Anti-Corruption Commissions in China: Panacea or Cure-all Medicine to Fight Corruption

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Panacea or Cure-all Medicine to Fight Corruption¹

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I .Introduction

With the rapidly economic development and the overall social transformation, corruption has becoming a more prominent threat to China’s long-term development. The CPC and Chinese government, while severely cracking down corruption, has proposed a series of strategic thinking to fundamentally solve the problem of corruption. The sharp weapons against corruption in China are generally two institutions³, which are Commission for Discipline Inspection responsible for the inspection within the party and the People’s Procuratorate, one of key functions of which is prevention and punishment of corruption. A popular saying among Chinese government officials goes: “Fear not the heavens or the earth, but fear the summons of the Central Commission for Discipline Inspection’s Anti-Corruption Office⁴.” This sentence is reflected the powerful of the anti-corruption organs.

Commission for Discipline Inspection has the right to require the investigated subjects to report their problems within a prescribed time and in a prescribed place which is called “Shuanggui” in accordance with relevant provisions of disciplinary regulations of the party⁵. It has successfully solved a number of difficult and complex cases and effectively prevented the tide of corruption. However, with today’s rapid development of economy and gradual improvement and enhancement of legal system and thoughts, it is exposed that such institution, to some extent, limits the liberty of citizens granted by the Constitution of our country.

Again, after the implementation of the amended Criminal Procedural Law, there is a higher requirement for prosecution investigations. Especially, it has more specifically provided for the express procedures to handle cases. For instance, summons shall not exceed 12 hours which brings difficulties to the investigation of prosecution organs.

Today, facing the increasing pursuit of uniformity between social effects, legal and political

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³ Actually, it also includes the Ministry of Supervision, the National Audit Office, the National Bureau of Corruption Prevention, Anti-Corruption Bureau and other anti-corruption agency, due to the limitations, this paper only discusses Discipline Inspection Commission and People’s Procuratorate
⁴ “天不怕，地不怕，就怕中纪委反贪局找谈话”
⁵ “Shuanggui” is an investigative measure of Chinese Communist Party to carry out discipline inspection, referring to the investigation and restraint of liberty of the members of CPC prior to the prosecution's investigation
effects, the role of anti-corruption of the discipline inspection organs and prosecution organs is facing enormous challenges.

II. The Commission for Discipline Inspection of CPC

Commission for Discipline Inspection refers to commission of discipline inspection of Chinese communist party at all levels. It is the inspection and supervision organ of Chinese communist party, with the role of party conduct, party discipline and anti-corruption. The reasons and likely source of law of these organs of Commission for Discipline Inspection are the relevant provisions of Chapter 8 Discipline Inspection Organs of the Party of Constitution of Chinese Communist Party.

Central Discipline Inspection Commission was reinstated in 1979. However, in 1980’s, the main tasks of Central Discipline Commission was to correct framed-up and wrong cases. After 1993, it began to comprehensively research and deployed its anti-corruption force. Discipline organs were entrusted with such mission at a critical and difficult moment to investigate severe cases of corruption. Therefore, in such a special and critical period of combating corruption, “Shuanggui”, a special organizational measures and investigation methods required for the discipline organs, came into being at such special moment. “Shuanggui”, is an organizational measure against suspected and undisciplined members of CPC. There is strict limitation on him to communicate with outside and his scope of activities.

In recent year discipline organs at all levels have made breakthroughs with a lot of major and grave cases with this “Shuanggui” measure and greatly and deeply carried out the anti-corruption (See Table 1). Of course, some scholars have a different view to this measure. They think that when the personal right is involved in a case, only the judicial authorities have jurisdiction over such case on the premises that the legal procedures are strictly followed. Thereafter, Central

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6 “社会效果、政治效果和法律效果”

7 It is including the central Commission for Discipline Inspection, local Commission for Discipline Inspection and grass root Commission for Discipline Inspection of Chinese communist party

