

CHINA'S MARCH FROM OPEN GOVERNMENT TOWARDS OPEN JUDICIAL SYSTEM

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ABSTRACT: *Transparency and openness, government integrity, citizen participation and the respect for the rights of the public are the fundamental requirements for the open government. In order to increase the efficiency and effectiveness of the government, re-designing and openness is necessary. Re-engineering government can help in building a governance model adaptive to the demands of public in the information age. Open government is built on e-government development. Information technology is the basic key towards open government. In the age of technological advancement, open government can't be realized without the use of information technology. It enables the public to easily access the government information and provides different channels for public participation in the government processes. Research paper in hand investigates the development of open government and open judiciary in China. Chinese term kāifang sīfǎ (开放司法) which literally means "judicial openness" has been widely used in China's official documents since 2004. Now a day's, the term judicial openness is being used frequently among judges, politicians, scholars and the public, therefore, this research tries to trace out the growth of expanded use of openness in the Chinese judicial system. Further, it explains the development of judicial openness from relatively narrow concept towards a broader one during the development of more than one and half decade.*

KEYWORDS: Open government, judicial openness, participation

INTRODUCTION

In China, the term "Open Government" which is "kāifang zhengfǔ" ("开放政府") first time appeared in the official documents in 2014, but Chinese scholars were discussing and writing about the open government from the start of 21st century. Chinese Scholars, like many others, were also inspired by the concept of open government and were discussing about reengineering government as a novel approach for public administration.¹ Johnes, L. R., and Thompson, F. 1999 were of the view that information revolution would bring enormous changes in the State

¹Osborne, D., & Plastrik, P. (1998). *Banishing bureaucracy: Strategies for reinventing government*. New York, NY: Plume.

and its institutions and suggested to “reinvent government” to keep in pace with the emerging technologies.² Osborne and Plastrik, in 1998 gave a practical plan to “re-invent government” in order to increase the efficiency, effectiveness and working capacity of the public institutions.³

Inspired by the concept of openness, Chen Zhenming, in 2002, offered strategies and tactics for management reforms of public departments.⁴ WU Jiang suggested in 2005 that Chinese government should improve and construct a service oriented government in order to figure out the problems which Chinese Administrative system was facing at that time.⁵ Hence, Chinese Scholars, similar to the other counterparts in the world desired in the start of 21st century to re-engineer or re-invent government making the use of information technology. All the scholars were agreed at the point that changes should be designed and guided by the needs of the public and purpose of the re-invented government should be to meet the needs of the society. Zhang suggested in 2005 that re-engineering or re-inventing government meant redefining the division of labour between the state, civil society and market economy, that reconstruction should be (1) development towards public governance (2) a return to civil society and (3) the use of a market economy.⁶ These considerations along with the reforms initiated by China led the scholars to believe that the ultimate objective of the reforms was to open the government for the public and “re-inventing government” or “re-engineering government” was the stage in between the closed government and the open government.⁷

In his influential writing on Opening Government (开放政府论), Professor WANG Conghu proposed kāifàng zhèngfǔ (开放政府) the most suitable translation of “open government” as the term not only implies that the government is not closed, but also suggests that the government needs to open domestically(i.e., to act with integrity, interact with the public and protect human rights) and internationally(i.e., to interact and open to the foreigners).⁸ Professor XIAO Jinming in 2005 stressed that the fundamental requirements for the open government were transparency and openness, government integrity, citizen participation and the respect for

² Johnes, L. R., & Thompson, F. (1999). *Public management renewal for the twenty-first century*. Stamford, CT: Jai Press, Inc.

³ Osborne, D., & Plastrik, P. (1998). *Banishing bureaucracy: Strategies for reinventing government*. New York, NY: Plume.

⁴ Zhenming, C. H. E. N. (2002). Reengineering government: Strategies and tactics of public department management reform. *Southeast Academic Research*, 5, 16–22.

⁵ Jiang, W. U. "Improving Administrative Capacity and Constructing Service-oriented Government [J]." *Journal of China National School of Administration* 1 (2005): 006.

⁶ ZHANG, X. (2005). "Toward Alternative Delivery Systems of Public Goods and Services——A Critical Review of Reinventing Government Movements [J]." *Journal of Renmin University of China*.

⁷ Wang, C. (2006). On opening government [关于开放政]. *Henan Social Sciences* [河南社会科学] 4, 5-8.

