

The Fourth Plenum of the 18th CPC Central Committee: Perspectives from India

Speakers:

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Discussant:

Alka Acharya, Director and Senior Fellow, Institute of Chinese Studies

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Remarks by the Discussant, Alka Acharya

The Chair, Alka Acharya, opened the seminar with the observation that the 4th Plenum seems to have used the terms ‘constitutionalism’ and ‘rule of law’ interchangeably. In her view, constitutionalism was about rights, duties, procedures of governance and so on. Whereas, rule of law implies a more normative context. Hence, the two are not necessarily equal. Having said that, she averred that it is a complex issue. The Chinese may perhaps try to explain their

approach from the perspective of their time tested emphasis on ‘Chinese characteristics’. With this, Acharya opened the floor to the three speakers who spoke on different aspects of the 4th Plenum of the 18th Communist Party of China’s Central Committee from.

‘Rule of Law and Beyond’ – Sreemati Chakrabarti

The Fourth Plenum holds significance for more than one reason. Most importantly, it has brought the phrase ‘Rule of Law’ back into the Chinese legal discourse. Further, it has set the balling rolling towards a semblance of constitutionalism in China. However, Chakrabarti emphasized the need to differentiate between constitutionalism and ‘rule of law’, as the recently concluded Fourth Plenum sought to reassert Party legitimacy by claiming that “persisting in Party leadership is a basic requirement for the Rule of Law” and that “Party leadership and Socialist Rule of Law are identical”. It is within this context that the ‘Fourth Plenum’ and the ‘Rule of Law’ become interesting loci of discussion.

Among others, Chakrabarti’s presentation traced the origin of the phrase rule of law in mainstream Chinese political discourse. She also provided a short narrative on the legal tradition of China followed by an attempt to weigh this phrase within the current political context. According to her, the phrase rule of law was first mentioned in 1997 by the then Chinese President Jiang Zemin at the 15th Party Congress. Later, in 1999 the phrase was added to China’s Constitution.

As far as China’s legal tradition is concerned, she explained that it had its precedence rooted in China’s legal history, starting from the Legalist School whose central precept was ‘rule by law’ and the Confucian philosophy, which held a diametrically opposed view stemming from the belief that humans are inherently good by nature, and hence, there are no need for laws.

Tracing the legal history to the post-Qing era, she mentioned that while the KMT (Kuomintang) government had an impressive array of legal experts and laws, they could not be implemented because of the political instability China was riven with during the first half of the 20th century. This was later to be succeeded by the CCP (Communist Party of China) under the leadership of Mao Zedong from 1949- 1976, when 135 laws were promulgated which included ones on marriage, land reforms etc. But the laws took a backseat during the period of Cultural

Revolution, when there was no recourse to law and Mao's words became the law. The 1954 Constitution was done away with and it was only in 1982 that China got its new Constitution, which continues till the present with many amendments. Thus, she argued that China has seen nothing but a 'tinge of constitutionalism'.

Further, she referred to the debate on democracy in China, wherein she cited Pan Wei, a Professor from Beijing University, who has argued that the western style of democracy is out of sync with Chinese realities and that China can have its own rule of law or what he calls, 'Consultative Rule of Law' based on six pillars: a neutral Civil Services, an autonomous judiciary system, extended socialist consultative institutions, an independent anti-corruption body, an independent audit system and finally, freedom of speech, press, assembly and association. However, critics argue that these are not enough for democracy and that this is only a step towards democracy.

Finally, assessing the Fourth Plenum and weighing constitutionalism within the current political scenario, she argued that there is nothing empowering for the NPC(National People's Congress) or the NPC Standing Committee within the Fourth Plenum. According to her, the three purposes of the emphasis laid on rule of law were: 1) legal reforms for better governance 2) to strengthen Party control and 3) to return to the past. In addition to this, there were two other significant reasons: one, within the context of crackdown on 'tigers and flies', Xi found it important to strengthen his position against his political adversaries, who had links extending to the PLA (People's Liberation Army) and two, the global and domestic pressure for political and legal reforms made it inevitable for the road to be laid for further reforms. But the message from the Party is clear – that China will have democracy, but 'a democracy sans multi-party electoral politics'.

'CPC Plenum: Past and Present' – Bhim Subba

Bhim Subba spoke on the theme, '*CPC Plenum: Past and Present*', which looked into the evolution and role of plenums in Chinese politics since the early reform period. He began by outlining the role and function of plenums and its importance in a Leninist type party. He pointed that the plenum or the plenaries – the meeting of the Central Committee (CC), the highest

decision making body of the Chinese Communist Party (CCP) – are usually held once or at the most, twice a year.

