Front. Law China 2010, 5(2): 215–243
DOI 10.1007/s11463-010-0011-6

RESEARCH ARTICLE

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Trend and Retrospection of Legalization: Analysis on the Data of Legislation and Litigations in China

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Abstract As China's society is developing towards modernization, the role of law is increasingly prominent. Due to the legalization progress, there will be a trend of more laws and litigations. Over the past 30 years, the problems of reform and opening up in Chinese laws have become apparent. While the quantity of legislation is rapidly growing, the issues appear as follows, i.e., how to ensure the quality of legislation and enforce the formulated laws effectively, how to tackle the contradiction between the limited resources and the ability to settle disputes, and the relationship between litigations and other means for settlement of disputes when the courts facing more litigations.

Keywords legalization, quality of legislation, judicial resources, alternative dispute settlements

Legalization refers to the coverage of law in social life and an index indicating the degree of importance of law in society. This can be measured and compared from multiple perspectives. In the legislative context, the quantity of legislation may generally measure the degree of legalization to a certain extent, but it is not absolute. Where legislation is still imperfect, the increase of the quantity of legislation is positive. When legislation has already become relatively sound and complete, it is necessary to pay attention to its quality rather than quantity. The increase of the litigations shows the increasing confidence in courts for settlement of disputes even though the judicial capacity is still weak. However, if there are more litigations submitted to courts, for their limited judicial capability, the increase of litigations is not necessarily enough, which indicates that the alternative dispute resolution mechanism is not smooth. Hence, the related data

Translated from *Zhongguo Fazhi Luncong* 中国法治论丛 (China Law Forum), 2008: 12–37

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are employed to analyze the degree of legalization in different legislations and judicature as well as the features and trend at different stages of the development of Chinese laws.

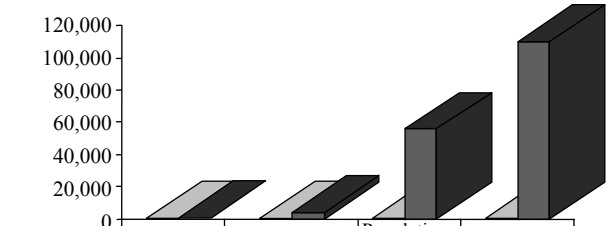
As the Chinese society develops towards modernization, the role of law in society is increasingly prominent and the legalization progress is increasingly accelerating, which forms the developmental trend of more laws and litigations. Due to the reform and opening up since 1978, problems in Chinese laws have become apparent. In a legislative context, how to ensure the quality of legislation and the effective implementation of formulated laws as the quantity of legislation is rapidly growing? In judicature, how to tackle the contradiction between the limited resources and the ability to settle disputes and how to handle the relationship between litigations and other means for dispute settlement when courts facing more and more litigations? All these are related to the overall development of Chinese laws.

1 Legislation and Its Retrospection

1.1 More Laws

1.1.1 Quantity of Legislation

In a legislative context, we can obviously observe that more laws were made. The laws and decisions on related legal issues formulated by the National People's Congress ("NPC") and its Standing Committee, administrative laws and regulations formulated by the State Council and administrative rules and regulations formulated by the Ministries and Commissions under the State Council, and local laws and regulations formulated by local congress and their standing committees at the provincial level are different between the two stages: 1949–1978, 1979–2005. The quantity of legislation by the NPC and its Standing Committee since 1979 is 6 times that of before. The quantity of legislation by the State Council since 1979 is 12.49 times that of before. The quantity of legislation by ministries and commissions under the State Council since 1979 is 99.08 times that of before. The quantity of legislation by the congresses and the standing committees at the provincial level since 1979 is 933.24 times that of before (See Fig. 1).



	Laws	Administrative Regulations	Regulations at Ministry Level	Local Statutes
1949–1978	127	319	586	118
1979–2005	762	3,985	55,714	110,122

Fig. 1 Legislation by Different Agencies before and after the Reform and Opening up (1949–1978, 1979–2005)

The average annual growth rate of laws during 1979–2005 is 11.8%, administrative regulations 10.7%, regulations of ministries and commissions 14.4%, and local statutes 33.1%. While the average annual growth rate of legislation of all categories is 21.3%.[1]

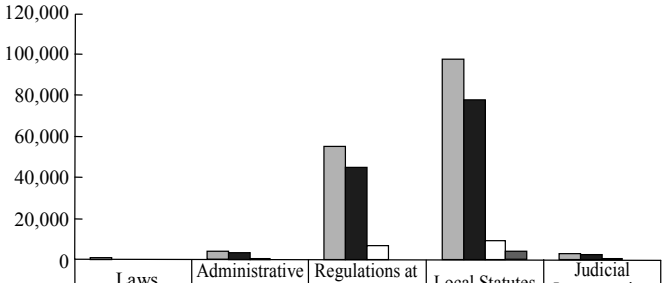
1.1.2 Ratio of Formulation, Repeal and Modification of Laws

Chinese society has been changing since the reform and opening up. Such change is reflected in the laws and related legal documents formulated by the NPC. This indicates the composition of formulation and modification of laws of all categories. 30.26% of the laws and related legal documents formulated by the NPC and its Standing Committee are still effective. Nearly 70% have become ineffective or have been amended, 93.12% of the legislation by the State Council, 87.03% of the rules and regulations of ministries and commissions, 85.03% of local statutes and 89.2% of judicial interpretations are effective (See Fig. 2).

At the beginning of the Chinese legal system a lot of laws were formulated. Gradually, the focus was switched to amending those laws which had already been implemented. This indicates such a developmental trend. The ratio of formulation and modification of laws by the NPC and its Standing Committee was 36:2 during the 5th NPC, 37:10 during the 6th NPC, 56:4 during the 7th NPC, 64:20 during the 8th NPC and 34:40 during the 9th NPC. This means that the quantity of modified laws exceeded that of the newly formulated laws. It is expected that such ratio will continue towards the modification of laws. Some important laws have been amended many times. The Constitution of 1982 was

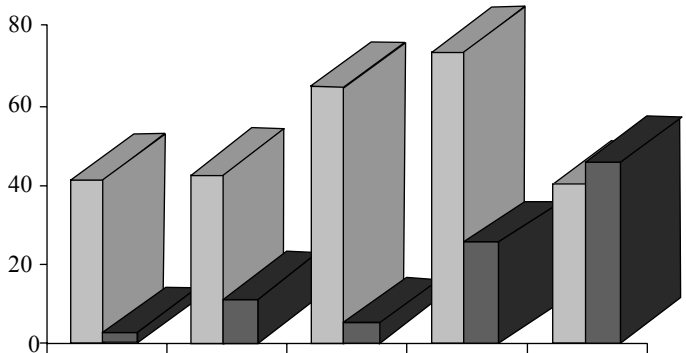
[1] http://www.npc.gov.cn, 2006-4-10.

amended 4 times, in 1988, 1993, 1999 and 2004 respectively. The Criminal Code of 1979 was amended and interpreted 25 times during 1979 and 1997, which was greatly amended in 1997 and further amended and interpreted 12 times by the end of 2004. The Criminal Procedural Law of 1979 was greatly amended in 1996 and further amended and interpreted 13 times by the end of 2004 (See Fig. 3).



	Laws	Administrative Regulations	Regulations at Ministry Level	Local Statutes	Judicial Interpretation
Total	769	3,992	55,000	97,248	2,889
Valid	220	3,457	44,870	77,663	2,577
Invalid	35	309	6,523	9,062	309
Revision	85	43	160	4,062	3

Fig. 2 Percentage of Formulation, Modification and Repeal of Legislations and Judicial Interpretations (1979–2004)[2]



	5th	6th	7th	8th	9th
Law-Making	36	37	56	64	34
Law-Amending	2	10	4	20	40

Fig. 3 Composition of Law Formulation and Amendment (5th–9th NPC)[3]

[2] This figure is based on the data and materials provided in the report of the NPC Standing Committee and the encyclopedia of the NPC. The numbers in the figure do not include such documents as legal interpretations and measures for voting of proposals.
[3] Ibid.

