

Chinese Innovative Practices for Transparency in Judicial System

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Received on: 18-10-2021

Accepted on: 25-11-2021

Abstract

Transparency and openness are necessary things in order to develop a fair judicial system that can protect people's rights and uphold rule of law in the society. Over the past forty years, China has been undertaking massive reforms in judicial sector for turning it into an open, transparent and fair system. Various online mechanisms have been developed with the deployment of information technology into the judicial system, which have effectively turned the Chinese Judicial system into transparent one. Significant improvements have been made by Chinese People's Courts for making convenience in the cases management system, development of a system of public hearings, disclosure of information related to parole and Commutation, and development of a public information system online containing documents related to cases i.e. hearing notices, orders, judgements and other necessary information. This research paper focuses on the innovative mechanisms developed by the Chinese Government and People's Courts to showcase those steps as learning experiences for other jurisdiction.

Keywords: Judiciary, Innovative, People's Courts, Openness, Transparency

INTRODUCTION

Judicial transparency and openness are keys towards maintaining rule of law in the society.¹ Although reforms in judicial sector in China started with the era of opening up of the "People's Republic of China" to the outer world that started in 1978², but extensive reforms in judicial sector initiated in 1999 with the incorporation of provisions related to "rule of law" into the Chinese Constitution.³ Till today, four 5 year court reform plans have been undertaken jointly by the Chinese Government, People's Courts and the Chinese Communist Party in order to bring fairness and transparency into the judicial system which can uphold rule of law values in true sense.⁴ Innovations based on information technology have been extensively initiated

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and widely adopted throughout the country.⁵ Said reforms have successfully converted the Chinese Judicial System into one of the world's transparent and open judicial systems.⁶ Paper in hand explores the innovative mechanisms developed by People's Courts of China which help in upholding the principles of transparency to achieve the goals of rule of law. These steps can be helpful for the judicial reformers of the other jurisdictions who are working on the reformation of their judicial systems. The innovations made by People's Republic of China have been discussed below in detail:

Convenient Case Registration Mechanism

Filing of a case is the first step in the litigation where a court connected directly with the parties concerned. Therefore, openness of information regarding filing of the cases is first and important step in the process of judicial diapositive. The people's courts have been expanding the opening up in this area from openness in the cases filing consultancy to the openness in all-around litigation service.⁷ In 2009, the Supreme People's Court first issued the "Six Provisions of the Supreme People's Court on Judicial Openness", requiring in its Paragraph 1, along with the other things, that courts should promptly inform parties, initiating litigation, about the requirements for and processes of case registration, the procedures for reducing litigation fees, and of their rights and obligations.⁸ Later that year, the highest court sent another directive requiring that "case registration and letters-and-visits windows" be improved to provide the public with more functional judicial service platforms.⁹ Accordingly, Litigation Services Centres have been established by the courts in order to provide the guidance about litigation, litigation risks, steps for filing the case and other litigation services.¹⁰

In order to fix the obstacles in the registration process under the registration system reforms, the Chinese People's Courts have specified clearly the scope of case registration and the conditions under which a case is not qualified to be registered according to the law and the courts have taken measures such as notifications of the rights, disclosure of the risks involved in the litigation and provide the litigation guidance online. For the cases which should be registered under the laws, the courts at all levels have been dealing with them and accepting maximum number of cases. Therefore, the online registration rate has exceeded 95%.¹¹ In circumstances where the criteria for filing a lawsuit are not met, the people's court must quickly notify the parties of the decision not to file the lawsuit and guide them on how to submit the lawsuit properly. The courts provide the guidance regarding the essential requirements and provide samples of the litigation documents to be filed with the lawsuits.¹²

Courts have developed the diversified and innovative mechanisms for the implementation of online case filing requirements. For example the courts in the Jiangsu province have established "integrated" litigation service online and set up one window operation for filing of cases online, online consultation of case files, service related to litigation documents online, online inquiry, submission of litigation documents online, communication with the judge online, filing petitions online and other many relevant services. Nanjing Intermediate Court has developed the "Mobile APP Online Litigation Service Platform" which allows the users to file cases online and help in service of litigation documents and provide more than 13 litigation services in order to provide open, transparent and timely services to the users.¹³

