

# **The Role of Law in Social Development**

## **---An Analysis of Legislations of China and India**

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**Abstract:** Due to rapid development for many years, both China and India have become influential world economies. This article examines the role of legal institutions and practices in China and India in order to make an objective evaluation of the function of law in these countries' social development. Development is defined by the circumstances of the society in which it is produced. Whether the law can be functional or not is determined by its responsiveness to the social environment. China and India are different from each other. They are also unique as global actors. Therefore, their laws will develop unique, individual characteristics. This article will analyze three functions of law in the course of China and India's peculiar social development: the protection of rights, signaling rights and duties to citizens, and balancing the rights of individuals, groups, and government. Finally, it will be proved that only laws that reflect the essence of a society can be valued in practice.

**Key words:** development, legislation, anti-modernity, social effect

India and China, along with Brazil and Russia, form BRIC, a group of rapidly developing emergent economies. As these countries' economies developed, their citizens began to think about the development of other sectors of their societies. They asked, do laws and policy influence the development of the economy? Will economic development lead to social development? China, for example, it has experienced a very special development path over the last one hundred years. Under a highly centralized government, China carried out the strategy of "develop first, regulate later." Because China's legal system developed later than its economy, Chinese legal professionals have committed themselves to establishing a modern legal system. Most Scholars assume that law has not had much influence on the development of Chinese society. In fact, China's neglect of the rule of law has already produced negative impacts on its

society. Unlike China, India's legal system is highly esteemed in the world. India's democratic political structure, put in place after it won independence in 1947, provided it with some initial advantages in development; however, India's institutions are complicated, and its social system suffers from chronic illnesses. A failure in the courts frequently cancels out the a victory in the legislature. What's more, due to the diversity and disparity in Indian society, including the remnants of the caste system, the effect of legal reform hardly benefits those at lower levels.

In light of their histories, the two countries devoted themselves earnestly to progress as a cure for their social ills. In modern times, the achievement of the West set an example that China and India have attempted to follow on their path toward development. However, the ability of Western development theory to deliver its promised results in non-Western countries is oftentimes unclear. This is because the path of development is different for every country and must fit local customs and practices. I apply current research in law and development to show the positive impacts of legal reform and government supervision on developing economies, and I outline ways to promote those objectives.

This essay focuses on the legislation of India and China. I select positive and negative examples with respect to three criteria – the protection of rights, signaling rights and duties to citizens, and balancing the rights of individuals, groups, and government – in order to explore the necessary conditions of each and discover how law influences social development.

## **Part One: Definitions**

### **Development and Modernity**

The discipline of sociology gives three criteria for development: social change, economy, and culture. The focus of these criteria is on progress: society is supposed to develop from a less organized to a more organized state. As an academic project, development studies have focused on social change and evolution in the West from the 16th century. This project asks, why did Europe develop from a feudal society to a capitalist one? From the beginning, development studies assumed progress, defined as development in Western society. One of the three theoretical perspectives on development is the modernization school. In *Economy and Society*, Max Weber studied in the relationship between law and economy. In his opinion, all societies develop in sequence from a lower level to a higher level. The highest point is formal rationality in law and a modern industrial economy. In this sense, if a third world country intends to modernize, it has to absorb a developed legal system and be governed by the rule of law.<sup>1</sup> According to this theory of development study, developing countries are in a state of “backwardness.” Once they adopt legal systems similar to western countries, growth in their economies will naturally follow.

### **Criticism of Development Study**

However, the modernization school of development study has suffered reverses. In many developing countries, after the initial phases of legal reform and development,

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<sup>1</sup> Li Guilin, “New Moves in Law and Development Movement”, *Legal Forum*, May, 2006

growth has slowed or stopped in most countries; the legal system transplanted from the West did not bring constitutional government and democracy as wished. In fact, the foreign laws did not work in the new social conditions. In some cases laws have been translated to fit local culture, which distorts the law's original purpose; and some laws were not welcomed so that people found a way to get around them: "In order to realize the development of society and nation, it is necessary to build up an appropriate political system, which are from the facts of the nation, widely accepted, and can present modification to the government and its employee."<sup>2</sup>

The proper definition of "development" becomes the prerequisite of legitimacy for research. One thing is certain: the definition of development cannot be decided by the detailed circumstances of Western society's development. There are many terms to describe modernity in the West, such as rationalization, secularization, alienation, universalism, objectivism, mass society, industrial society, and democratization, etc.. It is not possible to have a standard definition that can be used in all societies. But one principle is important: the development of society must conform to the moral standards and values of that society. Development cannot come at the cost the human rights or cultural identity. The purpose of development is for the benefit of the people.