1.2 Retrospection on the Increased Laws

The basis for measuring the status of the legislation in one country or region may be based not only on the quantity of legislation but also on the quality of legislation. To take legislation as the criterion on measuring the quality of legislation does not tell the whole story. Whether legislation can be implemented, its social effect should be taken into consideration. However, a large quantity of laws do not necessarily mean that the legislation is advanced, and a small number of laws do not mean that the legislation is backward.

China should consider the features of legislation in the period of reform and opening up, especially at the initial stage when its legal system was imperfect. Therefore, China shall fill up the vacancy of laws as quickly as possible within the shortest time. As stated by Xiaoping Deng at that time: "The current problem is that law is rather incomplete, and many laws have not been formulated." "Amend and supplement a law once it becomes mature, and do not wait for 'a full set of laws.' In short, half a loaf is better than no bread, so it is better to be fast than to be slow." (Deng, 1978) Hence, it is only of relative significance to take the quantity of laws as an indicator to measuring the development of laws. One should consider that there was no law to follow at the initial stage of reform and opening up. Fig. 1–5 indicates that the high-speed development of Chinese legislation occurred mainly before its access to the WTO in 2001. During the period (2002–2005) upon China's access to WTO, the average annual growth rate of Chinese legislations of all categories was negative. The NPC has explicitly taken the improvement of the quality of legislation as one of the main objectives of Chinese legislation (See Table 1). (Wu, 2004)

Table 1 Average Annual Growth Rate (%) of Chinese Legislations of All Categories in Different Periods

	Laws	Administrative Laws and Regulations	Rules and Regulation at Ministry Level	Local Statutes	Total Legislations
1979–1989	4.9	6.2	22.3	45.1	24.5
1990–2001	24.6	19.9	16.1	30.9	24.3
2002–2005	–8.14	–15.5	–9.5	–0.4	–2.9

For the purpose of improving the legislative quality, China has adopted the measures in recent years, including (but not limited to):

(1) Tighten legislative procedures. Especially in 2000, China adopted the Legislation Law of the People's Republic of China to regulate the legislative procedures of the NPC and its Standing Committee and the State Council. Prior to the 8th NPC, the procedures for deliberation of bills were rather simple and the

frequency of deliberation of bills was not specifically prescribed. A law becomes effective a few days after its submission to the relevant Standing Committee of the NPC. For the purpose of regulating legislation and improving legislative quality, the NPC changed "two deliberations" of a draft law into "three deliberations" during the 9th NPC. After 1998, the deliberation and discussion of a draft law generally adopt the three-deliberation system. The first deliberation is to hear the explanations by the drafter on the draft law and to conduct the preliminary deliberation. The second deliberation runs for two months or a longer period. This is when the members of the NPC Standing Committee carry on in-depth discussion by focusing on key points and different opinions of the draft law. This is done only after sufficient investigation and research has been done on the draft law. The third deliberation is to discuss the draft law on the basis of the modifications by special commissions according to the deliberation opinions and the report of the members of the NPC Standing Committee, and if no adversary opinions exist, the draft law will be put to a vote. The Legislation Law of the People's Republic of China of 2000 clearly provides for the "three-deliberation system." Among 74 laws adopted by the 9th NPC, 8 were passed upon the first deliberation, 20 upon the second deliberation, 38 upon the third deliberation, 6 upon the fourth deliberation. The Securities Law and the Contract Law were passed even upon the 5th deliberation.

(2) Improve the professional quality of legislators. The cultural quality and professional quality of the deputies to the NPC, especially the members of the Standing Committee of the NPC have obviously been improved. Members of the NPC and the Standing Committee of the NPC are no longer "layman," who are more likely to air their substantive opinions during the legislative process of China. Many members of the Standing Committee of the NPC have worked at the front of competent departments of the State Council. This makes them familiar with the background related to legislations and capable of airing their expert opinions. The full-time member system which has been promoted in recent years also provides a feasible way to improve the professional quality of legislators. For the purpose of improving the legal quality of the members of the Standing Committee of NPC, from the 9th NPC, legal experts from universities, research institutions and practical departments have been invited to give lectures on legal affairs once every meeting of the NPC Standing Committee (every two months), 30 times during the 9th NPC and 11 times from the 10th NPC to the end of 2004. Lectures on legal affairs play a positive role for members of the NPC Standing Committee to get familiar with the work of the NPC. It helps them perform their duties endowed by the Constitution and laws, especially improving the quality of deliberations on laws.

(3) Proactively listen to the opinions of legal experts and other related experts. Their opinions have been widely listened in the process of drafting many

important laws. To form expert opinions in legislation has become a general rule in China in recent years.

(4) Public participation in legislation. China has learned the form of participation by the public in the legislation of other countries, such as legislative hearing and demonstration meetings, and widely adopted the forms of soliciting opinions from the public. Discussion by the whole people of China during important legislations, concerning the vital interests of the people, such as the Constitution, the Law of Industrial Enterprises Owned by the Whole People, the Administrative Procedural Law, the Law on Assembles, Processions and Demonstrations, the Land Administration Law, the Organic Law of Villagers' Committee, the Contract Law, the Family and Marital Law and the Property Law, has proved to be effective.

(5) Strengthen the examination on law enforcement. Measurement of the quality of legislation may not be based merely on legislation. More importantly, we should see whether the formulated law can be implemented and what effect its implementation will produce. In recent years, one of the main functions of the NPC Standing Committee is to strengthen the supervision on the effect of law implementation and examine the enforcement of important laws. From 1989 to 2004, the NPC has successively conducted examinations on law enforcement for 57 times, national inspections for 4 times, and inspections for 20 times with the range of 10–17 provinces and autonomous regions. The inspections cover such as industry, agriculture, environmental protection, education, science and technology, product quality, democratic construction and social governance and public security, especially the 8th NPC Standing Committee which inspected the implementation of the Agricultural Law for four consecutive years from 1994 to 1997. The 9th NPC Standing Committee organized two inspections on the implementation of the Agricultural Law in 1998 and 2000. The 8th NPC arranged inspections on the implementation of the Environmental Law for three consecutive years.

2 Litigations and Retrospection

2.1 Increased Litigations

2.1.1 Quantity of Litigations

In judicature, the quantity of Chinese litigations has increased year by year since 1979. The total number of all kinds of cases at first instances by courts, including civil, criminal and administrative cases, is rapidly increasing. From 1979 to 2006, the average annual growth rate of Chinese litigations was 9.6%, of which civil

cases was 10.0%, criminal cases 9.7% and administrative cases 53.8% (See Table 2).

Table 2 Accepted Cases of First Instances in China (1979–2006)[4]

Year	Criminal Cases of First Instances	Civil Cases of First Instances	Administrative Cases of First Instances	Total Cases of First Instances
1979	123,846	389,943		513,789
1980	197,856	565,679		763,535
1981	232,125	673,926		906,051
1982	245,219	778,941		1,024,160
1983	542,648	799,989	527	1,343,164
1984	431,357	923,120	983	1,355,460
1985	246,655	1,072,170	916	1,319,741
1986	299,720	1,310,930	632	1,611,282
1987	289,614	1,579,675	5,940	1,875,229
1988	313,306	1,968,745	8,573	2,290,624
1989	392,564	2,511,017	9,934	2,913,515
1990	459,656	2,444,112	13,006	2,916,774
1991	427,840	2,448,178	25,667	2,901,685
1992	422,991	2,601,041	27,125	3,051,157
1993	403,267	2,983,667	27,911	3,414,845
1994	482,927	3,437,465	35,083	3,955,475
1995	495,741	3,997,339	52,596	4,545,676
1996	618,826	4,613,788	79,966	5,312,580
1997	436,894	4,760,928	90,557	5,288,379
1998	482,164	4,830,284	98,350	5,410,798
1999	540,008	5,054,857	97,569	5,692,434
2000	560,432	4,710,102	85,760	5,356,294
2001	628,996	4,615,017	100,921	5,344,934
2002	631,348	4,420,123	80,728	5,132,199
2003	632,605	4,410,236	87,919	5,130,760
2004	618,826	4,332,727	92,613	5,044,166
2005	684,897	4,380,095	96,178	5,161,170
2006	702,445	4,385,732	95,617	5,183,794

We may generally divide the development of Chinese litigations into two stages since 1979.

