

Research on the Challenges and Countermeasures of the Comprehensive Rule of Law

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Abstract

Since the 18th CPC National Congress, when rule of law has achieved great success, there are still some problems to be urgently solved. This article focuses four vital aspects of rule of law, namely, scientific legislation, strictly enforcing the law, judicial justice and obeying the law. It is found that there are a lot of challenges facing these aspects. For example, the law system needs improved further, there is still a big improvement for law system, enforcing standardization and judicial justice. The awareness of the rule of law has not been universally established. Targeting at these challenges, this article proposes relevant suggestions in order to make efforts in the process of constructing rule of law country in the theory.

Keywords

Rule of law; Scientific legislation; Strictly enforcing the law; Judicial justice; All people obey the law.

1. Introduction

Comprehensively advancing the rule of law is the basic strategy for the CPC to lead the people in governing the country. Since the 18th CPC National Congress, great progress has been made in comprehensively advancing the rule of law. Legislation, law enforcement, justice, and popularization of the law have been continuously improved, and the people's sense of fulfillment, happiness, and security of the rule of law has been continuously enhanced [1-2]. However, it cannot be ignored that there are still some challenges in the process of comprehensively advancing the rule of law, which have affected the development of the rule of law and should be made to be solved.

2. Analysis of the Challenges of Comprehensively Advancing the Rule of Law

The key links of comprehensively governing the country by law can be summarized as scientific legislation, strict law enforcement, impartial administration of justice, and law-abiding by the whole people. Scientific legislation is an important prerequisite for comprehensively governing the country by law, which solves the problem of "whether there is a law" and "whether the law made is a good law". Strict law enforcement is the key to comprehensively governing the rule of law, and it solves the problem of whether the written law is really implemented into practice. Fair administration of justice is the last line of defense to comprehensively rule the country by law. The judicial organs should solve specific conflicts and disputes in accordance with the law and crack down on illegal and criminal acts. Compliance with the law is an important foundation for the comprehensive rule of law. By letting people understand the law, understand the law, take the law as the code of conduct, and using the law to safeguard their legitimate rights and interests, to provide a good atmosphere for the comprehensive rule of law. The following will focus on these four key links to analyze the challenges facing China's comprehensive rule of law.

2.1. Challenges Faced in the Field of Scientific Legislation

Although the socialist legal system with Chinese characteristics has been formed and China's legislative field has achieved fruitful results, there are still some problems to be solved in practice. The first is the gap in legislation. Some emerging areas and even key areas have no relevant legislation, resulting in no access. The second is the phenomenon of legal conflict. In practice, there are still conflicts between lower law and superior law, and conflicts between new law and old law, resulting in the inconsistency of legal provisions. Third, the phenomenon that the legislative technology and the quality of legislation still need to be improved. In practice, there are repeated legislation, the legislation lags behind, and the operability of the laws formulated is not strong, resulting in the situation of lax legal provisions.

2.2. Challenges to Strict Law Enforcement Areas

Law enforcement is an important link to implement the written law into practice. In other words, law enforcement is an important link to ensure the implementation of the law. Law enforcement is related to the legitimate rights and interests of the opposite party, therefore, we must guarantee the law enforcement according to law. As General Secretary Xi Jinping has pointed out, "The government is the main body of law enforcement. The people hate the prominent problems such as irregularities, lax law enforcement, irregularities, or even suppressing the law with power, trading power and money, and bending the law for personal gain, and we must make great efforts to solve them." In practice, there are still several problems in the field of strict law enforcement[3].

2.2.1. Deviation in Law

From the current situation of law enforcement in some departments, a small number of law enforcement personnel do not have enough understanding of laws and regulations, and can not carry out the law well, and even damage the legitimate rights and interests of their counterparts. Through interviewing legal practitioners, the author found that some laws give their counterparts certain rights and interests, and if the relevant departments do not understand the law thoroughly, then some of the staff in this department would rather not enforce the law, nor dare to wrongly enforce the law. This approach is conducive to protection, but it is undoubtedly the deprivation of legal rights granted to the counterpart by the law, and is a kind of "inaction" that damages the rights and interests of the counterpart.

2.2.2. Law Enforcement Is Not Standard

The law enforcement is not standardized two common: one is the law enforcement subject is not standardized, the second is the law enforcement procedures are not standardized.

