

Judicial Corruption and its Threats to National Governance in China

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Abstract

Judicial corruption poses serious threats to good national governance in the PRC as it renders courts irresponsive to the country's growingly complex society and undermines the legitimacy of the law and government. Most sources of judicial corruption lie outside of the courts, and they can hardly be eliminated without administrative and political restructuring. The reduction of corruption by organizational redesign; issue of systemized regulations; distribution of resources and provision of more information represent some short term solutions, but not long term solutions. Deeply rooted in Chinese political theory is the concept that laws must be used to strengthen state capacity and fulfil political ends. This is often given heavier weight than the ideals of fairness and justice. A departure from the theoretical paradigm that the judiciary should *principally* serve practical political and economic interests is essential to the true extermination of judicial corruption in China.

Key words: judicial corruption, governance, China

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Introduction

Large scale social and economic reforms in the past three decades have impacted profoundly on national governance in the People's Republic of China (PRC). The building of the economy has accelerated the communist party state to one of the world's major political powers and business hubs. At the same time, the Chinese legal system has also been steadily reinvented from scratch, after its near destruction in the earlier periods of the People's Republic. The recent ten years have witnessed an increased stress in official rhetoric on the importance of law in China. The modernization of statutes and the improvement of the legal profession's quality to tackle social complications are already established policies of the Beijing government. However, the country's judicial institutions are still largely underdeveloped. One of the most serious complications at stake is judicial corruption.

In this paper, it is argued that corruption in the judiciary is an eminent threat to good governance in the PRC. It obstructs the governance goal of establishing a state which rules in accordance with the law (*yifa zhiguo*). Corrupted courts pose harsh challenges to the prospect of using law as an effective instrument in the promotion of justice and public order. It prevents the existence of a fair adjudication mechanism in a state which bears the burdens of having a vast and growing population of 1.3 billion with huge foreign investment and numerous social, political and business disputes. The paper will analyse the damaging effects of judicial corruption. Finally, it will be argued that organizational redesign and the implementation of certain policies in the form of commands, resources and information distribution are vital to change the current situation. A comprehensive elimination of judicial corruption will certainly demand more vigorous restructuring in the legal-political system.

An Overview of Judicial Corruption in China

The Chinese judiciary is "plagued" by corruption (Peerenboom, 2002). This is a perilous situation, because the judicial system forms an integral component of the larger legal system, which is supposed to be an important factor in the opening of the People's Republic to the rest of the world. The quality of the judiciary directly determines the chances of success of efforts to modernize and reform the law. The judiciary itself is situated in the judicial system which can broadly be understood as including the various organs of the people's courts, the people's procuratorates, the public safety agencies, the state security, the judicial administration, the legal profession, the notaries, the mediation and arbitration systems and the system of labour re-education. Collectively, the members of the 'judicial system' are called 'political-legal cadres' (Chen, 2004). This paper will narrow down its focus on judges, who amounted to 200,000 and hear approximately 6,000,000 cases per year (Bergstein, Gill, Lardy and Mitchell, 2006). Judges, who must uphold and protect the socialist system's interests, play a predominant role in the administration of justice, at least on the surface. In the absence of juries, judges are entitled to proactively participate in the trying of cases, questioning of witnesses and ordering of evidence to be brought by the parties (Tay, 1997).

Judicial corruption encompasses various conduct which deviate from professional ethics and undermines the reputation of justice, including embezzlement and bribery, abuse of fair procedures and misuse of power for personal gains among judicial personnel in their official

and social course of conduct (Miao, 2007). Mishandling of cases and unlawful judgments which led to the reversal of more than 85,000 cases in 1998, were also closely connected with judicial corruption (Liu, 2000). Court corruption usually takes the form of judges accepting invitation from attorneys to dine and wine together, and receiving valuable gifts such as televisions, watches, cars and gold from litigants (Gong, 2004). Illegal activities between judges and lawyers cover a wide range of misbehaviour such as money laundering, inappropriate granting of special privileges and commercial sexual transactions. There are instances when lawyers have to go to settle a bill for judges at restaurants late at night, and pay for the shopping expenditures of female judges (Peerenboom, 2002). Other judges go farther by collecting small fees, going to sauna bathrooms with attorneys and leak confidential details of cases in return for benefits (Miao, 2007). Some law firms even publicize that some of their employees are relatives of serving judges as an attraction to potential clients (Xin, 2004).

