of the Education Law and the Way of Codification

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ABSTRACT

The Education Code has been put on the agenda, but the codification of education still needs to be solved. What is the codification of the Education Law? Why do people need to realize the codification of the Education Law? How do people realize the codification of the Education Law? These are three core issues. Based on the stated before, it is necessary to explain the connotation of codification of the Education Law from the perspective of jurisprudence. Through practice, axiology and methodology, this paper analyzes the necessity, legitimacy and feasibility of Education Code, hoping to draw inspiration from the legislative logic of the Civil Code's "general rules first, specific provisions second" and the structure of the "general rules plus specific provisions" system to achieve the codification of the Civil Code.

Keywords: Code of the Education Law, Codification, Compilation of code, Education Law, Right to education.

1. INTRODUCTION

The annual legislative work plan of the National People's Congress for 2021 mentions the need to study the codification of the Education Law with mature conditions for implementation. [1] From this, it can be seen that the codification of the Education Law has been officially included in the legislative plan and will be an important value goal in the future. Professor HOZUMI, Japan, expressed his views in this regard, that "Law is synchronized with the development of society. So, when a country undergoes a revolution, society changes, and people's thoughts change, the law must change accordingly. In this case, legislators must temporarily codify a law based on the new situation in society, which is called the codification of renewal strategies". [2] The Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code), which was officially implemented in early 2021, is the first law in China named after the "code" and an important achievement of the rule of law in socialism with Chinese characteristics, the legislative model and methods established by which provide new ideas and valuable experience for legislative work in various fields in China. Education is an important

aspect of social life and its legal construction has always received widespread attention from the education, law and public sectors. The brilliant achievements of the Civil Code have pointed out the way forward for the codification of the Education Law. However, some scholars also propose with concern: "In real life, codification is not the only choice for the development and modernization of law. It is only an external manifestation of the existence of law. Therefore, we must have a rational understanding of the role of code and codification. We can't worship codification too much, nor can we pursue codification too much, especially that the codification in Western countries can't be regarded as the only standard to measure the modernization of the legal system." [3] This requires a dialectical analysis of the codification of the Education Law and a re-examination of the codification of the Education Law from the perspective of legal philosophy. At the same time, "The codification of the Education Law comes with irresistible force. However, in this era, a significant problem is how we should establish an Education Code and what form it should appear with". This requires to further clarify the codification path of the Education Code in theory. [4] In this context, the authors intend to

further discuss this issue from three aspects: the first part is: What is the codification of the Education Law? The second part is: Why do people need to realize the codification of the Education Law? And the third part is: How do people realize the codification of the Education Law? Through the detailed discussion of the above three aspects, this study ponders and discusses the core issues that should be paid attention to when China codifies the Education Code, hoping to theoretically make a positive and efficient answer to these key issues of codification of the Education Law, so as to promote the early formulation and promulgation of the Education Code.

2. JURISPRUDENTIAL CONNOTATION OF CODIFICATION OF THE EDUCATION LAW

What is codification? What is the codification of the Education Law? These are the questions that need to be answered firstly when codifying the Education Code. The codification of the code can be traced back thousands of years in human history. However, the large-scale codification movement really arose after the emergence of the state. With the establishment of modern nation-state and the rise of legal scientism, people began large-scale legal construction activities. [5] As everyone knows, the term "codification" was first put forward by Bentham, a law master of utilitarianism in modern England. [6] The understanding of codification can be carried out from three aspects: politics, science and technology. [7] From a political perspective, the emergence of the codification movement in modern times has a special social historical scene. Codification is not an activity of professionals specializing in legal work, but a manifestation of the political ideals of the ruling class. The origin of law lies in political will, and law is another "Tower of Babel" built by humans. [8] From the theoretical point of view, the legal system and jurisprudence are the carriers of codification. Without a strong theoretical basis, it is difficult to carry codification. From the perspective of legal technology, codification aims to make the law simpler, reduce the difficulty of law users to "find the law", let people better understand the law, better abide by the law, and better protect their rights. In this sense, codification can guarantee the "accessibility" of law, which is the prerequisite and basis for the democratization of law. [9] Generally speaking, codification is a political declaration, an academic achievement and a legislative art.