⁸ Ibid 5-6

the rights of the public. He also suggested for development of mechanisms for disclosure of the information and ensuring the participation of the public in the processes.⁹

After the disclosure of *Open Government Directive* (2009) in USA more and more scholars in China have started to discuss the potential impacts of the open government and started to investigate how the principles of transparency, collaboration, and participation have been integrated and implemented in different countries. For example LI Hengmin in 2014, discussed the impacts of technological developments under Canada's open government policy.¹⁰ LI Yin in 2012 wrote about the openness in archives and record administration after the implementation of Open Government Initiative in US.¹¹ LUO Bo in 2014 discussed about the overseas open government data plans under open government initiative worldwide.¹² RAN Congjing, LIU Jie & CHEN Yi in 2013 wrote a commentary on information and documentation services under open government initiative of the US.¹³

While talking about the open government initiatives, Wang considers the Open Government Directive (2009) of the US, implemented by the Obama Administrations as an exemplary one, characterized by making "government information disclosure" and "public participation in various government decision-making processes based on the new Web technologies" as the key points, and actively promote it.¹⁴ WANG Yaqin and ZHANG Chengfu, discuss the implications of information disclosure for China.¹⁵ All these scholars first of all recognize that, in China, open government is the most recent development of e-government. As discussed by these researchers, open government plans, through technological innovation, effectively influence government data to open and empower public to take an interest in the decision-making processes. With regard to the objectives of "open government", these scholars have

⁹ Xiao, J. (肖金明). (2005). Administrative licensing system, as well as open government and government credibility (行政许可法制与开放政府、信用政府). *China Public Administration (中国行政管理)*, 4, 91-95.

¹⁰ Hengmin, L. I. (2014). Canada's open government policy study. *Technological Development of Enterprise*, 5, 143-144.

¹¹ Li, Y. (2012). Putting the U.S. National Archives and Records Administration's "Open Government Initiative" into perspective. *China Files*, 11, 55-56.

¹² Luo., (2014). Overseas open government data plan: Progress and implications. *Information Studies: Theory and Application*, 12, 138-144.

¹³ Ran, Liu, & Chen. (2013). Commentary on the progress of implementing the U.S. Open Government Initiative in the Web 2.0 environment (Web2.0环境下美国开放政府计划实践进展评述). *Information and Documentation Services*, 6, 89-95.

¹⁴ Wang. Study on "Open Government Program" in the United States (美国"开放政府计划"研究(一) (12 June 2012), available at http://intl.ce.cn/specials/zxgjzh/201206/12/t20120612_23399833.shtml (Last Visited 30 Jan, 2021)

¹⁵ Wu, Zheng, Mei, Ren., (2014). National Science Foundation (NSF) information disclosure and its implications for China – using the "Open Government Data Program" (OGDP) as a research focus (美国国家自然科学基金会 (NSF)信息公开及对中国的启示——以开放政府指令计划 (OGDP)为研究对象). *Science and Technology Progress and Policy*, 7, 94-99.

suggested various goals, including transparency, being interactive and open, being “user friendly”, promoting “participation and collaboration” in order to gain the legitimacy and public trust. Specifically, they have underlined the need to set up a service oriented government, strengthen mechanisms for public scrutiny, responsiveness and responsibility of the government, increase fairness and accessibility of information disclosure, develop more networks for participation of the public, and augment coordination among different departments of the government .

Growth of E- Government in China

Efforts for the formation of e-government formally initiated in China in 2001 with the establishment of Informatization Leading Group under the leadership of Premier of People’s Republic of China which intended to adopt all the means to accelerate the process from the industry society to the information society. Prior to 2001, this leading group was working as Steering Committee of National Economy Informatization.¹⁶As stated by the Informatization Leading Group 2001, the aim of e-government construction was to accelerate the transformation of the government’s functions, to improve the quality and efficiency of government administration, to strengthen the government’s regulation and service capacity, and to encourage public scrutiny”¹⁷. Subsequently, a chain of official documents were released to develop the foundation for open government after the release of landmark regulation of open government information. The first important document released in this regard was the National Informatization Development Strategy (2006–2020).¹⁸ Laying down the role of the informatization in the promotion of scientific, economic, and social reforms, this document required to implement informatization as a strategic measure for the modernization of the country, development of harmonious Socialist society, and construction of innovative country.¹⁹ Furthermore 2006 Strategy stated the construction of e-government as a strategic priority for increasing government efficiency, administrative efficiency and the democratic participation. It desired for the further enactment of information disclosure legislation.²⁰ Consequently, in 2007 the State Council of the PRC announced the “*Regulation of the People’s*