Reliable statistics of judicial corruption are unavailable. This strongly hinders empirical research in this area. The successive reports submitted to the National People's Congress (NPC) in the recent years by Xiao Yang, then President of the Supreme People's Court (SPC), may provide some indications of the level of corruption. In 2005, it was admitted that nearly 470 judges were punished for corruption in each of 2003 and 2004.² It was however, claimed that only 218 judges were prosecuted in 2007.³ This dramatic drop immediately raises doubts. Even if Xiao was precisely accurate, these figures only revealed the limited number of successfully processed cases, where the true scale of judicial corruption, that is, the real concern, is not in question. The number of undiscovered or improperly acquitted cases is virtually unknown. It is a worrying trend to hand the duty of prosecuting corrupted judges to the very same system that has nurtured them. This will result in the circularity of corruption in the administration of the judiciary, which is basically hostile to effective solutions to this complication.

In 1998, former SPC president Ren Jianxin claimed that only 376 judges were punished on criminal grounds between 1992 and 1996.⁴ However, more detailed figures were unveiled in the subsequent report, stating that 1654 judges received administrative penalties, 637 were punished by Party rules in the single year of 1997.⁵ This could be alarming, because a decade later, the judicial system remained substantially unchanged, except for the execution of some policies which did not solve the original causes. Recently, it was indicated that Xiao, as head of judiciary, was alert of the dangers of judicial corruption. The former chief justice admitted that he had ongoing fears and was disturbed by the grave situation of corruption within the judiciary (China Daily, 2007). In his last Report delivered as China's chief justice, he also repeatedly stressed the importance of *transparency* and *fairness* in judicial adjudication.

The Threat to Governance

The notion of governance was given significant attention when Hu Jintao, President of the PRC, mentioned the term repeatedly in his report delivered to the 17th Congress of the Chinese Communist Party's (CCP). The paramount leader urged "to incorporate the spirit of reform and innovation into all links of governance, unswervingly adhere to the

² See *Supreme People's Court Annual Working Report 2005*.

³ See *Supreme People's Court Annual Working Report, 2008*.

⁴ See *Supreme People's Court Annual Working Report 1998*.

⁵ See *Supreme People's Court Annual Working Report 1999*.

orientation of reform, and have more scientific decision-making and better coordinated measures for reform” (Jintao, 2007) This may indicate that the idea of ‘governance’ has gained considerable attractiveness to the top policy-makers in the country.

What really is ‘governance’ in this context? The word is not new – it has appeared in relevant literature as early as in the 15th century (Denthier, 2000). However, as a theory, it is yet to be developed and incoherent (Frederickson and Smith, 2003). Rhodes (1996), for example, listed six potential definitions of governance, which are in many ways, totally distinctive and even contradictory concepts.⁶ But all of these are based on the developed and liberal model of society.⁷ Other definitions include the World Bank indicator which has ranked China below the 25 percentile of all countries on its ‘voice and accountability’ and ‘political instability and violence’ measurement, placing emphasis on regulator quality, the rule of law and control of corruption (Keefer, 2007).

Governance in China is so complex that the construction of a satisfactory model could be virtually impossible. Despite ongoing economic reforms, political control is still extensively hierarchical and tight. It is notable that the ambit of governance is usually wider than that of government by encompassing the non-exhaustive list of political, social and economic actors in its conception. Economic reforms, authoritarian policies, globalization and a growingly complicated society give rise to governance problems like social conflicts, huge income disparity and separatism are not easy to tackle. Multiple governance actors including the party state government, foreign and local large business corporations and regional factions bargain interests and shape the governance processes every day. ‘Quasi-actors’ like civil society, which is not independent enough from state control, exist too.

