



RESEARCH PAPER

Reformation of the Contemporary Chinese Judicial System

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ABSTRACT

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Judiciary is an important organ of the Chinese Government along with other organs of the Government. Chinese Judicial System has undergone various phases of reforms in order to fulfil local demands and be in line with international criteria. Various local as well as international actors have been influencing the process of reformation in Chinese Judicial System. Since the launch of the judicial reform era in China, keeping in view the international judicial standards, the Chinese Government and the Supreme People's Court have been taking profound steps to make the judicial process efficient, open and transparent in order to safeguard the people's rights to know and to participate. Official reports of the government and the people's courts indicate that incredible achievements have been made making the judicial system open and transparent. Reformation in the judiciary has enabled people to supervise the judicial activities, enhanced judicial legitimacy and helped the courts to gain public confidence. Paper in has tries to unfold different phases of reforms occurred in Judicial System of China in order to understand the developmental path of China's Current Judicial System.

Introduction

Judiciary is an important organ of the Chinese Government. Judicial System has played a significant role in the legal, social and economic development of the country (Allen, Franklin, Qian & Qian, 2005). Further, it has been an important actor in transforming China from planned economy to market economy (Clarke et al., 2006). Chinese judicial system has undergone various periods of reforms, resulting in change of the old and traditional judicial system to one of the efficient judicial systems in the world. Judicial Reforms in China have been guided by the public's demand for the transparent judicial system, international commitments of China and the party's priority to undertake judicial reforms. Transformation of planned Chinese economy to market economy also required for the extensive reformation of judicial system.

Although, the period of reformation can be traced back from the emergence of People's Republic of China in 1949, but the judicial reforms were boosted up from opening up period of China to the outer world in 1978. The move entered into a new era

when the rule of law provision was incorporated into the China's Constitution in 1999 ("Amendment to the Constitution of the People's Republic of China(1999) - China.org.cn", n.d.) From 1999 to 2018 four extensive five reform plans of People's Courts have been carried out. The 1st four Five-Year Court reform plans from 1999 –2003 (Walker, 2016). 2nd from 2004 – 2008 ("Second Five-Year Reform Program for the People's Courts (2004-2008) (CECC Partial Translation) | Congressional-Executive Commission on China", n.d.), 3rd from 2009 – 2013 ("Notice of the Supreme People's Court on Issuing the Third Five-Year Reform Outline for the People's Courts (2009-2013)", n.d.), and 4th From 2014 – 2018 (Monitor, n.d.) have made significant developments in the Chinese Judicial System changing it from the rigid and strict system to more transparent and efficient judicial system. As a result of recent reforms, the dimension of reformation has been entered into the informatization of people's courts which have given birth to the technological courts. Chinese Government, the Communist Party and the Supreme People's Court have imputed significant efforts during the reform process. Although reforms in the judicial sectors in China started later than the reforms in the other areas such as the political system and economy sector, but the pace of reforms in the judicial sector has been rapid as compared to other areas (Jiang, 2010). This paper encircles the reformation process of people's courts in historical context.

Striving for Modern Judiciary in China (Before 1978)

The judicial organ is an important and basic component of socialist legal system of China. It contains its own characteristics which are unique and different from other legal systems of the world. The basic framework of Chinese judicial system has been derived from Soviet model where people's courts handle the adjudication and people's procuratorates supervise the implementation of Law. Although the basic framework of the legal system has not been changed over the past decades, but as the result of China's efforts to foster rule of law in order to improve the Country's image in the world and bring the legal system in line with the international community, extensive reforms have been made in laws, procedures, and infrastructure resulting in the substantial developments in the judicial system. Public view about the Chinese court system has changed gradually as a result of procedural fairness (Burke, Kevin and Leben, 2007), developed during past years which have ultimately improved the image of Chinese judiciary among local as well as foreign communities.

The significant attempt towards the reformation of modern Chinese judicial institution is traced from the reforms taken in late Qing dynasty (Jones William, 1994) which was suspended later on by the Hsin-hai Revolution (Xinhai Revolution) and the most of the reformatory measures remained unimplemented (Xu & Xiaoqun, 2008). During the period of Republic of China before 1949, government focused less on judicial innovation and continued the old heritage of judicial reforms (Lin & Chris, 2003). Judicial institution made limited achievements mainly due to war and social disturbance in China during the period of the government of Kuomintang (KMT) party (Tiffert & Glenn, 2011). Upon the formation of the People's Republic of China in 1949, there started a new era of reformation in China which was extended to each and every institution of the government (MacFarquhar, Roderick and Fairbank, 1987). Significant changes were made in Legislature, Government and the Judicial System as well. Moreover, in 1951 the Supreme People's Court of China and 2547 Local People's Courts were established to carry out judicial work in all over the country. These courts contained the civil, criminal and administrative divisions and secretarial offices (Chunying, 2004).