¹⁶ Zhao, X., 2006. Practice and strategy of informatization in China, available at <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN025040.pdf> (Last Visited Jan 20, 2021)

¹⁷ Aims of the e-government construction were stated in *Guiding Opinion of the National Informatization Leading Group on the Development of E-Government Affairs in China*, 2002

¹⁸ See 2006-2020 National Informatization Development Strategy released together by CCP Central Committee General Office and State Council General Office, available at <https://chinacopyrightandmedia.wordpress.com/2006/03/19/2006-2020-national-informatization-development-strategy/> (Last Visited 30 Jan, 2021)

¹⁹ Ibid

²⁰ Ibid

Republic of China on Open Government Information” which was made effective from May 1st, 2008.²¹

Chapter I of the 2007 Regulation provides general rules regarding government information disclosure.²² The stated purpose of the 2007 Regulation was to safeguard the legal access by the legal persons, citizens, and other organizations.²³ The regulation requires the people's governments at various levels to make more efforts in leading and organizing the information disclosure of the government work.²⁴ Moreover, the 2007 Regulation directs the government agencies to “establish and improve a government information disclosure working system”²⁵ and requires them to follow the principles of justice, impartiality and bringing convenience for the citizens.²⁶ Moreover the 2007 Regulation requires the departments to ensure the disclosure of government information in a timely manner²⁷ and to develop coordination mechanisms.²⁸

²¹ See Regulation of the People's Republic of China on the Disclosure of Government Information issued on January 17th, 2007 and made effective May 1st, 2008, available at <http://www.lawinfochina.com/display.aspx?lib=law&id=6011&CGid=> (Last visited Jan 30, 2021)

²² Ibid

²³ Article 1 of the 2007 Regulation states “This Regulation is formulated for the purpose of safeguarding the legal access to government information by citizens, legal persons and other organizations, improving the transparency of government work, promoting the administration according to law and giving full play to the role of government information of serving the people's production, living and social and economic activities.”

²⁴ See Article 3 of the “Regulation of the People's Republic of China on the Disclosure of Government Information 2007” which states “The people's governments at various levels shall make more efforts in organizing and leading government information disclosure work.”

²⁵ See Article 4 of the “Regulation of the People's Republic of China on the Disclosure of Government Information 2007” which states “The people's governments at various levels and the departments of the people's governments at or above the county level shall establish and improve a government information disclosure working system of their respective administrative organ, and appoint an institution (hereinafter referred to as working institution of government information disclosure) to be responsible for the daily work of government information disclosure of their respective administrative organ.

The specific duties of the working institution of government information disclosure of an administrative organ shall be:

- (1) Undertaking specific government information disclosure issues of this administrative organ;
- (2) Maintaining and updating the government information disclosed by this administrative organ;
- (3) Organizing the compilation of this administrative organ's directory for government information disclosure, catalogue of government information disclosure and annual report on government information disclosure work;
- (4) Conducting confidentiality review on the government information to be disclosed;
- (5) Other duties related to government information disclosure as prescribed by this administrative organ.”

²⁶ See Article 5 of the “Regulation of the People's Republic of China on the Disclosure of Government Information 2007” which states “An administrative organ shall follow the principles of impartiality, justice and bringing convenience to the people when disclosing government information.”

²⁷ See Article 6 of the “Regulation of the People's Republic of China on the Disclosure of Government Information 2007” which states “An administrative organ shall disclose government information in a timely and accurate manner. Where any administrative organ finds out any false or incomplete information that has affected or may affect social stability or has disturbed or may disturb social management order, it shall disclose the corresponding accurate government information within its scope of duties to clarify.”

²⁸ See Article 7 of the “Regulation of the People's Republic of China on the Disclosure of Government Information 2007” which states “An administrative organ shall establish and improve a coordination mechanism

Whereas, Article 8 of the 2007 Regulation put obligation on the administrative organs to consider the issues of national security, economic security, public security and social stability while disclosing the information.²⁹ Chapter II of the 2007 Regulation covers the scope of information to be disclosed.³⁰ Article 9 of the 2007 Regulation requires the administrative organs to voluntarily disclose the information and also sets the requirements for the information to be disclosed.³¹ Additionally, the 2007 Regulation provides the list of the categories of information to be disclosed³² and designates the people's governments at city, district and county level to disclose the necessary information enlisted in the regulation.³³ In this way the 2007 Regulation on open Government Information has set a national standard for the government information disclosure. The 2007 Regulation was promulgated as a result of open government information regulations implemented on trial bases in different municipalities i.e. in Guangzhou³⁴, Shanghai³⁵, Chengdu³⁶, Hangzhou³⁷ and Wuhan³⁸, which produced fruitful results. Furthermore, the "Twelfth Five-Year Plan of the PRC" issued in 2011 added more strength to the efforts of the government towards information disclosure system. Chapter 13

for government information disclosure. In case the disclosure of government information concerns any other administrative organ, it shall communicate with the relevant administrative organ for confirmation to make sure that the government information to be disclosed is accurate and consistent.