Different plenary sessions have different purposes, especially since the reform period (*gaigekaiifang* or 改革开放). It hears and examines the report of the Central Commission of Discipline Inspection, and reshuffles personnel and party cadres at the CC. Besides, the agenda for such meetings can include discussions on economics, politics, society, culture, as also the national five year plans.

Unlike other plenary sessions, the fourth plenum is called the ‘politics’ plenum. He informed that the first and the second plenaries are usually concerned with party congresses and nomination of state leadership and that the third tends to be dominated by discussion on economic issues. For instance, at the 4th Plenum of the 13th CCP CC in 1989 (after the Tiananmen Crisis), there was an official inauguration of third generation leaders. Subsequently, at the 4th Plenum of the 14th CC in 1994, there was a formal transfer of power from second to third generation of leadership with Jiang Zemin at the core. Even in the case of the Central Military Commission’s (CMC), Hu Jintao became the first Vice Chairperson of the CMC at the 4th Plenum of the 15th CC in 1999. Further, Jiang stepped down from his position of power at the 4th Plenum of the 17th CC in 2004.

Similarly, the 4th Plenum of the 18th CC too reshuffled personnel with the following reshuffled and included in CC’s full membership: Ma Jiantang, (Chief, National Bureau of Statistics), Wang Zuo’an (Head, State Administration of Religious Affairs) and Mao Wanchun (Member, CPC Shaanxi Provincial Congress Standing Committee). They replaced Li Dongsheng, Jiang Jemin and Yang Jinshan who had been expelled from CC for their involvement in corruption and financial bungling. He noted that investigations are ongoing.

Next, Bhim turned his attention to the theme of the Plenum, ‘rule of law’, which according to him, has also been translated as ‘rule according to the law’ by some. Both of it connotes, in Chinese *yifazhiguo* (依法治国). However, he pointed out that the latter – ‘rule according to the law’ – is closest to the intended meaning.

He also discussed the Plenum’s outcome titled, *‘Decision on Several Important Issues Regarding the All-Around Promotion of Ruling the State According to Law’*, called for the establishment of

socialist rule of law system with Chinese characteristics, reforms and professionalization of judicial appointments from grass roots, which entailed promotion based on respect of rule of law, after GDP growth and stability. He also outlined the Decision's call for establishment of 'circuit tribunal' and new layers of 'courts' for reforming the legal system and conducting justice through rule of law.



He highlighted some important aspects of the Decision: to make local courts free from arbitrary control of local party leaders, the thrust on zero tolerance on corruption, the declaration of National Constitution Day on December 4, and finally, invoking the spirit of the highest court of the land by Xi Jinping, the Chinese State Constitution.

Bhim concluded his presentation by admitting that the Plenum had raised many more questions in his mind such as the question of *the status of the Party leadership*. His final words were: the Party tended to emphasise intra-government relations or for that matter, centre-province relations, rather than citizen-government relations. This for him reflected the CPC's role as a vanguard of self.

‘Two Years of Xi’s Leadership and the Fourth Plenum’ – Manoranjan Mohanty

It has been two years since the leadership transition that paved the way for Xi Jinping and others at the helm of affairs in China. Since then, China has witnessed massive political campaigns with the clear message that the government is serious about revamping the Party and the State by cracking down massively on ‘tigers and flies’. It has set an impressive record by purging not just local and provincial officials, but also many top leaders like Zhou Yongkang, a former CPC Politburo Standing Committee (PBSC) member and Xu Caihou, former Vice-Chairman of the CMC. But even before this, the ‘mass-line campaign’ had begun where emphasis was laid on bridging the gap between the Party and the people, recognising the need for good governance. Thus, the 4th Plenum and its emphasis on legal reforms can be located within the context of political campaigns aimed at providing good governance to the people.

Prof. Mohanty focused on the assessment of the 4th Plenum and the Communique, *‘Decision on Several Important Issues Regarding the All-Around Promotion of Ruling the State According to Law’*. He began with an assessment of Xi’s role in the planning of the 4th Plenum and went on to discuss the Plenum document to analyse the place of various indicators such as, democracy, judicial autonomy and party-state relations in the Plenum’s Decision. According to him, given the backdrop of visible opposition to his policies due to the anti-corruption campaign, Xi picked up ‘Rule of Law’ as the loci of the 4th Plenum to further strengthen his leadership and to convey the message to the world about China embracing democracy. Through this, he intended to pave way for further institutionalisation and judicial autonomy, to create checks and balances for good governance.

