



Research Article

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The Judiciary of China: Understanding its Independence, Glitches and Reforms Measures

Mohammad Saiful Islam^{1*}

Abdul Malek¹

Masoud Ahmad²

Anjuman Ara Begum¹

¹Department of Law,
International Islamic University Chittagong,
Kumira 4318, Bangladesh

²Department of Business Administration,
International Islamic University Chittagong,
Kumira 4318, Bangladesh

*Corresponding Author

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Abstract

The judiciary of china and its degree of independence is the vital theme of intellectual discourse not only among the western jurists but also among Chinese intellect as the judiciary of China is randomly criticized by the westerners for not upholding the actual independence. In fact, the Chinese authority never explores concentration to admit and implement the western concept of the independent judiciary rather they have attempted to build a strong and independent adjudication system with unique Chinese characteristics. Hence, the Chinese Communist Party (CCP) has declared and implemented various reforms initiative and plays a momentous role to execute all reforms plan properly. This paper, largely, endeavors to address the understanding of judicial independence in China, ascertaining its glitches and deficiencies with the scheme of various rounds of reform policy as an extent of strengthening the impartial and independent adjudication system. The study finds that the competent authority devotes vast judicial reform agenda to improving the court management, appointing qualified judges through the comprehensive selection process, to eliminate internal interference from courts seniors and political leaders.

Keywords: Adjudication; Chinese Judiciary; Decisional Independence; Reform Policies; Strengthen Independence

1. Introduction

As one of three organs, the judiciary is the adjudicative branch of the State and a multifunctional institution since the judiciary performs several facets of functions beyond the primary function, i.e. settlement of disputes. The judiciary is an indispensable institution for guaranteeing fair justice, imposing punishment on the offender, safeguarding an innocent person from harm and hurt, and

ensuring the liberty and rights from the ill-treatment of the individual as well as of the sovereign power (Islam, 2018: 16; Islam & Xin, 2020: 149). The Constitutional directive of China is that China would be administered through the rule of law.¹ The judiciary seems a striking keystone in the execution of the rule of law. It is mostly acknowledged that an independent judiciary can play the prime role in guarding the rule of law (Keyuan, 2002: 1046).

The judiciary of China is continuously criticized by the western jurists for non-maintaining the actual judicial independence. They alleged that in China, the separation of power does not exist which is the principal base of ensuring an independent judicial system. Most western jurists strongly assumed that the government, more particularly the Chinese Communist Party (CCP), plays a vital influence over the functions of the court. Although the Chinese authority has absolutely denied these allegations and has completely been rejected the western concept of judicial independence and separation of power bearing in mind harmful to China (Xin He, 2017: 131). In actual fact, the Chinese government has emphasized an independent settlement method to protect the rule of law and guarantee the citizens' rights. Accordingly, the Chinese authority randomly pushes several judicial reform initiatives to enhance its credibility and establish an independent adjudication process. The objectives of this study are to present the summary concept concerning the Chinese judiciary with its degree of independence, hitches, and reforms initiative based on the Chinese context to those who have the enthusiasm to know about it, and to enlarge the existing literature about judicial independence in China.

2. Methodology

This research is conducted principally based on qualitative in nature with the analytical method. The study has proceeded with the content analysis of trustworthy primary and secondary legal sources. The substantial portion of content analysis contains several reforms order of the supreme people's court and undertaking actions regarding enhancement of judicial independence. Moreover, the primary legal sources comprise the Constitution of China, Organic Law of the People's Courts, Judges Law of China, and other legal orders and rules relating to the judiciary of China. The secondary sources embrace books, articles from reliable journals, useful online-based publications, media reports, newspaper reports and articles, and internet pamphlets.

3. Briefing about Judiciary of China

The Constitution of China does not mention the term "judiciary" or "judicial system" but used the court.² Hence, to the Chinese mass people, the judicial system is not confined to the courts and procuratorates but also contains "the police bureau and judicial bureau." Whereas in the international scholarship 'judiciary' commonly mentions "the court system or judges collectively"³ (Yanrong, 2018: 5). In other words, the judicial system of China includes many sub-systems but institutionally contains three parts: "the people's court system, the people's procuratorate system, and the public security system" (Yang Zhao & Jianglong, 2019). Conforming to this, the judicial system of China does not only denote courts, but also procuratorates, public security agencies, and the justice department (Wang, Biddulph, & Godwin, 2017: 5; Olemis, 2019). In this position, the study attempts to draw a brief scenario of the court system in China, respectively. The people's courts are judicial organs working out judicial power on behalf of the State, and then established under "the

¹ The Constitution of the People's Republic of China 1982 declares, "The People's Republic of China Governs the Country According to Law and Makes It a Socialist Country under Rule of Law" (Article 5, Section 1 of Chapter I).

² Section 7: The People's Courts and the People's Procuratorates, The Constitution of China 1982.

³ The Cambridge Dictionary defines 'judiciary' as "the part of a country's government that is responsible for its legal system and that consists of all the judges in its courts of law." See dictionary.cambridge.org. The Oxford Dictionary defines "The judicial authorities of a country; judges collectively." See oxforddictionaries.com.