In case an approval is needed for the disclosure of government information by an administrative organ as required by the relevant state provisions, no information may be disclosed without approval."

²⁹ Article 8 states "No administrative organ may endanger national security, public security, economic security or social stability when disclosing government information."

³⁰ See Regulation of the People's Republic of China on the Disclosure of Government Information issued on January 17th, 2007 and made effective May 1st, 2008, available at <http://www.lawinfochina.com/display.aspx?lib=law&id=6011&CGid=> (Last visited March 30, 2021)

³¹ See Article 9 of the "Regulation of the People's Republic of China on the Disclosure of Government Information 2007" which states "An administrative organ shall voluntarily disclose the government information satisfying any of the following basic requirements:

- (1) Information concerning the vital interests of citizens, legal persons or other organizations;
- (2) Information that should be widely known by the general public or concerns the participation of the general public;
- (3) Information reflecting the structural establishment, duties, procedures for handling affairs and other situation of the administrative organ;
- (4) Other information that shall be voluntarily disclosed by the administrative organ as prescribed by laws, regulations and the relevant state provisions."

³² See Article 10 of the "Regulation of the People's Republic of China on the Disclosure of Government Information 2007", available at <http://www.lawinfochina.com/display.aspx?lib=law&id=6011&CGid=> (Last visited March 30, 2021)

³³ See Article 11 of the "Regulation of the People's Republic of China on the Disclosure of Government Information 2007", available at <http://www.lawinfochina.com/display.aspx?lib=law&id=6011&CGid=> (Last visited May 20, 2021)

³⁴ See Regulation of Guangzhou Municipality on Open Government Information, 2002

³⁵ See Regulation of Shanghai Municipality on Open Government Information, 2004

³⁶ See Regulation of Chengdu Municipality on Open Government Information, 2004

³⁷ See Regulation of Hangzhou Municipality on Open Government Information, 2004

³⁸ See Interim Regulation of Wuhan Municipality on Open Government Information, 2004

namely “Comprehensively improve the informatization level” was added in the Twelfth Five year plan focusing on the construction of new generation IT based infrastructure and its implementation in all socio economic fields.³⁹ Section 1 of the chapter 13 of the twelfth Five year plan desires to develop new-generation information infrastructure.⁴⁰ Furthermore, section 2 of the Chapter 13 of 12th five year plan emphasised to accelerate socioeconomic IT building⁴¹ and section 3 of the same chapter focused to strengthen the network and information security.⁴² Another important step that was taken in the Twelfth Five Year Plan 2011 was to redefine the e-government as a “*strategic initiative to deepen the reforms in the administrative system and build a service-oriented government with which the citizens are satisfied*” (emphasis added).⁴³ The Plan emphasised to develop the “government-citizen interaction” through the use of information technology. The plan focused to protect the people’s right to know and right to participate. Moreover, the principles of transparency, collaboration and participation were

³⁹ See China's 12th Five-Year Plan (2011-2015), available in English at http://cbi.typepad.com/china_direct/2011/05/chinas-twelfth-five-new-plan-the-full-english-version.html (last visited 25 May, 2021)

⁴⁰ Section 1 of chapter 13 of 12th five year plan states about the building of new generation information structure by stating “Plan new-generation mobile communication networks, the new-generation Internet, digital broadcast and television networks in a unified manner, and promote the construction of satellite communication facilities, and create an ultra-high-speed, large-capacity and highly intelligent national trunk line transmission network. Guide the construction of broadband wireless cities, promote the door-to-door connection of urban optical fibers, accelerate the construction of broadband networks in rural areas, and increase bandwidth popularity rate and access bandwidth comprehensively. Establish sound laws, regulations and standards with focus on the two-way access of radio and television, and telecom operations, realize the convergence of the telecom network, the radio and television network, and the Internet, and promote network interconnection and operation convergence.”

