

ORIGINAL CONTRIBUTION

Reasons and Challenges of China's Judicial Reforms

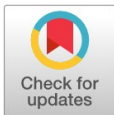
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Abstract— With the advancement of society, Chinese authorities have been undertaking mega reforms in judicial sector. As a result of judicial reformation, current state of Chinese Judiciary is one of the technologically advanced systems in the world, which is efficiently dispensing justice to the largest population in the globe. This research investigates the reasons behind Chinese Judicial reforms. Research demonstrates that although reforms in the judicial sector began later than the reforms in the other areas such as the political system and economy sectors, the pace of reforms in the judicial sector has been rapid as compared to other areas. 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 the Chinese economy from a planned economy to a market economy also required for the extensive reformation of the judicial system. Significantly, the Chinese determination to promote socialist rule of law with Chinese characteristics has further impacted the judicial reformation process. Judicial openness has become an essential condition for the promotion of the rule of law in China. Research in hand tries to figure out the reasons behind judicial reforms in China. Further, it has outlined the challenges on the way judicial reforms. Existing literature and official reports about judicial reforms have been consulted and analyzed to reach towards a conclusion. Research shows that various national as well as international actors influenced the reform process. This study gives an impartial view point on the topic which will help the readers to understand Chinese Judicial System.

Index Terms— Judicial Reforms, Reasons, Challenges, China, People's Courts, Communist Party

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Introduction

Since the start of reform era in China, many areas have been focused for reforms. The most significant development is the shift of China's planned economy towards market economy which has improved the living standards of the Chinese citizens (Naughton, 1996). Besides this, a large focus has been for opening up of China to the world (Wright, 2018). Although the reforms in judicial sector initiated relatively later than other areas of reforms in China but until now meaningful developments have been made in judicial sector and extensive reform measures have already been implemented. In the recent years, Chinese judicial openness reforms have been discussed widely by Chinese scholars, legal practitioners and international community.

Reasons Behind Chinese Judicial Reforms

While discussing about Chinese judicial reforms, it is necessary to look into the reasons behind huge reforms in judicial sector undertaken by the Chinese authorities. Various local as well as international factors have contributed for the judicial reforms in China, i.e., the devel-

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opment of market economy, public demands, need for the effective dispute resolution and China's international commitments. Reasons are discussed in detail as under:

Development of Market Economy

The development of Chinese economy from planned economy to market economy placed the changed requirements for redressal of problems by the judicial system (Jiang, 2008). The shift changed the economic relations of the citizens making them more diverse and complex (Li et al., 2013). In the changing circumstances of economic relations, it became a necessary condition to have uniform legal system to regulate and resolve disputes arising out of the complex nature of relationships. Only an independent, uniform, fair and effective judicial system could achieve these goals. The legislature can enact laws but ultimately it is the duty of judiciary to enforce the standards made by the legislature. The judicial system designed for the planned economy in China was unable to meet the growing needs of the Chinese society (Alamanda et al., 2019; Zhao, 2010). Therefore, an impartial and fair judicial system to protect individual rights as well as to fight against the growing economic crimes became the dire need of Chinese society and ultimately authorities had to undertake reform measures in the judicial sector. It can be said that the development of market economy is the most vital reason for the huge reforms in the Chinese judiciary during past forty years.

Democratization of Chinese Politics

Developments in the political system of China allowed and encouraged the judicial reformation process especially after the end of Cultural Revolution in 1978, the new leadership of China under Deng XiaoPing forwarded the politics to step out from the influence of Cultural Revolution and to stop the taking of arbitrary decisions. The Communist Party of China emphasized on improving and strengthening Piquet (2013) the governance system and eventually the people's republic of China started to open it up to the outer world under the "Open Door Policy" (Guo, 2015). Moreover the era of class struggle ended up and under the new governance strategy, China moved economic, legal, cultural and social development in reasonable democratic manner (Wright, 2018). This situation of development in various sectors influenced the national authorities to undertake judicial reforms as rule of law and the democratization pre-require the fairness of judicial system, thus, the reforms of the judicial system were initiated as a result of democratization of the Chinese politics after 1978.

Need for an Effective System for Resolution of Disputes

Another reason for the judicial reform was the need of a sound, fair and publically legitimate dispute resolution system to resolve disputes arising out of the diversification of the Chinese society and the changing nature of people's economic relations. Relationships of the individuals, groups and companies have changed a lot since after the beginning of economic reform era and consequently those have been turned into more complex and diversified ones. The complexity and diversification of relationships made it essential for China to reform the judicial system as per the need of society, requiring refined judicial and legal environment to protect the people's rights. Therefore, judicial reforms were begun to replace the out-dated Chinese judicial system.