Constitution, laws, and decisions of the Standing Committee of the National People’s Congress.”⁴

Organizationally, the people’s courts system comprises the Supreme People’s Court (SPC), local people’s courts, and special people’s courts.⁵ The SPC, the highest level judicial organ,⁶ has the authority to supervise the administration of justice in local and special people’s courts (Keyuan, 2002: 1043). Besides supervision, the SPC has the command to approve death penalty cases, and issue judicial interpretations of laws (Wang et al., 2017: 9-10; Yang Zhao & Jianglong, 2019). However, it has jurisdiction over judicial interpretations but does not have recognized authority to interpret legislation or to announce laws, rules, and regulations invalid (Wang et al., 2017: 5). The president of the SPC is nominated by the NPC and its standing committee (Olemis, 2019). The local people’s courts are existent at several levels and are also familiar as the courts of the first instance. These people’s courts are consisting of “Higher People’s Courts, Intermediate People’s Courts, and Basic People’s Courts.”⁷ The Special People’s Courts,⁸ generally set up where necessary, contain the Military Courts, Railway Transportation Courts, Maritime Courts,⁹ Internet Courts, Forestry Affairs Courts, Intellectual Property Courts, and Financial Court (Olemis, 2019).¹⁰

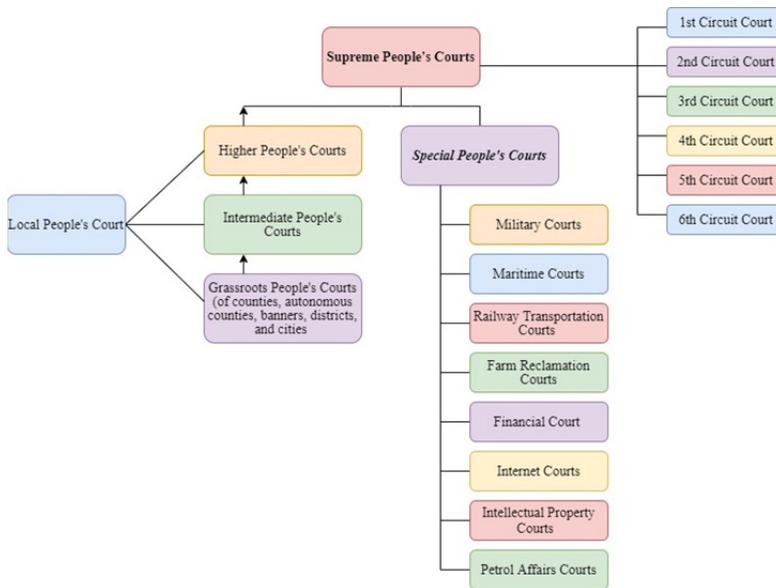


Figure 1: Court System of China

⁴ Article 123 of The Constitution of China 1982; Article 2, 3 of Organic Law of the People’s Courts of the People’s Republic of China, (The People’s Courts Organic Law was revised by the sixth session of the Standing Committee of the 13th National People’s Congress on 26 October 2018, and the revised law was effected on 1 January 2019) (hereinafter Organic Law of the People’s Courts).

⁵ Article 12 of Organic Law of the People’s Courts.

⁶ Ibid. Article 10; Article 127 of The Constitution of China 1982.

⁷ Article 13 of Organic Law of the People’s Courts.

⁸ Ibid. Article 15.

⁹ The SPC has been established several maritime courts at the port cities of Shanghai, Guangzhou, Tianjin, Qingdao, Dalian, and Haikou. These courts possess jurisdiction over maritime cases and maritime trade cases of the first instance (Olemis, 2019; Wang et al., 2017: 16).

¹⁰ For well understandings about judicial system of China, see ‘Legal System of China’ at <http://en.pkulm.cn/Legal/index.aspx> (last accessed 8 December 2020).

4. Understanding of Judicial Independence in China

The study finds that there are vast debates and even fully reversed opinions instead of consensus opinions regarding the nature and extent of China's judicial independence among legal scholars inside and outside China, party executives, and even the people. The vital reason for different views concerning nature and the degree of independent judiciary among scholars is different methods of measuring the rod of independent judiciary.

4.1 Global Insights and the Constitution of China

Zhou Qiang, the president of the SPC, stated China's position is absolutely against the separation of powers, judicial independence, and constitutional democracy as of being all are these Western models that might cause of damaging the CCP's rule (Xin He, 2017: 131). Very frequently, China has painted as not recognized of judicial independence (Hung, 2004; Landry, 2008: 209). Usually, the Chinese judiciary or court has continuously been portrayed as entirely subservient to the government's ruled by a one-party –CCP- without separation of powers and judicial independence (Cohen, 1969: 967; Dam, 2007: 250). The roots of this criticism include the CCP's policy and role to the judiciary, such as many scholars have stated, very beginning of the CCP's establishment the law and courts were to oblige for subduing the enemies of the State rather than defending individual rights (Yanrong, 2018: 2). The judges appoint by State from the amongst of Party's members whose are tested by Party's unit of the judiciary; in practice, they must obey to administrative seniors (Yi Zhao, 2003). The rule of law designed with Chinese characteristics that necessitate the Party's control upon the judiciary (Peerenboom, 2002). Equally, scholar claims that social activists and lawyers attaching with judicial institutes are examined constantly, and information flows are systematically controlled. Mainly if anyone makes a challenge against State actors or attempt to pursue case before the court remains a vastly charged political matter (Gallagher, 2005).