The first stage is from 1979 to 1996, when the quantity of various litigations grew rapidly, with the litigation curve rising sharply. During this time, the average annual growth rate of criminal litigations was 12.6%, civil litigations 16.98%, administrative litigations 93.3%, and the average annual growth rate of total litigations of first instances was 15.4%.

[4] As to the figures from 1986 to 2006, see Law Yearbook of China 1987–2007; for the figures 1979–1985, see Judicial Statistics: List of Criminal Cases of Courts of China 1950–1998 and List of Civil Cases of Courts of China 1950–1998. http://www.lawyee. net, 2007-3-21.

The second stage is seen as from 1997 to 2006. Here, we can obviously observe that the curves of various litigations had become flat and even dropped, among which the average annual growth rate of criminal litigations was 2.1%, civil litigations –0.45%, administrative litigations 2.4%, and total litigations –0.2% (See Table 3).

Table 3 Annual Growth Rate (%) of Various Cases of First Instances in Different Stages (1979–2006)

Period	Criminal Cases	Civil Cases	Administrative Cases	Cases of First Instances
1979–1996	12.6	16.98	93.3	15.4
1997–2006	2.1	–0.45	2.4	–0.2

Experiences of other countries indicate that the increase of litigations is linked to the growth of GDP, however, the former does not absolutely depend on the latter. Generally speaking, all kinds of contradictions among people will increase at the transitional period of the society, when social anomie will be prominent, and litigations will rise rapidly. However, when the society is at the stage of relatively steady development, and anomie will shift nominally and regular order will occur, the increase of litigations will become smooth and even drop. The reasons for the increase of various cases differ not only between criminal, civil and administrative cases, but also between the quantity of homicide, robbery, rape and economic criminal cases in the same category of criminal cases. Thus, specific analysis shall be made on specific problems.

2.1.2 Crime Rate

There are some indicators of crime rate: (i) the registered and solved criminal cases by public security organs; (ii) the number of persons arrested with approval by the procuratorial organs; and (iii) the quantity of criminal cases convicted by courts. When we compare the crime rates of different countries or different periods of history, it becomes clear that each country's statistics are based on different factors. Some countries' statistics are based on the quantity of registered or settled cases of public security organs, some are based on the number of persons arrested with the approval by the procuratorial organs (sometimes, the public prosecutions filed by courts), and some are based on the quantity of criminal cases convicted by courts. The criminal cases registered by Chinese public security organs increased from 547,115 in 1986 to 4,718,000 in 2004. This is an average annual growth rate of 16.7%. The number of settled cases increased from 343,185 in 1986 to 2,004,000 in 2004, constituting an average annual

growth rate of 12.4%. The number of suspects arrested upon review, approval and decision by the procuratorial organs increased from 422,188 in 1986 to 811,102 in 2004, 1.92 times that of the year 1986, constituting an average annual growth rate of 4.7%. The criminal cases adjudged by courts increased from 324,099 in 1987 to 742,261 in 2003, at the average annual growth rate of 6.2%. The rate of registered criminal cases, the rate of settled criminal cases, the rate of persons arrested with approval and the rate of convicted persons per 100,000 in China was 51, 32, 40 and 30 respectively in 1986, and 363, 154, 62 and 59 respectively in 2004 (See Table 4).

Table 4 Registered, Settled Criminal Cases, Persons Arrested and Convicted in China and Corresponding Crime Rates (1986–2004)[5]

Year	Number of Registered Criminal Cases	Rate of Registered Criminal Cases	Number of Settled Criminal Cases	Rate of Settled Criminal Cases	Number of Persons Arrested	Rate of Persons Arrested	Number of Convicted Persons	Rate of Convicted Persons
1986	547,115	51.286,1	343,185	32.169,87	422,108	39.568,05	325,000	30.465,22
1987	570,439	52.621,8	570,439	52.621,82	357,056	32.937,68	324,099	29.897,47
1988	827,594	75.124,5	626,488	56.869,19	422,108	38.316,68	366,751	33.291,67
1989	1,971,901	176.275,1	1,112,152	99.419,12	579,992	51.847,49	481,076	43.005,05
1990	2,216,997	195.298,3	1,265,240	111.456,72	636,804	56.096,94	580,272	51.116,95
1991	2,365,709	205.574,4	1,460,622	126.924,52	550,955	47.876,66	507,238	44.077,76
1992	1,582,659	135.854,1	1,079,517	92.664,79	511,150	43.876,67	492,817	42.302,98
1993	1,616,879	137.205	1,211,888	102.838,33	558,008	47.351,41	449,920	38.179,29
1994	1,660,734	139.342,6	1,298,005	108.908,11	629,331	52.803,53	545,282	45.751,47
1995	1,690,407	140.299,6	1,350,159	112.059,87	608,678	50.518,78	543,276	45.090,57
1996	1,600,716	131.470,2	1,279,091	105.054,49	704,148	57.833,19	665,556	54.663,55
1997	1,613,629	131.181,4	1,172,214	95.296,14	537,363	43.685,39	526,303	42.786,25
1998	1,986,068	159.885,7	1,264,635	101.807,71	537,363	43.259,67	528,299	42.529,99
1999	2,249,319	179.429,5	1,375,109	109.693,24	663,518	52.929,22	602,381	48.052,28
2000	3,637,307	288.112,7	1,644,094	130.229,39	715,833	56.701,44	639,814	50.679,94
2001	4,457,579	350.700,5	1,910,635	150.319,42	841,845	66.232,25	744,549	58.577,48
2002	4,336,712	338.699,8	1,925,090	150.350,67	782,060	61.079,35	701,772	54.808,81
2003	4,399,000	341.431,2	1,841,900	142.960,26	764,776	59.358,58	742,261	57.611,07
2004	4,718,000	362.956,6	2,004,000	154.168,08	811,102	62.398,22	764,586	58.819,74

[5] The cases registered and settled by public security organs, the persons arrested with approval by the procuratorial organs and the persons convicted by courts in various volumes of Law Yearbook of China 1987–2005. The rate of registered criminal cases, the rate of solved criminal cases, the rate of persons arrested and the rate of the convicted persons are calculated on the basis of such figures and the population of respective years.

The development curve of Chinese criminal cases may generally be divided into four stages as follows: (i) 1986–1991, rapid increase of criminal cases, at the annual growth rate of registered criminal cases of 41.34%, forming the first crime peak; (ii) 1992–1997, slowing-down growth of criminal cases, after increased standards on acceptance of criminal cases in 1992, at the average annual growth rate of registered cases of 0.43% only; (iii) 1998–2001, another rapid increase of criminal cases, at the average annual growth rate of registered cases of 30.15%, forming the second crime peak; (iv) 2002–2004, slack growth of criminal cases, at the average annual growth rate of 1.9% (See Fig. 4).

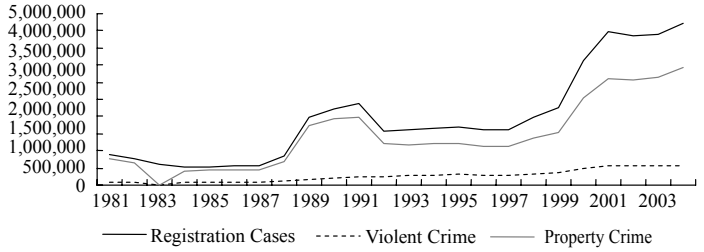


Fig. 4 Crimes of All Sorts Registered by Public Security Organs (1981–2004)[6]

The change of crime quantity and crime rate in different stages in China should be stated as follows:

(1) Crime rate may change with the statistic standards, especially in property crimes. For example, if the registration standard of theft is increased from RMB 500 to RMB 1,000, quite a few thefts less than RMB 1,000 will not be registered as crime. Such difference is sometimes directly expressed in the form of judicial interpretations.

(2) Crime rate is an objective indictor, which is, however, often directly linked to the performance of the government or competent authority of a region at a specified time. Thus, falsehood is unavoidable.

