

DATA ANALYSIS

DATA ANALYSIS OF PROFESSIONALIZATION OF LEGAL WORKERS IN CHINA

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Since the reform and opening up, the legal profession in China has changed dramatically. In terms of both quantity and quality, the legal profession has stepped into a new phase. A tendency towards widespread litigation and more professionals: judges, lawyers and law students, can be clearly evidenced. Along with the development of the legal profession, other types of legal workers including business arbitrators, grassroots paralegal service workers (grassroots paralegals), and mediators have experienced great changes. To a certain extent, they have become more marginalized than before. The development of the legal profession is extremely unbalanced. Whether in terms of the number of lawyers or the income generated by lawyers, the inter-provincial gap in China is huge. The development of the legal profession also brings out the issue of judicial corruption. From the number of letters and visits related to lawsuits and the National People's Congress deputies' votes on the reports of the Supreme People's Court and the Supreme People's Procuratorate, the level of legal corruption can be noted. This problem has become a crucial challenge to the reputation of the legal profession and the judicial creditability of the country. The same amount of attention should be paid to judicial corruption as to the quality of legal services.

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INTRODUCTION

Along with increasingly more cases rushed to court since reform and opening up in China, the professionalization of legal service workers has become a trend. This has produced a trend towards more litigation, more judges, more lawyers, and more students of law. Early on, Deng Xiaoping worried about the lack of sufficient numbers of legal workers to influence the development of reform, thinking that China needed more legal workers of higher professional and educational quality to deal with issues arising in the new era.¹ However, before the reform, most disputes were handled by people's mediators, whether in residences or village committees in rural or urban areas or in the work units of disputants, who almost never received legal training and handled disputes with common sense or civil customs. Obviously, by depending only on them, it was very difficult to meet the needs of the new era. Through more than 30 years of effort, the legal profession in China has already reached a considerable scale. The number of judges has grown from more than 50,000 at the early stages to almost 200,000; the number of lawyers has increased from more than 8,000 to more than 220,000; law students as reserves of the legal profession graduating from law schools per year grew from less than 1,000 to more than 100,000. Respectively numbers grew by 10 times, up to even 100 times. The educational quality of the legal profession increased dramatically. Before the reform period, the proportion of judges in the Supreme People's Court (SPC) who had earned university degrees was very small, accounting for less than 5%. Currently, the proportion of judges who have law degrees in the courts at all levels stands at more than 70%. It is beyond doubt that the professionalization of legal services has greatly increased its efficiency. For example, the annual average number of cases of the first instance tried by a judge increased from 8.8 to 38.6 between 1979 and 2011, an increase of 3.38 times.

Along the professionalization of legal services, the profession has encountered several new issues.

Firstly, professionalization has marginalized legal workers including business arbitrators, grassroots paralegals and people's mediators. The role of people's mediator has provided legal services in rural and urban areas for a long time and has played a very important role in resolving civil disputes and maintaining public security at the grassroots level. Mediators tend not to be professional, being ordinary people who have almost

¹ DENG Xiaoping, 目前的形势和任务 (Current Situation and Missions), in 邓小平文选 (第2卷) (Selection Works of Deng Xiaoping, Vol. 2), People's Press (Beijing), at 263 (1994).

never received legal training. They have regulated millions of disputes using common sense and civil customs. Indeed, at the start of the reform era, most disputes were not tried by the courts, but rather they were handled by people's mediators. The ratio between the two forms of resolution was about 10:1, with 90% of disputes handled by people's mediators and less than 10% tried by courts. Nowadays, the situation has undergone a great change. More and more cases have been centralized in the courts. However, the quantity of civil disputes handled by people's mediators had experienced almost no change, sometimes even reducing. The ratio of the two is now almost 1:1, meaning that the annual number of trials and mediation has become almost the same. Another example is the grassroots paralegal service worker. At the beginning of the reform period, China had a shortage of lawyers, and was unable to fulfill needs for legal services. Grassroots paralegal service workers stepped in to fill this vacuum. Their work has overlapped with that of lawyers in many aspects, including litigation, non-litigious matters, legal consultation, allographs and legal advice. When the number of lawyers increased swiftly, the complementary relationship between grassroots paralegals and lawyers turned into a competitive relationship. In order to ensure the quality of legal service and to regulate the legal service market, grassroots paralegals were subjected to a number of restrictions and shifted their spheres of influence to areas which did not have enough lawyers. The problem is that the activity of paralegal service workers mainly focuses on the small urban and rural sectors, where lawyers prefer not to go. Limiting paralegal service workers actually means that it is difficult for the people living in urban and rural areas to find legal services.

Secondly, the distribution of the legal profession throughout China is seriously unbalanced in terms of quantity and business income of lawyers. China has more than 210,000 lawyers. This means that in 2011, there was an average of 15.6 lawyers per 100,000 people. Whether in the number of lawyers or in the business income created by lawyers, provinces of the country experience a huge resources gap. Regarding the number of lawyers, the first five provinces average 16,891 lawyers and the last five provinces average 966 lawyers, which is only 1/17.5 of the former. Taking into consideration the factor of population, regarding the number of lawyers per 100,000 people, the first five provinces had 46 lawyers, but the last five had seven lawyers, which is 1/6.7 of the former. In terms of the business income of lawyers, the first five provinces' lawyers earned 6.12 billion RMB, but the last five provinces' lawyers earned only 38.3 million RMB, which is 1/160.1 of the former. Considering the population factor, on the business income per lawyer, the first five provinces earned 373.8 trillion RMB, but the last five earned only 19.2 trillion RMB, a ratio of 1/19.5. From the analysis above, it can be concluded that areas with the most well developed legalization are mainly concentrated in several municipalities, especially Beijing and Shanghai, and also concentrated in provinces with

better developed economies. On the other hand, lawyering in the western and northern regions of China has remained underdeveloped, with very few lawyers and much less business income.