Last two decades, both domestic and international scholars have allotted extensive concentration towards different aspects of reforms and development of the Chinese courts' system or judicial system, including the nature and extent of independent judiciary. The common understanding towards judicial independence in China include: most of the prevailing literature remarks China's judicial independence 'as stagnant' (Yanrong, 2018: 1), it holds tiny judicial independence (Xin He, 2004: 213), it does not exist or vulnerable by impressing from a variety of sources (Fairbairn, 2016: 819), it is not stable but fluctuate based on court jurisdiction allocated to judges by the CCP (Yanrong, 2018: 3). Mentioning judicial reform, some scholars have remarked that "the judiciary has become more competent, authoritative, and independent" (Peerenboom, 2009: 87). In addition, the reverse view provides that in China; independence of judiciary has been recognized more than China's requirement (Liang, 2010).¹¹

The Constitution of China, Organic Law of the People's Courts, and Judge's Law of China have mandated that the judiciary performs independent adjudication short of any intervention of any other individual and organization. In 1954, the first Constitution stated, "the people's courts adjudicate cases independently, only subject to the law."¹² Later, in 1982, *The Constitution of China* specified, "the people's courts exercise judicial power independently, in accordance with the provisions of law and not subject to interference by any administrative organ, public organization or individual."¹³ *The Organic Law of the People's Courts* declares, "The people's courts shall exercise the

¹¹ Liang expressed anxiety about judicial independence that will hard to avert judicial injustice and judicial corruption. He also mentioned that the achievement of an independent judiciary is not because people deprived of fair, excellent, and efficient judicial remedy, or people cannot get justice. However, it is the output of the screamed slogan of judicial independence by "our Chinese legal persons, our Chinese jurists, judges, prosecutors, lawyers, and journalists."

¹² Section VI, Article 78 of *The Constitution of China* 1954.

¹³ Chapter III, Section 7, Article 126 of *The Constitution of China* 1982.

power of adjudication independently in accordance with the provisions of law, and are not to be interfered with by administrative organs, social groups or individuals.”¹⁴ *Judges Law of China* affirms, “Judges performing their duties in accordance with law are protected by law and are not to be interfered with by administrative organs, social organizations and individuals.”¹⁵

Based on the examination of Constitutional Article 126, some scholar indicates that the judiciary of China does enjoy independence, although in a tiny volume. The reasoning in this point is that whereas Article 126 forbids interference of court adjudication by administrative organs; public organizations and individuals, it is not vibrant whether CCP is counted as an organization, and the Article is also inaudible regard the people’s congress, and the procuracy (Feng, 2016: 5; Xin He, 2017: 131). In this situation, it is inferred that some others State organ can make political influence over the adjudication process (Feng, 2016: 5; Xin He, 2017: 131). By comparison of Article 78 of 1954 and Article 126 of 1982 of the Constitution, scholars specified that the provision of 1954 was sound in the sense that judge was only answerable to the law about independent adjudication, and Article 126 is a worsening rather than a development, and it should be revised (Zhiwei, 2005:109). As a result, the existing Chinese law demands only limited admiration of the judicial independence principle because the constitution does not plainly ban interventions from the CCP, the legislators, or the higher court (Li, 2013).

4.2 Approaches to Realizing Independence of Judiciary in China

There are several approaches¹⁶ to understanding the nature and extent of independence of judiciary in China. The study has designed the following three approaches to realize and understand the independence of the judiciary in China.

4.2.1 Conventional approach

The scholars, who took the position of the conventional international view, contend that more independence more justice. This group highlights two pleats to understand judicial independence: maintaining the political theory of “separation of powers” and upholding judges’ power of “judicial review” (Avino, 2003: 370; Henderson, 2009: 25). They do criticism that due to China’s political structure, in general, judicial independence does not exist in China. They argue that there is lacking institutional disintegration of government organs under any theory of separation of powers (Avino, 2003: 370; Dam, 2007: 250). The judiciary has no judicial review power to examine the constitutionality of laws. In line with, more significant, Western view the nonexistence of power of judicial review is the lack and deficiency of judicial independence (Dam, 2007: 249-250). Also said, the one-party system, CCP’s leadership, and “the courts’ connection to the CCP” are the main hindrances to judicial independence (Chow, 2015: 199; Dam, 2007).

Scholars claim that in China, judges have no security of office tenure because of the power of appointment and promotion, grand sanction, and removal of judges under the authority of CCP, and the majority of judges are appointed for political aims with a lack of legal training (Avino, 2003: 380).

¹⁴ Article 4 of Organic Law of the People’s Courts.

¹⁵ Chapter I: General Provision, Article 7 of Judge’s Law of the People’s Republic of China, amended on 23 April 2019, effective on 1 October 2019 (hereinafter Judge’s Law of China).

¹⁶ Yanrong (2018: 14) identified three leading schools of thought to understand the nature and extent of judicial independence in China: “the International Best Practice School, China’s Special Condition, and the Strategic Interaction School.” He explains that the ‘International Best Practice school’ emphasizes the institutional arrangement to study judicial independence. The “China’s National Situation School” contends on China’s different institutional schemes. Moreover, the “Strategic Interaction School” insists on the strategic interaction between the judiciary and other organs to study judicial independence. Feng (2016: 2) mentioned there are mainly two different approaches to the study of judicial independence in China. One is the ‘social-legal approach’; another approach is traditional and doctrinal.

The judicial system of China imitates a bureaucratic culture. Like bureaucratic traditions, judges often make a consultation with senior-level judges in making decisions (Hung, 2004: 99-104). Scholars also make dissatisfaction regarding China's judicial independence due to the use of adjudicative committees "those who try the case do not decide it, and those who decide the case do not try it" (Peerenboom, 2002: 323-325). Similarly, Avino further argues; the SPC, senior judicial officers, the procuratorate, and the people's congress also grip the authority to watch over the act of judges, which decreases the courts' adjudicative independence (Avino, 2003: 382). Another crucial point in favor of the conventional view's pocket that the Political and Legal Committee (PLC) was established by the CCP to confirm that judges and courts perform functions under Party commands (Chow, 2015: 198). The highest authority of the Chinese court view reflects that the courts are often treated as branch of the government, and judges watched as civil servants duty to follow superiors orders which makes obstacle to performing legal duties (Hung, 2004). As a result, scholars have been decided that, in reality, judges follow the directives of the CCP's leadership. However, the Constitution of PRC delivers courts have the power to decide cases independently (Avino, 2003: 381).