(3) In some periods, some regions may practically adopt the measure of "no registration without solution of cases" when giving statistics of crime rate. The cases could not be included in the crime rate until being settled while the crime rate did not cover those unsettled cases. Such situation did not change until the Ministry of Public Security emphasized that the crime rate should reflect the true status of crimes. Therefore, the high crime rate indicated by the statistic figures in a region may be its real picture of crimes, while the low crime rate in another region may be completely false, and accordingly the sense of security of local

[6] Based on part of the relevant materials from public security organs in the report related, among which, violent crimes include registered cases of killing, injury, robbery and rape. Property crimes include the registered cases of theft and fraud.

ordinary people will be rather poor. Thus, the comparison of crime rates between different regions may not be based merely on statistical figures and other indicators, especially the indicator of the sense of security of the people, which shall be used as supporting evidence.

In the statistics of Chinese crime rate, the proportion and growth differs based on the particular type of crime. According to the statistics of the Ministry of Public Security, violent crimes including homicide, injury, robbery and rape accounted for 15.2% of the total registered cases from 1981 to 2004, at the average annual growth rate of 8.5%. While property crimes (including theft and fraud) accounted for 74% of the total, at the average annual growth rate of 14.1%.

2.2 Retrospection on Increased Litigations

2.2.1 Choice of China: Grand Design of Justice or Small Design of Justice

Measuring the status of judicature of one country or region may not be based merely on the quantity or the rate of litigations. Moreover, the increase of the quantity or the rate of litigations does not necessarily mean the high level of legal development, vice versa. The increase of litigations may mean that people are more likely to depend on courts to settle disputes, the experiences of many countries indicate that it is not necessary to centralize the disputes that can be settled by other means than by courts.

With the progress of social modernization and increasing social contradictions and conflicts, there are basically two means for conflict settlement. The first is the institutional design focusing on judicature. This mainly centralizes conflicts into courts for settlement. The size of courts is expanded with the increase of the number of judges and the increase of trials. Consequently, a series of interrelated phenomena appear, such as the increase in litigations, judges, lawyers and law schools which lead to the state and individuals to make more legal inputs in a bid to meet the increasing legal demands of people. Japanese scholar Kojima Takeshi once took the US as an archetype of such grand design of justice. However, as researchers discovered with the so-called “exploded litigations” in the US in the 19th century, the US dealt with it not by expanding the size of justice, but through summary procedures, such as plea bargaining in criminal law and reconciliation or mediation and absent trials in civil law for handling a great number of cases. For instance, approximately 90% of criminal cases were handled by plea bargaining. The overwhelming majority of contract cases were settled by the parties concerned, with rare participation by lawyers. Even if lawyers participate in cases, few of them are settled by trials but dealt with through commercial customs or good faith and reconciliation of both parties instead. The second is

the institutional design of small judicature by means of non-litigations. Here due to the increasing social conflicts and contradictions, people are not encouraged to settle disputes in courts but by means of mediation, arbitration or direct negotiation by the concerned parties. Even if disputes were submitted to courts, they were required to go through the procedures of mediation or arbitration first. The alternative dispute settlement mechanism should be taken as the pre-procedures for hearing by courts. Japan is usually taken as a typical example of such small design of justice. Japan has reached the lowest civil litigation rate and the lowest rate of lawyers' possession in developed countries. In reality, the US with the so-called grand design of justice, when faced with exploded litigations, has adopted another important method, i.e., the alternative dispute settlement mechanism, diverting the disputes swarming into courts to mediation or arbitration for settlement besides the "interception", including summary procedures, increase of litigation expenses and regulating the acceptance of cases, etc. (Zhu, 2004; Takeshi, 1993; Shen, Wang, 1993; Macaulay, 1963; Friedman, 1973)

Due to the period of reform and opening up, the litigations in China has increased. Prior to this, disputes in Chinese society were generally not settled by litigations but by the work-units, and residential committees or villagers' committees where the concerned parties worked or were domiciled. The work-units were not only the places where the staff worked but had the function of settling disputes. The residential committees and villagers' committees were not only the places where residents were domiciled, but responsible for public security and the settlement of conflicts. They were not organizations simply for work or life but with multiple functions. In the circumstance of little migration of population, a number of disputes were not submitted to courts but resolved or settled by the work-units, villagers' committees or residential committees. Even though there appeared disputes between different work-units or among people from different work-units, they could also be solved by their common authority. Although the main function of work-units was strengthened, the function of work-units, residential committees and villagers' committees for settlement of disputes was diverted to the agencies devoted to settlement of disputes, such as courts, public security organs or administrative organs. Under such circumstances, a number of disputes swarmed into courts. The number of judges obviously increased and the trial quantity grew rapidly. From 1981 to 2004, the quantity of cases in China increased from 1,179,388 to 5,625,310, up 376.9%; the number of judges increased from 60,439 to 190,627, up 215.4%; and the average annual number of trials per judge increased from 19.5 to 29.5, up 51.2% (See Table 5).

Table 5 Change of the Annual Trials in China (1981–2004)[7]

Year	Number of Judges (A)	Number of Cases (B)	Trials per Judge (B/A)
1981	60,439	1,179,388	19.5
1982	76,906	1,270,967	16.5
1983	83,688	1,638,813	19.5
1984	88,135	1,637,356	18.5
1985	95,247	1,655,712	17.3
1986	99,820	2,226,527	22.3
1987	117,647	2,417,884	20.5
1988	119,529	2,563,652	21.4
1990	131,460	3,211,758	24.4
1991	138,459	3,214,948	23.2
1998	170,000	5,880,759	34.5
2002	210,000	5,665,966	26.9
2003	194,622	5,676,413	29.1
2004	190,627	5,625,310	29.5

With the increasing trend of legalization including the functions of public security organs, procuratorial organs, courts and lawyers centering on litigations, the alternative methods for settlement of disputes in China have changed. While the direction and degree of such methods are different, they may be generally divided into the following categories:

(1) Mediation. Traditionally, mediation plays an important role in settling civil disputes, but since the reform and opening up, both civil mediations and arbitration by courts has shown an opposite trend. These practices are increasingly weakening.

(2) Arbitration. It includes economic contract arbitration, labor arbitration and foreign-related arbitration. Although the quantity of economic contract arbitration, after being transformed from administrative arbitration to civil arbitration, is on the rise, the total volume is far less than that in the period of administrative arbitration. In 2004, the quantity of economic arbitration was only 37,000, while the quantity of accepted contract cases at the courts was 224,000. This is far less than litigations. Labor arbitration was increasing, and the rate of labor arbitrations and labor litigations was 60%:40%, which tended to increase.

(3) Administration law enforcement. For example, cases by industrial and commercial administration are in great increase, which even surpass judicature

[7] Sorted out and drawn on the basis of the Part of Trials in the related report. The number of judges includes the number of presidents, vice presidents of courts, judges and assistant judges; the number of trials includes the number of cases accepted of first instances, second instances and retrials.

both in quantity and in speed.

(4) Petition letters and visits. This is one of traditional channels for expression of willingness and discontent. Petition letters and visits have witnessed several peaks with their quantity far higher than that of litigations. While the quantity of petition letters and visits accepted by courts and procuratorates is on the decrease, whether in absolute quantity or as compared with the quantity of trials and approved arrest.

2.2.2 Mediation

In terms of role, mediation may be further dividend into civilian mediation, court mediation and arbitration mediation. In the situation where the litigations by courts grow rapidly, the role of mediation has changed greatly. Generally, the role of mediation has been weakening since the reform and opening up.

2.2.2.1 People's Mediation

Mediation has played an important role in settling civil disputes. During 1981–2004, the total disputes mediated by residential committees and villagers' committees were 149 million in China. This is 2.1 times that of 71 million civil cases of first instances accepted by courts in the same period. However, the cases mediated by residential committees and villagers' committees in China had declined from over 7.8 million in 1981 to 4.41 million since the 1980s. Correspondingly, civil cases of first instances accepted by courts increased from 674,000 in 1980 to 5.05 million in 1999. This began to drop after 2000, but the civil cases of first instances were still 4.33 million in 2004. In terms of the ratio of mediation and civil cases, the quantity of civil mediation in 1981 accounted for 92.1% but for 50.4% in 2004. Therefore, the decline of civilian mediation and the rise of civil cases of first instances of courts over those years had caused their quantity to a basically consistent level (See Table 6).