8 In February 1993, in accordance with the decisions of Central Commission of CPC and State Council, Ministry of Supervision and Discipline Inspection Commission of Central Commission of CPC handle official affairs jointly. And the organs are concluded as organs of State Council and the organization is listed as the department directly under the Central Commission of CPC. National Bureau of Corruption Prevention is included in the agencies directly under the State Council and listed in the Ministry of Supervision. From 1993, local supervision organs and the party’s discipline commissions handle official affair jointly

9 Chapter 8 of the 1997 Constitution of CPC


12 “Shuanggui” is an investigative measure of Chinese Communist Party to carry out discipline inspection, referring to the investigation and restraint of liberty of the members of CPC prior to the prosecution’s investigation. The main purpose of this examination in isolation is to prevent the investigated from delay, evading investigation and even concluding and fleeing

13 Professor He Weifang has a negative view to “Double prescribed”, he thinks, the party’s discipline inspection commission may require a person to report its problems at prescribed time and place. This involves the liberty of such person. This authority shall of course only be exercised by judicial organs and public security organs in accordance with legal procedures. It is clear that such “Shuanggui” is over the law

See http://www.360doc.com/content/06/0307/12/2873_76519.shtml accessed 28 October 2011
party and central discipline commission laid out a serial of rules and regulations to constantly improve and regulate the application of “Shuanggui”, which expressly stipulate the applicable subject, authority to use, procedures and working discipline concerning such measure, providing basis for the application of “Shuanggui” within the party\textsuperscript{14}.

Table 1 Recently Shuanggui cases\textsuperscript{15}

<table>
<thead>
<tr>
<th>Name</th>
<th>Position held prior to shuanggui</th>
<th>Alleged offenses</th>
<th>Start of shuanggui</th>
<th>Criminal sentence, date of sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHEN Shaoji</td>
<td>Chairman, Chinese People’s Political Consultative Conference, Guangdong Province</td>
<td>Accepting bribes, embezzlement</td>
<td>Apr 2009</td>
<td>Death sentence, suspended two years, Jul 2010</td>
</tr>
<tr>
<td>LIU Zhijun</td>
<td>Party Secretary, National Railway Ministry</td>
<td>“Severe violations of discipline,” manipulating competitive bidding</td>
<td>Feb 2011</td>
<td>Pending</td>
</tr>
<tr>
<td>WANG Huayuan</td>
<td>Member, Party Committee for Discipline Inspection, Zhejiang Province</td>
<td>Accepting bribes</td>
<td>Apr 2009</td>
<td>Death sentence, suspended two years, Sep 2010</td>
</tr>
<tr>
<td>XU Zhongheng</td>
<td>Mayor, Shenzhen</td>
<td>Accepting bribes</td>
<td>Jun 2009</td>
<td>Death sentence, suspended two years, May 2011</td>
</tr>
</tbody>
</table>

Great importance has been attached to integration of the reform of “Shuanggui” with rule of law, to provide the person under investigation with consultation channels of discipline of party and government and relevant policies. The disciplinary measure will be transparent and fair and input new and fresh blood for anti-corruption\textsuperscript{16}.

\section*{III. The People’s Procuratorates of the PRC}

In China, the prosecution organs are people's procuratorates, including Supreme People's Procuratorate, provincial-level People's Procuratorate, prefectural level and county-level People's Procuratorate of the People's Procuratorate. China’s Procuratorial agencies are set up according to the provisions of Article 129-133 of \textit{Constitution of the People's Republic of China}. According to the provisions of \textit{Constitution}, the People’s Procuratorate is the national supervision institution of law, with the roles to authorize arrest, to prosecute, investigate cases involving bribery and corruption crimes and dereliction of duty of government staff, and supervise investigation, trial, sentence and execution. In which, one of key tasks of prosecution organs is to place bribery and corruption cases on file for investigation and prosecution.