In their attempts at legal and social reform in modern times, China and India have adopted policies of imitation of the West. Large-scale legal transplantation work was carried out. But the so-called "development" theory was frustrated in reality because it was secluded from social circumstances. This obviously contradicts the view of the

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<sup>2</sup> P-Ebow Bondzi-Simpson, "Outline: Facing to the predicament of Development by Law", *The Law and Economic Development in the Third World*, Sep., 2006

sociological school. According to the definition by Pound, law is a regime, and a kind of social control, which is of specialized form and implemented in the process of administration and justice by the regulations of authority.<sup>3</sup> The social law school, on the other hand, is against dogmatism and mechanicalism, which are separated from social reality. According to the social law school, the life of law is in the application of it. As a social regime law is founded by people, and furthermore it is created with certain intentions. On the one hand, law is experience developed by rationality; on the other hand, it is also rationality proved by experience. Within the theoretical bounds of social law, it is feasible to set a target for law in a social sense. The value of law is then evaluated according to whether or not this target can be achieved. The disadvantages of legal transplantation led to criticism of development study theory. Friedman did not agree with the classification of society into “traditional” and “modern.” In his understanding, the core of law is culture, which can be traditional and modern at the same time, and none of them is superior to another.<sup>4</sup>

## **Part Two: The Role of Law in Development**

Generally speaking, China and India have benefited from the progress of law. From the view of institutional economics, the institution is a determinant in economic development, and law is one of the most important parts. The definition of property rights and enforceable contract law can lower trade costs and create fairness in

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3 Zhang Hongsheng , Gu Chunde ed., History of Legal Ideas in the West , Beijing University Publication , 2002, p.422.

4 Yao Jianzong, Commentary on Law and Development Movement in U.S. , Law Press , 2006 , p 26

competition. If the exploiting power of government can be limited, the interest of most enterprises can be assured. And the formation of a market economy can promote justice, fairness, and right in a society. A reasonable separation of rights between citizens and government can be made, and this will form a harmonized citizen society in the end.

As two ancient, civilized countries, China and India have formed independent schemes in religion and culture. The transplantation in modern times of Western customs and practices was like a fresh breeze, which brought new thought and institutions in law. At the least, it became easier for India and China to communicate with the rest of the world. Meanwhile, they still faced difficulties finding a way to minimize the shortcomings of legal transplantation. What is exactly the right law for them? And how can they make the law do right by the people and make better lives for them?

#### **□. The role of protection**

This is the most fundamental and significant role of law. “Those who have property will have morality”(Mencius). To protect property by law can promote investment and development of the economy. For example, an effective contract law can build up effective transaction orders, as well as lower costs and risk. The laws of China and India are of the social standard. Through the protection of the weak, the law turns towards public interest, and means to realize fairness and justice in society.

#### **1. Cases in China**

## **(1) Protection of the rights of women**

Since the Song dynasty, treatment of females as inferior to males has been a popular value in traditional Chinese thought. For a long time, women had no legal right to their person and property. They were considered to be the property of their husbands on the authority of patriarchal society. Even the rights of personhood were not protected for women.<sup>5</sup> Customs like Sadie in India were common in ancient China too. Following the example of laws in Germany and France, equality between men and women was stipulated in the Civil Law Draft in the Qing Dynasty and the *Civil Law Code* in the Republic government era. Otherwise, this was out of step with social life at that time. According to the data sources of the period, Chinese people went on with their lives in the traditional way, and legislation was just something on the book. Rich men still married more than one wife as his ancestor did a thousand years before. The “May 4th movement” and the “Cultural Revolution” caused a twofold separation from the traditional culture in China. Discrimination against women and its traditional justification were gradually abandoned. During the “May 4<sup>th</sup> movement” schools for female students were founded. Peking University began to recruit female students in 1920. They were encouraged to work even after they married so that they might have an independent source of income. After 1949, the social standing of women in society increased. Because of low productivity, women worked just as men did. In 1968, Chairman Mao famously said, “Women hold up half of the sky.” Many laws reinforce the equality of men and women, including constitutional law, marriage law, and even

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<sup>5</sup> For example, from Song dynasty, foot binding was a custom for women. The smaller her feet were, the easier she could be married well. Such feet were called by the beautiful name “lily feet.”

criminal law. And those statutes play a role in the protection of women as well. However, women still suffer some disadvantages: for example, the employment rate for women was about 40% in 2002.