Thirdly, the issue of judicial corruption has become increasingly serious along with the development of the legal profession. Since reform and opening up, the court has already become a place to resolve disputes and criminal investigations. It seems that people increasingly rely on the judicial organs, resulting in a supposed increase in judicial credibility. However, in the last three decades, along with more litigation, the number of letters and visits related to lawsuits at all levels of the courts has outnumbered those related to litigation. Between 1986 and 2011 the total number of cases tried by courts of all instances was 133.6 million. The total number of letters and visits relating to lawsuits was 145.1 million, outnumbering the number of cases tried by courts. To a certain extent, the quantity of letters and visits relating to lawsuits is an indicator to assist in the evaluation of court trials by the public. Another indicator is the voting of the deputies to the National People's Congress (NPC) on the reports of the SPC and Supreme People's Procuratorate (SPP). Deputies to the NPC voted in dissention and absented themselves in the SPC an average of 22.45% of the time and in the SPP 21.51% of the time between 2006 and 2013. Comparing voting on the State Council and the Standing Committee of NPC's working reports, dissention and abstention voting in the SPC and procuratorates were much higher than in the first two. Although reasons to vote against or abstain taken by the deputies to the NPC may be various, an undeniable reason was whether judicial decisions were fair and executable, and if the courts and the procuratorates had credibility.

Although China has seen great achievements in the development of the legal profession alongside its massive economic growth spurt, troubles such as those mentioned above need to be confronted and resolved for further progress to be possible. It could not be imagined that China would fall back on its original, unprofessional methods in the present situation and become prey to increased judicial corruption. Also it could not be contemplated to ignore the seriousness of the above troubles when engaged in the professionalization of legal workers. Achievements and the troubles are two sides of the same issue, law and development, that are interrelated and interdependent on each other. The problems should not negate the achievements, but in celebrating these achievements, China cannot ignore the problems.

I. THE TREND TOWARDS PROFESSIONALIZATION IN CHINA'S LEGAL SERVICES

Before reform and opening up, China's legal workers were far from professional. Courts played a very limited role in resolving disputes. Professional knowledge of the judges was poor and limited because cases tended to be very simple. Most judges and

lawyers were not trained in law school. Most disputes were handled by the neighborhood committees or work units. An American scholar once called this phenomenon “law without lawyers.”²

Reform and opening up brought about deep changes in Chinese society, including the complications of social relations and a diversification of interests. The role of neighborhood committees and work units in resolving disputes became poorer as a consequence, while courts gained prominence. More litigation, more judges, more lawyers and more law students sums up the current legal environment and the path of development of the legal profession in China over the past 30 years.

A. Quantity and Educational Quality in the Legal Profession

As Table 1 shows, the number of judges grew from 59,000 to 195,000, growing by 2.31 times, between 1979 and 2011.³ The number of procurators grew from 113,289 to 151,092 between 1988 and 2011, a 33% growth rate⁴ (see Table 2). The number of lawyers increased from 8,571 to 214,968 between 1981–2011, a 24.1 times growth rate⁵ (see Table 3). Notaries grew from 6,286 to 12,163 between 1986 and 2011, a 93.5% growth rate⁶ (see Table 4).

In term of educational level, the number of judges at all levels with university degrees grew from 6.9% in 1995 to 60.8% in 2006.⁷ The number of procurators with university degrees grew from 15.14% in 1998 to 67% in 2006, and the number of degree-holding lawyers grew from 49.1% in 2000 to 92% in 2011.⁸

Along with the growing number and educational quality of judges, efficiency of the trial system, that is, the annual average quantity of cases tried by judges, grew from 8.8 to 38.6 per judge, an increase of 3.38 times.⁹

² See Victor H. Li, *Law without Lawyers, A Comparative View of Law in China and the United States*, Westview Press (Boulder), 1978.

³ See 中国法律年鉴, 1987–2012 年各年版本 (*China Yearbook of Law*, 1987–2012 vols.), Law Press (Beijing); ZHU Jingwen, 2012 中国法律发展报告 (Report on China's Legal Development), RUC Press (Beijing), table 0–01, (2013).

⁴ See 中国法律年鉴, 1987–2012 年各年版本 (*China Yearbook of Law*, 1987–2012 vols.), Law Press (Beijing); Id. ZHU, table 0–02.

⁵ See 中国法律年鉴, 1987–2012 年各年版本 (*China Yearbook of Law*, Beijing: Law Press, 1987–2012 vols.), Law Press (Beijing); Id. ZHU, table 0–03.

⁶ 中国法律年鉴, 1987–2012 年各年版本 (*China Yearbook of Law*, 1987–2012 vols.), Law Press (Beijing); Id. ZHU, table 0–04.

⁷ CHEN Bing, 历史和战略性的转变——全国法院教育培训工作综述 (Historical and Strategic Transformation — A Summary of Judges' Training in Courts All Over China), *People's Court Daily*, Feb. 26, 2006), and calculation based on the data the article provided.

⁸ See ZHU, fn.3 at introduction.

⁹ Id.

Table 1 Numbers of Judges, Cases Tried by Courts in the First Instance and Annual Average Cases Tried per Judge in China (1979/2011)

| | Total judges | Judges per 100,000 people | Cases tried by courts in the 1st instance | Annual average cases tried by a judge |
|---------------------|--------------|---------------------------|---|---------------------------------------|
| 1979 | 59,000 | 6.1 | 518,842 | 8.8 |
| 2011 | 195,000 | 14.5 | 7,534,955 | 38.6 |
| Growth rate (times) | 2.31 | 1.38 | 13.52 | 3.38 |
| AAGR (%) | 7.2% | 4.3% | 42.3% | 10.6% |

Source: 中国法律年鉴 (*Law Yearbook of China*), Law Press (Beijing), (1988–2012).