The law enforcement subject is not standardized mainly for, no law enforcement power personnel for law enforcement. For example, according to the law, law enforcement should be conducted by more than two qualifications of law enforcement personnel, in practice, however, the department in law enforcement, by a law enforcement certificate staff led another person without law enforcement qualification, this situation although on the number to meet the requirements of the law, but does not conform to the original meaning of the legislation.

irregular law enforcement procedures are common. Procedural justice is conducive to guaranteeing substantive justice, and observing the principle of due process is an inevitable requirement of law enforcement. The principle of due process includes many systems, such as notification, avoidance, hearing, disclosure and so on. However, in practice, in the process of law enforcement, some departments often violate the due process requirements in various forms, such as those who should be informed and are not informed, those who should be heard, and even some departments have made administrative decisions, which are the embodiment of the non-standard law enforcement procedures.

2.2.3. The "Trust and Protection Principle" Needs to Be Further Observed

Some departments still have behaviors that do not conform to the principle of trust protection, including, but not limited to, the promised administrative acts made by the government to the parties concerned, which ultimately damages the legitimate rights and interests of the counterpart. For example, in a single case somewhere, a department had promised to financially subsidize a project, but had not yet received the subsidy promised by the department. Such a behavior will inevitably lead to the relative person's distrust of the government department.

2.3. Challenges Faced in the Field of Impartial Justice

The negative impact of a wrong case is enough to destroy the good image accumulated by ninety-nine impartial judges. One in ten thousand mistakes in law enforcement and justice are 100 percent harm to the parties concerned. Justice is the last line of defense to ensure fairness and justice, and in the process of comprehensively governing the rule of law, there are also some judicial activities to be improved, which are as follows.

2.3.1. The Procedures of Judicial Activities Are Not Standardized

Judicial activities require strict procedure, which is inseparable from the nature of justice. In practice, however, the author interview for the legal practice workers more or less encountered judicial procedures is not standard, this situation is more obvious in the grassroots people's court, the author try to illustrate, for example: in a folk lending dispute case, the defendant refused to appear in court, the grassroots people's court on the grounds that not to find the defendant to trial. Article 144 of the Civil Procedure Law of the People's Republic of China stipulates that "if a defendant refuses to appear in court without justifiable reasons without a summons, or withdraws from the court without the permission of the court, he may make a judgment by default". The court should have entered judgment by default and should not have refused to hold.

2.3.2. The "Difficult Implementation" Problem Still Exists

Solving the problem of "difficult enforcement" is an important problem to be solved in judicial activities. The author gives a case to explain the difficult situation of execution: in the process of applying for property preservation before litigation, according to the legal procedure, the court should issue a lawyer's investigation order to the plaintiff's lawyer to inquire about the property information under the defendant's name, and the plaintiff's lawyer took the lawyer's investigation order to the administrative examination and approval department to inquire about the defendant's property. According to the law, the administrative examination and approval department after the lawyer issued by the court, can query the defendant's property, in practice, however, have the court asked the plaintiff and his lawyer must provide the defendant property information to issue the lawyer investigation, however, this is a paradox, because if there is no court lawyer investigation, the plaintiff and his lawyer almost no way to know the defendant's property information, equivalent to the court artificially set a threshold, stop the plaintiff's rights.

2.3.3. Lawyers' Rights and Interests in Judicial Activities Need to Be Further Protected

In judicial activities, lawyers have many rights granted by lawyer laws and other laws and regulations. However, in practice, some of the rights and interests of lawyers cannot be protected, such as the right to review papers. It is not uncommon for lawyers to read limited papers, and even some judges even refuse lawyers to review the court records, which conflicts with the relevant provisions of the Lawyers Law and the Civil Procedure Law, and infringes on the legitimate rights and interests of the parties.

2.4. Challenges Faced in the Field of Universal Law Compliance

The challenges in the field of law-abiding are mainly reflected in the belief in the rule of law has not been widely established, which is mainly reflected in the following aspects. First, the ideological problem is still true. In practice, some people do not understand, do not believe in the law, or even abide by the law. Even some leading cadres do not understand or use the law. Second, the problem of lacking the rule of law still exists. After the law is formulated, it should be strictly implemented and implemented. However, in practice, some legal norms have not been effectively implemented, and even the implementation is biased, which affects the authority of the law. In practice, some leading cadres, as a key minority, lack of belief in the rule of law, weak awareness of the rule of law, and lack of ability of the rule of law are also important problems in the field of abiding by the law.