In the initial days of the PRC, the courts of China were called the people's government. In 1951, the Provisional Regulation on the Organization of the Courts changed the name of the courts to the Peoples' Courts. The judicial departments at county level, intermediate level and provincial level were named as County level people's courts, the Intermediate Level People's courts and the Higher Level People's Courts respectively. The judicial reformation process started in PRC, was aimed at eliminating the influence of the previous government (KMT) over judicial institution by re-organising the judicial institution and the judges (Cohen & Alan, 2003). During the initial reformation process of judicature, almost 5000 judicial persons were detached from the judiciary as they were considered to be specialized in old laws promulgated during KMT's period and thus be incapable to deliver judicial services as per the new laws formed during the start of the PRC government (Keyuan, 1999). A new team having the legal expertise was selected from the different departments of the government to work in the courts (Qianfan, 2003). Around 25000 new judges were recruited (Xin, 2004). The main work of the courts was focused on criminal matters, civil matters such as family disputes and small debts while other civil litigation was not frequent (Xin, 2004). The new government also pushed the judges and other court officials to alienate from the old perceptions and laws and to work under the new leadership (Ling, 2016). This period of reformation was called the judicial reform movement.

In 1954, provisions of the newly promulgated Constitution of the PRC and Organic law of the People's Courts directed that except the people 'courts, no other groups, organizations or individuals would exercise the judicial power as judicial power solely belonged to the courts. The people's courts were declared to function independently, according to law and without any external intervention. The impartial trial system, collegiate panel and defence system were also established under the system at that time for the protection of rights of the litigants (Chunying, 2007). Unfortunately, system could not be implemented fully in practice. Further, the Cultural Revolution (1966-1976) did not impart positive developments on the legal and judicial system of China (Stanley, 1991). The judicial system that had been instituted in 1950s, got affected during Cultural Revolution. In most of the areas, the courts, procuratorates and public security related organs were put under the control of revolutionary committees while most of the judicial officials were sent for the labour work to the countryside. Special groups (zhuan'an xiao zu) were formed to try and sentence the individuals (Xin, 2004). This era ended up with the death of Chairman Mao in 1976.

Reconstruction of Chinese Judiciary (1978-1997)

The year 1978, marked a turning point in the history of China. The Communist Party of China, in its third session of the Eleventh Communist Party's Congress, emphasized to focus on the economic development of the county. This impacted the judicial system a lot, since then judicial system of China has been undergoing a process of reformation which has already marked great achievements in the judicial system along with the transformation of rigid socialist country towards a more open and diverse society (Yuwen, 2016). Legal and Judicial System of China have also made significant contributions in the economic transformation of modern China.

Rebuilding of Infrastructure of Judiciary (1978- Mid 80')

The rebuilding of institutions started in 1978 under the leadership of Den Xiaoping, after the changes made during the Cultural Revolution, led to disastrous results, were questioned (Tang, 1999). The new leadership acknowledged that it was important to rule the country in accordance with law in order to reclaim the legal order in the country (Deng, 1993). Excessive efforts were invested to rebuild the Judiciary and legal procedures (Stanley, 1996). First of all, the reforms emphasized to govern the country according to the law, to sentence and punish criminals in accordance with the provisions of newly promulgated criminal law (State Constitution, 1978). New laws and regulations were issued to develop the procedural framework for Judicature (Cai, 1999). Organic Law of the People's Courts and Organic Law of the People's Procuratorates were promulgated for the work of Chinese People's Courts and People's Procuratorates respectively.

Thus, legal institutions i.e. the Peoples' Courts, the People's Procuratorates, lawyers' associations and judicial administrative departments were rebuilt. The judiciary moved towards a more autonomous institution as compared to the previous regimes. Moreover, both the Constitutional Law and the Civil Procedure Law specified for the independent adjudication by the judiciary and intervention by the executive branches, citizens and social organizations was required to be discouraged (Yayun, 2004). Thus, emphasize during 1980s was to establish an impartial and independent judiciary keeping in view the lessons learned from Cultural Revolution. Aggressive reform policies were initiated to improve the image of the judiciary which gave birth to the modern People's Courts System in China (Goldman, Merle and MacFarquhar, 1999).