⁴¹ Section 2 of the Chapter 13 of 12th five year plan states “Promote IT building in all socioeconomic fields. Develop e-business actively, improve e-business services oriented to SMEs, and promote the construction of society-oriented credit services, online payment and logistic distribution systems. Promote e-government building greatly, drive the interconnection, information sharing and operational coordination of key governmental information systems, construct and improve online administrative approval, information disclosure, online complaint handling, electronic supervision and auditing systems. Strengthen the building of key information systems, such as market regulation, social security and medical care, and improve basic information resources system for geography, population, legal person, finance, taxation and statistics, strengthen the integration of information resources, regulate collection and distribution, and strengthen integrated social development and utilization.”

⁴² Section 2 of the Chapter 13 of 12th five year plan states “Improve laws and regulations on network and information security, the system of standards, and the system of certification and authentication for information security. Implement information security rating protection, risk assessment and other relevant systems. Accelerate the demonstration and extension of key secure and controllable software and hardware, strengthen information network monitoring and control capabilities, and ensure the security of basic information networks and key information systems. Promote the construction of information security and secret protection infrastructure, and build an information security and secret protection system. Strengthen Internet management, and ensure national network security and information security.”

⁴³ See The Five-Year Plan of The Twelfth National E-Government Affairs 2011

incorporated in the plan in order to turn the administrative organs into service oriented institutions.

Development of the Open Government Concept Fostering Rule of Law

China, in a relatively short time span has made considerable achievements towards the goals of transparency, collaboration and participation through the development of e-government. As discussed earlier, discussion about the open government principles by various Chinese scholars have influenced the Chinese government to take measures for the development of Open Government in China. In 2014 China issued an official document namely the “Notice Concerning Speeding up the Implementation of Work Related to the Information-for-Citizens Project (2014)”.⁴⁴ The importance of the notice was marked by the fact that it was issued jointly by a number of ministries and departments together including the Ministry of Education, the National Development and Reform Commission, the Ministry of Finance, the Ministry of Public Security Information, the Ministry of Civil Affairs, the Ministry of Human Resources and Social Security and the Ministry of Industry and Information Technology.⁴⁵

Development of open government and open government data for sharing and opening government data, designating government data as public resource, and the promotion of transparency and collaboration and developing interaction between the citizens and the government were the tasks listed on priority in the 2014 notice.⁴⁶ Moreover, in “*The 13th Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016–2020)*”⁴⁷, (2016) greater focus was given to the need for improving the mechanisms for public participation, in order to strengthen the efforts to develop the basic institutions for social governance, ensure participation⁴⁸ and to increase capabilities for social governance for promoting social vitality, harmony and stability.⁴⁹ The use of internet+ action plan was laid

⁴⁴ Jimenez-Gomez, C. E., and M. Gasco-Hernandes. "Achieving Open Justice through Citizen Participation and Transparency." Hershey: IGI Global (2017).

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ “The 13th Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016–2020), available at <http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf> (last Visited 15 July, 2021)

⁴⁸ Section 5 of PART XVII of the “The 13th Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016–2020)” states goals about public participation as “We will, in accordance with the law, safeguard residents’ rights to be informed, to participate, to make decisions, and to conduct oversight, and improve institutional channels for public participation in governance. For major decisions related to key public interests, we will broadly solicit comments and suggestions from the public through residents meetings, discussions and deliberations, and democratic hearings. We will strengthen public oversight and evaluation by improving democratic evaluations and the transparency of village and community affairs.”

⁴⁹ Chapter 70 of the “The 13th Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016–2020)” states about the Improvement of the Social Governance System that “We will improve the social governance system to help see that Party committees play a leadership role, government plays a guiding role, social organizations play a cooperative role, the general public participates, and the rule of law acts

down as a key initiative to deepen reforms in the multiple fields, in-order to provide open, convenient, transparent and effective public services.⁵⁰ In this way the plan emphasised to implement modern internet technologies for making the overall environment open, convenient, effective, public need based and in the easy access for the public. It is obvious that the 13th plan has been guided by the principles of transparency, collaboration and participation for the development of overall e-governance in each and every field of life. It demonstrates the acceptance of open government principle by the highest executive organ. As mentioned in the plan, values of the rule of law are yet to be raised. Plan accelerates the efforts to build law based governance,⁵¹ for overall objective towards the building of Rule of Law in China.⁵²

It was the continuance of efforts since the incorporation of rule of law provision in the constitution of the People's Republic of China in 1999.⁵³ The 13th Plan focused on the needs of the public through better coordination and information sharing in order to establish an environment where everyone in the society can participate in the process. The Plan first time in the history emphasized the great attention towards the development of Big Data resources through the use of information technologies.⁵⁴ Section 1 of the Chapter 27 directs for the Opening and Sharing of Government Data and section 3 aims to promote and encourage the use of big data by general public and the enterprises to utilize and analyse.⁵⁵ In his speech

as a guarantee, thereby achieving positive interaction between governmental governance and social regulation and resident self-governance.”