## **(2) Protection of the consumer**

Special protection for consumers was the result of the transition of contract law from the “individual standard” to the “social standard.” The change in the contract law of the Western legal system was also adopted in *Consumer Interest Protection Law* (CIPL) in China in the 1990’s. At that time, China was enjoying the fruits of the “Reform and Opening-up” policy. But the need to provide better protection to the weak in society increased in importance. CIPL was issued then. Besides it, relevant regulations for the protection of the consumer have been promulgated in the *General Rules of Civil Law*, *Product Quality Law*, *Contract Law*, *Anti-monopoly Law*, and even *Criminal Law*.

First, the “consumer” was defined in a narrow sense, as “the one buys and uses goods and services for their livelihood.” It limits the definitional range of “consumer” to very specific persons. This definition merely follows the universal usage in the rest of the developed world. Second, a procedure of remedy was applied in a restricted way, which only allows the consumer himself to prosecute a case.<sup>6</sup> In China, most people’s only chance for legal education is in college, and the percentage of college graduates is only 16.6%.<sup>7</sup> Thus, the remaining 83% of citizens lack fundamental legal knowledge,

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6 “Taking part in investigation and supervision of administrative department, communicating with and giving proposals to relevant department, mediation when consumers complain, asking the evaluation department to give the feedback of report, supporting consumer to sue, and disclose and criticize the wrong-doer in media.” Sec. 32, CPA

7 According to the statistics, the illiteracy rate in China has been reduced to 6.67% in 2008. The ratio of school attendance was 23.8%. It is estimated that there will be 2 billion who have a college certificate.



which amounts to 10 billions. The simpler the procedure is, the more opportunities the consumer has to find a remedy. Moreover, ordinary people still need assistance from professional organizations, while the Chinese Consumer Protection Agency does not have much to do. (They gave a try in 1990's, but have no result.)<sup>8</sup> The ineffectiveness of CIPL works in the strategy of the CPC, who has decided to restrict development of association in China for the stability of politics. Compared to Indian law, which allows the government to prosecute on behalf of the consumer, the Chinese government chooses to stand by because it has not yet realized the service function of a modern government.

## **2. Cases in India**

### **(1) Protection of women**

With British laws came ideas about the equality of rights to India. "Equality before the law" became the ground rule in Indian legislation too. In traditional Indian society, women had low status. Section 14 of the Constitution emphasizes the equality of men and women and forbids discrimination between sexes in the following section. In terms of Hindu laws, the bride's family has to pay a lot for her marriage. In the caste system, if a girl from a lower caste gets married to a man of a higher caste, she has improved her life and her child's. Thus, parents of the low caste girl will pay a premium for such a match. This leads to increased costs for the dowries of high caste girls because their supply of husbands becomes smaller. The dowry custom has caused many social

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<sup>8</sup> After nearly 20 years after the legislation on consumer protection, this work has little actual result in China yet. Food security is still in a terrible situation. The consumers have experienced incidents about poisonous milk, artificial eggs, water injection beef, and even water they drink every day is not safe anymore. In most cases, people have to pay more to obtain commodities with good quality. But this does not work all the time. The rich pay a lot to buy luxurious furniture called "Vinci Furniture", which is actually produced in China instead of in the very beautiful and artistic country in Europe as they claimed before.

problems. In 1961, the *Anti-dowry Law* was passed, and it stipulates crimes for that in 1984.<sup>9</sup> But it has produced little effect. The dowry even becomes the channel of income re-distribution.<sup>10</sup> On one hand, this is because the law does not differentiate “dowry” from “present” clearly, so duty can not be confirmed; on the other hand, and most importantly: Indian society is not ready to give up the dowry custom yet. Similarly, the matrimonial regime was useless in China in 1900, but very useful 100 years later. Religion is very influential in India. Because of “Parda,”<sup>11</sup> it is very hard to let female students study in the same school with male students and teachers.<sup>12</sup> Unlike women in China, women in India are not in habit of working after they get married. These conditions lead to the dependence of women on their family.

