

China: How to Find Laws in China

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CHINA

HOW TO FIND LAWS IN CHINA

By

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INTRODUCTION

Strengthening the legal system and building a country governed by rule-of-law has been an integral part of the overall Reform and Open Door Policy of China since late 70's. In comparison with history, it is fair to say that China has made remarkable progress and achievements in building its capacity of carrying out rule-of-law, to the extent that it took most western countries several decades to get there.“ There must be rules to observe, rules must be observed, enforcement of rules must be strict, the those who violate the rules must be punished” was a goal proposed by Deng Xiaoping in early 80's throughout the country, and is now partly reality.

Before the reform, laws played a very marginal role in China and the country was famous for its “Rule-of-man” model. For more than 30 years, China in fact had very few laws, and the term “rule-of-law” was foreign to many people. The strict centrally - planned economy and the resulting social structure left small room for law to play. For instance, in a society where there was no private property, where labor was treated like a chess on the chessboard, where one was allocated no more economic resources than necessary to feed oneself, there was no need for civil law; where all the economic activities were organized and managed by governments, where economic parties were seen as players of the state functions, economic law were not needed. There were no soil for administrative law too because under a ideology that gave government a

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position to represent people and to exercise all kinds of rights on behalf of the people, individual rights and freedoms were neglected too.

Since early 80's, in the course of its further opening and reform, construction of a new legal system has become part of China's modernization process, By the year 2001, the National People's Congress had passed more than 400 new laws, the State Council and its various ministries had enacted more than 4000 regulations, local People's Congress and local governments had adopted more than 7000 local regulations.

It is against this background that "how to find laws in China" become an issue, not only for foreign legal academics, business, but for Chinese as well.

I. SOURCES OF LAW AND TYPES OF LEGISLATION: CIVIL LAW TRADITION AND SOCIALIST LEGAL CONSTRUCTION

A. Sources of law

Generally speaking, Chinese legal system belongs to civil law family, that is to say law only refers to statues, not cases. The system was first established in later last century and early this century. Combine ancient Chinese legal system with the imported forms through Japan from Germany, Chinese legal system was a federal one before People's Republic of China is founded. The first thing for P.R China was to abolish all the laws existed before in order to establish a new legal regime. Soviet Union was the only model for China to follow in the first years, and even after the broke up. Law was seen as the instruments of the ruling class to oppress the ruled.

Given the above historical bearing, and as a society undergoing rapid changes with the trend of pluralism in the society, the administrative mechanism governed for so long is no longer effective. "Rule of law" is on one hand the social demand, and it is a very complicated task on the other. Meeting with the demand, and with more than 20 year's effort on track, the 15th Communist Party's Congress took place in September 1997 announced "to run the country by law and to build up a socialist rule of law State" for the first time in China's history. It is a commitment by the ruling Party, and it is considered a milestone, given the "rule of man" culture and its legacy in China's modern history.

China is now undergoing the period of transformation. Economically, China is changing from an agrarian society to a modern, industrialized country; and politically, from centralism to a more democratically oriented system. These changes could also be reflected in changes in the legal system. Due to some special features of this nation, such as large population, with 80% of the population in the countryside, and unbalanced economic development between different regions, the legal system of China has become rather unique, possessing outstanding “Chinese characteristics”. When specifying aspects of law-making, purpose and content of law, means to execute law or procedure for any changes in law, the legal system of China is not a fixed one, in the sense that there are many factors contributing to the legal development everyday.