⁵⁰ Section 3 of the Chapter 14 of the “The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016–2020)” states “We will innovate the way government services are provided, ensuring that both government and public services are open, transparent, effective, convenient, fair, and easy-to-access. We will work faster to standardize government approval, and improve work processes and service standards for services provided directly to enterprises and the general public. We will strengthen coordination between government offices. We will popularize the use of the “Internet +” government services model and increase government transparency across the board.”

⁵¹ PART XVIII of the “The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016–2020)

⁵² Chapter 75 states to Build a Rule of Law China as “We will ensure that the country is governed, governance is exercised, and administration is conducted in accordance with the law, and that our country, government, and society are all based on the rule of law, developing a rule of law system of socialism with Chinese characteristics and the rule of law in socialist China.”

⁵³ Amendment to the Constitution of the People's Republic of China 1982 Adopted at the Second Session of the Ninth National People's Congress and promulgated for implementation by the Announcement of the National People's Congress on March 15, 1999.

⁵⁴ Chapter 27 of the of the “The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016–2020)” states to Implement the National Big Data Strategy as “We will make big data a fundamental strategic resource and fully implement a plan for its development, accelerating the opening, sharing, development, and application of data resources so as to help transform and upgrade industries and bring about innovations in social governance.”

⁵⁵ Section 3 Chapter 27 states to “1.Establish a unified open platform for big data; 2. Progressively release public datasets; 3. Encourage enterprises and the general public to analyze and utilize data; 4. Promote the innovative use of big data in fields such as government governance, public services, industrial development, and technological research and development; 5. Promote the development of comprehensive big data experimental zones”

delivered at the 19th National Congress of the Communist Party of China on October 18, 2017, Xi Jinping, the president of the PRC acknowledged that although the rule of Law with Chinese characteristics has been improved steadily in the previous five years but the demands of the public for, rule of law, democracy, fairness and justice, security, and a better environment are increasing with the advancement of technology. He mentioned that *“the thought on Socialism with Chinese Characteristics for a New Era makes clear that the overall goal of comprehensively advancing law based governance is to establish a system of socialist rule of law with Chinese characteristics and build a country of socialist rule of law.”*⁵⁶

Xi Jinping further emphasized that *“We must promote the rule of law and work to ensure sound law-making, strict law enforcement, impartial administration of justice, and the observance of law by everyone.”*⁵⁷ He focused also to *“promote further integration of the internet, big data, and artificial intelligence with the real economy”*⁵⁸ (emphasised) while acknowledging that *“the development, administration, and functioning of internet services have been enhanced”*⁵⁹ he desired for the more use of internet and information technology in the wordings as *“We should be good reformers and pioneers. We should be enterprising, work creatively in light of actual conditions, and adeptly apply information technology, including the internet, in our work.”*⁶⁰ The President Xi focused also on the need to improve public participation as participation of the public is necessary to create a public need based system.⁶¹

The Growth of Judicial Openness in China

The term (Judicial Openness) *sīfǎ gōngkāi* appeared first time in the *“Decision of the Supreme People’s Court on Further Strengthening the Basic Construction of People’s Courts”*⁶² released by the SPC in 2004. In the 2004 Decision, the SPC stressed to *“further implement an open adjudication system”* and *“promote judicial fairness through judicial openness”*.⁶³ The context of the 2004 Decision suggests that term (Judicial Openness) *sīfǎ gōngkāi* was intended to replace the term *shěnlǐ gōngkāi* (审理公开; open handling) which was already being used in

⁵⁶ Speech of President Xi Jinping, Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era, Delivered at the 19th National Congress of the Communist Party of China October 18, 2017, available at http://www.xinhuanet.com/english/download/Xi_Jinping's_report_at_19th_CPC_National_Congress.pdf (Last visited 30 July, 2021)

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ See (above n. 56)

⁶² See The Decision of the Supreme People’s Court on Further Strengthening the Basic Construction of People’s Courts 2004

⁶³ Ibid

the official documents. For example article 125 of the Constitution of the People's Republic of China (1982) refers to "*open handling/public hearing*"⁶⁴. Article 120 of the Civil Procedure Law of the People's Republic of China (1991) uses the term "*open handling/ open adjudication*"⁶⁵ and "*open pronouncement of judgement*" used in Article 121 of the *Criminal Procedure Law of the People's Republic of China* (1979).⁶⁶ All these terms were commonly used to express the impression of openness in the judiciary.