Table 2 Numbers of Procurators, Cases Examined and Approved to Arrest, and Cases Initiated Prosecution in China (1988/2009)

| | Procurators | Procurators per 100,000 people | Cases examined and approved to arrest (persons) | Cases examined and approved to arrest (cases) |
|---------------------|-------------|--------------------------------|---|---|
| 1988 | 113,289 | 10.28 | 422,108 | 262,896 |
| 2011 | 151,092 | 11.21 | 923,510 | 824,052 |
| Growth rate (times) | 0.33 | 0.09 | 1.19 | 2.13 |
| AAGR | 1.45% | 0.39% | 5.16% | 9.2% |

Source: 中国法律年鉴 (*Law Yearbook of China*), Law Press (Beijing), (1988–2012).

Table 3 Numbers of Lawyers, Litigation Business and Non-Litigation Business in China (1981/2011)

| | Lawyers | Lawyers per 100,000 people | Litigation business | Non-litigation business |
|---------------------|---------|----------------------------|---------------------|-------------------------|
| 1981 | 8,571 | 8.62 | 73,302 | 4,550 |
| 2011 | 214,968 | 15.95 | 2,315,101 | 625,229 |
| Growth rate (times) | 24.1 | 85% | 30.58 | 136.4 |
| AAGR (%) | 80% | 2.7% | 101.9% | 454.7% |

Source: 中国法律年鉴 (*Law Yearbook of China*), Law Press (Beijing), (1986–2012).

Table 4 Numbers of Notaries and Notary Documents (1986/2011)

| | Notaries | Notaries per 100,000 people | Notary documents(million) | Average annual notary documents per a notary |
|-------------|----------|-----------------------------|---------------------------|--|
| 1986 | 6286 | 0.59 | 2.38 | 377.87 |
| 2011 | 12,163 | 0.90 | 10.77 | 885.18 |
| Growth rate | 93.5% | 52.5% | 354% | 134.3% |
| AAGR | 3.7% | 2.1% | 14.2% | 5.37% |

Source: 中国法律年鉴 (*Law Yearbook of China*), Law Press (Beijing), (1988–2012).

B. Access to the Legal Profession

As Table 5 shows, China's legal profession has realized a considerable growth in scale following more than 30 years' development. By 2011, it included 195,000 judges, 151,000 procurators, 215,000 lawyers and 12,000 notaries, 573,000 legal professionals all

together.¹⁰

Table 5 Scale of the Legal Profession in China (2011)

| | Judge | Procurator | Lawyer | Notary | Total legal profession |
|---------------------------|---------|------------|---------|--------|------------------------|
| Number | 195,000 | 151,092 | 214,968 | 12,163 | 573,223 |
| Number per 100,000 people | 14.50 | 11.21 | 15.95 | 0.90 | 42.50 |

Source: 中国法律年鉴 (*Law Yearbook of China*), Law Press (Beijing), (2012).

The development of quantity and quality of different legal professionals was closely related to the application of examinations to access the profession. The exam for access to legal profession was introduced for lawyers in 1986 and expanded to other legal professions, judges, procurators in 2001 and to notaries in 2005. On average, more than three million people took the National Judicial Exam per year. The rate of passing the National Judicial Exam was 8% in 2002, and rose to 22.3% in 2007, maintaining a pass rate of about 23% since then¹¹ (see Fig. 1).

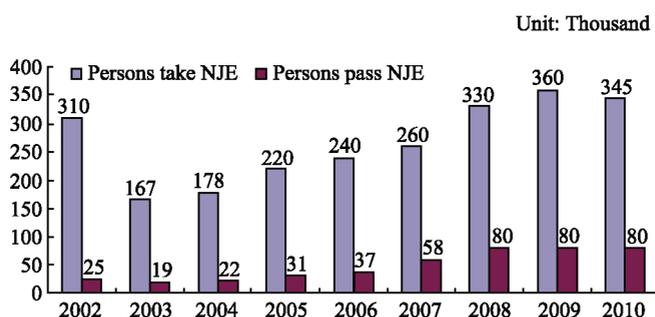


Fig. 1 Number of People Taking the National Judicial Exam and Passing the National Judicial Exam (2002–2010)

Source: 中国司法行政年鉴 (*Judicial Administration Yearbook*), Law Press (Beijing), (2001–2011).

II. IMPACT OF THE LEGAL PROFESSION ON OTHER TYPES OF LEGAL WORKERS

Along with the development of the legal profession, other types of legal workers, including arbitrators, grassroots paralegals, and people's mediators, have been greatly influenced by the rise of the legal profession.

A. Arbitrators

Arbitrators can be divided into business arbitrators, labor arbitrators and arbitrators

¹⁰ Id. table 0–05.

¹¹ See 中国司法行政年鉴 (*China Yearbook of Judicial Administration*), Law Press (Beijing), (2001–2011).

for foreign affairs, and the impact of the development of the legal profession has been different for each sector. As more cases are tried by the courts, business arbitration in commercial cases tried by courts has dropped significantly. However, labor arbitration in labor cases tried by courts is still a significant recourse. This may be because business arbitration is not an official arbitration authorized by the government but rather a civil arbitration. However, the labor arbitration is authorized by labor administrative organizations.

- Business Arbitration

As Table 6 shows, an arbitration commission was set up in 1995, which established 11 business arbitration commissions and the number of cases filed to them was 107. In 2011, the number of business arbitration committees grew to 215, and the number of cases filed by them increased to 88,473, a growth rate of 41.3 times.¹² Compared to the number of contract cases tried by the courts, the number of arbitration cases was very small but the growth rate was fairly rapid.