According to the constitution adopted in 1982, the overall pattern of the legal system of China works as follows:

1. Legislative Powers China is practicing a multi-level legislative system. At central government level, the National People’s Congress and the Standing Committee exercise national legislative power. The legislative power of the NPC includes: revising the constitution, supervising the enforcement of the constitution, enacting and revising criminal and civil laws, laws governing state organs, and some other basic laws. The legislative power of the Standing Committee of the NPC includes interpreting laws, supervising the enforcement of the constitution; enacting and revising laws other than those enacted and revised by the NPC; and when NPC adjourned, partially supplementing and revising the laws enacted by the NPC, but not violating the fundamental principles set aside in those laws; interpreting the law; revoking any executive regulations, decisions, and orders formulated by the State Council however contravening the constitution and laws; revoking any local laws and regulations drawn up by organs of state power in provinces, autonomous regions and government-controlled municipalities however contravening the constitution, laws and executive regulations.

The State Council has the power to enact executive laws and regulations. The decisions and orders issued by the State Council bear equal legal statues as the executive rules and regulations.

At local levels, the people's congresses and their standing committees in provinces and government-controlled municipalities can enact local laws and regulations under the pre-condition that these laws do not conflict with the constitution, laws and executive regulations. These local regulations should be submitted to the Standing Committee of the NPC for record.

The people's congresses in autonomous regions have the power to enact autonomous provisions and/or decrees and independently implemented provisions. These provisions and decrees shall be submitted to the Standing Committee of the NPC and deemed valid upon approval. The autonomous/independently implemented provisions enacted by the autonomous areas and counties should be submitted to the people's congress at provincial or autonomous-regional levels and shall be deemed valid upon approval. These provisions should also be submitted to the Standing Committee of the NPC for record.

The people's congresses of provincial capital cities where the provincial or autonomous regional governments are located and of State Council-endorsed cities, also have the power to enact local laws and regulations under the precondition that they do not violate the constitution, laws, executive regulations and local rules and regulations.

2. Executive Powers The executive power is exercised by the State Council. As the highest executive body of the state, the State Council, except for the power to formulate executive laws and regulations which we already mentioned, also has the power to submit resolutions to the NPC and its Standing Committee; to alter or revoke any inappropriate orders, instructions and decisions drawn up by various ministries, state commissions and executive agencies at local levels.

3. Judicial Powers In the Chinese legal system, the concept of judicial power bears a very special connotation. It would mean the power to give final judicial verdict, but it also would cover the meaning of authority to supervise legal work. The judicial organs, together with the body for legal supervision, should all be responsible for the NPC, so as to make sure that laws are properly and correctly enforced. The highest judicial organ of the state is the Supreme People's Court, and highest body for legal

supervision is the Supreme People’s procuratorate. What need to mention is that all the organs bears some kind of rule-making capacity.

B. Types of legislation

Constitution and Constitutional laws

Basic Laws

Laws

Administrative Regulations

Local Regulations

Implementation Rules

C. The hierarchy of legal rules

The hierarchy of legal rules

The constitution	National People’s Congress
Basic Laws	National People’s Congress and its Standing Committee
Administrative rules and regulations	The State Council
Local regulations	Local NPC and their Standing Committee

**II. CURRENT SITUATION OF LEGAL TEXT PUBLICATIONS:
HOW TO FIND LAWS IN CHINA**

A. The situation of national legal text publication

1. Compilation by legislature

So far as the statutory laws are concerned, the situation is like this:

It is stipulated in clause 52 of the legislative law that law should be published in NPC’s standing committee gazette and national wide newspapers in time after be signed

and issued. The legal text published in NPC's standing committee gazette is the standard version which comprises laws, acts, decisions, and international conventions, bilateral agreements and part of important administrative laws and regulations enacted by the state council, also the China Military Committee.

Other than the gazette, the NPC sub-divisions are also compile law books either in general terms or in their respected working areas, such as criminal laws by the Criminal law research section, and civil laws by the Civil law research section. For example, the *Compilation of laws and regulations of the P.R.C* has been a popular one among users because it bears the authority of the National Legislature.

2. The State Council Gazette

State Council Gazette publishes administrative laws and decrees as well as legislation by the NPC.