The scope of judicial openness continued to grow and broadened when the SPC released *Second Five- Year People's Court Reform Plan (2004-2008)* (the "Second Court Reform Plan"). The Second Five Year Court Reform Plan stated the significance of "*open adjudication*" and desired to "*adopt new measures on judicial openness*" and demanded that "*information on enforcement of judgments to be made public*",⁶⁷ Thus extended the openness principle to the enforcement of judgements by issuing the "*Several Provisions of the Supreme People's Court on Open Enforcement Work of People's Courts*" in 2006.

The Third Five-Year People's Court Reform Plan (2009-2013) issued in 2009, further enhanced the scope of judicial openness. After the release of Third Court Reform Plan and "*Six Provisions of the Supreme People's Court on Judicial Openness 2009*", the terms "Public Hearing", "Open Trials", "Open Case Registration", "Adjudication Affairs Made Public" and "Documents to be Made Public" have been covered under the scope of Judicial Openness concept.⁶⁸ Moreover the six provisions emphasized of developing "Judicial Democracy" through establishing and developing the mechanisms for expression and communication of public opinion in order to safeguard fully the right of people to know, express, participate and supervise.⁶⁹

⁶⁴ See Article Constitution of the People's Republic of China 1982, available at http://english.gov.cn/archive/laws_regulations/2014/08/23/content_281474982987458.htm, (Last Visited 18 Aug, 2021)

⁶⁵ See Article 120 of the Civil Procedure Law of the People's Republic of China (1991), available at <http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn029en.pdf> (Last Visited 25 Aug, 2021)

⁶⁶ Article 121 of the Criminal Procedure Law of the People's Republic of China (1979), available at <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=6293&context=jclc> (Last Visited 20 Sep, 2021)

⁶⁷ The Second Five-Year People's Court Reform Plan. (2004-2008) (《人民法院第二个五年改革纲要(2004-2008)》), available at <http://www.chinalaw.gov.cn/article/fgkd/xfg/sfwj/200904/20090400132177.shtml> (Last Visited 30 Sep, 2021)

⁶⁸ See Notice of the Supreme People's Court on Issuing the Six Provisions on Judicial Openness, available at <http://en.pkulaw.cn/display.aspx?cgid=125149&lib=law> (Last Visited 30 Nov, 2017), The Third Five-Year People's Court Reform Plan. (2009-2013) (《人民法院第三个五年改革纲要2009-2013》), available at <http://www.chinalaw.gov.cn/article/fgkd/xfg/sfwj/201012/20101200330558.shtml> (Last visited 30 Sep, 2021)

⁶⁹ The Third Five-Year People's Court Reform Plan. (2009-2013) (《人民法院第三个五年改革纲要(2009-2013)》) paragraph 25-27, Six Provisions on Judicial Openness 2009

During the 4th plenary session of the CCP's 18th Central Committee in 2014, the leadership of China adopted the *Decision on Several Major Issues Concerning Comprehensively Moving Forward "Governing the Country According to Law"* (2014), the "Fourth Plenum Decision". The main focus was to govern the country according to law. Guidelines were laid down to foster rule of law in the country. Among the other goals, a great focus was to ensure judicial openness. In order to guarantee judicial fairness and raise judicial credibility, the Decision stressed on to:

*"Build an open, dynamic, transparent, and convenient sunshine judicial mechanism; move forward with open trials, open prosecutorial work, open police work, and open prison work; promptly publish law enforcement and judicial basis, procedures, processes, results, and effective legal documents according to the law; and put an end to secretive work. Strengthen the explanation and interpretation of legal documents, and create an online integrated open inquiry system for effective legal documents."*⁷⁰

The 2014 Decision further increased the cover area of judicial Openness by emphasising to "broaden people's channels to orderly participate in the judiciary", "under sunshine judicial mechanism that is "open, dynamic, transparent, and convenient to citizens" to ensure that people can "participate in the judiciary" and emphasising to "improve the judicial administration system and the operating mechanism of judicial power, standardize judicial conduct, strengthen supervision of judicial activities, and strive to ensure that the people feel fairness and justice in every judicial case".⁷¹ Moreover, in his speech, delivered at the 19th National Congress of the Communist Party of China October 18, 2017, Xi Jinping the President of China, while talking about the judicial reforms, emphasised to "strengthen rule of law awareness among the people" to enforce "judicial accountability in all respects", to strengthen "judicial oversight, public oversight, and oversight through public opinion" so that "the people can see in every judicial case that justice is served".⁷²