Further, the rapid increase in the legal disputes after 1978 required the government to upgrade the judicial system to resolve the cases efficiently and in a timely manner. Cases filed before the courts in China were approximately 420,000 in 1978 which number has increased to over five million per year (Alexander, 2002). Moreover, changing nature of legal disputes have given birth to reforms in judicial system to widen its circle, and the court system in China now includes many types of courts i.e., Maritime courts, intellectual property courts, military courts, cyber courts etc., which was limited only to criminal, civil and family matters before 1978. The complexity of judicial cases is far greater than it was forty three years ago (Zhang et al., 2018).

Public Demands for Justice

Development of society and increasing awareness regarding rights in the public also put continuous impetus to fairness of the justice system (Smith & Bai, 2011). In addition to demand of the public for fair judicial system there is always a deep human desire to equality before law which has added strength to demands for judicial system reforms. Merely the availability of fine Constitution and other necessary laws cannot achieve the goals of fair justice, but core is the right implementation of the law and practical performance in the field of justice. Only an impartial and fair judicial system can help in achieving the justice in the society. Pre-reform Chinese judicial system became incapable to deliver as per the needs of the society, therefore, structural and procedural reforms were required to make it capable of delivering justice in true sense (Chan, 2008; Serah et al., 2020).

International Influence on Chinese Judicial Reforms

The world has become a global village and one country cannot isolate itself from the outer world. Further, in order to retain good relations with the international community, it is necessary for a country to update its law, regulations and implementation procedures in line with the internationally required standards. Although, legal system of every country is different from each other but all share some common characteristics, which are required to be followed generally by all the countries.

Harmonization of laws and judicial practices globally has also influenced China to conduct reforms in the legal and judicial sector. China's interaction with the outer world after 1978 and the increasing role of China in global scenario, have led China to gain a position as one of the most important economic players in the world (Beeson, 2018).

Having increased relationships with the international community required China to raise its judicial standards in order to hold and promote long-term economic, social and diplomatic relationships. International community had some reservations against its pre-reformed judicial system (Breslin, 2018). The nature of relationships with the international community put an important impetus for China to undertake reforms in the judicial system for bringing it in accordance with the international standards where the legal norms could be observed. In order to gain the confidence of international community, China took initiative to foster rule of law through judicial reform (Lee, 2007). Hence, we can say that international factors also contributed towards China's judicial reform.

The WTO Rules and Standards

Predictability and the state of legality promote a more liberal economic environment based on market economy (Alexander, 2002). Goal of engaging with global markets, membership status in the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) have influenced and continue to influence the legal system reforms in the countries around the world (Wang, 2019). WTO regime has forced countries to undertake substantial reforms in the legal systems (Barton et al., 2008), whereby it requires the countries to amend their existing laws and develop new laws and regulations as well to comply with the on-going economic regime in the world (Liu, 2019). WTO has played an important role in the development of judicial systems also (Slaughter, 1999).

The WTO puts some basic requirements on its member countries with respect to transparency and fairness in their rules, regulations and procedures. The WTO rules generally require smooth flow of information in this aspect. The general requirements for all members have been laid down in GATT Article X and members have been required to comply with those conditions. This article sets forth a basic obligation to disseminate laws, regulations, judicial decisions and administrative rulings having general application (Karttunen, 2016). The specific requirements for transparency under WTO regime are different for different countries, e.g., requirements with regard to Access to Information (ATI) for China have been laid down in its Protocol on Accession to WTO. These contain *inter alia* conditions similar to GATT Article X to publish all "laws, regulations or other measures... pertaining to or affecting trade in goods, services, and TRIPS [Trade-related Intellectual Property Issues]..." (Voon, 2009). Moreover, an additional "enquiry point" is required "where, upon request of any individual, enterprise or WTO Member all information relating to the measures required to be published... may be obtained" (Lee, 2007), whereas, such inquiry points are generally not required under GATT 1994 but sometimes such inquiry can be required under TBTs or SPSs (Hinton et al., 2014).

Here the wording is very important i.e., "all information relating to..." which can be interpreted as not only the information related to the measures but also the information of background as how and why the measures came into existence and should be made public upon the request made by an individual person, the enterprise or a WTO member. This obligation requires China to provide access of government information not only to the Chinese citizens but also to foreign persons, companies and the governments also.

China's Protocol of Accession is binding upon China along with the WTO rules and regulations to fulfil minimum standards related to fairness and transparency in laws, regulations and judicial decisions. These requirements motivated China to undertake reforms in the judicial sector i.e., to open trial process, make adjudication affairs public, provide access to judicial documents, and develop open enforcement procedures in order to bring fairness and transparency in the judicial system. China's accession to the WTO required formidable challenges on the leadership to undertake reforms for the development of rule of law and as a result huge changes in laws regulations and procedure were made (Killion, 2003; Lin, 2003).