Table 6 Ratio of Civil Disputes Settled by Mediation Commissions and Civil Cases of First Instances at Courts (1981–2006)[8]

Year	Civil Mediations (B)	Civil Cases of First Instances at Courts (C)	Proportion of Civil Mediations B/(B+C)
1981	7,805,400	673,926	0.921
1982	8,165,762	778,941	0.91
1983	6,477,494	799,989	0.89
1984	6,748,583	923,120	0.879

(*To be continued*)

[8] See Volumes of Law Yearbook of China 1986–2007 and the calculation is also based on them.

(*Continued*)

Year	Civil Mediations (B)	Civil Cases of First Instances at Courts (C)	Proportion of Civil Mediations B/(B+C)
1985	6,332,912	1,072,170	0.855
1986	7,307,049	1,310,930	0.847
1987	6,966,053	1,579,675	0.815
1988	7,255,199	1,968,745	0.786
1989	7,341,030	2,511,017	0.745
1990	7, 409,222	2,444,112	0.752
1991	7,125,524	2,448,178	0.744
1992	6,173,209	2,601,041	0.703
1993	6,222,958	2,983,667	0.676
1994	6,123,729	3,437,465	0.640
1995	6,028,481	3,997,339	0.601
1996	5,802,230	4,613,788	0.557
1997	5,543,166	4,760,928	0.538
1998	5,267,194	4,830,284	0.522
1999	5,188,646	5,054,857	0.506
2000	5,030,619	4,710,102	0.516
2001	4,861,695	4,615,017	0.513
2002	4,636,139	4,420,123	0.512
2003	4,492,157	4,410,236	0.505
2004	4,414,233	4,332,727	0.505
2005	4,486,800	4,380,095	0.506
2006	4,628,018	4,385,732	0.513

The decline of Chinese civilian mediations is closely connected with the low efficiency of mediation. In 1981, China had a total of 4.76 million people acting as mediators. These people mediated 7.8 million civil disputes making the quantity of disputes per mediator 1.63 pieces each year. While in 2003, China had 5.14 million mediators, who mediated 4.49 million pieces, with the quantity of disputes mediated by each mediator 0.86 pieces each year. This was far lower than the average annual quantity of trials per judge in China. Judges handled 19.5 pieces in 1981 and 29.5 pieces in 2004. Of course, this is related to the fact that mediators are amateur while judges are professionals. The quantity of Chinese mediators has changed radically with the maximum quantity over 10 million and the minimum quantity only over 4 million. It is estimated that many village cadres or cadres of residential committees had never actually mediated civil disputes, but they were still counted in the statistic figures as mediators. Otherwise, it is unacceptable that less than one dispute was mediated per mediator annually.

2.2.2.2 Court Mediation

Mediation played an important role in the settlement of civil cases by courts. From 1978 to 2004, the courts settled total 72.2 million civil cases of first instances. Among which the settled cases through mediation amounted to 36.42 million, at the annual settled case rate by mediation of 50.4%. However, the mediation role of courts is declining. This indicates that the settled mediation rate of Chinese courts' civil cases of first instances was 72.33% in 1978, with the settled mediation rate over 70% maintained till 1989. In 1991, China amended the Civil Procedural Law and amended the basic principle of civil procedure that "the court shall focus on mediation while hearing civil cases" into "mediation shall be conducted in accordance with the principle of voluntariness and cooperation." Thereafter, the settled mediation rate of civil procedure began to plummet. Until 2003, the settled mediation rate had declined to less than 30%. In 2004, the central government emphasized on construction of the harmonious society and strengthened the publicity of the role of mediation, but there was no obvious turning point from the curve of the settled mediation rate (See Table 7).

Table 7 Settled Mediation Rate (%) of Civil Cases of First Instances at Courts (1978–2004)[9]

Year	Number of Settled Cases	Number of Settled Mediation	Settled Mediation Rate
1978	284,411	205,710	72.33
1979	367,369	258,605	70.39
1980	555,078	383,653	69.12
1981	662,800	456,753	68.91
1982	778,358	530,543	68.16
1983	792,039	569,161	71.86
1984	931,358	678,633	72.86
1985	1,056,002	795,610	75.34
1986	1,287,383	961,725	74.70
1987	1,561,620	1,140,548	73.04
1988	1,905,539	1,406,589	73.82
1989	2,482,764	1,770,618	71.32
1990	2,452,183	1,611,338	65.71
1991	2,498,071	1,489,227	59.62
1992	2,598,317	1,534,747	59.07
1993	2,975,332	1,779,645	59.81
1994	3,427,614	2,017,192	58.85
1995	3,986,099	2,273,601	57.04
1996	4,588,958	2,477,384	53.99
1997	4,720,341	2,384,749	50.52

(*To be continued*)

[9] See Volumes of Law Yearbook of China 1986–2007 and the calculation is also based on them.

(*Continued*)

Year	Number of Settled Cases	Number of Settled Mediation	Settled Mediation Rate
1998	4,816,275	2,167,110	45.00
1999	5,060,611	2,132,161	42.13
2000	4,733,886	1,785,560	37.72
2001	4,616,472	1,622,332	35.14
2002	4,393,306	1,331,978	30.32
2003	4,416,168	1,322,220	29.94
2004	4,303,744	1,334,792	31.01
2005	4,360,184	1,399,772	32.10
2006	4,382,407	1,426,245	32.54

2.2.3 Arbitration

2.2.3.1 Arbitration of Economic Contracts

The development of Chinese arbitration of economic contracts fell into two stages. The first stage was before the year 1994, at that time arbitration was made by economic contract arbitration commissions, which were administrative arbitrations. The second stage is from 1995 up till now. Special arbitration commissions were established, which are non-governmental civilian arbitrations. As indicated by Table 7, at the first stage from 1983 to 1994, the quantity of administrative arbitrations of economic contracts amounted to 2,064,415. While the economic contract cases accepted by courts totaled 5,494,578, with the proportion of arbitrations at 27.3%. At that stage arbitration obviously played a role of diversion. If those arbitration cases were forwarded to courts for hearing, the quantity of hearings by courts would be obviously increased. At the second stage, though the quantity of civilian arbitrations was on the rise, total number of civil arbitrations was still small compared with that of the stage of administrative arbitrations. During the decade from 1997 to 2006, civilian arbitrations totaled 232,392, while the quantity of contract cases accepted by courts at the same period accounted for 24.269,816 million.[10] (Ran, 2005) The proportion of arbitrations was no less than 1%. At the stage, arbitrations obviously failed to play the role of diversion. Thus, the change of the litigations since the mid and late 1990s could not be explained according to the increase of the quantity of

[10] The statistic standard on the economic contract cases accepted by courts before 1994 and that on the accepted contract cases after 1995 were not consistent. The contract cases include labor contracts, technical contracts and intellectual property contracts apart from economic contracts, but are mainly composed of economic contract cases, with other contract disputes accounting for a limited proportion. For example, from 1995 to 2004, the contract cases accepted by courts totaled 24.475 million, among which labor contract cases amounted to 773,000, accounting for 3.1%. The proportions of technical contracts and intellectual property contracts were far lower, and thus to replace the economic contract cases before 1995 with those after 1995 will not substantially affect the conclusion.

economic contract arbitrations (See Fig. 5 and 6).