Academics around the world have welcomed the developing trend of judicial openness in China. For example Jones and Carol AG consider the judicial openness a step towards the development of rule of law.⁷³ Randall Peerenboom desires the world to learn lessons for rule

⁷⁰See Decision of the Fourth Plenum of the 18th CCP Central Committee of the Central Committee of the Chinese Communist Party 2014, available at <https://genius.com/Central-committee-of-the-chinese-communist-party-decision-of-the-fourth-plenum-of-the-18th-ccp-central-committee-english-annotated> (Last Visited (30 Sep, 2021)

⁷¹See Ibid

⁷² Speech of Xi Jinping, Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era, delivered at the 19th National Congress of the Communist Party of China October 18, 2017, available at http://www.xinhuanet.com/english/download/Xi_Jinping%27s_report_at_19th_CPC_National_Congress.pdf (Last Visited 30 Sep, 2021)

⁷³ See Jones, Carol AG. "IN THE NAME OF JUSTICE: STRIVING FOR THE RULE OF LAW IN CHINA by

of law from emerging Chinese characteristics.⁷⁴ Song Jianli is of the view that prudent openness in judiciary is a beginning in China to develop a better judicial system which can protect the lawful rights of the citizens. It will help China to develop confidence of the public in justice system.⁷⁵ Hou, Shumei, and Ronald C. Keith consider Judicial Openness as a positive step as it may create pressure on judges and force them to research and learn in fear of exposing to public scrutiny.⁷⁶ Zhou Qiang suggests that openness is a step towards impartiality⁷⁷. GUAN Mei suggests that openness increases the credibility of the judiciary and develops public confidence on it.⁷⁸

Moreover the judges of the higher judiciary in China also welcome the enhanced coverage of judicial openness. Zhou Qiang the then president of the Supreme People's Court (SPC) of China in a meeting with visiting foreign court officials from One Belt One Road countries, for a high-level international judicial cooperation forum on Sept 25, 2017 stressed that judicial openness reforms of China would ultimately lead towards open, transparent, dynamic and people-oriented judicial mechanism by setting up innovative platforms for openness of judicial documents, trial processes and enforcement mechanisms.⁷⁹

CONCLUSION

The term “judicial openness” first time appeared 2004 in the “*Decision of the Supreme People's Court on Further Strengthening the Basic Construction of People's Courts*” and it was intended to replace the term “open handling”. Since 2004 the scope of judicial openness has been expanding and presently it has encircled the entire activities of the People's Courts. While concept of the openness in judicial is seemingly also inspired by the open government principles developed in the start of twenty first century. The scope of judicial openness continued to grow and the broadened when the SPC released *Second Five- Year People's Court Reform Plan (2004-2008)*, furthermore *Six Provisions of the Supreme People's Court on Judicial Transparency 2009* made it necessary requirement for the people's courts to develop openness in all aspects of judiciary, therefore, significant developments have been made in this

HE WEIFANG." (2013): 689-694.

⁷⁴ See Peerenboom, Randall, ed. *Judicial independence in China: lessons for global rule of law promotion*. Cambridge University Press, 2009.

⁷⁵ Song, Jianli. "China's Judiciary: Current Issues." *Me. L. Rev.* 59 (2007): 141.

⁷⁶ Hou, Shumei, and Ronald C. Keith. "A new prospect for transparent court judgment in China?." *China Information* 26.1 (2012): 61-86.

⁷⁷ Zhou Qiang: Promoting impartiality by judicial openness: Openness is the rule, non-openness is the exception (周强:以司法公开促进公正,公开是原则不公开是例外). *People's Daily* (人民日报), available at, <http://legal.people.com.cn/n/2013/0704/c42510-22083161.html> (Last visited 25 Sep, 2021)

⁷⁸ Mei, G. U. A. N. "Preliminary Study on Public Confidence Force of Judicature—Concept, Type and Characteristic [J]." *Law and Social Development* 4 (2005): 018.

⁷⁹ See SPC head meets with senior judicial officials in NW China, available at http://english.court.gov.cn/2017-09/26/content_32499855.htm (Last visited 30 Sep, 2021)

regard consequently converting the China's Judicial System into a transparent, open and efficient judicial system.