As observed by international scholars, the Chinese Legal system was not adequate for the needs of international investors in China and was not in line with the WTO standards. One commentator said, "China's economy will not mature until there is a judicial system that produces a modicum of accountability among government and party officials" (Keyuan, 2002). Therefore, China had to undertake massive reforms for entering into the WTO (Hasmath & Hsu, 2007). The United States and the other members of WTO scrutinized the application of China to the WTO as an earlier report of the WTO did confirm that the members of the WTO must develop sound legal mechanisms to implement their obligations under the agreement of WTO. Accession to the WTO represents a commitment for systematic reforms in the areas of fairness, transparency and independent judicial review (Test & Body, 2005). Moreover, China had to fix the problems linked with the transparency, openness and the intellectual property that the China's accession to the WTO underlined (Farah & Cima, 2010).

In response to WTO's judicial review requirements, the SPC delivered a number of provisions to meet the need of judicial review, such as the "Rules on Several Issues concerning Adjudication of Administrative Cases of International Trade 2002"; the "Rules on Several Issues concerning Administrative Cases of Anti-subsidy 2002"; and the "Rules on Several Issues concerning Administrative Cases of Antidumping 2002" (Ip, 2012). Legal reforms in China generally, derived from China's acceptance of the provision in the Protocol on Accession to the WTO and other WTO rules (Calkins, 1983). Article 2(A) 2 of the Protocol on Accession provides;

"China shall apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures... pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights ("TRIPS") or the control of foreign exchange (Jiang et al., 2020)."

Further, the Article 2(D) of the Protocol on Accession requires judicial review in the administration of regime under WTO. Development of an independent judicial review has been the most challenging task for Chinese leadership (Hung, 2004). Article X of the GATT also requires for the Judicial review in these wordings "Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters" (Koul, 2018). Article X(1) of the GATT requires the publication of laws and judicial decisions (Ala'i, 2015). Moreover, the Article VI of the GATT requires;

"Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question"(PS, 2016).

Consequently, China reviewed legislation, revised and issued new laws and regulations during its Journey towards the WTO. Legal reforms in this regard fundamentally focused on new rules and regulations for the changing economic needs and as per international commitments in order to build the positive image of China in the world (Li & Wang, 2021). As interim measures, in order to build a base for the handling of WTO related cases, China reviewed 2500 pieces of legislation, amended 325 pieces of legislation and repealed 830 pieces of legislation and further enacted 118 pieces of legislation in compliance with the WTO standards, by the end of 2004 (Sun et al., 2022). To improve the quality of regulations and bring the uniformity in the local legislations, China required the provincial governments to submit their legislation before the state council. Consequently 2026 pieces of local legislations had been submitted to the State council by the end of 2003 (He, 2018). Moreover, the body of judicial interpretations was also improved. The SPC re-examined all previous interpretations and related documents and formulated around 200 new judicial interpretations from 1998 to 2003 (Zamir & Kielsingard, 2019). For example, keeping in view the WTO standards, the SPC issued the International Trade Judicial Interpretation, the Countervailing Judicial Interpretation and Countervailing Judicial Interpretations and designated the courts of upper level to handle the administrative cases related to WTO, antidumping and countervailing etc. (Hung, 2003).

Initially as the interim measures, China commitments required the reforms by enacting some new legal provisions or laws in order to meet its baseline requirements on its protocol on Accession to the WTO (Test & Body, 2005). Here it is obvious that the WTO rules and regulations, to some extent have been influenced by the western concept of constitutionalism, rule of law and Judicial Independence concepts and do not contain view point of the countries like China which have their own context of Rule of Law and Judicial Independence (Hung, 2004).

CHALLENGES OF CHINESE JUDICIAL REFORMS

In order to effectively plan, implement and assess judicial reform measures, the challenges of the judicial system play an important role. Over the past years of Chinese judicial reforms, a number of challenges which have been tried to be figured out by the reformers are discussed below using the existing literature on judicial reforms and official reports, whitepapers etc. issued by Chinese authorities. Whitepapers issued by Chinese Communist Party have also been studied to provide an appropriate view point on the topic.

Reorganization of Judicial Organ

In the beginning of reform era, the infrastructures for the courts had to be built as those were damaged and destroyed during Cultural Revolution. Courts were poorly organized, therefore before the implementation of reforms the first thing required was to reorganise and build judicial infrastructure and raise the number of judicial personals to enhance the judicial capacity (Li, 2016).

Judicial Professionalism

During the pre-reform era, being selected arbitrarily and without having essential legal qualifications to hold the judicial functions, some of the judicial persons were unable to deliver judicial services effectively. Moreover, during the Cultural Revolution process of enhancing

higher education was also affected and there was a shortage of qualified persons at the beginning of reform era. Judicial personnel without proper legal training and having insufficient knowledge were not fit for functioning in judiciary, emerging after the start of reform era. Therefore, to develop a professional and capable judicial organ, there was need of legally trained, qualified and professional (Walker, 2016).