The constitution confers the State Council and its subordinate department the function power to enact administrative laws and regulations and directives. It is our social present and decided by our political and economical circumstance. There is principle requirement for the sign, the name, the form, and the publication of administrative laws and regulations in relevant clause of our legislative law and administrative laws and regulations making procedure regulations issued by the State Council recently. It should be published in the State Council Gazette and national wide newspapers after signed and issued by government departments, and legal affairs office of the State Council should edit and publish state formal text. The State Council Gazettes are standard version of administrative laws and regulations.

Corresponding to the State Council legislative power, the subordinate ministries have more widely, more concrete and more operational power.

It is specifically stipulated in clause 71 of the Law for Legislation: ministries and committees under the State Council, the People's Bank of China, the State Auditing Bureau and affiliate organs with administrative function shall make rules within the limit of their respected authority according to law and administrative laws and regulations of the State Council. It should be published in the State Council Gazette, ministry Gazette and national wide newspapers.

It is a special phenomenon in China that government is conferred with rulemaking power. They enact a great deal of standardized document such as directives and decrees. In general the ministry directive decrees have three tasks:

First, the aim of rulemaking is to implement national law, especially some special terms of administrative laws and regulations which largely implement by directives under the principle of laws and regulations.

Second, government ministries are the functional departments in specific work areas, the directives and decrees would enrich administrative rules and practice.

3. Ministry Gazettes

A large number of directives or decrees are issued in ministry gazettes. Those gazettes are published in regular bases and enjoy great number of readers because it concentrated on certain issues. The famous ones are:

Gazette of State Bureau for Copyright

Gazette of State Bureau of Forestry

Gazette of State Administration of Quality and Quarantine Supervision and Inspection

Gazette of the Ministry of Personnel

China Price Control Communiqué

Gazette of Ocean Environmental Quality, China Sea Level Communiqué

Gazette of Ocean Calamity

Gazette of China Environmental Status

Public Announcement of State Stock Supervision Committee,

Public Announcement of State Economic and Trade Commission

Public Announcement of China Patent Bureau

Public Announcement of Taxation Laws and Regulations

Public Announcement of China Trademarks

Public Announcement of Finance and Economic Audit Laws and Regulations

Public Announcement of ocean navigational affairs

Proclamation of Ministry of Finance

Proclamation of the People's Bank

Proclamation of the Ministry of the Foreign Trade and Economic Cooperation

One could tell by the names of the publications to know which Governmental Agency is the subject.

4. Regular publication in Ministry periodicals

Communications, loose-leaves and national organizational periodicals by various Ministries are common in China. For example: special periodical of Labor and Social Security Regulation and Policy, Government Gazette of Ministry of Education, Land and Resource Communication, China Public Health Legislation, Administration for Industry and Commerce of PRC, Customs Laws and Regulations loose-leaf of PRC, Environmental Protect Communication, China Tobacco, China Civil Affairs, and China Water Resource. Those names are well-known among area users, they provide more recent information, legal directives and policy documents of the ministry are publicized for public reference.

5. Professional newspapers

In addition to publications mentioned above, it is stipulated both in our legislative law and rulemaking procedure regulations that all laws and regulations should be published in comprehensive or special newspaper of national wide in time at the same time laws and regulations be issued in the State Council gazette or Ministry Gazette. For example: China Culture Relic Newspaper, China Labor and Safety Newspaper, China Environment Newspaper, China Medicine Newspaper, China Taxation Newspaper, China Gold Newspaper, China Nationality Newspaper, all of the papers carry the task to gave access to the public the legal documents.

B. The situation of Local regulation text publication

Local regulation texts chiefly refer to local laws and regulations, local government directives and decrees. It is stipulated in Law for Legislation of PRC that the NPC and it's standing committee of province, autonomous region, and municipal directly under the central government can enact local law under legal premise, some big cities and their NPC and standing committee can enact city's law under legal premise, the governments of those places can enact local government directive accord to laws and

regulations, and the principal of local law. It stipulated also in the same law that local government decrees and ministry directives has equal legal effect, and be carry out in each area.