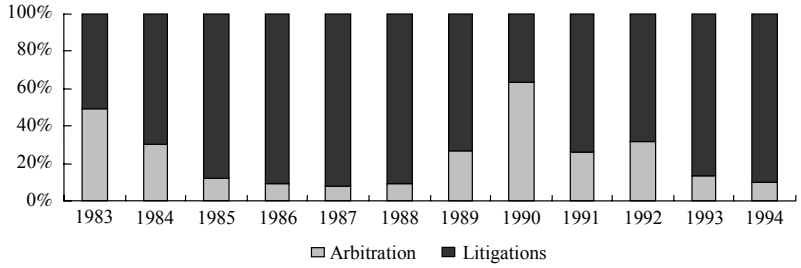


Fig. 5 Proportion of Economic Contract Arbitration and Litigations (1983–1994)

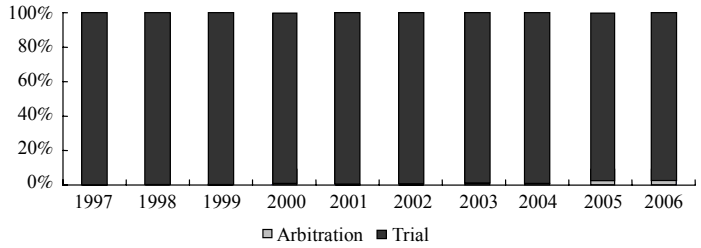


Fig. 6 Proportion of Economic Contract Arbitration and Trials (1997–2006)

2.2.3.2 Labor Arbitration

Chinese labor arbitration agencies, namely, labor dispute arbitration commissions, are the special agencies for the settlement of labor disputes. These were established within the government with the attributes of administrative organs. Therefore, labor arbitration is different from economic contract arbitration in China, which belongs to administrative arbitration. By contrast, economic contract arbitration is decreasing while the quantity of labor arbitration is increasing rapidly. As indicated by Table 8, according to the statistics of the Ministry of Labor and Social Security from 1987 to 2004, when the labor dispute settlement system was resumed. Chinese labor arbitration agencies at all levels totally registered and accepted 1,408,720 labor dispute cases, while the labor disputes accepted by courts reached 907,509 pieces at the same period, which makes the proportion of labor arbitration of 60.8% and that of litigations only of 39.2%. In respect to the developmental trend, the proportion of arbitration is larger, increasing from 34.3% in 1987 to 61.2% in 2004. Considering that labor

arbitration was taken as the pre-procedure of labor disputes settlement in many circumstances, the increase of arbitration proportion and the decline of litigation proportion indicate that Chinese labor arbitration actually renders more labor dispute cases settled before the entry into courts. Thus, as far as labor disputes are concerned, arbitration plays a role of diversion indeed and alleviates the litigious burden of courts.

In terms of the growth rate, the average annual growth rate of arbitration of labor disputes from 1987 to 2004 was 27.8%, of the growth rate of litigations for labor disputes was 18.7%, 9.1% lower than the former. The main difference could be found between 1987 and1996. This was when the growth rate of labor arbitration was 31.1% while that of labor litigations was 8.1%. The difference of the average annual growth rates of labor arbitration and litigations shrunk after 1997 with the former being 24% and the latter being 22.5%. In other words, the growth rate of labor litigations does not fall with the decline of the growth rate of litigations but rise after 1997. Thus, in terms of the relationship between labor arbitration and litigations after 1997, both are on the rise, but considering labor arbitration is the pre-procedure of labor litigations, the diversion role of labor arbitration is beyond doubt (See Table 8).

Table 8 Average Annual Growth Rate (%) of Labor Dispute Arbitration and Litigations at Different Stages (1987–2004)

Period	Growth Rate of Arbitration	Growth Rate of Litigations
1987–2004	27.8	18.7
1987–1996	31.1	8.1
1997–2004	24	22.5

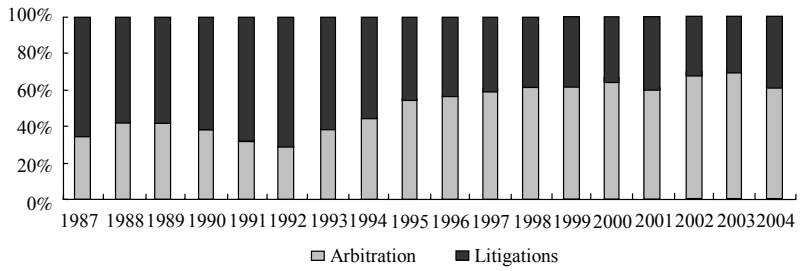


Fig. 7 Proportion of Arbitration and Litigations for Labor Disputes (1987–2004)[12]

[12] The data of accepted cases of labor dispute litigations from 1987 to 1998 quotes from the Compilation of the Nationwide Judicial Statistical Historical Data of the Courts 1949–1998; the data of accepted cases of labor dispute litigations after 1999 quotes from Law Yearbook of China 2000–2005.

2.2.4 Administration Law Enforcement: Industrial and Commercial Administration and Security Administration

Administration law enforcement is extremely extensive in content. Its subject is not a judicial organ but an administrative organ. However, it covers a far larger scope than judicature. A person may never contact a judicial organ all his life but is closely interrelated to administrative organs from cradle to grave in all necessities of life. Here we choose only industrial and commercial administration and security administration to state the relationship between their development and judicature.

2.2.4.1 Industrial and Commercial Administration

As indicated by Table 9, the quantity of unfair trading cases (including speculation and unfair competition) investigated and prosecuted by Chinese industrial and commercial administrations increased from 512,900 in 1997 to 1,529,500 in 2002. The cases for protection of consumers' rights and interests (including acceptance of consumers' complaints and reports, investigation and handling of infringement of consumers' rights and interests and production and sale of counterfeit and inferior products) increased from 138,346 in 1997 to 1,026,057 in 2002. Contract dispute cases (investigation and handling of illegal contracts) increased from 13,957 in 1997 to 33,264 in 2002. Advertisement cases (investigation and handling of illegal advertisements) increased from 31,780 in 1997 to 83,653 in 2002. The total quantity of the aforesaid cases increased from 697,000 in 1997 to 2.67 million in 2002 when the total cases of administration law enforcement by industrial and commercial administrations accounted for 9.54 million (See Table 9).

Table 9 Administration Law Enforcement Activities by Industrial and Commercial Administrations (1997–2002)[13]

Year	Investigation and Handling of Illegal Advertisements	Investigation and Handling of Illegal Contracts	Acceptance of Complaint and Report Cases of Consumers' Rights and Interests	Investigation and Handling of the Cases of Infringement of Consumers' Rights and Interests	Investigation and Handling of Production and Sale of Forged and Fake Commodities	Fair Dealing Enforcement	Subtotal
1997	31,780	13,957	46,996	18,821	72,529	512,900	696,983
1998	37,707	12,936	41,575	13,571	69,803	546,100	721,692
1999	51,494	22,939	272,015	52,481	74,805	710,900	1,184,634
2000	66,824	30,076	446,737	90,442	230,544	971,600	1,836,223
2001	79,236	36,019	650,570	135,067	163,422	1,366,800	2,431,114
2002	83,653	33,264	704,853	161,342	159,862	1,529,500	2,672,474
Total	350,694	149,191	2,162,746	471,724	770,965	5,637,800	9,543,120

[13] See Compilation of Industrial and Commercial Administration Statistics (1997–2002).

By contrast, the contract cases in the civil cases of first instances accepted by courts declined from 2.64 million in 1997 to 2.26 million in 2002. The infringement and ownership cases increased from 489,771 to 607,646. And the total number of such two categories of cases decreased from 3.13 million to 2.874 million. The cases of destroying market economy order among the criminal cases accepted by courts increased from 7,367 to 15,252. The number was too small to constitute substantial effect on the decline of litigation growth rate after 1997 (See Table 10).

Table 10 Quantitative Comparison of Administration Law Enforcement by Industrial and Commercial Administration and the Contract, Infringement and Ownership Litigations (1997–2002)

Year	Contract Litigations (A)	Infringement & Ownership Litigations (B)	Litigations (A+B)	Industrial & Commercial Administration
1997	2,641,167	489,771	3,130,938	696,983
1998	2,636,902	600,520	3,237,422	721,692
1999	2,832,049	599,004	3,431,053	1,184,634
2000	2,513,639	630,566	3,144,205	1,836,223
2001	2,358,926	668,240	3,027,166	2,431,114
2002	2,266,695	607,646	2,874,341	2,672,474
Subtotal	15,249,378	3,593,747	18,843,125	9,543,120

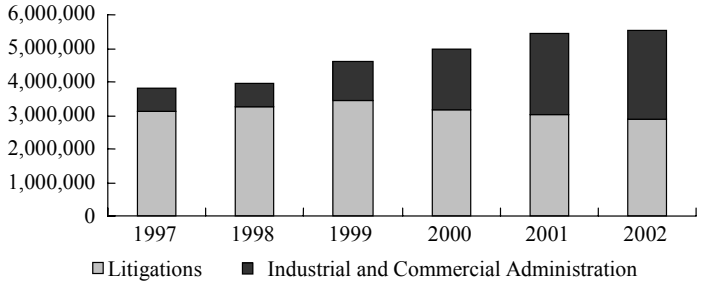


Fig. 8 Administration Law Enforcement by Industrial and Commercial Administration and Contract, Infringement and Ownership Litigations (1997–2002)

2.2.4.2 Public Security Administration

As indicated by Table 11, the public security cases discovered and accepted by Chinese public security organs amounted to 1.11 million in 1986, and 7.19 million in 2006, with the average annual growth rate of 10.35%. While at the

same period, the quantity of criminal cases of first instances accepted by courts increased from 299,720 to 702,445, with the average annual growth rate of 5.1%. Thus the average annual growth rate of public security cases was twice that of criminal litigations, with their related coefficient being 0.925, among which the proportion of public security cases was 86.7% (See Table 11).

