

Discussion on “Selective Investigation” and “Rule of Law Soft Constraints”

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Abstract. In the rule of law, the law would have been a clear, openness, institutional rules that everyone should follow. However, , in our country, "rule of man" is still overwhelming "rule of law" in some places at present. From the nature, source, time, objects, and methods of supervision investigate five cases analyzed the "selective investigated" and "rule of law soft constraints" performance and features, from the historical, practical reasons, the concept of self-preservation, a confidant of law enforcement personnel quality and mass participation degree-depth analysis of the causes and hazards exist, the last in terms of mechanisms to strengthen education, improve, punishment, constraints, etc, to explore and to take appropriate measures to improve coping strategies.

Introduction

The paper analyzes the manifestation and features of selective investigation and rule of law soft constraints from the five aspects of the cases' nature, origin, time, object and ways of supervision, deeply explores the reason of their existence and harms from the angles of history, practical reasons, concept of self-preservation, qualities of law enforcement personnel and mass participation degree and puts forward with methods for impronement and strategies from the prospectives of educating, improving, punishment and constraint systems.

The report of the 18th National Congress of the Communist Party of China made it clear that anti-corruption must be carried out with unswerving perseverance and anti-corruption must be sounded alarmingly. If it can not be solved appropriately, it would cause fatal damages to the Party, even subjugate the party and the nation. This fully reflects our party's clear understanding of the dangers of corruption and the high attention to the long-term anti-corruption struggle. In some parts of our country there still exists the phenomenon of advocating power, power supremacy, "rule of man" overwhelming "rule of law", which seriously damaged the authority attached to laws. At present, China has no law, regulation or normative document clealy defining the "selective law enforcement" and "soft restraint of the rule of law". This article holds that the so-called "selective investigation and punishment" refers to the fact that the functional departments with discipline enforcement law are affected by the subjective consciousness or follow the superior's instructions and the interests when they investigate and deal with cases, rather than the current laws and regulaitons. The so-called "soft restraint of the rule of law" refers to the fact that the existing laws and regulations cannot effectively restrict the executive power which leads to the ineffective enforcement of some administrative law enforcement departments in supervising and punishing, undermines the objective standards of the laws and weakens the rigid constraints, resulting in soft constraints. The following is the analysis of the manifestation, features, origin, harms and methods on "selective investigation" and "rule of law soft constraints".

Manifests on and Features of “Selective Investigation” and “Rule of Law Soft Constraints”

In a society ruled by law, the laws should be clear, open, institutionalized rules that can be applied repeatedly to anyone and anything; it is predictable, able to guide people's behavior and orderly arrange people's behavior; it is procedural with a set of mechanisms of access, filtering and

screening, everyone should follow. However, in our country where personal relationships are more emphasized, this new era of reform and opening up, in the strong advancement of the rule of law in the process, but there has been some phenomenon, contrary to the society of rule of law, in the new era of opening-up and reform and the process of promoting rule of law.

In Terms of the Case Nature, Cases are Not Investigated Until they Become “Serious”. Some law enforcement departments dealing with the case involve all the elements concerning the social relationships in the content of the cases, which makes the cases be investigated lightly or not investigated, resulting in irreparable losses to the society, country and the party.

In Terms of Case Origin, Cases are Not Investigated until They Become “Unknown”. One of the important duties of administrative law enforcement departments is to actively carry out supervision and inspection. However, in the actual work, some crew members of the discipline inspection and supervision departments often sit in the office "waiting" for cases, not actively do the jobs. Some methods and technologies of some discipline inspection and supervision institutions in finding clues cannot fully meet the requirements of the development of the current situation.

In Terms of Investigation Time, Cases are Not Investigated until they are “Urgent”. Discipline enforcement departments, especially the discipline inspection and supervision departments should normalize the duties and actively play a functional role, but in practical work, it often cannot meet the requirements due to staffing, work and hardware investment and other factors,. They get down investigating the cases when the situations are urgent, the person has strong hatred for the involved cases or the severe mass disturbances with great reactions happen. Such work concepts make the government more passive, seriously affecting the images of the party and governments in the people.