4.2.2 Socio-political approach

Scholars, who emphasize China's historical socio-political culture to understand the nature of independence of judiciary in China, decline the universal civilization notion grounded on a 'more independence more justice' theory. Based on reformation events, they claim the Chinese judiciary is competent and independent. In this way, they insist on 'impartial adjudication' or 'adjudicative independence' by arguing that the main aim of judicial independence is providing judgments with impartiality to achieve and sustain justice (Fu & Peerenboom, 2009: 95; Peerenboom, 2009: 90; Chen, 2013: 1; Yanrong, 2018: 7, 9, 18). They indicate CCP's own goals to ensure fair and efficient disputes resolution that diminish party influence to the judiciary (Zhu, 2009: 68). Some scholar justifies CCP's influence on the courts on the ground that, the Party's oversight has depressed judicial egotism and judicial corruption which build a "balance between judicial accountability and judicial independence" (Fu & Peerenboom, 2009: 98).

4.2.3 Tiede's definition approach

Some scholars, based on Tiede's definition,¹⁷ claim that the degree of independence of the judiciary in China is not fixed or stagnant but fluctuates and is changeable. Tiede contends that judicial independence changes in line with legislative instruction (Tiede, 2006: 134). Like in the US, the legislative body exercises the authority to enact a law to increase or limit the discretion of judges. Hence, in the context of China's political structure, they make a similarity with the legislative body of the CCP because the CCP is the actual source of any power in China (Yanrong, 2018: 12).

In summary, the study realizes that actually according to China's political traditions, China does not recognize the conventional theory of separation of power but emphasizes the separation of functions. The conventional theory of separation of power offers checks and balances among the government divisions to control abuses of its authority; that are not preserved in China. As per China's one-party politics, National People's Congress (NPC) members concurrently hold seats in the government and in the Party, and they unsurprisingly possess the high-ranking officials of the CCP. Besides, the NPC oversees the actions of the supreme court, the supreme procuratorate, the

¹⁷ Tiede defines "judicial independence can and should be defined as the judiciary's independence from the executive, as measured by the amount of discretion that individual judges exercise in particular policy areas" (Tiede, 2006: 131). In this definition, she provides two matters of judicial independence; firstly, separate from the executive, secondly discretion offers to the individual judge by the legislative body. On the basis of the second matter of her definition, she further recognized that judicial independence "is not fixed or stagnant, but is fluid and changeable" that "may be measured by the amount of discretion that individual judges may exercise at any particular moment in time, concerning any specific area of the law" (Tiede, 2006: 134).

government, and the central military commission (Islam & Xin, 2020: 155). In the matter of judicial independence, China's propositions are "adjudicative independence" of individual judges, or an "impartial adjudication process," not institutional independence of the judiciary as an autonomous body. Truly, the level of adjudicative independence is evolving and changeable by the degree of judicial discretion considered by the CCP to judges. However, the scholar reflects that the independent judiciary is not evocative if the court cannot attempt to check unjust or arbitrary power of political actors (Larkins, 1996: 611).

5. Glitches of Independent Judiciary in China

As per the provision of the Constitution and statements of other relevant laws, the courts of China have, minimum theoretically, been assured to exercise adjudication independently. Also, by the proclamation of the law, the court has been confirmed freedom from influence or interference by any other executive agencies, political organizations, and individuals.¹⁸ However, scholars claim that several factors and arrangements might generate influence judicial independence.

5.1 Higher Court's Command

The higher courts can command retrials of the cases adjudicated by lower courts even without appealing to higher courts by the parties of the case (Wang et al., 2017: 27). In this circumstance, the opposing view presents that it can be branded as supervision of lower courts by the higher courts rather than interference. If the case is involved any substantial interpretation of laws,¹⁹ significant public concern or higher courts find an error in legal order and judgments; then, the higher courts can resolve the problem regarding the question of law and then can instruct lower courts to retrials. This type of instruction only would be for confirming justice and reducing errors during the trial.²⁰ In the view of economic analysis of law, the ultimate target of judicial procedure is minimizing social costs comprising direct costs and error costs of the trial. Therefore, the directions from the higher court only for ensuring justice and reducing error costs could not measure as interference with independence.

5.2 Providing Report to the NPC

The Constitution of China and *The Organic Law of the People's Courts* remark the SPC is responsible and necessary to provide reports on their works to the National People's Congress (NPC) and its Standing Committee. Similarly, local people's courts are responsible and required to submit a report about their work to the local people's congresses and their standing committees at corresponding ranks.²¹ As of the approach of literal interpretation, these provisions grasp the ambiguity of clarification regarding the 'nature of responsibility' due to supplementary description within the Constitution or in the organic law of courts. It is eminent that judges perform adjudicative functions as well as administrative duties in the courts. In this position, thus, the nature of judge's or court's responsibility is not vibrant. Moreover, scholar indicates that the scope and extent of the reporting duty and style of submission of a report about a task either monthly, annually, or occasionally is unknown. The practice is that, at least, the people's courts report their works annually to national

¹⁸ Article 126 of *The Constitution of China 1982*; Article 4 of *Organic Law of the People's Courts*; Article 8 of *Judge's Law of China*.