Table 11 Public Security Cases and Criminal Cases of Public Security Organs and Criminal Cases of First Instances at Courts (1986–2006)

Year	Public Security Cases Discovered and Accepted By Public Security Organs	Criminal Cases Registered by Public Security Organs	Criminal Cases of First Instances at Courts
1986	1,115,858	547,115	299,720
1987	1,234,910	570,439	289,614
1988	1,410,044	827,594	313,306
1989	1,847,625	1,971,901	392,564
1990	1,965,663	2,216,997	459,656
1991	2,414,635	2,365,709	427,840
1992	2,956,737	1,582,659	422,991
1993	3,351,061	1,616,879	403,267
1994	3,300,972	1,660,734	482,927
1995	3,289,760	1,690,407	495,741
1996	3,363,636	1,600,716	618,826
1997	3,227,669	1,613,629	436,894
1998	3,232,113	1,986,068	482,164
1999	3,356,083	2,249,319	540,008
2000	4,437,417	3,637,307	560,432
2001	5,713,934	4,457,579	628,996
2002	6,232,350	4,336,712	631,348
2003	5,995,594	4,393,893	632,605
2004	6,647,724	4,718,122	647,541
2005	7,377,600	4,648,401	684,897
2006	7,197,200	4,653,265	702,445

In terms of public security cases, any person, whose action of disturbing social order, disrupting public security, infringing upon citizens' individual rights or violating public or private property is serious enough to be deemed criminal, shall bear criminal responsibility according to law; and any person, whose action is not enough for criminal punishment, will be punished by the public security organs according to the Law on Public Security Administration Punishments. What deserves attention is that many public security cases are taken as crimes in

the US and other European countries, and even those of lesser severity are also considered minor crimes; but in China, they are handled as public security cases. This means that Chinese public security cases are considered as non-criminalization. We can image that if such a large scale of public security cases are diverted to criminal ones, even accounting for one tenth, the quantity of criminal litigations will double, consequently triggering tremendous effect on criminal trials.[14] (Krislov, 1979; Zhu, 2005)

In view of the proportions of public security cases and criminal litigations, the proportion of public security cases is on the rise. The proportion of public security cases was 84% during 1986–1996, and 89.5% during 1997–2006. This indicates that the tendency of "non-criminalization" through public security administration in China is obvious. Thus, a larger number of cases are settled through the security administration procedure before entering into the criminal justice procedure so that the quantity of criminal trials is highly reduced. Such development after 1997 has alleviated the pressure of criminal trials.

Of course, non-criminalization, while public security cases will be handled not through criminal litigations, may also cause another problem that may fuel arbitrariness. When public security organs handle such kind of cases, the perpetrators may be deprived of the right of lawful trials. As a matter of fact, this has become an important content in the reform on China's criminal procedural law and penalties of public security administration in recent years. The Law on Public Security Administration Punishments of China adopted in 2005 has added the basic principle of "to implement the penalties of public security administration shall be open and fair, and safeguard human rights and protect citizens' personal dignity" (See Table 12).

[14] Such phenomena are often encountered while comparing the criminal litigation rates between different countries, for example, there is a big difference between the criminal litigation rate of the US and that of China, and Chinese criminal litigation rate is far lower than that of the US. But it may be found through careful analysis that the key of question lies in what crime is. China does not take public security cases as crimes while the public security cases exceed 7 million, far higher than the quantity of criminal litigations. People often denounce Chinese public security cases deprive defendants of the right for lawful acceptance of trials, but it shall not be forgotten that the US criminal litigations have also corresponding expression in this regard. The US has many criminal litigation cases, 90% of which, especially minor crimes (equivalent to Chinese public security cases), are settled through plea bargaining while the role of courts is only confined to affix a seal to bargains. In other words, the criminal cases actually heard by the US courts are less than 1/10. So if we are not confined to the concepts of "crime rate" and "litigation rate" but the functions, Chinese and American criminal cases are comparable whether in quantity or in nature.

Table 12 Average Annual Growth Rates (%) and Proportions of Public Security Cases of Public Security Organs and Criminal Litigations of First Instances at Courts in Different Stages[15]

Year	Growth Rate of Public Security Cases	Growth Rate of Criminal Litigations	Proportion of Public Security Cases
1986–2006	10.35	5.1	0.867
1986–1996	12.1	8.17	0.84
1997–2006	8.56	2.1	0.895

2.2.5 Petition Letters and Visits

Petition letters and visits have a long tradition in the history of China, which are an important way to claim redress for the wrongdoings, to express wills and settle disputes, whether in the form of calling for redress a grievance in ancient China, or reflecting the situation of the people and handling cases of injustice in the early days of the foundation of the People's Republic of China. Nowadays, while facing the modern judicial system, the reservation or abolishment of petition letters and visits have become a tough problem facing the state systems. There exists the so-called "hesitance to abolish or not." To remove the system of petition letters and visits and lead people to the modern judicial system is an ideal design, but in reality, due to unfamiliarity with it, judicial corruption and considerable litigation costs, people often shrink back before the judicial system. It is also an ideal institutional design to reserve or even strengthen the system for building the petition letter and visit agencies into a mechanism fully capable of settling disputes. However, it will render the recently established modern judicial system to collapse down. Moreover, who can ensure the petition letter and visit agencies will not be ruined by more petition letters and visits?

There have appeared several peaks of petition letters and visits since the reform and opening up of China, with the quantity of petition letters and visits far surpassing that of litigations. After the mid-1990s, group and individual petition letters and visits with great contradictions are growing. This led to a "flood peak of petition letters and visits" in 1993. Director Z. Zhou of the State Bureau for Letters and Calls pointed out: "It has been on the increase for ten years, when the quantity of the nationwide petition letters and visits bounced back since 1993." (Wang, 2003) In 1990, the departments of provinces, autonomous regions, and municipalities directly under the central government and the central agencies totally accepted more than 5 million petition letters and visits, 4.79 million in 1995, 10.24 million in 2000,[16] (Zhu, 2007) 12.72 million in

[15] Proportion of public security cases = quantity of public security cases / (quantity of public security cases + quantity of criminal litigations).

[16] The above-mentioned data mainly quote from the speeches of directors of the State Bureau for Letters and Calls at various meetings and the answers while receiving interviews, some of

2003, (Fan, 2007) and 13.7 million in 2004. In 2005, the quantity of petition letters and visits commenced to fall, reaching 12.7 million;[17] and the quantity 10.73 million in 2006[18], dropped by 15.5%, in comparison with that of the previous year. We may make a comparison of the quantity of petition letters and visits accepted by the Party and government organizations and the quantity of cases of first and second instances and retrial cases accepted by courts over these years:

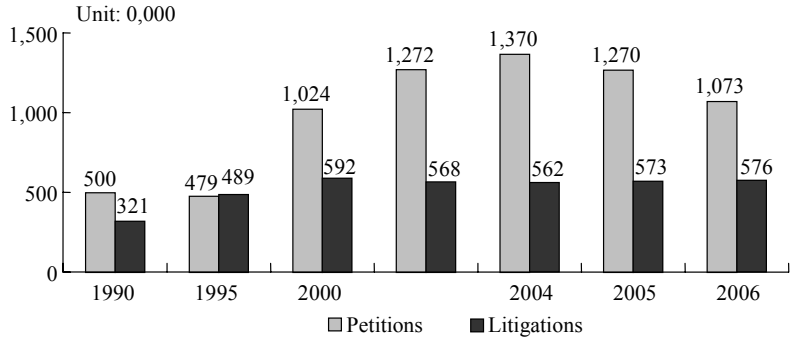


Fig. 9 Comparison of the Petitions and the Litigations (1990–2006)[19]

The issues referred by petitions and hot points reflected are relatively concentrated and there are many practical policies. The outstanding problems in the five aspects extensively reflected by the people including land expropriation and requisition, urban removal for construction, environmental protection, enterprise reorganization, institutional transformation, bankruptcy and problems involving law and litigations have become focal points of petitions in the latest period.[20]

What deserves attention is that some of those issues are unavailable for acceptance by courts, involving overall circumstances in the institutional reform, which renders the relevant administrative departments at the frontier of dilemma, and it is difficult for the people concerned to solve problems through litigations.