In Terms of Investigation Subjects, “Acquaintances” are “Lightly” Investigated or Exempt from Being Investigated. Under the influence of social relations, some functional departments' staff will encounter "familiar" face. "when implementing duties. The thought of sophistication will make them lightly investigate or not investigate when dealing with cases involving acquaintances. [1].

In Terms of Investigation Methods, They Do Not Know How to “Investigate”. From the formal point of view, there is a phenomenon that "they do not dare to supervise the superior officials, feel embarrassed to supervise the staff of the same level and are not willing to supervise the inferior officials; from the procedural point of view, despite the requirements of the "supervision" in advance, in the middle of and after the cases, the general discipline inspection agencies are involved in the process supervision. Some units do not inform the supervision items in advance, do not offer feedbacks after supervision, but just show in the process.; from the supervision content, the leader of discipline inspection and supervision departments has only one vote on major issues, and he or she has to take the main responsible person into consideration. It is just as a mere formality that leading cadres report the duties and honesty, reporting on important matters, property, resulting in the supervision work, which leads to the result that discipline inspection and supervision departments do not know how to check or not dare to check it in the supervision.

In short, the "selective investigation" is often demonstrated by the fact that law enforcement discipline enforcement departments have a choice when dealing with cases, and concerns when investigating cases. When it comes to the "selective investigation", it necessarily involves "the rule of law and soft constraints", which accommodates or even condone the "selective investigation." As a result, the above specific performances, cause the phenomenon of being not serious when implementation and being not punished when dealing with violations.

Origins and Harms of “Selective Investigation” and “Soft Constraint of the Rule of Law”

Aristotle said that the rule of law should be superior to the rule of man. In a society governed by the rule of law, if the society lacks the pursuit and dependence of the faith in law, ideals and the rule of law, loses citizens' trust in law and the legal institutions, and the cornerstone of social system is not based on the concept of respect for the law, any law completion and legal functions would be empty words and the concept of the rule of law could not come true. At present, the concept of the

development of the spirit of the law remains deficiency. Therefore, we should continue to strengthen the awareness of legally administering the administration and handling affairs according to law so that we can constantly raise public trust in the Party and the government by follow the rule of abiding the existing laws, being strict in carrying out laws and punishing any violation.

Historical Reasons. Throughout the history of Chinese law development, we are confined to the areas of practical experience, such as legislative skills, compiling methods and implementation methods, and it is difficult to develop towards a higher level of fairness and justice. In the depths of the Chinese consciousness and ideology, we are still in a society that advocates power and power supremacy, or a society that is not accustomed to following rules, or a society that has not yet broken away from acquaintances. We do not rely on laws and neglect precedures with one-sided instrumentalist view of law, excessive nationalism and the concept of legal ethics of pan-moralism [3].

Realistic Reasons. Due to the lack of law belief worship and ultimate concern, the phenominon of order or policy superior to law, the mass' fearing laws, complaining laws and avoiding laws appear in the process of legal system construction in the new China, which can be explained by lack of lofty ideals. Since the reform and opening up, all kinds of the legal systems have been set up, but when the system construction has been dramatically accumulated in quantity, lack of legal authority is the key problems which restrict the development and level of rule of law. As a result, although there are a lot of legal systems, these systems to a certain extent, have become a static law on the books, a soft law without any practical effects.

Influence of the Concept of Keeping Oneself Safe. For a long time, the anti-corruption work has been a major work of the party and the country, which is related to the vital interests of the whole Party and the whole people. However, in practical work, it can sometimes not get the effective support from the people and even the Party members and cadres. The curruption of some officials are known by the inferior colleagues, the masses and families, but they are not disclosed timely. Consequently, the curruption officials get bad from worse, and even some of them are unwilling to be honest or hide some bad behaviours when the discipline supervision departments have involved in the cases, and the reason for that is to protect themselves, that is to say that they fear that may do harm to their profits or affect their reputation and promotion.