Table 6 Number of Business Arbitration Committees and Cases Filed by Business Arbitration Committees (1995/2011)

| | Business Arbitration Committee (BAC) | Cases filed by the BACs | Average annual cases filed by a BAC |
|---------------------|--------------------------------------|-------------------------|-------------------------------------|
| 1995 | 11 | 107 | 9.73 |
| 2011 | 215 | 88473 | 411.50 |
| Growth rate (times) | 18.5 | 828.29 | 41.29 |
| AAGR (times) | 1.15 | 51.77 | 2.58 |

Source: ZHU Jingwen (ed.), 中国法律发展报告 2012:中国法律工作者的职业化 (2012 Report on China's Legal Development: Professionalization of Legal Workers in China), RUC Press (Beijing), (2013).

Comparing the quantity of contract cases tried by courts, the ratio of number of cases filed by the arbitration committees to those tried by courts in the first instance was only 1.32% between 1997 and 2009 (see Table 7).¹³ Business arbitration had only a very small impact on the quantity of litigation of contract disputes. That is to say, as more business cases were tried by the courts, business arbitration was seriously affected.

¹² See 中国工商行政管理年鉴 (China Yearbook of Industry and Commerce), Press of Industry and Commerce (Beijing), (1992–2011); See ZHU, fn. 3, table 0–06.

¹³ Id.

Table 7 A Comparison of the Number of Cases Filed by Business Arbitration Committees (BAC) and the Filed by Courts of the First Instance (Ct) (1997–2009)

| | Cases filed by BAC (A) | Contract cases filed by Ct (B) | Ratio of BAC to Ct cases (C/D) |
|----------------------|------------------------|--------------------------------|--------------------------------|
| Total cases | 433,293 | 32,818,821 | 1.32% |
| Annual average cases | 28,952 | 2,734,901 | 1.06% |

Source: ZHU Jingwen (ed.), 中国法律发展报告 2012:中国法律工作者的职业化 (2012 Report on China's Legal Development: Professionalization of Legal Workers in China), RUC Press (Beijing), at 8 (2013).

• Labor Arbitration

As Table 8 shows, in 1994, the labor arbitrator committees handled 19,400 cases. In 2010, this number increased to 601,000, which was a growth rate of 30.63 times, and an average annual growth rate of 191.4%.¹⁴

Table 8 Quantity of Labor Arbitration Committees and Cases Handled by Labor Arbitration Committees (1994/2010)

| | Labor arbitration committee (LAC) | Cases handled by the LACs (1000) | Average cases handled by each LAC |
|---------------------|-----------------------------------|----------------------------------|-----------------------------------|
| 1994 | 2,819 | 19 | 6.73 |
| 2010 | 3,515 | 601 | 170.98 |
| Growth rate (times) | 0.247 | 30.63 | 24.41 |
| AAGR | 1.5% | 191.4% | 152.6% |

Source: ZHU Jingwen (ed.), 中国法律发展报告 2012:中国法律工作者的职业化 (2012 Report on China's Legal Development: Professionalization of Legal Workers in China), RUC Press (Beijing) at 9 (2013).

Unlike business arbitration, labor arbitration plays an important role in labor dispute resolution. From 2000 to 2009, the number of labor cases tried by courts in the first instance was 1,443,954. On the other hand, the number of labor disputes handled by the LAC was 3,319,900 in the same period, which is 2.3 times that of the number of labor disputes tried by courts¹⁵ (see Table 9).

Table 9 A Contrast of Quantity of Labor Arbitration Cases to Labor Cases Tried by the Court of the First Instance (2000–2009)

| | Labor arbitration cases(A) | Labor cases tried by courts(B) | Ratio of labor arbitration and labor trial(A/B) |
|----------------------|----------------------------|--------------------------------|---|
| Total cases | 3,319,900 | 1,443,954 | 2.3 |
| Average annual cases | 331,990 | 144,395 | 2.3 |

Source: ZHU Jingwen (ed.), 中国法律发展报告 2012:中国法律工作者的职业化 (2012 Report on China's Legal Development: Professionalization of Legal Workers in China), RUC Press (Beijing), at 9 (2013).

¹⁴ See 中国统计年鉴 (China Yearbook of Statistics), Press of China's Statistics Yearbook (Beijing), (1996–2012). Id. ZHU, table 0–07.

¹⁵ Id.

• Foreign Arbitration

The foreign arbitration includes international economic and trade arbitration and maritime arbitration. The China International Economic and Trade Arbitration Commission (CIETA) developed very rapidly during recent years. In 1986, the CIETA handled 90 cases, however, the number was 1,482 in 2009, it is a 15.47 times growth; The China Maritime Arbitration Commission handled 30 cases in 1986, and 79 cases in 2009, it is a growth of 1.63 times. However, the annual number of cases is quite limited.¹⁶

B. Grassroots Paralegal Service Workers

In the 1980s, China had a shortage of lawyers and was unable to fulfill people's needs for legal services. In such a situation, grassroots paralegal service workers (paralegals) filled the void. As Table 10 shows, in 1988, there were 81,520 such paralegals. In the 1990s, there were between 100,000 and 120,000. When the number of lawyers increased swiftly, original complementary relations between the paralegals and the lawyers gradually became competitive. In 2000, the quantity of paralegals reached its peak at 121,904. After that, alongside an increase in the number of lawyers, the quantity of paralegals started to drop, and, by 2011, had dropped to 73,000.¹⁷

Table 10 Quantity and Ratio of Grassroots Paralegal Service Workers and Lawyers (1988/2011)

| | Paralegals (A) | Paralegals per 100,000 people | Lawyers (B) | Lawyers per 100,000 people | Ratio of Paralegals to lawyers (A/B) |
|---------------------|----------------|-------------------------------|-------------|----------------------------|--------------------------------------|
| 1988 | 81,520 | 7.4 | 32,412 | 2.94 | 2.52 |
| 2011 | 73,000 | 5.42 | 214,968 | 15.95 | 0.339 |
| Growth rate (times) | -0.10 | -0.27 | 5.63 | 4.43 | -0.87 |
| AAGR(%) | -0.45% | -1.2% | 24.49% | 19.24% | -3.76% |

Source: 中国法律年鉴 (*Law Yearbook of China*), Law Press (Beijing), (1989 and 2012).