¹⁹ The SPC of China is illegible to determine the interpretation of particular matters on the application of the law in the trial effort. See, Article 18 of *Organic Law of the People's Courts*.

²⁰ In the common law legal system, for example, the Supreme Court of Bangladesh has been authorized to supervise subordinate courts, and it has constitutional jurisdiction to withdraw a case from the lower court for determining the question of law. See, Article 110 of *The Constitution of Bangladesh 1972*.

²¹ Article 128 of *The Constitution of China 1982*; Article 9 of *Organic Law of the People's Courts*.

people's congresses in the course of the formal meeting period (Wang et al., 2017: 27). It is not surprising that the courts could submit their annual works report revealing details or a summary of regular adjudicative and administrative duties.²² But the approach of reporting and responsibility to people's congress signposts judges accountability to the politicians rather than judicial bodies that be able to generate influence to the independent adjudication process. Also, the ambiguity of terms and fuzzy legal provisions impose strictness and fear to perform judicial functions independently.

5.3 Connection of CCP to the Courts

Scholars designate that the connection of CCP with the courts is measured as a vital hindrance to judicial independence (Chow, 2015: 199), and it is one of the maximum discussion concerns challenging judicial independence in China (Feng, 2016: 15). Because, scholars argue that judges in China do not have the security of office tenure due to the Party's control regarding the appointment, promotion, sanction, and dismissal of judges; and maximum judges in China are employed for political aims, even with a lack of legal training (Avino, 2003: 380). However, the judges' law has been changed with an accumulation of mandatory passes in the legal professional qualification exam for new judges, and to be promoted to higher-level courts must hold experience at the corresponding subordinate judicial organs.²³ Moreover, a "Supreme People's Court Judicial Selection Committee shall be established for the selection of SPC judges' and for reviewing the professional capability of the judicial candidates."²⁴

The relationship of the CCP to courts also seems complex (Feng, 2016: 15).²⁵ Peerenboom remarks that the CCP stimulates the courts in various channels and through various ways. It applies influence in policy, ideology, and personnel matters, although it occasionally is involved in determining the result of particular cases (Peerenboom, 2009: 79). Scholars ascertain the most worrying is the arrangement of the Political and Legal Committee (PLC) to generate CCP's straight interference to conduct of specific cases. In particular, question residues about the degree of influence from the Party authorities on politically complex cases (Xin He, 2017: 133). The PLC was formatted by the CCP to confirm that judges and courts act in accordance with Party commands (Chow, 2015: 197-198). The PLC is measured as the most authoritative actor in the criminal administration of justice although it is not brought up in any statutes (Li, 2013: 27).

Especially, the CCP approves limited independence of the judiciary relating to politically subtle cases (Peerenboom, 2009: 79), and, in most cases, the results are predetermined by the Central Political and Legal Committee, the uppermost decision-making authority in political-legal issues (Xin He, 2017: 133). On the contrary, scholar pronounces that the CCP's adverse impression on judicial independence is usually overstated and supposed... to be pernicious (Peerenboom, 2009: 78). It also states that some CCP strategies actually upsurge the authority and independence of the court vis-à-vis other actors, although some others might hinder judicial independence from attaining other essential social goals (Peerenboom, 2009: 79).

²² The adjudication work report may contain filing of case volume, disposal case percentage, calculation of case logging, sorting of cases based on nature and importance, statistics of judges individually settled cases, the quantity of interprets laws, and so on. And the regular administrative works report might include training programs for judges, legal seminars and workshops, lower courts visits, personnel and infrastructural development, and a summary of expenditures.

²³ Article 12(5) (7) of Judge's Law of China. See also, 'China Focus: China adopts revised laws on judges, procurators', Xinhuanet, 23 April 2019, at http://www.xinhuanet.com/english/2019-04/23/c_138002581.htm (last accessed 15 December 2020).

²⁴ Article 16 of Judge's Law of China.

²⁵ Feng (2016: 16) identifies three views vis-à-vis connection of CCP to the courts: first, negative influence on judicial independence; second, more balanced view; and third, more positive view.

5.4 Non-maintaining Internal Independence of Judges

The criticism of the Chinese judiciary for non-maintaining internal independence of judges in the decision-making process has been received for a long time. Scholars claim that the assigned judges who hear the case cannot decide the result, but those who do not hear the case determine the case outcome. This is because, before the delivery of judicial decisions may necessary to discuss at the adjudicative committee and attain consent from the chief judge of a specific division, the president, or the vice president in charge (Feng, 2016: 9). About this issue, Peerenboom has revealed that a contentious matter has been the authority and independence of the judges hearing the cases to announce a final verdict without authorization from the high-ranking judges on the court or adjudicative committee (Peerenboom, 2009: 77).

Criticisms argue that this rule might be a cause of low self-confidence of judges to exercise adjudicative functions independently because judges who engage in hearing the case think they are not competent to reach a decision, and they have tiny power or they are dominated by seniors. Conversely, there are enthusiasts in favor of the practice of prior approval of the adjudicative committee or senior judges' review. They argue that more or less junior judges are not experienced enough, which can decrease the probability of corruption, and it can strengthen judicial independence as the adjudicative committee holds power to repel external influences on junior judges (Peerenboom, 2009: 78). The constructive matter is that the CCP has been taking place several rounds of judicial reform to confirm a more adjudicative independent, strengthen, and efficient judiciary.