## **(2) Protection of the consumer**

Seven years earlier than China, India has passed the *Consumer Protection Act* (CPA). First, The definition of “consumer” in the CPA is broad. For example, people who bought and used the goods for the purpose of earning his livelihood by means of self-employment can be included in the definition<sup>13</sup>. Some critics say the Indian law has included too many people in the concept “consumer,” which occupied a position of prominence then. But the range of protection is decided by different social situations. In India 107 million individuals are trying to form 85 million small businesses.<sup>14</sup> The government has to protect the interest of small business. It rejected the proposal to

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9 The criminal law stipulates that the one who demands a dowry will be punished by imprisonment for 6 months, and fine of Rs. 10,000

10 According to the data by Indian National Crime Statistic Office, 8391 brides died for a dowry in 2010, which nearly means that every hour a bride murdered.

11 A custom of separating women from men. It keeps women stay at home.

12 An Shuanghong, “Chances for Indian Women of Higher Education”, *Comparative Study in Higher Education*, No.7, 2001

13 Sec. 2(d), CPA

14 <http://www.moyak.com/papers/small-business-statistics.html>

permit foreign retail sellers to enter the market of India not long before. It is hard to find a supermarket even in the capital of India, Delhi. Many people find their own ways to make a living. And the government has to protect those people. The amendment occurred with reasons. And it seems to benefit the Indian society in fact.

Second ,At the mention of procedure, Indian laws can benefit the consumers more, because it is cheaper and costs less time. Many individuals are entitled to bring suits including individual consumers, groups who have same interest, any registered voluntary consumer association, or central government or the state government.<sup>15</sup> This is currently important in India. Corruption is the stubborn illness of Indian bureaucracy. The more complicated a procedure is, the more possibility there is of power-seeking rents. In this sense, the design of procedure in the CPA and relevant laws act on the demands of this reality.

## **II. The Role of Signaling**

For one thing, modern laws should reflect the interests of most people and the needs of the society; for another, law is the manifestation of ideas of government. Ultimately, government is not on the opposite side of its people. It derives its power from the governed – the people. Therefore it is the duty of government to maximize the interest of its people. This is the rational basis of laws and regulations by the government. Those actions that conform to the laws are supported and have a positive effect. From this perspective, laws can be understood as a signal from the government

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<sup>15</sup> Sec. 2(a) ,CPA

to private citizens regarding their duties toward the state.

## **1. Cases in China**

### **(1) Regulations of non-state-owned economy in the *Constitution***

There is statute about private ownership in the Chinese Constitution of 1982, which obviously contradicts Marxist economic policies that were pursued by the government. China adopted a planned economy system with public ownership as the main form. But because the economy was on the edge of collapsing, the government could not put private ownership out of existence. In response to this, Sec.11 in the Constitution admits self-employed people, but describes the activity as supplementation. This is definitely a signal from the government, and it set people's minds at rest. Self-employed people and those who wanted to be self-employed started to pursue personal fortunes. In next 30 years, there were three other amendments relevant to the private sector that promoted development in practice. More and more room is permitted for the advancement of private enterprise in China's laws.<sup>16</sup>

After 1949, China followed the way of Soviet Union, and utilized a planned economy. Because of the "Reform and Opening-up" policy, China transferred to a market economy.<sup>17</sup> As the law with supreme legal authority, the constitution functions as the most powerful backup for the transition to a market economy. Four amendments occurred to change the economy and then serve it in return. They acted as signals to

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<sup>16</sup> When the 1988 amendment of the Constitution permitted private economic activity, it was not in accordance with the planned economy. It was also not compatible with the official communist ideology. With this in the background, Deng Xiaoping made his south inspection tour speech, directing the way of economic reform. Private economy was made part of the market economy, instead of a supplement. In the 1999 amendment of Constitution, it is characterized as an "important part".

<sup>17</sup> In 1978, total industrial output value of national owned enterprises occupies 77.6% of the total number. 1990: 54.6%; 1994: 37.3%; 1996: 28.5%. The individual economy of urban and rural occupies 1.8% in 1985; 1990: 4.8%; 1994: 10%; 1996: 15.5%. Until the end of 2002, the number of private business is 2,435,000, with registered capital of RMB 24756 billion.

demonstrate changes in ideas of the government, and the way that the government governs. Law is authoritative and stable. The content of it can be seen as the promise of the government. Until 2002, the non-state-owned economy comprised 1/3 of GDP. And by 2012, this number has increased to 3/4, which may be the best endorsement of these four amendments.