The sphere of the paralegals' work overlaps with that of lawyers in many aspects, including litigation, non-litigation matters, legal consultation, allograph and legal advisers. When the number of lawyers increased swiftly, the complementary relation between the paralegals and lawyers gradually turned into a competitive relationship. In order to ensure the quality of legal service and to regulate the legal service market, the paralegals were subjected to some restrictions and shifted their focus to areas which did not have enough lawyers. In 1988, the number of paralegals was 2.5 times that of the number of lawyers, while by 2011, the number of paralegals was only 33.9% that of the number of lawyers.¹⁸

¹⁶ See 中国法律年鉴 (*Chins Yearbook of Law*), Press of China Yearbook of Law (Beijing), (1987–2011).

¹⁷ See 中国司法行政年鉴 (*China Yearbook of Judicial Administration*), Law Press, (2001–2011). Zhu, fn. 3, table 0–10.

¹⁸ *Id.*

C. People's Mediators

In 1981, China had 4,767,700 mediators, but in 2011, the number of people's mediators had dropped 9% to 4,335,500. During this period, the number of mediated disputes had risen from 7,805,400 to 8,935,341, a growth rate of 14%. People's mediation used to be the major form of civil dispute resolution. From 1981 to 2011, the number of cases tried by courts in the first instance was 126,235,233, while the number of civil disputes handled by people's mediation was 192,644,933.¹⁹ The number of cases handled by people's mediation was 1.53 times of the cases tried by courts in the first instance (see Table 11).

Table 11 Number of People's Mediators and Disputes Handled by People's Mediators (1981/2011)

| | People's mediators (millions) | People's mediators per 100,000 people | Disputes handled by all mediators | Disputes handled by a mediator |
|---------------------|-------------------------------|---------------------------------------|-----------------------------------|--------------------------------|
| 1981 | 4.76 | 479.7 | 7,805,400 | 1.64 |
| 2011 | 4.33 | 321.8 | 8,935,341 | 2.06 |
| Growth rate (times) | -0.09 | -0.33 | 0.14 | 0.26 |
| AAGR | -0.3% | 1.1% | 0.5% | 0.85% |

Source: 中国法律年鉴 (*Law Yearbook of China*), (1987/2012).

People's mediation weakened as a legal recourse after reform and opening up began. As Fig. 2 shows, in 1981, the number of cases handled by people's mediation was 7,805,400, and the number of cases tried by courts in the first instance was 894,782. The former was 8.72 times that of the latter. In 2011, the number of cases handled by people's mediation was 8,935,341, and the number of cases tried by courts of the first instance was 7,534,955, the former being 1.18 times that of the latter. The proportion of the these two was continually dropping, with the number decreasing to 86.4% in 2011 and the annual rate of decrease was 2.9% (see Fig. 3).

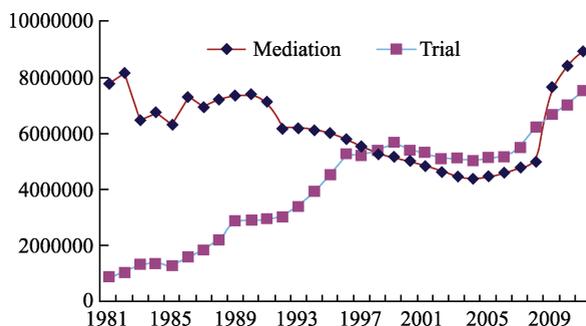


Fig. 2 Change in Number of Disputes Handled by Mediators and Courts (1981–2011)

Source: 中国法律年鉴 (*Law Yearbook of China*), (1981/2012).

¹⁹ See 中国法律年鉴 (*China Yearbook of Law*), Press of China Yearbook of Law (Beijing), (1987–2012).

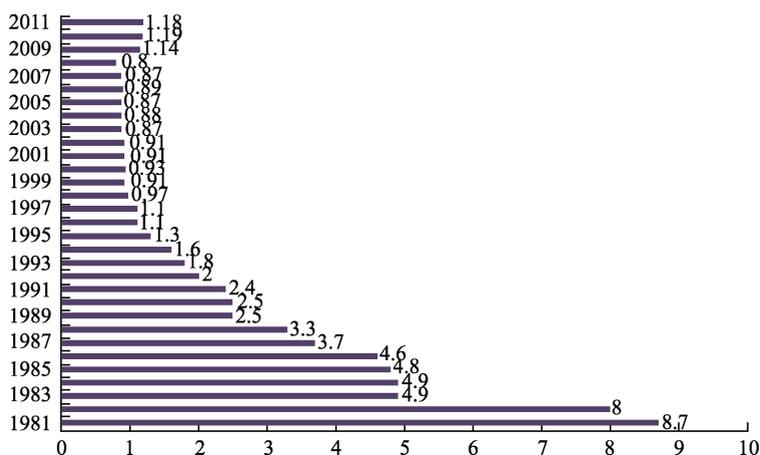


Fig. 3 Change of Ratio of Number of Disputes Handled by Mediators and by Courts (1981/2011) (mediated disputes/tried cases)

Source: 中国法律年鉴 (*Law Yearbook of China*), Law Press (Beijing), (1981–2012).