For the party state, the building of a ‘moderately prosperous society’ (xiaokang shehui) and ‘socialist legality’ have been widely-referred aims; which when decomposed, may imply the maintenance of CCP rule ensuring an acceptable degree of public order. The weakness of the institutions of governance, set in the background of economic transition, has created a vacuum which strongly encourages to corruption (Dethier, 2000). Corruption is structurally rooted, and officials often ignore or bend laws and policies, report false information and neglect the welfare of the population under their constituency (Lieberthal, 2004). Even though bureaucratic and commercial corruption is highly undesirable, judicial corruption is far more problematic. Courts are legitimately supposed to realize the law’s corrective justice with reasonable competence. A clean judiciary could not fundamentally curb governance problems; but a corrupt judiciary will not only be irresponsive but also intensify rising complications. Corrupt judges placed on the frontiers of exercising legal power are largely unfit to give fair adjudication, because their own objectives often go beyond the proper application of the law. Their actions may be motivated by self-interest and subjected to interventions by sources of corruption.

Systems of rule by law, not to mention rule of law, could hardly survive without a relatively committed judiciary. This commitment refers to the devotion of judges to the overarching policy of materializing the law’s role in solving conflicts fairly and normatively directing some of society’s operations. However, corrupt judges are more interested in maximizing personal benefits. Although it has been argued that legislation fails to achieve general public

⁶ These include the minimal state, corporate governance, new public management, good governance, socio-cybernetic system and self-organizing network.

⁷ For instance, the concept of ‘good governance’ is a blend of new public management with liberal democracy, (Rhodes, 1996).

benefits because it serves particular interests (Cranston, 1987) and the notion that legislation could solve all social problems should be cautiously taken (Hunt, 2002); it is believed that the law is still highly pivotal in a developing country like China where the authority of reforms and dispute resolutions need the backing of legal norms. Judicial corruption discourages public faith in the law in general and progressive legislation in particular, and fails to encourage lawyers, who value connections more, to respect the law (Peerenboom, 2002). This distrust hampers the usage of law as a tool in engineering better governance. Judicial corruption will further wither the state's capability in effectively delivering economic goods, because fair competition and a level playing field would nearly be impossible. It simply inhibits the prospects of creating an authoritative and transparent platform where disputes can be resolved by law in action.

Tentative Measures against Judicial Corruption

Judges naturally serve the dominating forces of politics and the economy of the day (Griffith, 1997). This is even more obvious in the People's Republic, where the law is openly mandated to serve political ends; courts are institutionally answerable to the legislature and subject to the leadership of the CCP. It is extremely difficult to insulate courts from corruption in the bureaucratic arena. Invisible political interests infiltrate freely and directly into the process of judicial decision making in many ways (Jagtenberg, 2000).

One must appreciate the new policies launched by the SPC since the late 1990s against judicial corruption to combat such corruption. However, it must also be admitted that they could at most slow down the erosion of the judicial system, but not effectively reduce it. Major efforts included the setting up of a reporting centre in 1998 to handle calls and mail from citizens regarding the malpractice of judges in the higher courts; the adoption of a code of conduct for judges in 2001, and the requirement of them to and refrain from contacting parties in lawsuits or voicing personal opinions. The 1999 five year reform plan of the SPC specified that chiefs of divisions have to be rotated, and collegiate panels are to be formed to adjudicate in a better manner. Moreover, the SPC imposes personal liability on judges for wrongly decided cases. Judges are also under the so-called 'supervision' of procuratorates and the local congresses. However, excessive interference being legitimated this way gives rise to new sources of corruption (Peerenboom, 2002). To address the problem, it is argued that certain additional tools of governance should be tentatively used to reduce judicial corruption, which are important because they specify the roles to be played by actors, and they highlight networks in problem solving (Salamon, 1992). In choosing the appropriate measures, the resistance of the western concept of independent judiciary by political-legal personnel and even the legal academia must be taken into account. For example, it was argued that any research in the relationship between the Party, the state, and the judicial system should consider the historical and social context of these institutions (Zhu, 2007). The view that "evaluations and judgments based solely on western experience or ideology have no academic value or possible practical applicability" was defended.