The codification of the Education Law is a process in which educational legal norms move from a decentralized system to a unified structure, from norm attachment to institutional independence, and from separate legislation to centralized codification. [10] Prudently speaking, based on the framework and content of the Civil Law, the codification of the Education Law should integrate the legal norms in the field of education, be in line with the basic principles, objectives and purposes of education and education management, and be in line with their corresponding logical arrangement, so as to constitute a complete, interrelated, interdependent, unified, and standardized institutional system that involves important systems, institutional mechanisms, and major legal relationships at all levels and fields of education. [11]

3. REALISTIC DEMANDS OF CODIFICATION OF THE EDUCATION LAW

The codification of education law is a realistic demand of contemporary society, which can be discussed from three perspectives: necessity, Legitimacy, and feasibility.

3.1 Necessity of Codification of the Education Law

The practical demand for the construction of rule of law education in China requires accelerating the construction of a legal system for education with Chinese characteristics. Compared to the education legislation since the reform and opening up, China's future education legislation work will face more complex difficulties and challenges, facing more stakeholders, involving more interest demands, presenting more complex educational laws, and more conflicts and contradictions. Therefore, whether the existing education legal system can cope with the complex challenges brought about by the intersection of multiple factors in the future deserves the attention of both theoretical and practical circles. [12] Firstly, the improvement of the education legal system is conducive to improving the level of education legislation. At present, there are many and complex education laws and regulations in China, which results in weak standardization of the laws and regulations, and some of the contents of the laws and regulations still have problems of overlap and poor operability. [13] By adopting the codification approach, various relevant legal provisions can be

integrated and overlapping and conflicting provisions can be eliminated, thus strengthening the standardization of education laws and regulations. In addition, the codification of the Education Law can effectively solve some practical problems existing in the current education legislation of China, such as the difficulty of specific education legislation to be incorporated into the national legislative plan and the competition and conflict between education articles of law. Moreover, the Education Code has significant advantages over other specific regulations and compilations of regulations. The current education laws and regulations in China are numerous and scattered, making it difficult to judge and enforce. Developing an Education Code can integrate various education laws and regulations and present them in a concise and concise manner, saving enterprises and individuals the time and effort to search for legal provisions.

3.2 Legitimacy of Codification of the Education Law

The codification of the Education Law is an important way to follow the pace of international development, promote the healthy and sustainable development of education, and ensure the rights and interests of citizens in education, with high legitimacy. Firstly, the legislative work in education is not to stand still and refuse to make progress. It requires the implementation of the concept and spirit of the rule of law, while also in line with the laws of human growth and education development, maintaining consistency with national development strategies and international development trends. Therefore, it is necessary to examine this issue from the perspective of a nation or even from an international perspective. Under the guidance of this concept, the international community has also paid high attention to the development of codification. Not only civil law countries, but also common law countries such as the United States and Britain, whose main source of law is case law, are highly concerned about this trend. For example, the United States has always relied on case law as the main basis for its judicial decisions, and has also begun to compile the United States Code, which specifically includes a section of the Education Code. [14] Secondly, the Education Code can better promote the healthy development of education. Its content not only includes the operational rules within the school (such as administrative management, disciplinary setting, etc.), but also covers the behavioral norms

between the school and other institutions, which helps to form a relatively complete, systematic, and authoritative education legal system, reconstruct the education governance mechanism, and enhance the standardization, scientificity, and effectiveness of China's education system construction. Similarly, the promulgation of the Education Law not only helps to expand the scope of research on education law, change and expand research paradigms, but also accelerates the development of the Education Law itself and contributes to the improvement of disciplinary construction. Thirdly, compared with the specific education law, the codification of the Education Law has a more comprehensive and systematic significance for the protection of citizens' educational rights. Although the specific education law contains some provisions on citizens' educational rights, it is scattered among different legal provisions, with a narrow coverage and insufficient comprehensive content. While the Code of the Education Law stipulates a large amount of content related to education laws, and covers a wide range of specific and clear aspects, which can better safeguard citizens' educational rights. While the Code of the Education Law stipulates a large amount of content related to education laws, and covers a wide range of specific and clear aspects, which can better safeguard citizens' educational rights. In short, the legal system constructed by the Code of the Education Law is a system of educational legal norms with unified values, rigorous logic, and comprehensive content, and it is also a process of continuous development and improvement of educational legislation. On this basis, a harmonious society can be built to promote social development. The emergence of codification can play a role in filling gaps in areas not touched by laws in the field of education in China, and improve the construction of the rule of law in education to a new level.

3.3 Feasibility of Codification of the Education Law

The education code has realistic feasibility. First of all, China has already established a relatively complete education law and regulation system, which has laid a solid institutional foundation for the codification of the education code. Secondly, the codification of the Civil Code is a major successful attempt by the legal profession in China, and its successful experience provides rich practical experience for the codification of the education code.