III. IMBALANCE IN THE DEVELOPMENT OF THE LEGAL PROFESSION

Whether in terms of the number of lawyers or in terms of the business income created by lawyers, there is a huge gap between provinces. As Table 12 shows, on the quantity of lawyers, the top five provinces averaged 16,891 lawyers and the bottom five provinces averaged 966 lawyers, just 1/17.5 of the former. Taking the factor of population and the number of lawyers per 100,000 people, the top five provinces had 46 lawyers, but the bottom five had only seven lawyers, 1/6.7 of the former.

Regarding the business income of lawyers, the top five provinces' lawyers earned 6.12 billion RMB, but the bottom five provinces' lawyers earned only 38.3 million RMB, 1/160.1 of the former. Considering the population factor, in terms of business income per lawyer, the top five provinces earned 373.8 trillion RMB, but the bottom five earned just 19.2 trillion RMB, 1/19.5 of the former.²⁰ By the analysis above, a conclusion can be drawn that areas with highly developed legalization mainly are concentrated in several municipalities, especially Beijing and Shanghai, as well as provinces with better-developed economies.

The relationship between the distribution of lawyers and people's mediators in China has also been noted. In the entire country, there are 15.95 lawyers and 321.8 people's mediators per million people.²¹ Their distribution across provinces is extremely imbalanced. As Table 13 shows, this situation reflects the complementary relationship between lawyers and people's mediators in distribution in different areas. That is, there

²⁰ All materials about quantity of lawyers and business income are from *China Yearbook of Lawyer*, Law Press (Beijing), (2012); Zhu, fn. 3, table 0–12.

²¹ All materials about the quantity of people's mediator are from *China Yearbook of Law*, Law Press (Beijing), (2012); Id. Zhu, table 0–13.

are more lawyers in areas with well-developed economies, while people's mediators are more active in less-developed areas. Of course, there are many areas with a great number of lawyers as well as people's mediators, such as Beijing. Still, there are some other areas which are less developed both in terms of lawyers and in terms of people's mediators. The relationships between them need further research.

Table 12 Quantity and Business Income Gaps between Lawyers in the Top Five Provinces and the Bottom Five Provinces (2011)

| | The top five provinces | Average of the first five provinces | The bottom five provinces | Average of the bottom five provinces | Ratio of the top five to the bottom five provinces |
|---|---|-------------------------------------|--|--------------------------------------|--|
| Quantity of lawyers | Beijing 22,100 Guangdong 21,489 Shandong 14,137 Shanghai 13,713 Jiangsu 13,018 | 1,6891.4 | Tibet 139 Qinghai 470 Hainan 1,050 Ningxia 1,020 Gansu 2,051 | 966 | 17.5: 1 |
| Lawyers per 100,000 people | Beijing 109.5 Shanghai 58.4 Tianjin 26.5 Guangdong 20.5 Chongqing 18.7 | 46.7 | Tibet 4.6 Guizhou 7.1 Jiangxi 7.2 Gansu 8.0 Qinghai 8.3 | 7.0 | 6.7: 1 |
| Business income (RMB) | Beijing 11.39b Shanghai 7.0b Guangdong 6.13 billion Zhejiang 3.07 billion Jiangsu 3.03b | 6.12 billion | Tibet 2.13m Heilongjiang 35.42m Qinghai 39.76m Henan 43.86m Gansu 70.11m | 38.26 million | 160.1: 1 |
| Business income per a lawyer (trillion RMB) | Beijing 515 Shanghai 510 Zhejiang 326 Guangdong 285 Jiangsu 233 | 373.8 | Henan 4 Heilongjiang 8 Tibet 15 Gansu 34 Inner Mongolia 35 | 19.2 | 19.5: 1 |

Source: ZHU Jingwen (ed.), *中国法律发展报告 2012: 中国法律工作职业化 (2012 Report on China's Legal Development: Professionalization of Legal Workers in China)*, RUC Press (Beijing), at 13 (2013).

Table 13 Distribution of Lawyers and Grassroots Paralegals per 100,000 People in Various Provinces (2011)

| Province | People's mediators per 100,000 people | Lawyers per 100,000 people | Province | People's mediators per 100,000 people | Lawyers per 100,000 people |
|----------------|---------------------------------------|----------------------------|-----------|---------------------------------------|----------------------------|
| Beijing | 610.4 | 109.5 | Hubei | 281.8 | 11.9 |
| Tianjin | 264.7 | 26.5 | Hunan | 319.2 | 11.7 |
| Hebei | 458.5 | 11.7 | Guangdong | 174.8 | 20.5 |
| Shanxi | 368.6 | 10.8 | Guangxi | 301.7 | 10.2 |
| Inner Mongolia | 329.6 | 14.6 | Hainan | 284.4 | 12 |
| Liaoning | 346.2 | 17 | Chongqing | 359.5 | 18.7 |
| Jilin | 273.4 | 11.7 | Sichuan | 517.4 | 12.5 |

(To be continued)

(Continued)

| Province | People's mediators per 100,000 people | Lawyers per 100,000 people | Province | People's mediators per 100,000 people | Lawyers per 100,000 people |
|--------------|---------------------------------------|----------------------------|---------------|---------------------------------------|----------------------------|
| Heilongjiang | 112.9 | 11.3 | Guizhou | 333.5 | 7.1 |
| Shanghai | 146.4 | 58.4 | Yunnan | 507.7 | 10.9 |
| Jiangsu | 254.2 | 16.5 | Tibet | 629.8 | 4.6 |
| Zhejiang | 319.5 | 17.2 | Shanxi | 325.6 | 13 |
| Anhui | 225.9 | 9 | Gansu | 455.8 | 8 |
| Fujian | 315.7 | 14.5 | Qinghai | 459.1 | 8.3 |
| Jiangxi | 274.9 | 7.2 | Ningxia | 293 | 17.5 |
| Shandong | 354.1 | 14.7 | Xinjiang | 315.7 | 12.6 |
| Henan | 259.7 | 10.9 | Whole country | 321.8 | 15.95 |

Source: ZHU Jingwen (ed.), 中国法律发展报告 2012:中国法律工作职业化 (2012 Report on China's Legal Development: Professionalization of Legal Workers in China), RUC Press (Beijing), at 14 (2013).