Development of Rules for Proceedings in Trials (From mid-80s to mid-90s)

As a vital part of reforms for the economic development of China, the judiciary was required to establish legal frameworks to run with the pace of growing economic development and to develop effective mechanisms for the settlement of disputes arising out of the fast-growing economy (Barry, 1996). With the emergence of private sectors during the development process, courts established new tribunals to tackle with the cases of economic nature, consequently, economic tribunal for the disputes of economic nature and administrative tribunal to hear the disputes among the companies or the individuals and the government were developed (Burns & John, 1999). The culture of open trial proceedings started taking roots in the judicial system. The new Civil Procedure Law (Civil Procedure Law of the People's Republic of China 1999) adopted Rules of Evidence to safeguard the litigants' rights related to the evidence.

Furthermore, the adoption of Judges Law in 1995 was also result of reform series, it made noteworthy step to tackle with the problem of professional identity of the judges ("中国人大网", n.d.). The courts at that time started separating their functions from the executive departments of the courts and building up their professional competence and degree of autonomy under the leadership of the CCP in-order to be on track with China's national reform process (Randall, 2009).

Judicial Reforms (1999-2018)

In China the term “rule of law” has been promoted and advocated by the CCP’s leadership (Yingyi, 2000), resultantly, the term “rule of law” was incorporated first time in the Constitution of the PRC with constitutional amendment in 1999 stating “to govern the country according to law” and to “establish the socialist country under the rule of law”. This is regarded as a significant step in Chinese legal history. By incorporating the rule of law provision into the Constitution, the CCP showed its commitment to foster the rule of law in the country. This constitutional amendment positively influenced the judicial reformation process. In 1999, the Supreme People’s Court, with the support of Chinese Communist Party initiated the large scale comprehensive judicial reformation process. The First 5-Year Plan of Judicial Reform (1999 – 2003) was launched in 1999, and further the Second 5-Year Plan for Judicial Reform from year 2004 – 2008 (Li, 2017), the Third 5-Year Plan for Judicial Reform was 2009 – 2013 and the Fourth 5-Year Plan for Judicial Reform (2014 - 2018) were issued and implemented consecutively. These reform plans have made considerable achievements in the development of openness in the Chinese Judicial System. Significant changes have been occurred turning the Chinese judiciary into one of the professional, efficient and modern judicial systems in the world. There has been key expansion in the function of judiciary and court network has been expended to railway courts, forest courts, IP courts, Internet courts etc. Moreover, International Commercial Courts are also being developed in order to settle disputes arising out of One Belt One Road initiative (“China establishes international commercial courts to handle Belt and Road Initiative disputes”, 2018).

The most significant development over the previous forty years of reform process has resulted in the increased judicial fairness, efficiency, democracy and most of the all transparency and openness in the judicial system, promoted by the systematic phases of judicial reforms. Next part of this paper encircles the developmental path of judicial reforms under four Five-Year plans for reformation of judiciary from 1999 to 2018.

First Five-Year Reform Plan for the People’s Courts (1999-2004)

The first Five-Year Reformation Plan (1999-2003) proposed 39 measures to be implemented during the five years and exhibited some reforms with new characteristics (SPC’s Notice 1999). The first reform period raised the qualifications of the SPC, HPC and IPC judges. The plan recommended reforming the procedures for the selection of new judges. The new unified National Judicial Examination System was initiated in 2001. Entrance qualifications for lawyers and procurators were strengthened which raised the professionalism of legal community. Further, in 2002 provisions were issued by the SPC to authorize the collegial panel in the people’s courts. It increased the capacity of the judges as the member of collegial panel and provided immunity from the external influence.

During the first Five-Year reform plan, many reform initiatives were successfully implemented addressing the problems in the judicial system. Rebuilding of judicial credibility was emphasized. The period restricted the internal arbitrary powers and gave more authority to the judges to decide cases independent of any influence. Judicial personnel were increased (Jiang, 2010).

Courts also gained more financial resources and the authority and used those to manage better facilities in the courts and reconstruction of the court premises. Cross-examination was introduced within the court proceedings. Enforcement offices were established at all levels of the courts. Single judge trial system was introduced for raising the efficiency of judges. The SPC started delivering interpretations of civil, criminal, and administrative litigation procedures. In the 16th National Congress of the CCP in 2002, the CCP's leadership committed to further deepen the judicial reforms (Party Congress Report, n.d). The report pledged to promote the reform of the judiciary. Further, the CCP set up in 2003 a Reform Leading Group for Judicial Institution to develop and implement plans for judicial reformation which was a significant step regarding the implementation of judicial reforms (Ling, 2016). As a whole, it was a good start of the series of massive reform plans.