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which are original data, some are the general conclusion inferred by the author based on clues.

[17] Cf. FACTBOX: China's "petitions and appeals" system. http://www.reuters.com/article/newsone/idUSPEK2837120070911, 2009-1-28.

[18] Total quantity of petitions of China dropped by 15% in 2006, with the quantity of group events declined. http://news.enorth.com.cn/system/2007/03/28/001589639.shtml, 2008-11-15.

[19] Petitions include the quantity of petitions to the Party and government organizations; and litigations include the quantity of cases of first and second instances and retrial cases accepted by courts.

[20] The outstanding problems in five aspects extensively reflected by the people have become the focal point of petitions. http://news.enorth.com.cn/system/2007/03/28/001589628.shtml, 2008-2-8.

Some are directly linked to litigations, namely, the so-called petitions are concerning litigations. The petitions swarming into the Party and government departments include kinds of problems, while those submitted to judicial organs mainly reflect such kind of problems. To some extent, the quantity of petitions, litigations and law is the wind vane for people to evaluate the trials of courts. We may make a comparison of the quantity of petitions and litigations at courts these years:

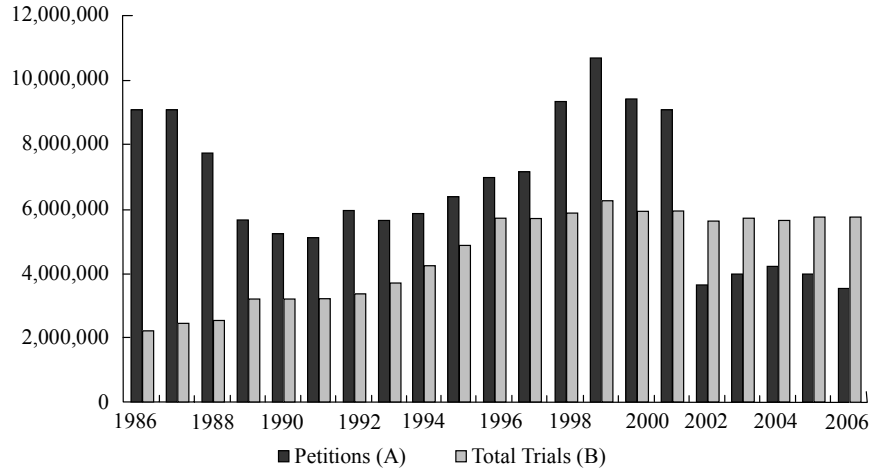

Fig. 10 Petitions and Litigations at Courts (1986–2006)[21]

As indicated by Fig. 10, from 1986 to 2006, the total quantity of cases of first and second instances and retrial cases accepted by courts amounted to 96.9 million. The total quantity of petitions at the courts reached 137.79 million, far more than that of litigations, which give rise to people's vigilance about whether the trials of courts are fair and effective. On the other hand, we shall also note that the quantity of petitions at courts has obviously declined since 2002, far lower than that of litigations, only equivalent to slightly over 60% of that litigations. The quantity of petitions at the two stages, to some extent, is of a positive significance to litigations. But this is only limited to the petitions at the courts. One may note that a considerable proportion of petitions to the Party and government departments, the people's congresses, trade unions, youth leagues, women's federations and news media belong to the scope of petitions concerning litigations, with the quantity possibly far more than that of petitions at the courts.[22] (Zeng, Wu, 2007)

[21] See Law Yearbook of China 1997–2007. The total trials include the quantity of first and second instances and retrial cases.

[22] In some reports, the quantity of petitions concerning litigations may account for 40% of the

Just as the analysis on petitions concerning litigations by courts, the reform and opening up policy contributes to the increasing prosperity of economy and culture, while contradictions and disputes have also doubled and conflicts of interests are increasingly intense. Thus, the society is in the phase while contradictions occur frequently and a lot of uncertainties are on the rise. Such as the issues of enterprise restructuring, bankruptcy, transfer of property, staff arrangement, endowment, insurance, land acquisition, real estate removal, land adjustment; and in acceptance of such issues by courts, in fact, many of them are not subject to the jurisdiction of courts. However, even though contradictions are ultimately submitted to courts for final judgments, the parties concerned are unwilling to conclude litigations and follow judgments, but make petitions. This triggers the increase of petitions concerning litigations. Simultaneously, in the practice of trials, the important reasons for sustaining high quantity of petitions are such phenomena as unfair judgment, enforcement difficulty, low efficiency, not settled after long trials and not judged after long delay, simple and rough law enforcement, focus on the rate of judgments announcement at the court session, more attention to judgment than mediation, weak in law enforcement, abuse of discretion in the process of handling cases, and grease money given by the parties concerned.[23]

Acknowledgements This article is based on the data from 中国法律发展报告：数据库和指体系 (Report on Chinese Law Development: Database and Indicator System) held by Prof. Jingwen Zhu (2007). Thanks are given to members of the grant group for their efforts to supply the data analysis in the article.

References

Cai D J (2003). 第九届全国人民代表大会及其常务委员会会议大事记 (Meeting Chronicle of Events of the 9th NPC and Its Standing Committee), compiled by No. 1 Secretariat of General Office of the NPC Standing Committee. Beijing: China Democracy & Rule of Law Publishing House, 38

Deng X P (1978). 解放思想，实事求是，团结一致向前看 (Emancipate Thoughts, Seek Truth from the Facts and Get United to Face the Future). In: 邓小平文选，第二卷 (Volume II of Selected Works of Xiaoping Deng). Beijing: The People' Press, 146–147

Fan Y (2007). Theory and Practice of Dispute Settlement. Beijing: Tsinghua University Press, 350

Kojima T (1993). 比较法在移植外国法律中的第二任务 (The Second Task of Comparative Law in Transplanting Foreign Law). In: Zongling Shen and Chenguang Wang ed., 比较法学的新动向 (New Trend of Comparative Jurisprudence). Beijing: Peking University Press, 49

total.

[23] Analysis on the present situation of petitions concerning litigations at grass-roots courts, at http://www.chinacourt.org/public/detail.php?id=200488, 2007-5-4.

Krislov S (1979). Debating on Bargaining: Comments from a Synthesizer. Law & Society Review, (13): 573, 575–576, 578–581

Macaulay S (1963). Non-Contractual Relations in Business: A Preliminary Study. American Sociological Review, (28): 55

Ran J F (2005). 当代中国民事诉讼率变迁研究 (Study on Changes of Civil Litigation Rate in Contemporary China). Beijing: China Renmin University Press, 128–145

Wang Y Q (2003). 破解群众信访八大热点 (Analyze and Explain Eight Hot Points Concerning Petition Letters and Visits of the People). 半月谈 (China Semi-Monthly Comments), (11): 24–25

Wu B G (2004). 为形成中国特色社会主义法律体系而奋斗 (Struggle for Formation of the Socialist Legal System of Chinese Characteristics). http://www.npc.gov.cn/zgrdw/common/group_photo_zw.jsp?label=WXZL, 2005-11-24

Zeng Q W, Wu C (2007). 妥善处理涉法上访案件的长效机制研究 (Research on the Permanent Mechanism for Appropriately Handling the Cases of Petitions Concerning Law). http://www.snzg.cn/article/show.php?itemid-6763/page-1.html, 2008-11-6

Zhu J W (2004). 法社会学 (Sociology of Law). Beijing: China Renmin University Press, 183–188

Zhu J W (2007). 中国法律发展报告——数据库和指标体系 (Report on Chinese Law Development: Database and Indicator System). Beijing: China Renmin University Press, 509–511

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