3.3.1 *Institutional Basis: a Comprehensive Education Legal System*

China's education law system is relatively complete, which provides a solid institutional basis for the codification of the Education Law. [15] The formulation of the Education Code needs to be based on the fact that the current education legislation has already taken on a systematic form. In other words, to make the education legal system codified, it must be based on the intensity of education legislation. Up to now, China has carried out legislative activities in the main fields of education, the education legal system is quite complete, and the construction of the education legal system has achieved initial results. Only by the two working together can they ensure the healthy and sustainable development of education.

Looking back at the development process of education legislation in China, it can be seen that in the process of education legal construction, the concept of governing education according to law has been deeply implemented, and the construction of rule of law has been running smoothly. More than 40 years have passed since the promulgation of the Regulations on Academic Degrees of the People's Republic of China in 1980. China's education legislation has basically formed a complete institutional system, including the Constitution, eight education laws, over 200 education administrative regulations, and over 12,000 local education regulations. [16] Prudently speaking, the basic framework of China's current education legal system is: it is based on the Constitution of the People's Republic of China, with the Education Law of the People's Republic of China serving as the basic law, and the 8 education laws of the Compulsory Education Law of the People's Republic of China, the Higher Education Law of the People's Republic of China, the Promotion Law of Private Education of the People's Republic of China, the Vocational Education Law of the People's Republic of China, the Teachers Law of the People's Republic of China, the Regulations on Academic Degrees of the People's Republic of China, the Law of the People's Republic of China on the State Commonly Used Spoken and Written Language and the Law of the People's Republic of China on Family Education Promotion serving as the backbone. At the same time, it also includes educational administrative regulations and local educational regulations in various regions. [17] It is not difficult to find that China has established a unified and layered

education legislation system, with high density, rigorous logic, and complete structure of education laws and regulations, covering all fields and levels of education. Although the quality of legislation still needs to be improved, it has basically met the needs of codification of the Education Law. At present, the education law system that has begun to take shape has laid a solid institutional foundation for the work of codification of China's Education Law. All the existing things show that the promotion of codification of the Education Law has strong feasibility.

3.3.2 *Practical Basis: Experiences Learned from the Codification of Civil Code and Other Departments*

The starting point of modern codification can be traced back to the Complete Book of Six Codes in the era of the Government of the Republic China. At that time, codification showed the actual form of "taking the code as the center, driving the whole legislative process and widely absorbing the power of the academic field". [18] The compilation of the Civil Code has greatly promoted the process of codification in various legal fields in China, and has provided many useful references for future compilation of the Education Code. There are three main contents. Firstly, the compilation ideas of Civil Law can serve as a reference for the compilation of the Education Code. General Secretary Xi once said: "The Civil Code is a systematic integration of various civil legal norms summarized through practice in the past 70 years of New China, absorbing China's excellent legal culture of more than 5,000 years, and absorbing the beneficial achievements of legal civilization in various countries. It not only reflects the essential characteristics of socialism in China, but also conforms to the interests and aspirations of the people, and meets the development needs of the times. It not only reflects the fair protection of people's rights to life, health, property, and other rights, but also reflects Chinese characteristics, practical characteristics, and the characteristics of the times." [19] Drawing inspiration from the compilation concept of the Civil Code, the Education Code should also respond to existing education issues, highlighting the era characteristics of China's education and Chinese characteristics. Secondly, the compilation model of the Civil Code can be used as a reference for the Education Code. The compilation approach of Chinese Civil Code is a "two-step" model, which starts with "general rules" and then "specific provisions". This code

compilation model can be used for reference by the Education Code, which can organize and systematize existing education laws and regulations, then legislate them, and finally merge them into the Education Code. [20] Thirdly, the compilation techniques of Civil Law can be used as a reference for the Education Code. The Civil Code adopts a method of "extracting common factors" to compile, which condenses the universal and comprehensive provisions of Civil Law into a general legislative technique, and follows the following logic: "civil subject-civil rights-civil legal acts-civil liability". This practice of "extracting common factors" based on the logic of "subject-rights-acts-liability" indicates that the compilation technology of the Civil Code has become mature, and its systematization and rationalization have strong vitality. [21] The compilation of the Education Code can draw inspiration from the legislative technique and extract common factors from laws and regulations such as education subject, education rights, and education responsibilities to generate the general rules of education. In a word, the compilation of China's Education Code is feasible in practice. The current complete education legal system provides the necessary institutional basis for codification of education. At the same time, the compilation of Civil Code provides practical experience for the compilation of Education Code.