The Supreme People's Procuratorate established Anti-Corruption Bureau in November 1995 to lead and coordinate the overall national work of anti-bribery and anti-corruption and directly handle significantly complex cases of embezzlement and bribery of high rank officials. The establishment of Anti-Corruption Bureau is learned from the experience of Hong Kong's ICAC, and its formation is a major advance in the field of anti-corruption. However, although the set-up of Anti-Corruption Bureau was to emulate the ICAC, to fight against the corruption, due to the different of institutional, status, funding as well as other reasons, the Anti-Corruption Bureau has not played as important as a key role as the ICAC in the anti-corruption process.

The prosecution organs are the legal supervision organs, and the procuratorial right is the right of supervision of law enforcement. This localization of this measure not only conforms to the provisions of our constitution and law concerning prosecution organs and procuratorial right, but also the specific conditions of China. Although, currently, there still are various problems with our prosecution organs during the specific enforcement of supervision of law enforcement, the main problems are how to strengthen and perfect the supervision of law enforcement and they are not sufficient enough to influence the nature of supervision of law.

IV. Anti-Corruption Commissions in China and the future reform: a formidable combination of dual sword

1. The sharp weapons against corruption under the socialist idea of rule of law

The socialist idea of rule of law is a supporting idea and legal basis for the cooperation between the discipline organs and prosecution organs during the work of anti-corruption. The core and essence of the socialism rule of law is the consistent integration of the leadership of the party, ownership of the people and rule of law. The basic difference between Chinese prosecutorial system and western prosecutorial system is that Chinese prosecution work is always under the leadership of CPC and prosecutorial undertaking is part of the undertakings of the party. However the disciplinary organs are the inspection and supervision organs within the party. And

In 1999, the national Procuratorial organs investigated 38382 criminal cases of embezzlement, bribery, dereliction, put on record 5244 cases of embezzlement above 50,000 Yuan for investigation, investigated and dealt with 2200 the suspected criminals above county office level, in which 136 officials are at bureau level and 3 at the ministerial rank. Such as, Jiangxi former Assistant Deputy Governor, Hu Changqing, unclear origin of vast fortune due to bribery, Secretary of Ningbo Municipal party committee, Xu Yunhong, abuse of power, malpractice for personal gains, are all under Procuratorial organs' investigation.


The socialism rule of law is a conclusion of the development and experiences of Chinese economy, society and rule of law since modern times especially after the opening-up and reform, which is made by CPC, as the ruling party, from the reality and overall situations of construction and modernization of a socialist country, drawing lessons from experience of rule of law of the world; it is not only part of the socialist construction planning, but also the theoretic pursuit and upgrade of the ruling party on Chinese rule of law.

In the 20th anniversary of commemoration of constitution promulgation from all walks of life in capital, Hu Jintao, General Secretary, said, “the party leader is the basic guarantee for the people to master their own affairs and the rule of law, the people to master of own affairs is the essence of socialist democratic politics, and the rule of law is essential strategy of the party to lead the people to govern country.”
disciplinary work is the key forming part of the career of the party23.

The guiding ideology "Three Supreme" is to adhere to the supreme of the party's cause24, the supreme of people's interests and the supreme of constitution and law as well as require the discipline inspection organs and people's procuratorates to uphold the Party leadership, faithfully enforce the constitution and laws, and to protect people's fundamental interests. Meanwhile, the anti-corruption departments of the prosecution organs must uphold and improve the party's leadership and always adhere to the party leadership over the judicial work while independent exercising prosecutorial power25.

2. Interactive combination between discipline inspection procedures within party procedures and judicial prosecution procedures

Party discipline inspection procedures may be started and applied after the Discipline Standing Committee has discussed and decided to preliminarily examine the clues and materials. In the event that the prosecution organs have no sufficient evidence at the first beginning, however they must act according to law and are not convenient to directly handle the case, in order to prevent collusion, destruction of evidence and other circumstances occur, usually the Commission for Discipline Inspection often come out ahead to take such "Shuanggui" measure.