2.4.1. Some Leading Cadres Are Lack of Faith in The Rule of Law and Have A Weak Awareness of The Rule of Law

Some leading officials do not believe in their power and the law, and lack basic respect for Party rules, discipline, laws and regulations. There are also leading cadres in the administration to consider the visible political achievements, the satisfaction of the superior and other factors, and even flatter the public opinion media, so that the administration by law has become a decoration. The concept of transformation from administrative means to the rule of law is relatively lagging behind. Some leading cadres mechanically understand "administration by law" and make extreme the concept of "administration by law and regulations", which becomes a reason for "not to take responsibility" and evade responsibility, and "lazy governance".

Some leading officials' attitude towards the law is often more important, secondary, busy, instead of the law and power over the law. In particular, they ignore the requirements of legal procedures, and sometimes not only do not act in accordance with the law and regulations, but even use power for personal gain.

2.4.2. Some Leading Cadres Are Lack of Legal Ability

Some leading cadres do not understand the understanding and study of law is not in place, usually pay more attention to the legal knowledge closely related to their life and work, the study and understanding of legal theory and other legal knowledge, and even constitutional knowledge is not deep enough, only pay attention to the present, strong pragmatism. Lead to a certain understanding of the law, but the grasp is not strong, with the ability of legal knowledge to guide the work to solve problems is not strong. The cultural basis and legal knowledge foundation of leading cadres are not the same and uneven, leading to the standards for the implementation of the law have differences, and they may explain the law and implement the law according to their own understanding, which seriously leads to mistakes in the implementation of the law. The training mechanism and system for improving the legal literacy of leading cadres are not yet perfect. At present, leading cadres have limited ways to receive legal education, and the systematic and professional legal training still needs to be strengthened.

3. Countermeasures to Meet the Challenges Facing the Comprehensive Rule of Law

The basic strategy of comprehensively advancing the rule of law will not be achieved overnight, nor can it be achieved in any single area. To be specific, we need to work together in all sectors and in all key links to improve the level of scientific legislation, strict law enforcement, impartial justice, and law compliance by the people.

3.1. Improve the Level of Scientific Legislation

Good laws are the foundation of good governance, and whether laws are reasonably formulated is the basis for whether they can be implemented and applied. To improve the level of scientific legislation, we must adhere to legal legislation, scientific legislation and democratic legislation, promote legislation in key areas, improve the quality of legislation, and provide legislative support for the rule of law. Adhere to the law legislation and scientific legislation, can provide excellent legal support for the construction of the rule of law, and legislation should also abide by the principle of democratic legislation, considering people's acceptance of the law, "in addition to meet the requirements of the legislation, scientific legislation, legislation should also have a set of laws of nature, namely people whether to accept the law" [4].

3.2. To Improve Strict Law Enforcement

3.2.1. Promote Substantive Justice With Procedural Justice: Follow the Principle of Due Process

The principle of due process is an important legal principle, whether legislative, administrative or judicial activities, must meet the requirements of procedure. Procedure plays an irreplaceable role in guaranteeing substantive justice, but the attention to procedure in practice is far from enough. In China, the violation of the principle of due process is an important reason for the administrative organs to lose the lawsuit. Take Shenzhen as an example, in recent years, more than half of the Shenzhen administrative organs have lost the lawsuit for violating the principle of due process. Thus, the principle of due process must be paid enough attention, and the legal activities must comply with the procedural requirements. To ensure that the legal act goes through all the contents and links of the procedure; to comply with the sequence of the procedure requirements; to complete the legal act within the time limit prescribed by the law; and to comply with the legal manner and forms.

3.2.2. Promote Transparency Through Openness: To Further Improve the Government Information Disclosure System

The government information disclosure system is an important means to protect the people's right to know, and then supervise the government's new policies according to law. Further improving the government information disclosure system plays an important role in protecting the people's right to know and supervising the government's administration according to law. To do a good job in government information disclosure, the following aspects require efforts.