4. COMPILATION WAY OF THE CODE OF THE EDUCATION LAW

This paper first discusses the key issues of codification of education from the perspective of legal philosophy, and answers the two key issues of "what is the codification of education" and "why should people promote the codification of education" in a sense. Then, "how to realize the codification of the Education Law" is a problem to be faced when discussing the codification of education. This problem is a methodological problem, which relates to the operation and implementation of codification of education. To realize the codification of the Education Law, one must rethink the specific legislative approach of the Education Code on the basis of legislative technique, and at the same time, one must reform the traditional general legislative thinking and establish a new kind of codification thinking.

4.1 Legislative Logic: a Three-level Progressive Model of "Filling Gaps First, Then Coming to General Rules and Specific Provisions"

From the legislative level, only with a relatively complete specific education law can it be codified. In view of the fact that the current education legal system is not perfect, scholars agree that the process of codification of education shouldn't rush, but should be carried out in three steps step by step through a gradual, three-level progressive way. [22]

The first level is to supplement the gaps in existing education legislation and organize education laws and regulations to form a logically rigorous legal system. At present, there are still many shortcomings in China's education laws and regulations. For example, the Law on Preschool Education and the Law on Lifelong Education have not yet been promulgated, so there is still a lack of perfection in the Education Code. Therefore, when compiling the Education Code, it is necessary to start with the formulation of such laws to fill the existing legislative gaps. Next, while improving existing legislation, it is necessary to fully consider the actual situation in China, fully absorb the opinions and suggestions of all parties, and improve the current specific legislation, promoting the development of some relatively complete school management systems that have practical foundations towards a more stable direction. At the same time, it is necessary to systematically sort out legislative work, identify areas of overlap and conflict, and provide a unified definition of certain basic concepts. It's crucial to allow the education legal norms in the existing specific laws to undergo a series of improvements and adjustments, and ultimately form a structurally complete, logically rigorous, and hierarchical normative system, in order to achieve the goal of a "quasi Education Code". [23]

The second level is to first compile the general rules of the Education Code. At this level, it is first necessary to conduct in-depth exploration and research on some basic issues in the Education Code, such as legislative purposes, basic principles, and the subjects involved in the legal relationship of education. It is also needed to clarify the powers and responsibilities between each subject, and so on. On the basis of clarifying the above legal norms, the legislative method of "extracting common factors" can be used to promote the formulation of the general rules of legal norms, and then draw on

the development ideas of Civil Law to be the first to issue the general rules.

The third level is the recompilation of the specific provisions of the Education Code. After the promulgation of the general rules of the Education Law, relevant experts and scholars should be organized to compile the content of each specific provision separately under the theoretical guidance of each specific provision field. When compiling the specific provisions of the Education Code, it is necessary to coordinate and connect the following aspects, specifically to handle the connection and coordination between the general rules and the specific provisions, between the various specific provisions, and between the Education Code and other departmental laws and regulations. By adjusting and connecting various chapters, it is possible to compile the Education Law.

4.2 System Structure: Drawing on the Legislative Model of "General Rules Plus Specific Provisions"

The Civil Code of China adopts a system structure of "general rules plus specific provisions". By drawing on the experience of education code compilation that has achieved good results internationally, combined with the traditional model of unified legislation in China, and the legislative foundation already established in the field of education, China's Education Code compilation should also take Civil Law as a reference, adopt a "general rules +plus provisions" system structure, combine numerous complex clauses together, and form a complete whole. The current Education Law is the "leading law" in China's education legislation system, playing a leading role in other education laws and administrative regulations. Therefore, the general rules of the Education Code can be revised on the basis of the current Education Law. In the compilation of specific provisions, the following three styles of integration and interweaving can be adopted. One is to divide it into preschool period, compulsory education period, secondary education period, as well as higher education and vocational education stage according to the education stage; one is to divide education and the subject of education into schools, off campus institutions, teachers, students, etc.; one is to categorize teaching organizers, which include public, private, international cooperation, etc. [24]

4.3 Content Generation of the Education Code

Based on the codification logic studied earlier, the education code consists of general and sub-clauses. The general part of the education code should be organized by the legal relationship of education as the main line of arrangement, and the sub-paragraphs of the education code should be based on the core legislative idea of guaranteeing the right to education.