## **(2) Patrimonialism**

Western society is individual-based, while ancient Chinese society is family-based. The idea of personal property has only been accepted in modern times in China. This foreign concept is against the patrimonialism of Chinese custom. Both the Republican government, and the Communist government decided to change the legal orientation of property to maintain the priority of the family. This is conveyed directly through family legislation.

Patrimonialism is very important in traditional Chinese culture, because the personal and property rights of the individual are decided by it eventually. An individual belongs to a family, and so does his property. According to the personal property system, the property of individuals or couples has independent status. This is not the situation in rural areas of China that are more secluded and more traditional. Here, the customs of “family break” and “heir adoption” are still popular. Before the “family break” happens, a young couple and the son’s parents have joint property rights. After that the young couple has independent property rights. “Heir adoption” is not exactly like adoption in the west. Males in the family, not females, can adopt a child from his relatives when he has none. The population in rural areas occupies half of the

total number. The existence of these two customs shows that patrimonialism from the traditional law still has influence. And it may also limit the conditions of welfare, such as medical treatment and pensions.<sup>18</sup>

## **2. Cases in India**

### **(1) Reform considerations in contract law**

India introduced contract law from the United Kingdom in 1872 in order to promote the development of a market economy through the modern transaction system supported by the law. The *Indian Contract Act* learnt achievement of contract law in 19<sup>th</sup> century. And accordingly it is different from British law in some respects. The principle of consideration is one of them. Indian contract law allows more exceptions than the U.K. version. First, it is signal from the government to encourage transaction. The bottom line is no argument between two parties. It is the role of the government to facilitate transactions. The government attempted to promote the circulation of wealth, which then stimulated the development of a market economy. Second, it reflects the impact of academic research at that time, which criticizes the rigidification of consideration. Third, it reflects the view of value of promise. Consideration insists there be an exchange of benefit from both parties. A promise that is not paid back is not going to form a contract. Otherwise, India is such a religious society that promises are highly valued. Indian people consequently decided to admit more promises with legal weight. As the only written contract law in the common law system, the Indian Contract Act has played important role for 100 years.

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<sup>18</sup> Yu Jiang, "Century Memorial Ceremony of Chinese Civil Code", Forum of Politics and Law, April, 2011

## **(2) Statutes concerning castes in the *Constitution***

The caste system is a serious social problem in India. People from low castes are not guaranteed the fundamental rights of life or body. Thus, after independence the government clearly signaled the end of castes by denying them legitimacy in the Constitution. This is also the result of the influence of the equality principle from the British legal system.<sup>19</sup> But the reality is different. Until the 1970s, the population of untouchables was about one billion, which comprised 1/5 of the total population. More than 90% of untouchables live in the rural areas, and 95% of them have no land. They can only be farmers and cleaners. The right of education is not much realized, because 87% of them are illiterate. Besides religious reasons, there are other reasons for the persistence of the untouchable class related to the rural policy of the Indian government and the corruption of the administration. Actually, the particular protections afforded the untouchables in the constitution makes things worse. People from other castes may think that untouchable's protections cause reverse discrimination, which makes them feel greater enmity towards the untouchables.<sup>20</sup> Such emotions have even sparked violence and pushed the untouchables into a sad plight. Thus, it may be time for the government to find another way to resolve the problem.

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19 In 1949 the Constitution clearly stipulated the principle of equality before law. The S. 15,16,17 stipulated that it is forbidden to discriminate against any citizens because of race, caste, sex, and birth. Everyone has an equal chance to obtain jobs in all kinds of government and nationally owned enterprises. The untouchable system is forbidden in law and practice. S. 46 regulates that the country will specially protect the educational and economic rights of people from middle and low classes. Legislatures of the central and state governments should keep chairs for people from tribes and castes on the list of the constitution. In the Examination for Governor Rules in 1955, it required that 12.5% of the places shall be for the people from tribes and castes listed.