(1) We will gradually expand the scope and refine the content of the disclosure

First, we should grasp the source and comprehensively promote the information disclosure work in full accordance with the Regulations on Government Information Disclosure. The goal to be achieved is: to timely clear the nature of disclosure, belong to the scope of disclosure should be disclosed, do not belong to the scope of disclosure, to be able to explain the reasons. Second, we should focus on key areas and promote information disclosure in key areas. The so-called priorities generally include the following aspects: the key tasks deployed by the central and local governments, the problems that the people urgently need to understand, and the emergencies that affect the overall situation of local development and stability.

(2) Make information disclosure more effective

First, coordinate and handle special applications, such as applications related to people's livelihood, multiple regions and multiple departments. Second, to do a good job of confidentiality review, to ensure the security of state secrets, this one should grasp a good principle is: "who is open, who is responsible for the information review". Third, do a good job of interpretation, open, consider the corresponding interpretation matters; open, synchronous distribute interpretation materials. Fourth, do a good job in response, and establish and improve the mechanism for collecting, judging, handling and responding to public opinions on

government affairs. Fifth, we should strengthen the development of platforms and channels, strengthen the construction of public platforms such as news spokesmen, government websites, microblogs and wechat, and give full play to the role of the media.

3.3. Improve the Level of Justice

The judiciary is the last line of defense to ensure fairness and justice. We must let the people feel fairness and justice in every case. Fair justice has the ultimate guarantee role in restricting public power and protecting private rights. Efforts should be made to solve the problems that the reform of the judicial system lags behind the requirements of social development, such as the reform of the staffing system, the management of personnel and property, the improvement of judicial career security, and the improvement of the judicial responsibility system. In addition, the mechanisms should be improved to supervise judicial activities. Enhance the sense of supervision, so that judicial personnel in front of inducement, degree and dare not do, obey the rules and can not do. By guiding the judicial personnel to administer justice fairly, the spirit of the rule of law can be integrated into the body and mind. To improve the supervision mechanism, we must restrain the boundary of power and solve the problem of "power control". Judicial personnel shall be severely punished for breaking the law and discipline. At the same time, the judicial personnel should consciously accept the supervision, should fully realize the important role of the supervision in preventing the abuse of judicial power and curbing the breeding of corruption, and consciously accept the all-round, all-weather and whole-process supervision.

3.4. Improve the Level of National Law Compliance

3.4.1. Create An Atmosphere in Which All the People Believe in The Law

Faith in the rule of law is the spiritual source of the rule of law. Only when all social subjects trust the law and believe in the rule of law can the law be deeply rooted in the hearts of the people. When facing problems, they will think of using the law as a weapon to solve them in the first time. We should cultivate a culture of the rule of law and create an atmosphere for the whole people to believe in the law. The premise of the rule of law culture is to have a relatively perfect legal system, on which the people understand, believe in and abide by the law.

3.4.2. Cultivate Leading Cadres' Belief in The Rule of Law

Leading cadres to strengthen the rule of law belief, the first thing to do the model of learning law. In practice, some leading cadres do not know much about the law, or even do not understand the basic legal knowledge, the lack of foundation will inevitably lead to these leading cadres can not become a model of leading the rule of law forward. Secondly, the leading cadres should be a model of law-abiding, do in strict accordance with the legal provisions to act, in practice, some leading cadres only pay attention to the results and do not pay attention to the procedures, not strictly in strict accordance with the legal norms have repeatedly occurred, which will cause a bad impact in the masses, and then affect the credibility of the law.

To enhance their belief in the rule of law, leading officials must also strengthen the people's views and solve the problem of "source of power". We must adhere to the constitutional concept that all the power of the state belongs to the people, and realize the protection of civil rights under the rule of law. At the same time, we will actively promote the orderly public participation in the rule of law, realize the transformation from "management" to "governance", and urgently address the people's urgent needs, and use legal means to solve the difficulties and problems facing the people.

To grasp the "key minority" of leading cadres, a key task is to strengthen the training of community-level cadres. Front-line cadres directly face the masses and directly contact with specific problems. Their level of rule of law directly reflects the cadres' rule of law literacy, which more profoundly affects the direction of work and the masses' evaluation of the Party's

"rule of law". Pay attention to self-education, in addition to the Constitution and other knowledge, should pay attention to the self-learning of legal knowledge involved in their respective industries and fields. We will strengthen the practice of the rule of law, develop the habit of handling affairs in accordance with the law, follow procedures, consult more, and think more.

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