The Second Five-Year Reform Plan for People's Courts (2004-2008)

To carry out the work under the comprehensive plan of the central government for judicial reforms, the SPC issued detailed second Five-Year Court Reform Plan in 2005. The said Second Five-Year Reform Plan (2004-2008) delivered by the Supreme People's Court further emphasized on extending the judicial reforms to carry out the initiatives, realised as the result of first five year court reform plan. The Second reform plan targeted specific areas for reformation. The second five year court reform plan directed fifty measures for reforms and identified main eight areas for reforms and research including the procedure for litigation, trial mechanisms and organizations, adjuration guidance and uniform application of law in country, judicial personnel's management, administration of judicial work and political work, enforcement measures and supervisions of the judicial work.

The first two five year courts' reform plans were issued and implemented by the Supreme People's Court under the leadership of the SPC's president Xiao Yang. Targeted efforts were made by Xiao Yang to build the judicial infrastructure and strengthen the efficiency and credibility of judicial institution. The regime shifted from the substantive justice towards procedural justice and fairness, putting the judicial reform process on the way of openness and transparency. Tremendous changes made during the first two reform plans, delivered sound results (Meng, 2009)

It is evident that the reform plans were supported by the CCP of China. The democratization of the politics allowed the reform of the judicial system of China. The second reform plan brought more legitimacy to the courts and judges turning them into more responsive, effective and accountable. In 2000s there was seen a tremendous increase in the number of cases before the judiciary due to the economic development and emergence of market economy (Pei, 2009). The judicial capacity of the courts was strengthened through the recruitment of large number of court personnel during the first two reform plans. There were only 59,000 court officials in 1979 nationwide which had increased to 300,000 including 190,000 judges in 2007 (Lanjie and Mingjian, 1993). During the second five year court reform period the SPC, through effective planning, succeeded to overcome the serious shortcomings prevailing at that time. Reform in the procedures of litigation, both the design and the function remained the most effective area of reforms. Achievements were made through the legislative progress and effective practical implementation of the legislative acts and policies by the SPC.

The Third Five-Year Reform Plan for People's Courts (2009-2013)

The 17th Congress of the Chinese Communist Party, in 2007 put forward a broad plan to reform the judicial system further. In his report before the seventeenth congress, President Hu Jintao, while considering the successful developments made in the previous reform plans, acknowledged the existence of problems in the judicial system and disclosed the plan to further deepen the judicial reforms (Jintao, n.d). In 2009 the third Five-Year Reform Plan (2009-2013) was unveiled by the SPC which seemed to move forward the agendas set out in the previous five year court reform plan and to further deepen the judicial reforms.

During the third reform plan, most of the policies about judicial reforms were made by the Central Political and Legal Committee in cooperation with the Supreme People's Court (Xuan, 2015). The judges were required to consider the "*sange zhishang* (Three Supremes)" in the course of decision making in the judicial process. The courts were directed to ensure the "cause of the Party, interests of the public and the Constitution" (Cohen, 2008).

The Central Political and Legal Committee also demanded the courts to enhance the professional competence in resolving the disputes and required the use of mediation for the effective resolution of disputes (Jieren, 2011). The significant measures were taken by the people's courts to make convenience in case registration, opening up of the trial process, adjudication matters, court hearings, enforcement and auction mechanisms. Moreover, the people's courts also committed to enhance the channels for participation of public in the judicial activities and to enhance the cooperation and collaboration with the other governmental agencies for the effectiveness of judicial system.

At the end of the third Five-Year reform plan, *the 18th Central Committee of the Communist Party of China in 2013* adopted "*Decision on Some Major Issues Concerning Comprehensively Deepening the Reform*" which put forward the goal to deepen the reforms in order to govern the country according to the rule of Law (李潇, 2014).

In order to promote the rule of law in the country the Decision further focused on the reform of judicial system. More attention was given to build impartial, independent and professional judiciary. Further the decision emphasised to improve the mechanism for the use of judicial power and to reform the judicial committee system. Moreover, the improvement in the transparency, people's assessor system and channels for the people to participate in the judicial system were also taken into consideration.

Additionally, the 2013 decision also aimed to deepen judicial reform and improve judicial system in-order to protect and safeguard the legitimate rights and interests of citizens and legal persons in accordance with the law.

Fourth Five Year Reform Plan for People's Courts (2014-2018)

In 2014, significant developments were taken place with regard to judicial reform process. In 2014 another land mark step was taken by the CCP during the *18th Central Committee of the CCP* in the form of "*Decision concerning Some Major Questions in Comprehensively Governing the Country According to the law Forward*" ("CCP Central

Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the law Forward", 2014). In the Decision, the ruling party of China affirmed its commitment to deepen rule of law reforms to shape a Socialist Rule of Law with Chinese Characteristics.