The Overall Quality of Law Enforcement Personnel Needs to Be Improved. In case the legal system has been formed, law enforcement officers have the necessary legal knowledge and professional skills of the case, law enforcement practitioners themselves to understand the concept of rule of law and grasp, it has often become a crucial factor that the law and discipline enforcement staff have a clear unerstanding of the conception of law and discipline enforcement under the circumstance where the law system has been established and the staff have grasped the necessary legal knowledge and professional skills. Therefore, we should continuously upgrade the overall quality of executive discipline law enforcement officers, and strengthen the means of handling cases, to realize being cautious and self-purification.

Insufficient Participation of the Public. In the anti-corruption work, increase openness and transparency to public the work content and the provisions on the operation of public services through network media. Encourage public participation. More supervision, will not only increase the strength, but also truly promote anti-corruption work in-depth. The reason why the people are not satisfied with the current anti-corruption is the lack of transparency and participation of the masses. Only by trusting and relying on the people, can the anti-corruption work be carried out smoothly and effectively.

Strategies for “Selective Investigation” and “Soft Constraint of the Rule of Law”

It is far from enough to terminate the "selective investigation" and "rule of law soft constraint" just relying on the disciplinary supervision departments. We should gradually expand to all Party members and cadres. "Loose to near and tense to far, but not following the same rule", the propoition by Bai Juyi when talking about the implementation of the laws and regulations, can be used for reference. A good social environment, requires the abidence and efforts from all members.

In a harmonious society, the officials should carry out their duties according to laws, the supervisors should conduct abiding by laws and the participants follow laws.

Strengthening the Ideological Education of Law Enforcement Officers. Ideological and political education is a good tradition of our party, the ideological guarantee of party members and cadres to resist corruption and change. Law enforcement officers do not have low legal consciousness and weak sense of honesty are the objective elements for the disciplinary and law enforcement staff to abuse the discretion of administrative penalty. Therefore, it is necessary to strengthen the education of ideals and beliefs of law enforcement officers, the party's work style and party discipline education, improve the service sense of law enforcement for the people, strengthen the administrative idea of law and discipline enforcement, establish a correct outlook on life, values, consciously resist power-abusing to build the steel "Great Wall in ideology of anti - corruption . Resolutely correct the view that the discipline law enforcement is to manage people, to fine, to create "income", to complete indicators" and other misconceptions through the enforcement of law enforcement education; improve the style of law and discipline enforcement to correct the attitude of arrogance, indifference, perfunctory manner, and correct the phenomenon of difficult access, unwilling facial expression and difficult handling matters. Effectively promote the education of law and discipline enforcement to regulate the related behaviours and actively explore the methods of serve the people.

Perfect the Supervision Mechanism of Law and Discipline Enforcement. We should establish a sound mechanism for supervising law and discipline enforcement agencies and strengthen it. First, to further regulate the administrative examination and approval behavior. Seriously implement the law on administrative licensing, further reduce and adjust administrative licensing items, standardize the approval procedures and methods, define the criteria, conditions, time limits and the corresponding responsibilities in all the procedures of approvals, and timely public them to the society for the rational work division, clear responsibilities and mutual restraint and mutual supervision. Second, to reinforce the publicaiton and notification. Publicify the key contents, such as basis, authority, procedure, result and informants' hot-line telephones to make it a reality of "sunshine operation", to eliminate "black-box" operation, and strengthen the supervision of the communities and the masses. Third, to increase efforts to correct the wrong cases. Gradually improve the unified administrative law enforcement fault liability system, define the fault behaviors of administrative law enforcement, clear manners and extent of accountability eliminate the phenomenon of not following the existing laws and not punishing the violations. Fourth, to increase the intensity of external supervision. We must strive to expand the supervision, widely accept the supervision of the National People's Congress, the CPPCC democratic supervision, press supervision and public supervision, and support supervision, audit departments to perform their duties independently. Public law enforcement investigation of major cases through radio, television, newspapers and other news media, widely accept supervision of the community [5]. Change the ways of supervision, altering the before and middle supervision to after supervision, result supervision to procedure supervision, and from part supervision to full supervision.