6. Reform Measures of Judiciary in China

The judiciary of China has continuously pushed for additional reforms as judicial reform is being treated as a basic phenomenon in China's jurisprudence (Xin He, 2017: 135). Accordingly, the positive matter, CCP has been proposing numerous rounds of judicial reforms for establishing a stronger, efficient, and independent judiciary. China commenced judicial reform initiatives in the 1980s with the dynamic objective of establishing a State administrated consistent with the law (Chunying, 2003), sanctioning professionalism in the judiciary, focused on swelling the tasks of the court, clarifying prosecutor jobs, and qualified professional judges' training (Council, 2012). Last couple of decades, the Chinese authority developed endeavors to build a strong judicial system in which particular attention is placed on the role of the court. Consequently, the SPC conveyed a variety of reform agendas by emphasizing the building of a professional courts, "separation of functions, and on trials and adjudication" (Woo, 2017: 247). In this section, the article concisely endeavors to highlight the significant judicial reform measures which into account the approach of strengthening the degree of judicial independence.

6.1 Three Five-year Reforms to Construct Fair, Effective, and Well-Functioning Judiciary

Till 2013, CCP dispensed three "Five-year Reform Programs for the People's Courts" correspondingly "in 1999, 2005, and 2009" (SPC, 2016b). In 1999, the SPC confirmed "first five-year (1999–2003) reform" policy to build a "fair, open, highly effective, honest, and well-functioning" judiciary (Gechlik, 2005) by forecasting of 50 aims.²⁶ The momentous reform measures contained under this policy: launching single judge hearing method aiming of higher court effectiveness, the construction of evidence rules concerning the receiving of parting cases of adjudication stage "within the courts, instituting enforcement office at all levels of courts, and demanding full pledge law degree for the fresh judge" (Liebman, 2007: 625).

²⁶ "The five-year program for reform of the people's courts," published in the "Gazette of the Supreme People's Court of the People's Republic of China," (October 20, 1999), Issue 6, pp. 185-190. For understanding 50 goals, see, "Five-year reform outline of the people's court," <https://zh.wikisource.org/wiki/人民法院五年改革纲要>.

6.2 Strengthen Competency of Judge and Professionalism in the Judiciary

In October 2005, the second five-year (2004-2008) reform policy was issued.²⁷ The reform policy was including 50 aims planned to build up the competency of the judge and the professionalism in the judiciary (Liebman, 2007: 625), guaranteeing judicial fairness and neutrality, enlightening judicial credibility, stimulating transparency and professionalism in the judiciary.²⁸ The noteworthy measures of second five-year reform were: applied judicial review on administrative decisions. Consequently, about 17,018 administrative decisions were confirmed invalid and illegal in 2006. The estimation displays that 34 percent of decisions of the government and their divisions made alterations.²⁹ Liebman branded three distinguished development inclinations in the lower court from the first two five-year reform policies. First, subordinate court judges are pursuing assistance of other courts regarding difficult or novel cases rather than party officials and court superior. Second, the network of judges develops legal innovation and substantial legal novelty. Third, the judiciary or court has progressed as the room of exposure a sort of grievances while courts of China are not a medium for determining public rights (Liebman, 2007: 631-633).

6.3 Progress Functioning Mechanisms

In 2009, the third five-year (2009-2013) reform policy was promulgated.³⁰ The reform policy was framed to progress functioning mechanisms, preserving social justice and fairness, nourishing expectations of the ordinary public vis-à-vis the court works,³¹ firming human rights safeguard, and augmenting judicial capabilities. Accordingly, the civil and criminal procedure laws were modified and revised in 2012 by amending the retrial procedures of the remanded case. Similarly, the law of criminal procedure encompassed provisions for the protection of human rights concerning preventing confessions by torture (Council, 2012).

6.4 Progress Personal Independence

The SPC pronounced “the fourth five-year (2014-2018)” reform policy of the courts for extensive reform in the judiciary to advancement judicial fairness and efficiency.³² In line with the outlines of reform policy, various reform measure has been implemented to improve the personal, internal, and collective freedom of the judge. The momentous reforms have been engaged concerning personal independence. Firstly, the selection committee has been formed to select professional judges at the provincial level. Secondly, ensuring the job safety of judges to establish a professional judiciary. Thirdly, a different salary structure has been introduced for judges (SPC, 2016a; Feng, 2016: 6-7). Also,

²⁷ “Second Five Year Reform Program for the People’s Courts (2004-2008),” (October 26, 2005), <https://www.cecc.gov/resources/legal-provisions/second-five-year-reform-program-for-the-peoples-courts-2004-2008-cecc>.

²⁸ “Second Five-Year Reform Program for the People’s Courts (2004-2008),” Congressional-Executive Commission on China, Washington, DC (2006), <https://www.cecc.gov/resources/legal-provisions/second-five-year-reform-program-for-the-peoples-courts-2004-2008-cecc>.

²⁹ *Ibid.*

³⁰ “Notice of the Supreme People’s Court on Issuing the Third Five-Year Reform Outline for the People’s Courts (2009-2013).” This plan was promulgated by the SPC with a vision to applying the spirits of the Seventeenth National Congress of the CCP, Peking University Center for Legal Information, (March 17, 2009), <http://en.pkulaw.cn/display.aspx?cgid=114912&lib=law>

³¹ *Ibid.*

³² On 9 July, the SPC declared a fourth five-year (2014-2018) reforms plan for the courts, which framed four broad areas of reforms relating to eight general areas. See, “The Supreme People’s Court Issues its Newest Five-Year Reform Plan for the Courts,” Supreme People’s Court Monitor, (July 10, 2014), <https://supremepoplescourtmonitor.com/2014/07/10/the-supreme-peoples-court-issues-its-newest-five-year-reform-plan-for-the-courts/>.

the SPC has attempted to maintain public trial to legitimize the workings and transparency of the judiciary. The SPC circulated around (45,000) forty five thousand trial minutes on open media, comprising prominent cases in 2013 (SPC, 2015).