IV. THE PROBLEM OF JUDICIAL CORRUPTION

A. Two Kinds of Judicial Corruption

Judicial corruption can be divided into two categories, the first one caused by the moral quality of law-enforcers who use the power to try, or the power to enforce a bend in the law for personal gain, and thus engage in fraud. As Table 14 shows, the annual average number of personnel who violated laws and discipline in all courts was 864.6 between 1988 and 2011. This amounts to 2.85% of all court personnel. Another is caused by institutional weaknesses, such as the courts conducting business to create income, local protectionism and departmental protectionism, the lack of a challenge system, etc.

Table 14 The Ratio of Personnel Who Violated Laws and Disciplines in All Courts (1988–2011)

| Year | Personnel who violated laws and discipline in all courts (A) | Personnel in all courts (B) | Proportion (A/B) (%) |
|------|--|-----------------------------|----------------------|
| 1988 | 401 | 214,930 | 0.18 |
| 1989 | 690 | 234,000 | 2.9 |
| 1990 | 912 | 225,000 | 4.1 |
| 1993 | 850 | 250,000 | 3.4 |
| 1994 | 1,094 | | |
| 1995 | 962 | 280,512 | 3.4 |
| 1996 | 1,051 | | |
| 1998 | 2,512 | 280,000 | 9 |
| 1999 | 1,450 | | |
| 2000 | 1,338 | | |
| 2001 | 1,080 | | |
| 2003 | 794 | 314,094 | 2.5 |
| 2004 | 461 | 294,597 | 1.6 |

(To be continued)

(Continued)

| Year | Personnel who violated laws and discipline in all courts (A) | Personnel in all courts (B) | Proportion (A/B) (%) |
|-----------------------|--|-----------------------------|----------------------|
| 2005 | 378 | 296,978 | 1.3 |
| 2006 | 292 | | |
| 2007 | 218 | 309,000 | 0.7 |
| 2008 | 712 | 309,183 | 2.3 |
| 2009 | 795 | 321,711 | 2.5 |
| 2010 | 783 | | |
| 2011 | 519 | 318,000 | 1.6 |
| Annual average number | 864.6 | 280,615 | 2.85 |

Source: *The Supreme People's Court's Working Report to the NPC* (1988–2011); *中国法律发展报告 2012* (Report on China's Legal Development 2012), Zhu Jingwen (ed.), RUC Press (Beijing), table 0–14, (2013).

B. Letters and Visits Relating to Lawsuits

Along with more litigation, China appeared at a high tide of letters and visits relating to lawsuits to courts at all levels, so that the quantity of letters and visits relating to lawsuits has outnumbered that of litigation in certain periods. To a certain extent, the quantity of letters and visits relating to lawsuits was an indicator to evaluate the courts' trials by the people.

As Fig. 4 shows, between 1986 and 2011 the total number of cases tried by courts in all instances was 133.6 million. On the other hand, the number of letters and visits relating to lawsuits was 145.1 million which outnumbered the number of cases tried by courts.²² It was necessary for people to present a doubt if the courts' decisions were just, executable, and efficient.

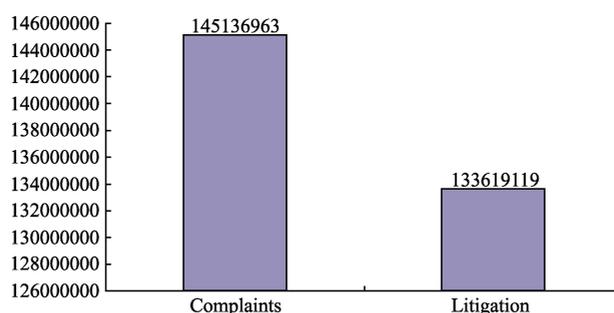


Fig. 4 A Comparison on the Number of Lawsuit-Related Complaints and Litigation (1986–2011)

Source: *The Supreme People's Court's Working Report to the NPC* (1988–2011); *中国法律发展报告 2012* (Report on China's Legal Development 2012), Zhu Jingwen (ed.), RUC Press (Beijing), table 0–14, (2013).

²² See 《中国法律年鉴》(*Law Yearbook of China*), Law Press (Beijing), (1987–2012). Calculation bases on the data above materials provide.

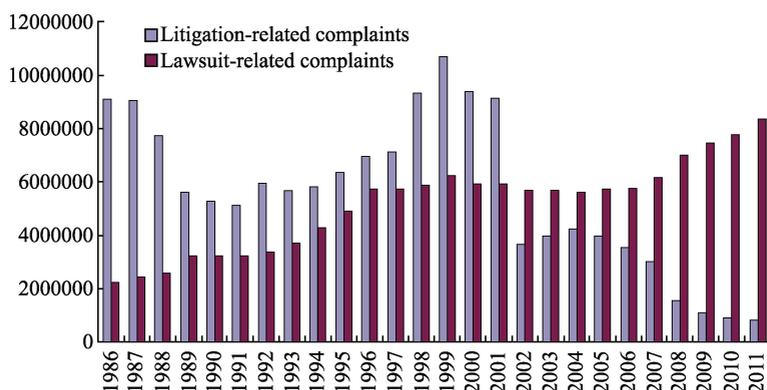


Fig. 5 Changes of the Quantities of Litigation and Lawsuit-Related Complaints. (1986–2011)

Source: 中国法律年鉴 (*Law Yearbook of China*), (1987–2012), Law Press (Beijing). The number of trials includes the first, second instance, and retrial.

