

China Debates the Rule of Law

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As China concludes its fourth plenum of the 18th Communist Party of China (CCP) “governing the country according to the law” and the “rule of law” become a dominant theme of discussion and a key challenge before ruling regime. Legal Reforms in China and its implication for rule of law stands as a less explored subject on China as nation that has thrived on sustained economic growth for past three decades. In convergence with the ushering of economic reforms in China, law has come to occupy an important role for fostering uniformity and predictability in the governance acting as a check over arbitrary exercise of state power.

In recent times, law in China has also become a key legal instrument for raising citizen awareness on issues of labour rights violations, consumer advocacy, rising pollution levels and delivery of civic services. In this, individual litigation has become a key tool. Consequently, the subject of rule of law in China has become a matter of public discourse and academic inquiry. While the Chinese claimed enhanced rule of law based on fundamental legal reforms, on the contrary China was criticized for unreasonable detentions, Party interventions and lack of legal expertise.

As the recent CCP plenum reaffirmed, “fairness is the lifeline of rule of law”. In run up to the debate on “promoting rule of law in China”, three related issues need necessary attention. Firstly, as the leadership proclaimed its firm faith in upholding the “socialist rule of law with Chinese characteristics”, it remains still unclear what are the basic premises of this principle. As western notion of rule of law clearly proclaims limited government and protection of rights,

Chinese are still long way to go in their understanding of rule of law and its universally agreed parameters. It still remains unclear whether the Chinese understanding of ‘rule of law’ stands for working towards a check on abuse of power by state and party; or will it go ahead with restricted legal and judicial reforms.

Secondly, the Chinese call for rule of law is more directed towards safeguarding rights under law. It is primarily concerned with providing significant legal measure to address issues of citizen grievances rather to the larger objective of openness in political governance. In one way, it appears that the Chinese are aiming to pacify rising individual and social dissident by advancing legal safeguards.

Thirdly, the plenum promised more autonomy for local courts with increased control over local executive level officials. It also called for possibilities of establishing “cross administrative regional courts and procuratorates”, a sincere step to ensure local court autonomy in China. In addition, it called for ruling in line with the Constitution as the core to ensure rule of law.

To conclude, it can be said that it remains still unclear whether rule of law in China will be another mechanism to enhance party control over state or if it reflects a fundamental shift in the pattern of governance in China.