6.5 Strengthen Internal Independence

The criticism regarding judges' internal independence in China was assumed by the SPC; hence, they attempted to advance it. In this aspect, several particular reform measures have been executed to improve judges' internal independence. First, a fixed adjudication team has been established in the intermediate and primary people's courts. Second, without an adjudication committee, apart from direct contribution to the case trial the presiding judge, the president, and vice president shall not verify, approve, sign, and deliver the judgment.³³ Third, the adjudicative committee, president, and vice president shall form a board to hear difficult, major, and complex cases (SPC, 2016b; SPC, 2017; Feng, 2016: 10). Fourth, the people's court shall institute council comprising of specialized judges of administrative, criminal, and civil area to convey advise to the panel concerning accurate understanding and application of the law (Feng, 2016: 10). It might be questionable and could disturb judges' individual independence without a clear statutory basis. Fifth, filtering the adjudication supervision system. In this reform measure, the supervision authority would refrain to provide their partisan opinion and would not directly deny the opinions of a sole judge or the panel on cases in which they do not join in hearing. Sixth, modifying and strengthening the system of the adjudication committee. The said committee has primarily been empowered to discuss issues concerning the application of laws relating to major, complicated, and difficult cases with the exception of complex cases on the subject of national security, social stability, and diplomacy. The context and nature of cases regarding national security and social stability should be well defined and delimited by the statutory provision to avoid unanticipated interference. Scholars have indicated that these numerous vibrant reforms significantly reduced the interfering to judge by the senior judges in the similar court (Feng, 2016: 10).

6.6 Strengthen Collective Independence

Under the fourth five-year (2014-2018) reform policy, vital reforms have been applied to improve the integrated management of court administration and organization as well as the appointment methods of the judge to strengthen the collective independence of the judiciary. In this aspect, the noteworthy reform events include: firstly, the establishment of court organization would be principally managed by the equivalent provincial department through the direction of the higher people's court. Secondly, introducing an integrated court personnel management system. Under this system, the judges subordinate at the regional level will be "appointed, selected, managed, and removed under the legal procedures of the provincial authority." Also, the new judge shall be recruited by the provincial level judge selection committee and would be engaged in employment and removed on the word of statutory processes of the provincial authority. Third, under administering a unified fund management system of court, the central government will guarantee the required fund of the local court lowers the provincial level, and the applicable budget will be seized by the national treasury's centralized payment method (Feng, 2016: 12-13).

Lately, the Chinese court³⁴ has requested and encouraged more people to visit and look out for court hearings as a means of building trust in the trial, guaranteeing justice, and augmenting the transparency of court proceedings (SPC, 2019a). So, the reforms concerning a unified management

³³ SPC's white paper remarks that the direct adjudication by a sole judge or a panel in the Shanghai courts reaches 99.9 percent, and only 0.1 percent referred to the discussion by the adjudication committee (SPC: 2016b).

³⁴ The Intermediary People's Court of Yinchuan, capital of Ningxia Hui Autonomous Region, is one of the courts that promoted the invitation to attend people in court hearings.

mechanism of judges, courts, and funds appear techniques to decrease the local protectionism. The merit-based transparent selection and employment process of the potential judge is vital to strengthening judicial independence (Islam, 2020: 12). Therefore, these reforms are being considered means to progress the degree of “collective independence of judges” to accomplish court roles easily and neutrally.

6.7 Proclaiming Fifth Five-year Reform Plan

The SPC dispensed its “fifth five-year (2019-2023) judicial reform” policy 27 February in 2019. The policy has been designed into 10 key sectors, 65 measures, and fragmented into 160 detailed tasks for establishing the modern and smart court by facilitating the good application of “contemporary technologies, and artificial intelligence to provide more effective legal facilities” (SPC, 2019b). The reform policy announces that judge must be answerable for own case, and the trial of case intend to free from disruption. Though, the chief judge and the president of the court could be permitted allowable to provide advice on two grounds, e.g. firstly, when the dispute contains a huge amount of litigants; secondly, the outcome of cases might affect social stability (SPC, 2019b). At this point, supplementary clarification is essential by mentioning the exact quantity of petitioners to reflect a large volume of complainants and must clearly define the extent of the impact on societal solidity to eliminate interference. The projected reform approves that that the observing process and guidance should be in black and white to prohibit the maltreating power (SPC, 2019b). However, the leader of the judicial reform office of the SPC indicates that the specifics nature and space of the observing manner of the presidents and chief judges of the court are still unmindful, and the SPC will deliver a further accurate list of controls in the reform phases (Shihao, 2019).