4.3.1 General Rules of the Education Code Based on the Arrangement of Education Legal Relations

When formulating education laws and regulations, a coherent and consistent "central axis" should be established. The main focus should be on education legal relations, and the reason why they are placed in the first place is because they can decompose the legal relations of education into many different legal relations, and on this basis, they further clarify the adjustment objects of the Education Law. [25] The general rules of the Education Code mainly include the following aspects: (1) Basic provisions. This section involves some basic concepts of law, such as legal purposes and legal principles. (2) Basic system of education. The main content includes: school education system, examination system, degree system, and the supervision and evaluation system for schools. (3) Subject of education. On this basis, it supplements and improves the provisions of the Education Law regarding "schools" and "other educational institutions", "teachers" and "other educational personnel" and "educated individuals". (4) Education management and supervision. (5) Education support and guarantee. (6) International cooperation in education. The mechanism for international educational exchange and cooperation can be improved on the basis of relevant laws such as the Regulations on Chinese-Foreign Cooperation in Running Schools. (7) Educational dispute resolution system. This system requires the establishment of a specialized mechanism for resolving educational disputes. It mainly includes two aspects, one is internal relief, that is, the school itself takes corresponding relief measures, such as student appeal system, teacher appeal system, etc. The second type is external relief. This kind of relief mainly refers to the appeals and complaints of students and teachers and the acceptance of reconsideration cases by educational administrative organs. [26]

4.3.2 *Specific Provisions of the Education Code with the Core Legislative Thought of Ensuring the Right to Education*

Ensuring the right to education as the core legislative concept of the Civil Code is of great significance for comprehensively promoting comprehensive quality education, promoting educational fairness, and highlighting the people-centered development concept. Firstly, it can better showcase China's people-centered development philosophy. The Constitution of the People's Republic of China clearly stipulates the importance of safeguarding citizens' right to education, and the specific provisions of the Education Code take this as the core legislative idea, which helps to implement the people-centered development concept. Secondly, taking the protection of the right to education as the core is to safeguard citizens' educational rights and interests. The specific provisions of the Education Code revolve around the right to education, stipulating standards of conduct for educational institutions, requirements for educational quality, and the rights and obligations of citizens to receive education, which help to safeguard citizens' educational rights and ensure that all citizens can enjoy good educational resources. Besides, it helps to promote comprehensive quality education. Comprehensive quality education is one of the main directions for the development of education in China and the right to education, as an important foundation for comprehensive quality education, helps to promote the implementation of comprehensive quality education. The specific provisions of the Education Code focus on ensuring the right to education as their core, regulating the quality of education, disciplinary setting, and education management, which is conducive to promoting the in-depth implementation of comprehensive quality education and improving educational levels. Finally, it helps to promote educational fairness. The realization of the right to education is the foundation of educational fairness, and the specific provisions of the Education Code regard safeguarding the right to education as the core legislative idea. From the perspective of educational fairness, a series of regulations have been formulated to safeguard citizens' right to education. This helps to promote the balance and fair distribution of educational resources, and achieve the goal of educational fairness.

Based on the above legislative ideas, the following distribution can be adopted in the layout

of the chapters of the Education Code: Chapter 1, Preschool Education; Chapter 2, Compulsory Education; Chapter 3, Higher Education; Chapter 4, Vocational Education; Chapter 5, Lifelong Education; Chapter 6, Special Education; Chapter 7, Education Promotion; Chapter 8, Education Evaluation; Chapter 9, Foreign Education; Chapter 10, Other Education, which is mainly a guarantee chapter designed to address issues that don't yet meet the conditions for educational legislation, in order to solve the problem of legislation falling behind practice.

5. CONCLUSION

Education is the foundation for cultivating human qualities, improving cultural, technological, and economic strength, promoting social progress, and building a harmonious society. Codification is one of the important achievements of the development of the rule of law and it is also an inevitable choice for the rule of law. Compiling an Education Code is a rational requirement for the rule of law in education and the realization of educational modernization. The Education Code has its practical necessity, legitimacy, and feasibility, which is the aspiration of the people, enjoying popular confidence. At the same time, the compilation of the Education Code should draw inspiration from the successful experience of the Civil Code, and coordinate the relationship between the general rules and the specific provisions, the specific provisions and the specific provisions, and the Education Code and other departmental laws, ultimately achieving the compilation of the Education Code and becoming a "rational decree and regulation" in the field of education law. [27]

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