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In order to facilitate lawyers in the adjudication process, the Courts at all levels in China are gradually developing lawyer service platforms to provide professional and personalized litigation services to the lawyers' community. The "Lawyer Service platform of the Supreme People's Court" was officially inaugurated on 30 December 2015 which provides the service to the lawyers for filing cases online, consulting case files online, making inquiry about the information, electronic delivery of documents and contacting the judges.¹⁴

The lawyer service platform have made it very convenient for the lawyers to file cases online without going to the courts which helps them to save time and efforts they had been investing for filing cases personally by visiting the courts before the launch of online platform. By the end of 2016 the "Lawyer Service platform of the Supreme People's Court" entered information about 88,000 lawyers and collected 21,846 pieces containing information about law firms. The Lawyer Service platform developed by courts in shanghai also provides more than twenty services to the lawyers including online case filing, schedule and schedule for court sessions and other online inquiries. All 1393 law firms of Shanghai are currently using Lawyer service platform. By the end of 2016, the lawyer service platform received total 1.85 million views with average of 2500 views in a single day. Moreover the platform accepted 30,600 cases by the end of 2016 with a success rate of 92.4% in online filing with increase of 4.3% as compared to the previous year.¹⁵

Development of Public Hearings' System

Public hearings are an essential tool for ensuring public involvement in judicial proceedings and allowing individuals to watch how the courts operate.¹⁶ Public hearings of state compensation cases, probation cases, retrial cases, commutation and parole cases, judicial objection and enforcement opposition cases are all highly valued by people's courts at all levels.¹⁷

The courts in Gansu through bulletins, online websites, WeChat, Weibo and other effective platforms open the time, place and information of members of collegial panel of the hearing and notify the obligations, rights and other contents of the hearing to the participants. Moreover, in order to promote collaboration and participation, the People's Courts invite the members of NPC, CCP, procuratorates, arbitration administrations and other pertinent departments to contribute in the hearings.¹⁸ People's Courts in Guangdong Province conducted over 1000 public hearing in 2013 and case hearing rate in commutation cases reached 100%. Moreover, the Courts of Jilin province have created the disclosure column in openness websites which makes it accessible for the public to check all kind of hearing information and authorizes the observers to attend hearings.¹⁹

Commutation of Sentence, Parole, and Serving Sentence Outside of Prison

Public hearings are an essential tool for ensuring public involvement in judicial proceedings and allowing individuals to watch how the courts operate. Public hearings of state compensation cases, probation cases, retrial cases, commutation and parole cases, judicial objection and enforcement opposition cases are all highly valued by people's courts at all levels.²⁰

To satisfy the criteria of judicial transparency, People's Courts at all levels are working hard

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to publicise instances of parole, mitigation, and out-of-prison execution. All cases related to the parole and commutation in sentences of duty related committed crimes, organised crimes committed by the gangs and the financial crimes are legally required to be heard in the public and during the public hearings of these cases the members of NPC, CPPCC and members from other relevant departments are also invited to participate in the court proceedings. All judgements and the verdicts in these mentioned cases are required to be published online on China Judgements Online platform. Whereas, the judicial personnel who are found guilty of misconduct while handling the parole, commutation of sentence and serving the sentence outside the prison cases are investigated and awarded heavier punishment.²¹

As per the direction of the Supreme People's Court, the People's Courts at all levels are actively promoting the construction of mechanism towards digital courts to increase transparency and openness in parole and commutation cases. The jail technology court has been deployed by the Intermediate People's Court of Hengshui City, Hebei Province, to improve the openness of parole and commutation, and the trial rate of parole and commutation cases has reached 100%. To guarantee the openness of parole commutation cases and the acceptance of outside monitoring of cases, the Jiangsu Provincial Court and the Jiangsu Provincial Bureau of Prisons have devised a remote trial system for parole commutation cases.²² Xuzhou "Intermediate People's Court of Jiangsu" province has developed a procedure of "accompanying by judge, inspecting with records, making checks at all levels, and enabling social supervision and regular announcement" for the cases of serving sentence outside the prison and the court invites the members of the NPC, CPPCC and people's procuratorate to exercise supervision on the cases of serving sentence outside the prison in order to maintain fairness and transparency in those cases.²³