Organizational redesign

The state should redesign the organization of courts as a whole, in order to act upon the threatening phenomenon of judicial corruption. Discussions of judicial independence has gained greater acceptance since the reforms. Nevertheless, it must be noted that, politically, any reform policy to be selected must conform to the CCP's interests; and indeed, the Party's ideology imposes a boundary to the extent of reforms (Saich, 2004). In China,

'judicial independence' is conditional because the upholding of the CCP leadership is required. For the ordinary person, the notion merely means that the judicial organ is independent from the litigating parties (Chen, 2005). These views may not be substantially conducive to extinguish judicial corruption. They may also imply the acceptance of a low standard among judges.

To address this issue, organizational redesign must be pushed forward. While the total separation of courts from politics is practically impossible, the reconstruction of the court's structure should at least achieve the greatest extent of autonomy outside of everything except the law for judges. Generally speaking, the judiciary should be created as a more unified institution in its own right. Interference to PRC courts, especially those in the name of 'supervision', is dangerous because it gives legitimacy to corruption (Xin, 2001). Courts from all levels should be subjected solely to the judiciary's jurisdiction, instead of being influenced by regional legislatures and governments. Supervision of courts should be detached from local factions and be vested exclusively in the higher courts and ultimately the SPC.

The political control of the judiciary imports much corruption from outside. Presently, the structure of the judiciary is indifferent from bureaucratic counterparts. Sometimes, courts are even part of the local administrative apparatus. Court personnel, funds and equipment are administered by local governments, and judges are selected by local people's congresses. Judges in China have not yet formed a distinctive group with common awareness and knowledge (Yu, 2006). The promotion of all judges should rest entirely in the hands of the SPC. This could at the minimum, reduce local undue interferences. While courts will constitutionally remain part of congresses because of ideological reasons, customs and enforcement mechanisms should be established to create an organizational dichotomy between political and judicial actors. Judges should refrain from attending political meetings. The fair application of laws which are made according to the socialist state's will is consistent with ideological doctrines. Though I contend that the SPC should assume the role as the central leader of the entire judiciary, there are some notable difficulties. Its disadvantaged position within intertwining political connections could heavily limit its reform capacity (Hou, 2005). More research has to be done to discover what should be done to accelerate the authority of the SPC.

Disciplinary Agency

A special disciplinary agency against judicial corruption could be created within the SPC, which modifies the current practice of appointing retired and prestigious judges as 'superintendents'. This department, independent from other courts and local administrative bureaucrats, should only be answerable to the SPC. It should have just one organizational goal – the investigation and management of all complaints about judicial corruption. It should be empowered with certain coercive initiatives and have actual power in handling cases. However, this could only be an interim practice before judicial corruption is substantially reduced, because it is not healthy to maintain a police of courts in the long run.

Legal Commands

Presently, there is a proliferation of legal commands which regulate judicial behaviour.⁸ These regulations collectively cover a large array of legal categories. This could be an undesirable situation when commands are too overwhelmingly huge in number, yet actually commanding nothing. Inconsistency and confusion, as to what to follow, are the consequences of such an unsystematic mix of abstract principles and detailed provisions that render these rules largely ineffective in practically guiding judicial conduct. A unitary, systematically written and authoritative law on judicial practice should be issued and distributed to all levels of the judiciary. It should specify the very details of offences and punishments and be clearly understood by all members of judicial administration. Although detailed rules are often rigid, they could give rise to higher legitimacy and certainty, which is important when judicial corruption is nearly uncontrollable.