The 2014 Decision under the leadership of the Chinese president Xi Jinping, focused to bring reforms in all the sectors to foster rule of law and emphasised on enhancing Judicial fairness, respect for law and realization of scientific legislation. The Decision put forward the need to guarantee judicial fairness and raise judicial credibility. The Decision stressed to;

- (1) Perfect the system to ensure judicial authority and procuratorial authority are exercised fairly and independently, according to the law;
- (2) Optimize the allocation of judicial duties;
- (3) Move straitening the judiciary forward;
- (4) Guarantee the popular masses' participation in the judiciary;
- (5) Strengthen judicial protection of the human rights;
- (6) Strengthen supervision of the judicial activities"

The 2014 Decision was an important step in Chinese history which comprehensively dealt with the rule of law reforms and the judicial openness, judicial fairness, and public participation in the judicial process and transparency of the judicial system were greatly focused to achieve the socialist rule of law with the Chinese Characteristics.

To implement the government reforms, the Central Leading Group for Comprehensively Deepening Reforms was constituted. This said leading group was established under the leadership of Xi Jinping to design and implement overall reform plans for the central government. For implementing the comprehensive reforms in the judicial sector, the SPC prepared detailed plan for judicial reforms in the light of the 2013 and 2014 Decisions of the CCP, the forth reform plan for people's courts (2014-2018) was issued in 2015 ("最高人民法院关于全面", 2015). The latest plan was more comprehensive and detailed in nature which led towards unprecedented changes in Chinese judicial system. The plan focused on the eight key areas of reforms which were identified as to deepen reforms in the courts personnel management, explore separating administrative regions and courts' jurisdictions, strengthen adjudication work mechanisms, increase the force of judicial safeguard of the human rights, further deepen judicial transparency, clarify the powers and status of the four levels of the courts, improve systems of the judicial administration, and promote reforms on the petitioning related to litigation. Moreover, in the Fourth Five Year Court Reform Plan, the measures were been taken to ensure the independence and fairness in the work of the courts after the court resources were managed at the provincial level.

Specific Measures Focused under Forth Five Year court Reform Plan:

1. Establishments of selection committees at the provincial levels and the strengthening of the system to avoid vertical management from within the system.
2. Establishment of the system to shrink the space for seeking instruction in a case, by improving the trial at higher level of courts and strengthening the system of Guiding Cases.
3. Establishment of more scientific trial mechanisms using the information technologies.
4. Standardization of the requirements for the superior courts related to remand of the case requiring for the new trial, strengthening the appellate supervision and correction functions.
5. Reformation in the performance evaluation mechanisms.
6. Establishment of 3 platforms for judicial openness i.e trial process, adjudication documents and the enforcement related information.

During the fourth reform plan, judicial personal management was strengthened through establishment of judges' selection committees at provincial levels, improvements in the appointment systems for the judges, and establishment of quota system for number of judges and the proper management of court personnel and employees.

Jurisdiction of courts has also been reformed through the establishment of new specialized courts, such as Intellectual Property Courts, Forestry and Agricultural courts etc.

Conclusion

From the scenario of the judicial reforms, three main actors can be identified which have influenced the judicial reformation process which are categorized as the Chinese Communist Party, the people and the international community, whereas, the SPC has been leading the reform process. The Chinese Communist Party has also been playing a key role in initiating and undertaking judicial reforms.

It is also important to mention here that whenever party issued major decisions about reforms, the reforms in the judicial sector went on fast track. Before the beginning of the era of five year court reform plans, in the 15th party congress in 1997 the "rule of law" was recognized in the Party's Decision consequently rule of law provision was adopted in the Constitution in 1999 and substantive reforms were made under 1st court reform plan. Similarly, significant developments have been made after the 16th, 17th, 18th and 19th Decisions of the party. The reforms which are taken by the courts with the support of ruling party always produce fruitful results. Chinese courts have also been undertaking reforms with the support of Chinese Communist Party, even in many occasions reforms have been proposed by the party.

The SPC has been leading the implementation of judicial reform measures proposed by the party or the government from 1999-2018. The most of the reform measures have been successfully implemented by the people's courts with the great advantage of having the support of the party for the reform implementation measures, which have delivered outstanding output and Chinese judiciary is now regarded as one of the modern judiciaries in the world. The judicial reforms have been widely taken to meet the requirements of market economy system, increasing demands of the public for effective and transparent judicial system, need for the efficient disputes resolution system and to satisfy the demands of international community. The structural as well as procedural reforms have been undertaken to develop an impartial, transparent and efficient judicial system which can satisfy the demands of all the stakeholders' i.e. the government, party, public and the international community.

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