Formation of China Judgments Online

On July 1, 2013, the "Chinese Governance Document Network," a nationwide open platform for governance documents, was formally established.²⁴ Detailed provisions on publishing the documents online are provided in the "Provisions of the Supreme People's Court on the Publication of Adjudication Documents on the Internet by People's Courts (2013)."²⁵ China Judgements Online was transformed into the upgraded version on 15 December, 2015 by adding new functions such as introducing an important smart explore, to explore for the pertinent verdict, verdicts and reconciliation reports. This central system recognised also the use of minority languages i.e. Uigher, Mangolian, Korean, Tibetan, and Kazakh for the disclosure of verdicts, judgements and conciliation statements in order to satisfy the needs of both majority and minorities in the country. Further, mobile APP client for China Judgements Online was also launched in August 2016.²⁶

China Judgements Online platform has become the largest website in the world for the disclosure of verdicts, judgments and conciliation statements. It has revolutionized the research on Chinese Law and Chinese Judicial Decisions not only in China but also in the world. It is significant to mention here that renowned universities of the world including the Harvard University, the Yale University, the Cambridge University, and the Stanford University have been using the materials from China Judgements Online into their research projects on Chinese Legal Studies and doing research in comparative perspectives.²⁷

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Improvement of Judicial Evaluation Mechanisms

In Peoples' Republic of China, the Judicial Evaluation programs are in the phase of development. In past recent years, the empirical research methods for the evaluation of judicial transparency and the rule of law have emerged using the quantitative research techniques. The methods employed by the empirical legal research are being accepted not only by the legal scholars but also recognised and implemented practically by the departments including the courts in China.²⁸ The need for the development of scientific index system in order to make use of empirical legal research was put forward by the 3rd plenum Decision of 18th CPC Central Committee by emphasising to “*establish a scientific index system and the assessment criterion for the legal construction*” which encouraged and promoted the in-depth development of the quantitative research of rule of law.²⁹ As a result of the enhanced efforts to develop mechanisms for the evaluation of rule of law by the Chinese Communist Party and the Government in general and the emphasis to develop judicial evaluation system by the Supreme People's Court in specific, different mechanisms have been developed in various provinces of China for the assessment of judicial transparency. Mechanisms for judicial evaluation have been developed by the Chinese Academy of Social Sciences (CASS) and China Rule of Law Research Institute.³⁰

High People's court of Zhejiang province with the cooperation of Zhejiang University and China Rule of Law Research Institute developed the judicial transparency index in order to evaluate the judicial system. This judicial transparency index is the most innovative in its nature which efficiently evaluates the efficiency of the judicial system. So far the judicial transparency index has been implemented in local courts at different districts of the Zhejiang province which has produced fruitful results. Furthermore, the Chinese Academy of Social Sciences' Institute of Law has performed an examination of the judicial system as an independent third-party institution since 2013, exposing the success of judicial transparency reforms and providing light on judicial difficulties, transparency, which enables courts to overcome flaws and progress.³¹ “High People's Court of Jilin” has also developed the “*Judicial Index Assessment System*” for courts in the Jilin province to carry out the effective assessment of the judicial transparency of local courts and improve transparency standards accordingly. This method is quite useful in the policy making for people's court.³²

CONCLUSION

Since the start of opening up era China in 1978, Chinese Government, Supreme People's Court and the Chinese Communist Party have undertaken several reforms in the system. Extensive reforms in the judicial sector have been undertaking in the form of five year court reform plans starting from 1999. Major purposes of the reforms were to develop judicial transparency, judicial openness and enhance fairness in the judicial system. Chinese Judicial System which was considered as a closed and arbitrary judicial system in the world, as a result of judicial reforms, has been turned into one of the transparent and open judicial systems in the world which has confidence of the public on it. The Supreme People Court of China's “*Six Provisions on Judicial Transparency*” and other important document issued in the following years have placed specific requirements on the People's Courts to develop mechanisms for making cases registration system convenient for the public, holding public

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hearings, enhancing people's participation in the judicial system, making adjudications affairs of the courts public and disclosing necessary information and documents online. These steps have resulted in the fairness of Chinese Judicial System and said steps can be helpful for the judicial reformers of other jurisdictions who are looking for reforms in the judicial sector for the purpose of transparency and openness.

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