All the local NPC and their standing committees in those places where meet the standards for local legislative power should edit and issue NPC periodicals and regular Gazettes. However, these Gazettes are not open to the public and only for reference and to record whenever there is need.

C. Judicial interpretations

China is a civil law country, strongly against “judge-made laws” in its legal ideology, because judges were not trusted for so long. But it has been changing since later 1970’s with the open up and reform policy. As a matter of fact, both common law system and civil law system have had great influence in the legal reform process. With a great number of scholars returned from abroad, they brought back what they have learned from the hosting country. Of course most of them are common law system. Another reason is that in the market reform and the complication of the social life, precedents are in high demand simply because legislators could not march the high speed development no matter how busy they keep themselves.

According to the Constitution, the Supreme Court of China enjoys the power to make judicial interpretations in order to correctly implement the laws, and the Supreme Procuratorate enjoys the power to interpret the laws relating to supervision. Officially speaking, those interpretations could only serve as references, not rules. However, judicial interpretations play active role, and their function are changing. The Supreme Procuratorate in 1996 and the Supreme Court in 1997 enact regulations by themselves stipulating that their interpretations shall have legal effect.

1. Judicial Gazette

The two major publications to search for judicial interpretation are the Gazette of the Supreme Court of China and the Gazette of the Supreme Procuratorate. Their carry mainly interpretation, sometime also legislation. Other than the two gazettes, both of the

Supreme Court and the Supreme Procuratorate publish selected documents as well, but the Gazettes serve as the standard version.

2. Judicial newspapers

The People's Courts daily by the Supreme Court and the People's procurators daily by the Supreme Procuratorate are also major sources for legal documents research, especially for judicial interpretations.

III. WHERE TO FIND LAWS IN CHINA

A. Variety of law compilations

Most of those law compilations are compiled by relevant Governmental Agencies, some are by scholars. There are too many to buy or to read in book stores. What we recommend are:

- a) Announcement for the most recent legislation and Judicial interpretation
(Bimonthly)
Examined and approved by the Legal Working Committee of the Standing Committee of NPC
Published by the Law Press
- b) Newly edited compilation of laws, regulations, decrees and judicial Interpretations
Examined and approved by the Legal Working Committee of the Standing Committee of NPC
Published by the Publishing House of China University of Politics and Law

There are many kinds of separated legal documents compilations edited mainly by governmental agencies in their respected areas such as:

- Compilation of Auditing laws and regulations
- Compilation of Intellectual Property laws and regulations
- Compilation of Economic and Trade laws

Compilation of Insurance laws and regulations
Compilation of Security laws and regulations
Compilation of Foreign related laws and regulations
Compilation of Laws and Regulation related to Future Goods and Securities
Compilation of Administrative laws and regulations
Compilation of Military laws and regulations
Compilation of Customs laws and regulations
Compilation of Laws and Regulations related to Women's Rights and Interests

B. Judicial interpretations

Judicial interpretations are published mainly by the two publishers, one is the publishing house of the Supreme Court, and another is the publishing house of the Supreme Procuratorate. It is a different system, compare with other countries, that judicial organs have their own publishing house. It is very easy for a new comer, or a new user, in searching for legal documents, to just visit the book store of that publishing house for certain kind of legal documents.

C. Relevant State organ and Scholar edited law compilation

1. Law text compilation of P.R.C

Chief edited by Xiao Yang, president of the Supreme Court, is taken as the authority's one. The compilation collected all the laws and regulations since P.R.C founding. It was checked by the legal working committee of the standing committee of the NPC. It is a very useful instrument.

2. Full collection of Chinese Laws

More than 4000 laws, administrative regulations, decrees. Judicial interpretations are collected. It divided all the legal text into 9 areas for the convenience of users.

3. Interpretation of laws of P.R.C

Edited by the Criminal Law division of the legal working committee of the NPC. It offers jurisprudential interpretation of legal text.