Resources Distribution

A cause of judicial corruption is the lack of funding. Courts have to depend on the provision of resources by local executive authorities, thus, indirectly submit themselves under the temptations of corruption. Moreover, judges neither enjoy a security of tenure, nor competitive salary. Judges are managed by the corresponding party cadres (Chen, 2004). They are often appointed on the criteria of political loyalty, and if they ever try to resist political interference, they will face undesirable consequences. Therefore, more resources should be allocated to the judiciary, with the SPC taking the responsibility of centrally allocating them. Financial resources should be used to increase judicial salary and strengthen the courts own position, so as to make courts economically independent.

Information

Historically, judges were merely government officials or retired military officers appointed to the bench because of political loyalty (Wang, 2005). Even after the adoption of the Unified Judicial Examination in 2001, most judges still do not meet the standards. The Judge Law 1995 does not even require members of the judiciary to hold a professional law degree (He and Ren, 2005). As a result, the quality of judges is doubtful, which may have an intrinsic connection with judicial corruption. Information sharing could be enhanced by better distribution and enhanced understanding of the goals of the judiciary and punishment of judicial corruption. Education establishments such as university law schools and professional colleges could provide regular training schemes for judges not only in the techniques of adjudication, but also, with greater emphasis, on the improvement of their understanding of anti-corruption laws and policies and professionalism in discharging their duties.

⁸ These include the Measures on the Responsibility for Unlawful Adjudication by Adjudicative Personnel of the People's Courts (Provisional), the Measures on Adjudicative Disciplinary Sanctions of the People's Courts (Provisional), Provisions on the Strict Implementation of the Recusal System concerning Adjudicative Personnel (2000); the Provisions of the Party Core Group of the SPC on the Engagement in Remunerative Legal Services Activities and Commercial Activities by Spouses and Children of Leading Cadres of the SPC of the Divisional Rank or Above (2000); the Basic Norms of Professional Ethics of Judges of the PRC (2001); the Provisions on Resignation of Presidents and Vice-Presidents of Local People's Courts at Various Levels and Specialist People's Courts to Take Responsibility for Wrongs (Provisional) (2001); and the Measures on Disciplinary Sanctions for the Execution Work of the People's Courts (Provisional) (2002) (Chen, 2004). In addition, the Constitution, Criminal Law and the Judge's Law are also relevant sources of law.

Concluding Comments and Limitations

Judicial corruption is against proper national governance in the PRC. It is not conducive to the establishment of a more reliable legal system which keeps in track with the fast growing economy. Corrupt courts simply erode the legitimacy of the law as well as that of the government. Judicial reform is a sensitive topic, because it touches many vested interests, whether in the political or commercial arenas. Therefore, efforts like increasing the salary and fringe benefits of judges may be easier to promote than those improving the independent role of judges (Chang, 2006).

On the basis of enhancing the country's governance, a number of measures against judicial corruption have been suggested, but they are only provisional in nature. If implemented, they may not only slow down but actually reduce judicial corruption. However, these measures concentrate solely on the courts. Most sources of corruption lie outside the judiciary, and they could not be effectively eliminated without administrative and political restructuring. Judicial corruption is tightly attached to other sources of corruption. In the light of the resistance to the western concept of independent judiciary, the organizational redesign of courts and creation of constitutional conventions for judges; the issue of systemized legal commands regulating judicial conduct; the distribution of more financial resources to the lower-level courts; and the provision of more information about the consequences and punishments of corruption to judicial personnel are what could be done. Entrenched in China's political philosophy is the concept that laws must be used to strengthen state capacity. This goal is often carries heavier weight than the ideals of fairness and justice. A clear departure from this theoretical paradigm that the judiciary should principally serve practical political and economic interests is essential to the true extermination of judicial corruption in China.

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