C. Deputies to the NPC's Voting on the SPC and the SPP's Reports

Judicial credibility can be also evaluated in terms of deputies to the NPC's voting on the SPC and the SPP. As Table 15 shows, deputies to the NPC who voted in dissension or abstention on the SPC averaged 21.46%, and for the SPP the number was 18.64% between 2006 and 2013.

Comparing voting on the State Council and the Standing Committee of NPC's working reports, dissension and abstention on the SPC and Procuratorate was much higher than for the first two. For the State Council and the NPC, the figure was under 6%. Although the reasons for dissension and abstention among deputies to the NPC may be various, an undeniable factor is whether judicial decisions are just and executable, and if the courts and procuratorates are seen to be credible.

Table 15 Ratios of NPC Deputies' Dissenting and Abstention Votes to the Supreme People's Court (SPC), the Supreme People's Procuratorate (SPP), the Standing Committee of NPC (NPCSC) and State Council (SC)'s Report on Work (2006–2013)

| Working Report | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Average |
|----------------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| SPC | 21.69% | 16.80% | 22.00% | 24.66% | 20.90% | 21.90% | 19.10% | 24.60% | 21.46% |
| SPP | 18.11% | 16.30% | 22.42% | 23.18% | 19.20% | 19.60% | 17.70% | 20.60% | 18.64% |
| SC | 1.00% | 0.90% | 1.50% | 2.22% | 2.10% | 2.90% | 4.90% | 4.90% | 2.55% |
| NPCSC | 3.64% | 2.10% | 2.73% | 5.78% | 2.50% | 4.10% | 4.20% | 7.10% | 4.02% |

Source: Live of the close of The 10th NPC session 4th, http://www.npc.gov.cn/npc/oldarchives/dbdh/dbdh/xwzb/index.jsp@lmid=dh&pdmc=dh&dm=dh09&hyid=011004_____htm; Live of The 10th NPC session 5th times, <http://news.sohu.com/20090313/n262773646.shtml>; Live of NPC and CPPCC in 2008, <http://www.xinhuanet.com/2008lh/zb/0318a/wz.htm>; NPC voted pass the report on work of SPC, <http://news.163.com/09/0313/12/549NACL1000120GR.html>; Xinhua Wet "The 11th NPC session 3rd times passed the report on work of government", <http://news.sina.com.cn/c/2010-03-14/140719861809.shtml>; Renmin Wet "memoirs of The 11th NPC session 4th times", <http://money.163.com/11/0314/09/6V3K6OGG00254LJE.html>; Close of The 11th NPC session 5th times, <http://news.sohu.com/20120314/n337696351.shtml>; Live of the close of The 12th NPC session 1st time, <http://www.dzwww.com/2013/qglh/lhzbj/rdbmh/>; (Data are collected and organized from the materials above).

CONCLUSION

In conclusion, since the reform and opening up, the legal profession has realized significant progress. Regardless of the quantity or the quality of the legal profession, it has stepped into a new phase, and then adjusted itself to increasing and complicated conflicts. However, there were many problems that have been exposed during the development of the legal profession. These problems need to be treated and resolved seriously.

Firstly, the development of legal profession in the country is extremely imbalanced in many aspects. Most of legal workers are in major cities and areas with booming economies, and there is a huge gap in lawyers' income and numbers. The problems of developing a suitable form of dispute resolution and of legal workers needed to improve the legal service in countryside and poor areas should draw major attention.

Secondly, during the development of the legal profession, more attention should be paid to the integrated layout of dispute resolution of our country. When the state is developing judges, procurators and lawyers, other legal workers be not be marginalized. Different legal professions should have different functions and serve in various areas. A complementary and cooperative relationship should be built up among various legal workers.

Thirdly, judicial independence, judicial accountability, and judicial supervision are three mutually related and interdependent aspects, and a proper relationship between them ensures judicial justice. In order to guarantee the independence of courts and procuratorates, and to prevent the judiciary from any interference from administrative organs, social groups, and individuals, judicial independence should become a constitutional principle; what is more, this principle should be carried out on the internal aspects of the judiciary and its relations with Party committees, People's Congress, and government at the same level. On the other hand, judicial independence should be carried out along with judicial accountability, which means the judiciary should be subjected to legal sanction if it violates the laws. Without judicial independence, there is no place for judicial justice; without judicial accountability and supervision, judicial independence would turn the judiciary into an arbitrary power, that could threaten judicial credibility.

Fourthly, the same amount of attention should be paid to judicial corruption as it is paid to the legal profession's development on quantity and quality. From the number of lawsuit-relating petitions and votes of NPC representatives to the SPC and the SPP, the seriousness of this problem can be noted, and responding to it has become a crucial challenge to the reputation of the legal profession and to judicial credibility in China. In the initial phase of the reform and opening up, Deng Xiaoping required that the legal workers of the new era should learn and understand the law, and, on the other hand, enforce the law with good personal morality. After 30 years of development, legal

workers have realized a massive elevation of professional standards, but there are many problems involving moral standards. In the future, professional morality should be put on a more central position in the development of the legal profession, which requires a strengthened professional discipline education, supervisions from orders of the Party, government and laws and a sound professional self-monitoring and disciplining mechanism. With these measures, legal workers and the legal profession can develop in a healthier environment.