The commencement and enforcement of party discipline inspection procedures may be divided into four parts: the first part is to accept and preliminarily verify; the second part is to put the case on file, the third part is to investigate and the fourth part is to transfer for trial26. In which the first and second parts are generally regard as phrase prior to the start of “Shuanggui” measure, the investigating phrase of third part is actually the phrase of “Shuanggui” measure, and the fourth part is the phrase of coordination with the judicial prosecution proceedings. The "Shuanggui" measure has the legal effects with respect to the issues within the party discipline and government discipline. When the case handled by the discipline commission organs involve criminal offenses, such case shall be transferred to the prosecution organs. After being transferred to the prosecution organs, if it is found that party discipline penalty shall be given, the discipline organs many directly hear such cases.

3. Panacea or Cure-all Medicine to Fight Corruption?

1) Who is in dominant position?

During cooperation, due to its position in co-operation the prosecution organs will inevitably lose part of its initiative in handling the cases. Discipline inspection commissions often have a higher political position, so during the process handling cases, it is showed that the personnel in charge

23 ZHANG Wenxian,‘Introduction on Socialism Rule of Law’[2006]Jurists Review
24 On 26th December 2007, Hu Jintao, General Secretary, at the conference of rap session of working conference of national politics and law and national grand justices and grand procurator, pointed out, “to continuously adhere to the supremacy of the leadership of the party, the supremacy of people's interests and the supremacy of constitution and law, to practically undertake the historical mission and political responsibilities to lead the judges, prosecutors and other working personnel to ensure the scientific development, promote the social harmony, and to try hard to construct a socialist judicial system with fairness and high efficiency”
26 Regulations of Discipline Inspection Organs of CPC on Investigation of the Case, 25th March, 1994
of the cases discusses the cases between two organs on the surface, but actually have the superior authority over the prosecution organs. Because of investigators of Commission for Discipline Inspection have the right of making decisions, thus consequently the prosecution investigators loss their initiative. But a lot of specific work is done by the prosecution's investigators; this phenomenon is particularly conspicuous during the cooperation between a superior discipline commission and grassroots procuratorates. As long as the officials are suspected in violation of discipline, discipline commission can start "Shuanggui" measure, whereas the procuratorates handling cases can only strictly abide by the provisions of Criminal Procedure Law to collect fixed evidences. Even the summon shall not be more than twelve hours. If there is no sufficient evidence for detention, it is impossible to take arrest measures. With such large difference, the effectiveness is consequently different.

2) The conflict between legal effects and political effects?
While cooperation of handling cases between prosecution organs and discipline organs, the requirements and purposes of both organs are different. In particular, the prosecution organs shall handle cases according the requirements of judicial procedures. The requirements on the evidence are comparatively strict and delicate and the purpose of prosecution organs in handling the cases is to fight crimes. However, the discipline commissions pay more attention to the political effects and have flexible ways to handle cases. Sometimes, even the evidence is not sufficient; they will still investigate for the political consideration.

3) Personnel cooperation?
The personnel of prosecution organs and the Commission for Discipline Inspection organs are instable. As a result, the new shift of personnel does not know the cases enough. The re-communication easily leads to inefficiency. For instance, in the last three years, in a district commission for discipline inspection, two leaders in charge of the cases are replaced and it is more frequent for the personnel exchange, each personnel exchanged shall be re-familiar with the cases due to the cooperation between to departments. Coupled with the misunderstandings between the personnel and mutual interdependence between them, consequently the efficiency becomes much lower27.

IV. Conclusions
In short, whether in the past, current days or a long time of the future, the prosecution organs and discipline organs are the main forces of anti-corruption and terrifying the corrupted officials.

Therefore, it is the trend of the times to integrate the procedures, methods etc. of the discipline inspection organs and procuratorial organs with the traditional rule of law. In this particular and historic period of anti-corruption, obviously it is not efficient and powerful enough to handle corruption conducts only through the over-cautious and complex judicial procedures. The best way is to bring both organs into full play, establish an interactive mechanism, emphasize the concerted cooperation and reach tacit understanding, then the anti-corruption work will be pushed forward and perfected.

27 Ibid (23)