Establish and Improve the Network and Public Oversight Mechanisms. China has entered the era of information society, in which monitoring and anti-corruption through network is an important way for the mass to take part in the anti-corrution. The success of cybercrime corruption includes several necessary procedures. The specific netizens publicly report the corrupt officials on the Internet or microblogs and provide specific clues which can be verified. The high attention of the network public opinion is manifested by frequent forwarding and lively discussion and comment. Anti-corruption agencies actively involved in the investigation and public the investigation results of relevant casess. Successful and active network anti-corruption, to a certain extent, makes up for the existing system, which help increase the trust and support of the masses in the party and government.

Improve the System of Investigating and Punishing Cases. Discipline law enforcement officers must adhere to three principles in dealing with disciplinary violation cases involving disciplinary staff. First, we cannot "catch up big." For the curruption involving law enforcement, we

should get rid of the root for the serious ones, and have satisfied explanation for the light ones. Anyone who hinder the fair implementation of discipline and laws, whether they accept the invitation, gifts and money, even bribery offering and accepting, will be severely punished once discovered. Second, the difference in "inside and outside are different." is not allowed. Law enforcement officers can not be lightly treated if they break the the discipline of corruption, for fear of affecting the image of the unit. Third, we should avoid the principle of "only thunder, no rain." we should dare to deal with the tough cases, early grasping, quick grasping, active grasping, to eliminate the corruption of law enforcement in the bud. We need actively build and improve the work mechanism of investigating and tackling cases, unifiedly led by the party committee, actively coordinating by the disciplinary committee, active cooperation of functional departments and active participation of the mass to form the joint forces to improve the level of tackling cases. We should, according to the characteristics and laws of corruption in the new period and under new conditions, participate in the important parts and key processes in the grassroots level and focus on investigating and prosecuting cases of abusing power in violation of political, getting profits through power, corruption and bribery, and selling and buying official positions in order to realize the aim of educating a group by investigating and punishing one. At the same time, we must increase the economic penalties, so that corrupt criminals pay a great price in the politics and finance, making them not dare and being willing to commit corruption.

Strengthen Constraints and Supervision Over Power. Strengthening the supervision of the frontier is the key to effectively prevent corruption. We should conscientiously implement the regulations on inner-party supervision, strengthen the supervision over leading cadres, especially top leaders of the party and governments, and strictly regulate the exercise of power. Besides, we also need to strictly carry out the rules on the leading cadres' report on their duties and honesty in performing them, admonishing talks and letter consultant and so on. And, we must deepen the audit of economic responsibility of the leading cadres of the party and governments, and strictly implement the responsibility system in the construction of party style and clean government. [6] We should strengthen and improve the inspection work, pay more attention to the comprehensive application of inspection results, improve the level of inspection work, and better play the role of inspection system supervision.

The comprehensive exposition on strengthening the party building, made on the 18th National Congress of the Communist Party of China (CPC) has important guiding significance for us to overcome the "selective investigation" and "soft restraint of the rule of law". The report stresses that strengthening supervision and inspection, seriously implementing the discipline of the party, especially the political discipline, and carefully addressing the disciplinary-against behavior to make everyone equal before the laws, have no privilege in following the discipline and no exception in implementing them. And all these will constitute the big strength with which the whole party, from top to bottom, will proceed at the same pace. At the same time, the report also points out the way of anti-corruption and advocating honest with Chinese characteristics, persisting in treating both the symptoms and the root, comprehensive tackling, implementing both prevention and punishment, and emphasizing prevention to comprehensively promote the system construction of punishing and preventing corruption. And we deepen the reform in key areas and processes, strictly implement of the party's responsibility system in work style and clean government construction, improve the discipline inspection and supervision system, perfect the unified management of the agencies to better play the role of inspection system supervision, and always maintain the high pressure of punishing and curing corruption, resolutely investigate and deal with major cases, and make efforts to solve the corruption in the big cases, whatever people, regardless of power, job level, violate party discipline and state law, must be severely punished [7]. Only in this way can we finally solve the "selective investigation" and "rule of law soft constraints", the abnormality in the development of rule of law at the beginning stage of socialism.

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