D. Law yearbooks

Law yearbooks have become a popular instrument of legal research. Each year the yearbook collects new legislation, new judicial interpretation, new reforms took place in legal areas within the year, and with statistics on matters such as cases filed and cases judged, etc. Now the most authentic ones are:

1. China Law Yearbook

Edited by the editing committee under China Law Society. It carries all legal data of the year.

2. China Judicial Yearbook

Edited by the Supreme Court of China, stressing on information related to judicial matters, with some typical cases and applications of law, is very useful for those who wants to learn about judicial system in China.

3. China Procurators Yearbook

Edited by the Supreme Procurators Office, Stressing on information related to legal supervision and the law implementation, with statistics on cases dealt by procurators at all levels, and is very useful for those who want to learn about law supervision.

E. Local law gazettes

All provinces, municipalities, even counties, publish local law gazettes even though some local regulations are not showed in the national legal structure, so there is a term “normalized documents”, which refers to those documents with legal characters. Local law gazettes are useful in the sense that it usually includes national laws and regulations

on certain areas, and local rules to implement them as well. So one could not only see the legal framework, but also the local practice.

Gazettes by local Standing Committee of the NPC in municipalities directly under the Central Government are four:

Gazette of the Standing Committee of the NPC, Beijing municipality

Gazette of the Standing Committee of the NPC, Shanghai municipality

Gazette of the Standing Committee of the NPC, Tianjin municipality

Gazette of the Standing Committee of the NPC, Chongqing municipality

Gazettes of the Standing Committee of the NPC in other provinces, take the form of monthly publication. We are not going to list all the names of those gazettes, just remember that all provinces publish gazettes as one of the means to direct the society.

F. Legal data discs

Currently most used Legal data discs are:

1. Full collection of Chinese Laws and regulations, produced by Beijing University legal information center.
2. Compilation of Chinese Laws and regulations. Produced by the information center of legal affairs office under the State Council.
3. Legal Star --- Chinese Law research data.
4. Data base of Chinese Laws and regulations
5. Chief Judges --- Chinese Law data base.
6. China Law Yearbook --- Chinese Law data base.

G. Law libraries

Including University libraries and special law libraries, the former like the State library in Beijing, and Beijing library, Shanghai library, other provincial libraries, the later include library of the Institute of Law under Chinese Academy of Social Sciences, library of Beijing University law school, library of Qing Hua law school, library of the University of politics and law, etc.,

H. Book stores and law book stores

All book stores have law book section. It has become a tendency that some book stores are specialized in laws books. Many law book publishers opened their own book store.

The most popular book stores for law book are:

Xin Hua Book Store (they have branches in all the cities and towns)

China Law books corporation (affiliated to Law press)

Readers service for the Supreme Court publishing house

Readers service for the Supreme procuratorate

Book store of the Mass Publishing House

Book store of the Publishing House of China University of Politics and Law

Reader's club of the Publishing House of Democracy and Legality

Reader's club of the Publishing House of the University for Public Security

I. Internet resources

Many public internet website carries legal information. But there are not well organized sometimes. Users must search for the ones that are more useful.

1. Official website

The National People's Congress, The State Council, all government ministries, The Supreme Court, the Supreme Procurator, all established their official website. They provide legal information related to their working areas. All the provinces, municipalities have their official website as well. What we could provide are:

<http://www.npcnews.com.cn/>

<http://www.chinacourt.org/>

http://www.legalinfo.gov.cn/gb/home/node_96.htm

<http://www.court.gov.cn>

<http://www.sdpc.gov.cn>

<http://www.setc.gov.cn>

<http://www.moe.edu.cn>

<http://www.most.gov.cn>
<http://www.costind.gov.cn>
<http://www.seac.goc.cn>
<http://www.gab.mps.gov.cn>
<http://www.mca.gov.cn>