20 Li Mingzhu, "Influence of Caste System on Indian Law", Journal of Minority University of Northwest, No.1, 2005

### **III. The Role of balance**

In the opinion of Montesquieu, those who have power have the intention to abuse it. People will utilize power until they cannot anymore. As mentioned above, law functions to protect and signal. But the implementation of laws depends on the power of the government. When the government is powerful, it is more likely to deprive citizens of human and property rights. When the rights of private citizens expand too much, they prevent the efficiency of government. One person's right might be at the cost a lot of other people's right. There should be a distinct border between public power and private right. It is the duty of law to achieve balance between two of them. "In a nation where there is government by law, the public power and private right must be in the state of equilibrium. Too much public power means autocracy, while too much private right means liberalism and anarchism."<sup>21</sup>

#### **1. Cases in China**

This issue is of particular importance in China. Since the "May 4<sup>th</sup> Movement," concepts of "me" and "alter ego" have become important. "Me" means self; "alter ego" means others as a group, such as a nation, country, or party. In the first fifty years of the 20<sup>th</sup> century, because of the national crisis, China needed a hero, who would sacrifice his personal interest for the interest of the nation. This hero came forward, and devoted himself to the "alter ego." This established a cultural value widely accepted by society. But after 1949, China still keeps using this concept from the time of crisis, which emphasizes the sacrifice of the individual, even when the "alter ego" becomes "the

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21 Wang Yuanzhi, "Rational Consideration to the relationship of Public Power and Private Right", Journal of Shanxi University, No.4, 2006



party and the masses” instead.<sup>22</sup> This value led to an unlimited expansion of public power, while individual rights were “swallowed” by it.<sup>23</sup> In the process it was forgotten that public power comes from private rights and exists to guarantee them.<sup>24</sup>

### **(1) Property Law**

“The boundary between public power and private right is decided by private law, but not administrative law.”<sup>25</sup> The progress of law of China is advanced by legislation. It is really interesting to look back at news from the past. Take, for instance, the news from the 1990’s in the newspaper. The government took over couples of motors owned by private persons. This was published as an effective enforcement of law. Ten years later, before or after the enactment of Property Law, there are a lot of cases in the newspaper about some brave persons who dare to say no to the government and protect property of their own. The Property Law was passed at the right time, when China had become the 4<sup>th</sup> largest economic body and GDP per capita was US\$2052. Already ten years have passed since the “Reform and Opening-up” policy. Legislators have enough practical experience that should be reflected in statutes. From another point of view, this law functions as a textbook that tells people to cherish their property. In this sense, private ownership has been cultivated to be powerful enough to bargain with public power. And then, from many rounds of gaming, they can only find a way to satisfy each other.<sup>26</sup>

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22 Liu Zaifu, “Boundary of “Group” and “Self” in a Pluralistic Society”, Du Shu, No.1, 2012

23 Zhuo Zeyuan, Nation Governed by Law, Fangzheng Press, 2001, p. 62

24 Pan Aiguo, “Limit of Pubic Power”, Legal Comment in Nanjing, Spring version, 2011

25 Liang Huixing, “How to limit the Abuse of Public Power”, Legal Study of the Era, No.3, 2004

26 Zhan Zhongle, “Protection of the Property of Citizens by Limitation of the Public Power”, Survey of Chinese Development, July, 2007

## **(2) Government procurement contracts**

Sec.23 of the *Government Procurement Act* (GPA) in 2001 maintains that contract law pertains to government procurement contracts as well.<sup>27</sup> The sphere of application is decided by actors. As long as the procurement is by the government, it has to abide by this law according to S.23. When the Contract Law was enacted in 1999, it did not include the concept of administrative contract. S23 of the GPA explicitly introduced this concept from “government contracts” in the common law system. To understand government conduct in a contractual way is a good way to start to transform how the government functions and to make a service-oriented government. But this law fails in government procurement in many cases. The Chinese government might be the richest in the world, but not the governors themselves. If there is a chance to use the huge public fund for private ends, it is definitely a tough test of the morality and responsibility of the governors. Therefore, when the procedure is not designed very finely, and the specific governor is not as honest as required, corruption happens. The pervasiveness of corruption could be ascribed to the traditional preference for “rule by men,” when in reality it is hard to find such ideal person now. The government procurement contract is just a show in the market. The deal has already been made long before the invitation for a bid. And of course, because there is no balance of power, the governor is easily able to manipulate the process and benefit from it.

## **2. Cases in India**

### **(1) The Criterion of “Public Interest”**

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<sup>27</sup>“The government procurement in this law means procurement of goods, project and service on the list by all levels of government, public institution and group using public financial fund.”