6.8 Strengthen Decisional Independence Through Modification of Judges Law

The typical perception, the personal freedom of judges in China has not been maintained sufficiently. The judge’s decisional independence is questioned since they have the requisite to meditate on numerous other aspects to resolve cases except for the fact, law, and guidelines of his conscience (Feng, 2016: 14). Subsequently, the authority randomly generates efforts to establish an independent and efficient adjudication process. Accordingly, China has been revised the Judge’s Law to promote the country’s judicial reform initiative. The amended Judges Law cuddles substantial significance for accumulating inordinate provisions concerning the adjudication process, appointment qualification, and promotion of judges to improve judicial independence, efficiency, and quality (Aili, 2019). As per the revised Judges law, the extensive new measures include:

First, the obtain credentials in the legal profession is the mandatory for new judges serving in their initial post under the “National Unified Legal Professional Qualification Examination.”³⁵ This measure will strengthen the degree of judicial independence and enhance delivering quality judgments. Because, qualified judges progress professional characters, and well-learned judges increasingly consider courts and other judges in resolving difficult and different cases instead of Party directors (Liebman, 2007: 620, 631). In addition, the other constructive impacts are: (i) the compulsory obtains of the permit through the national legal professional qualification exam might be an advantage to recruit judges at the first post with well-education and qualification in the legal profession. (ii) It upholds the priority of judges’ selection based on merit instead of lobbying and political concern. (iii) The appointment of new judges at the entry level with considering the skill and quality of the legal profession shall promote a solid and independent adjudication process by reducing dependence on external factors (Islam, 2020: 14).

Second, the serving of certain periods in the lower people’s court and practical work experience corresponding to the desired post is required for getting judges’ promotion to the higher level

³⁵ *Judge’s Law of China Art. 12(7)*.

judiciary.³⁶ This reform measure is being reflected to establish a competent and efficient judiciary. The reason is that serving in the lower level court gathers judges' practical experience concerning working style, court process, and court environment. Consequently, judges have possessed inclusive understanding and skills about the gap in judicial procedure, weakness, and the nature of the cases that strengthen judges' work efficiency in akin circumstances in upper courts. The reform, similarly, decreases the necessity of employing judges of other courts to settle the exact nature of the case.

Third, the amended laws have specified additional obligations of the judge concerning the protection of trial work secrets, state secrets, and personal private information in accomplishing one's duty by imposing legal penalties for failing.³⁷ The protection of secrets regarding the trial work procedure, private information, and evidentiary document is an integral fragment of ethical and professional obligations of judges. Nonetheless, the contents, context, and scope of secret matters would be manifestly revealed in the statutory law. Fourth, the judge's law stipulates that a judge's case hearing shall have the fact as the basis and the law as the measure of maintaining fair posture.³⁸ The law also accentuates that judges shall have performed duties consistent with the law out of interference by individuals, administrative organs, and social organizations.³⁹ The exercise of adjudicative powers based on law and fact independently and impartially without interfering by somewhat external factors designates the strength of judicial independence.

The notion of substantive or decisional independence of the judiciary designates that the execution of adjudicative duties of judges would be based on laws, facts, and their consciences rather than subject to other powers to decisions making procedure of dispute resolution. Likewise, judges would not be the substance of interference by administrative organs, organizations, and individuals. China's constitutional declaration, the judge's law, and other statutory legal provisions emphasize on fair, impartial, and independent adjudication process based on the law and facts that might strengthen the degree of *de jure* independence of the judiciary. In China's judiciary, "substantive independence is being meticulously connected to *de jure* judicial independence" (Feng, 2016: 14). Subsequently, maintaining strong *de jure* independence reveals the entrance of individual-level application of *de facto* judicial independence. Hence, the modification of the Judge's Law has muscally confirmed the maintaining substantive independence in the judiciary of China.

7. Conclusion

The attempt to preserve the independence of the judiciary appears the value of a well democratic and civilized country, and it denotes the State's honor for the principle of judicial administration. Western political scientists and jurists randomly claim that China governs by a one-party totalitarian regime, and no independent judicial system is operating. An independent judiciary is vastly appraised as essential in safeguarding the citizens' rights, and in constructing an unprejudiced society by eliminating injustice and unfairness. The competent judiciary can check on arbitrary actions and corruption of the politician, bureaucrats, executive, the judiciary itself, corporations, and other institutions (Islam & Xin, 2020: 173, 149). Thus, an independent judiciary is essential to execute its functions involving the administration of justice accurately. As a result, the judicial reform initiatives are a constant process in China to guarantee an impartial adjudication process, develop the degree of judicial independence, to confirm accountability and impartiality that might promote the rule of law (Islam, 2020: 15). Scholar remarks that despite deficiencies, the reform movement is unique: the party extensively implements reform plan to fulfill its public pledge to remodel the judicial system and construct more independent judicial institutions (Peerenboom, 2002).

Although "China's reforms of laws and judiciary must harmony with their national conditions"

³⁶ *Ibid.*, Art. 17.

³⁷ *Ibid.*, Art. 10(5).

³⁸ *Ibid.*, Art. 6.

³⁹ *Ibid.*, Art. 7.

(Liebman, 2007: 621), and reform agenda must be applied under the CCP's leadership; typically the authority does not tolerate any substances to damage the Party's control (Chan, 2016). The goal of reform policy is not only based on progressive anticipations, but it upholds the ultimate national identity. Therefore, the judicial reforms in China have regularly been entrenched in the expression of national goals. Any planned reform policy that might encounter Party objectives and national distinctiveness secure by the authority are obviously to fail (Woo, 2017: 242). In the end, the study declares that the vast judicial reform initiatives regarding the trial proceedings, court management, the appointment of qualified judges, emphasizing professionalism, and elimination of unwritten directions by higher courts have undeniably been dignified as a model of development of the independent judicial system in China. Scholars and jurists utter that several rounds of reform have been implemented that make the Chinese court faster to guileless independence of the judiciary (Feng, 2016: 3).

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