To search for Ministries' website, one can use common website, such like

http://search.sina.com.cn/search_dir/zf/official_org/national/bw/
<http://www.beijing.gov.cn>
<http://www.shanghai.gov.cn>

To search for local government legal information, one can also use:

http://search.sina.com.cn/search_dir/zf/official_org/area/df/

2. General legal information website

The website can provide more general and new legal information. Most popular ones are:

<http://www.chinalawinfo.com>
<http://www.law-star.com>
<http://www.china11aws.com/gb/>
<http://www.sinolaw.net.cn/>
<http://www.ceilaw.com.cn/>
<http://www.lawbase.com.cn/>
<http://www.clol.com.cn/>
<http://www.lawhighway.com.cn/>
<http://www.we18.com/>
<http://www.law999.net/>
<http://www.online148.com/index.php>
<http://www.yalaw.com/>
<http://www.lawchina.com/index.htm>
<http://www.chinajudge.com/>
<http://www.civillaw.com.cn/>

3. Special law website

Those website provide legal information on certain areas. It is more concentrated on certain legal issues. What listed below are those special law website:

<http://www.jluil.com>

(Insurance law review)

<http://www.lawstudy.com.cn/>

(Legal construction and legal theory information)

<http://www.qinbing.com/index.asp>

(204 lawyers group)

<http://www.smuiml.net/>

(Maritime law forum)

<http://www.cmla.org.cn/>

(China Association of Maritime Law)

<http://www.cmac.org.cn/>

<http://songcs.533.net/>

<http://www.ecupleconomiclaw.com/>

<http://www.elaw.net.tf/>

<http://www.com-law.net/>

<http://saminey.myrice.com/>

<http://person.zj.cninfo.net/~lukejun/>

<http://www.liuo.net/>

<http://corporatelawyer.my163.com/>

<http://netrule.126.com/>

<http://www.law-ec.org/>

<http://www.angelaw.com/weblaw/index.htm>

<http://www.cqi.gov.cn/>

<http://www.criminallaw.com.cn/>

<http://www.cnipr.com/>

J. Case books

Case books provide legal cases in different legal areas.

Implementation of the Security law --- typical cases
--- selected cases

Cases on Intellectual property protection

Cases of Criminal Law

Cases relating to civil litigation

Selected new cases of civil and commercial law

Case study related to financial laws

Selected cases of second instance on economic disputes by the Supreme Court

K. Other ways and means to legal information

1. General Law dictionaries

There are different kinds of law dictionaries published since 1980's. As the legal construction goes in depth, and changes take place everyday, there are social demands for more up-dated Law dictionaries. Now the most accepted ones are:

Big Law dictionary

By Shanghai Law dictionary Compilation Committee

Law dictionary

By Law dictionary Compilation Committee in the Institute of Law,
Chinese Academy of Social Sciences

2. Separated Law dictionaries

Separated Law dictionaries on specific legal areas, such as criminal law dictionary, civil law dictionary. Law dictionary on public administration, etc.,

3. Law journals

How many law journals are there in China? It is a hard question to answer, because there are new ones every month. According to statistics, there are more than 300 law schools and law departments, and some of them publish its own law journals. If they do

not have independent law journal, then share a section in the university review, which is common in all universities.

Some of the law journals are very good, enjoy high academic prestige. They are published by famous law schools, research institutions or law societies. For example:

Law Studies

By the Institute of Law, Chinese Academy of Social Sciences

China's legal studies

By China Law Society

Legal Sciences

By Beijing University Law School

Global Law Review

By the Institute of Law, Chinese Academy of Social Sciences

Politics and Law

By Southwest University law School

Legal Sciences

By Northwest University of Politics and Law

Application of Laws

By Supreme Court of China

Modern Jurisprudence

By Fu Dan University School of Law

People's Judiciary

By Supreme Court of China

Legal Forum

By the Law Society of Shandong Province

Law Review

By the Law Society of Beijing Municipality