While China suffers from the one-party system, India has a headache because of its democracy, which is inefficient. The poor condition of India's infrastructure is one reason that keeps the foreign investors away. As one of the largest airports in India, Bombay airport has to postpone its new airport project to 2014, for it cannot acquire the necessary land. Private ownership of land is the rule in India. The government only has 30% ownership of the land, so most of it belongs to private citizens. According to the *Land Acquisition Act* (LAA), the government can acquire land in the name of "the public interest." Seven circumstances are formulated as "public interest" in the 7<sup>th</sup> clause of Sec.3. Sec. 17 concerns "emergence": for example, when the river changes its route, the railway can use land needed to keep traffic flowing. Modern civil law prefers to limit the autonomy of private law. With the development of society, the basis of private law transferred from the individual to society. LAA provides stipulations about private land right. But the "public interest" principle has actually won some room for social development. This principle has a place in Sec.31A, 31B, and 300A of the Constitution, which provides that the court has the right to make judicial review of government contracts.<sup>28</sup> But there are restrictions on its application, which stipulates that if it is not against the public interest, courts have no power to interfere with the conduct of the government.

## **(2) Compensation Agreements**

As for the Land Acquisition Act, one scholar calls it "one of the most misused civil laws in the country"<sup>29</sup> He believes this law gives unprincipled support to the land

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<sup>28</sup> S.14 of Constitution

<sup>29</sup> Mohammed Asif, "Land Acquisition Act Need for An Alternative Paradigm", *Economic and Political Weekly*,

acquirers and the government. As required, the price of land is determined by reference to the market. But in many cases, the sale price is lower than the real value.<sup>30</sup> According to LAA, interested persons have a right to object to the Collector about the compensation. But it has little effect. For the standard of the compensation, on the one hand, if the land loser asks for a big price, he will be forbidden to do so. On behalf of the benefit of all people, it is responsible for the government to use public funds appropriately; on the other hand, reasonable compensation should be paid to the land loser. The best way to make the standard just is to find a third party, who may be professional.<sup>31</sup> By taking all factors into consideration, the appraisal agency will have a neutral and fair plan for compensation, and thus stop endless debate between the land losers and the government. The ownership of property will be ascertained, and the market will make the order in line with objective value. Otherwise, the function of the appraisal agency might be supervised, because in most instances it is big companies who plan to acquire the land. Big companies like TATA are very influential in commerce and social affairs. Some companies will have their own way to work on the government decision and gain their own interest at the cost of land losers.

## **V. Conclusion**

As Ellig said, no matter whether it is now or later, the core of legal development is neither about legislation, nor legal research, nor judicial judgment, but the society in

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June, 1999

30 In 1974 the Vishaka Steel Plant gave a compensation of Rs 1,200 per acre of dry land and Rs 2,000 for wetland. After three years, a settlement of a court increased the price to Rs 17,000 and Rs 20,000 respectively, which are nearly 10 times than before.

31 The Acquisition and Compensation of Houses on National-owned Land Regulation (2011) in China has such kind of regulation in Sec. 19, which allows qualified real estate appraisal agency to evaluate the houses.

which the law lives. And Lewman has opined that it is necessary to connect law and the society together for they depend on each other.<sup>32</sup> Even if a law is carefully devised by a person who is wise and moral; even if, it is logical and the legal spirit within it is noble and sparkling; it is still too early to conclude if it is a good law. The value of a law is decided by its social effect in practice. When the social circumstances change, the result of the law's application will be different. There is no law that can play its proper role outside of its specific social background. This theory is proved by the three aspects of law discussed in this article. China and India have experienced tremendous social changes in last 100 years. In the end, laws that are functional are those that answer back to those changes. Thus, no matter how a law is created, from a local or foreign system, it can only be valued by its effect.

There is an inherent criterion contained in the legal system of each nation. Only by paying respect to it and identifying it, can laws be useful and promote the development of society. In this sense, whatever definition of development is adopted, or route of development is taken, the crucial goal of "law and development" research is to protect the freedom of people to choose their laws. "The purpose of law and development is to cultivate and promote rights of people, and let them freely choose laws, rules and procedures they admit to."<sup>33</sup> This happens to coincide with the view of Amartya Sen: "To regard man as the core, the most valuable standard, is freedom."<sup>34</sup>

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32 Gu Chunde, *History of Legal Thoughts in the West*, Renming University Press, 2004, p 470.

33 David Trubek, "Back to the Future, Modernization of Law, p393

34 Amartya Sen, *Development as Freedom*, Renming University Press, 2002, p3