Development of Litigation Procedures

In the pre-reform period, litigation procedures laid were available in small number in the form of Constitution, the “Organic Law of the People’s Courts” and the “Organic Law of the People’s Procuratorates”. Procedures for litigation were used to be delivered by the supreme people’s court in documents containing judicial practices i.e 1954 “Supreme People’s Court Summary of Adjudication Experiences and Implementation Measures for the Future” (Chen, 2016). Those documents being not enacted by the legislators were not considered as authoritative although those were highly relevant to the judicial practice. Then in order to run the litigation matters smoothly, Civil Procedure Law, Criminal Procedure Law and Administrative Law etc. were enacted and implemented. Still China is in the phase of refining and establishing litigation procedures in order to bring them at optimum level for the protection of people’s litigation rights. Besides the laws and regulations, during the current reform process, the Supreme People’s court has also started practice to issue judicial interpretations and guiding cases in order to remedy the gaps left in the legislation. The practice of providing guiding cases has been welcomed by Chinese and International legal community. Guiding cases are being used frequently in all over China and thus, serving the uniform application of law and fostering rule of law in the country.

Balancing the Independence and Impartiality of the Judiciary

The Constitution of the People’s Republic of China 1982 provides the fair degree of independence to the people’s courts but at the same time, the influence of local governments, the right of people’s congress to supervise people’s courts and the influences exercised by the people’s procuratorates sometimes make it difficult to balance the independence of the court. Besides this “guanxi” is also a traditional problem in the Chinese society (Hwang, 1998). Under the previously taken reform, a large focus has been dedicated to make the procedures and process transparent in order to overcome these inherent problems in the judiciary. Only with the openness and transparent system, interference from the external factors in the judicial process can be minimized.

The Localization of Judicial Power

Judicial budget was usually approved and provided by the government at the same level. Moreover, the people’s courts are responsible to the people’s congress at the same level. People’s congress also plays key role in the selection and appointment of judges (Cooke & He, 2010). These circumstances make the people’s courts dependent on these organs which provide them space to interfere with the judicial functions. The reforms have also been focused on to minimize the influence of the government organs over judicial system. The reforms have focused on minimizing the dependency of people’s courts on the government institutions at the same level (Ginsburg & Moustafa, 2008).

Administrative Influences

Another problem which is highlighted by the Chinese and International law experts was the administrative nature of judicial work due to the influence of the system of state administration. In some cases where a case is heard by a collegiate panel and the decision of the panel is submitted before adjudication committee for approval in which the judges who did not take part in the hearing of the case and the judges of the other division (the judge of the criminal division takes part in the approval of a civil case) also decide the fate of the case (Clarke, 1991). This practice hinders the personal independence of the judge who tries the case. In such cases the judges of the higher ranks may also exercise their influence or use “guagxi” for the desired outcome of the case. Another problem is that due to underdeveloped guiding cases system, when junior judges face a difficult legal problem while deciding a case, they often seek guidance from their senior judges to resolve that problem, hence during the way of consultation or advice the senior judges can also influence on the decision of the lower court. To deal with this problem the SPC initiated the system of guiding cases in China and consequently the guiding cases are increasing steadily. With the proper development of guiding cases judges will eventually be able to seek guidance from guiding cases in spite of getting advice from the senior judges (Hwang, 1998).

Implications of the Study

China contains one of the complex legal systems in the world. Along with the Government, role of the Communist party is important in China. This research will help the readers to understand the reasons behind the massive reforms in China judicial system. Moreover, it will also facilitate in understanding the challenges faced by Chinese authorities while undertaking Judicial Reforms.

CONCLUSION

With the transformation of Chinese economy from planned economy towards market economy China witnessed a huge process of reformation in almost all the sectors of the government. Numerous Chinese as well as international factors have contributed towards Judicial reformation in China, i.e., quest for rule law, public demands, the development of market economy, need for the effective dispute resolution and China's international obligations. A number of challenges have been faced by China's during its judicial reformation journey including the reorganization of judicial sector, improving the judicial professionalism, balancing the independence and impartiality, minimising the influence of local actors on judiciary, and eliminating the administrative influence etc. Judiciary was required to ensure that its work was impartial and efficient both substantively and procedurally for delivering services in the economic development. 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. With the meaningful efforts made by the Chinese Government, Supreme People's Court and the Chinese Communist Party, present judiciary has been turned into one of the efficient, impartial and transparent judicial systems in the world which has gained the confidence of the public. Research has encircled the reasons behind judicial reforms in China and Challenges faced by authorities while undertaking reforms. Thus, it provides learning experiences for the judicial reformers in other jurisdictions.

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