As regards the Plenum’s document, he pointed out that for the first time, there has been a spelling out of the dimensions of democracy, wherein, a distinction between Chinese democracy and Western democracy is laid out. It includes: 1) people’s congress system, 2) multi-party cooperation and consultation under CPC leadership, 3) regional ethnic autonomous system, and 4) community-level self-governance. Second, he mentioned that it focuses on the judicial independence of the political leadership at the provincial and the local level. This, he attributed to the level of corruption and the ‘discretionary’ decision on economic matters that entailed the

autonomous functioning of the provinces. These measures are seen as introducing a certain amount of checks and balance and curtail arbitrariness at the provincial/local level.

Finally, he analysed the implication of these reforms on the nature of the Party-State functioning in China. An interesting question to ask, according to him, would be, 'has Xi increased or reduced the Party leadership over state and society?' In his opinion, Xi is following the trend set by Deng Xiaoping, of institutionalization of the Party and State functions, but in a more quantitative manner and with more vigour. This is to further 'deepen', rather than 'broaden' the process of economic reforms and to control social discontent-the reason why 'social management' is now back into the state vocabulary.

Discussion

The discussion session began with a question about the appropriateness of the translation of the Chinese term *yifazhiguo* as 'rule of law', and whether it may be more correct to translate it as 'rule according to law'? Whether there are debates being carried out in China or elsewhere on the issue of correct terminology. The speakers, including many in the audience, agreed with 'rule according to law' as the more appropriate translation of *yifazhiguo*.

This was followed by a number of questions. Is there scope in the system to challenge or recall existing laws? Chakrabarti pointed out that this can be done in the preparatory stage before it reaches the NPC SC. Most of the laws come from the top.

To another question, Bhim responded that China's rights discourse is not antithetical to Confucian tradition. Rather, an individual can avail his rights within the communitarian and hierarchical system.

On the question of relevance of Confucian ethics in China, all the speakers agreed that Confucian traditions are important but it is not the only one. Since the Hu Jintao regime, Confucian ideology has been reinforced in the political, social and cultural sphere.

On the question of village elections, Mohanty averred that local governance in China had failed to take off above the village (*cun*村) level, which has left the people disillusioned in some sense. Instead the Party had innovatively started using the term 'community level self-government'.

To another question about checks and balances, Bhim reiterated that the party is concerned mainly with relations between Beijing and provinces, than within people and government. He also discussed the role of factions, and informal groups within the party leadership that influences its decisions and policy outcomes. Such is evident in Xi's failure to promote his loyalists.

Was the emphasis on constitutionalism an effort to gain legitimacy for the party? Mohanty argued that ideological debate has been important, apart from economy, society and culture.

There was a to and fro discussion about Xi's influence in the party. First, an audience member pointed out that Xi was all powerful. Another reacted that such a view works in the Party's favour to project a strong leader, whereas, Xi actually is a consensus candidate. On this issue of collective leadership in China, Mohanty drew the audience's attention to Xi's recent statement about how he is the only nominated leader after Mao Zedong and Deng Xiaoping, implying that he indeed might have influence.

Mohanty argued that though there is functional differentiation between the party and the state, any rule of law or deepening of reforms within the ambit of the current system of leadership of the party makes it questionable. The 4th Plenum puts the State clearly under the Party system.

Mohanty mentioned that there are basically three areas under which deepening and broadening of reforms was taking place – easy capital access, opening of inland and border areas and establishment of free trade zones.

Mohanty concurred with the Discussant, Acharya's observation of the Plenum's proposal of judicial independence at the local level as being very important. He elaborated that this was urgently necessitated owing to the democratization of reform policies, which were leading to land acquisitions, party control and thus mass protests. The Plenum, therefore, focuses on checking the misuse of power and graft at the local level.

The audience also had important suggestions to offer.

One member pointed out the importance of audit systems as a tool to curb corruption and enhance governance. One of the speakers mentioned that the special procuratorate at the provincial level is independent of the party as the Plenum has provided for such a provision.

A member of the audience, Hemant Adlakha, commented that the 4th Plenum and its Decision on ‘rule of law’ was a kind of rectification programme as it conveniently complemented the anti-corruption campaign of Xi. In that sense, the Plenum was a means to crackdown on any challenge to Party leadership. In another context, he recalled a Chinese saying ‘left polity, right economics’.

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