

Investigation and Research on the Management of Misdemeanor in China in the New Era

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Abstract: Since the new era, China's crime pattern and crime structure have undergone significant changes, and vicious crimes and major violent crimes that seriously jeopardize the society as a whole have tended to decline, while minor criminal offenses have shown a linear upward trend, and there is an urgent need to build a perfect system of misdemeanor governance to cope with the new situation of social governance. This paper focuses on the necessity of building China's misdemeanor governance system, the problems existing in China's misdemeanor governance system, and in response to the above problems, puts forward practical and feasible countermeasures to promote the concept of misdemeanor governance from crime to governance, focus on the diversification of the use of China's misdemeanor governance methods, and strengthen the application of non-criminal punitive measures and non-prosecution.

1. Theoretical foundations of misdemeanor governance in China

1.1 Definitions

Misdemeanor governance refers to a set of mechanisms by which the State implements comprehensive measures to prevent, combat, punish and educate on minor crimes in accordance with the law, with the goal of safeguarding the safety of people's property and lives and social stability, and maintaining a just legal environment. In a nutshell, it is to systematize and systematize the governance of minor offences in order to better serve the overall situation of crime governance. China is now aiming to build and improve a new-era system of misdemeanour management that implements the concepts of leniency and severity, and prudent prosecution and remand in custody with fewer arrests, a move that is undoubtedly in line with the "people-centred" ideology.

1.2 Characteristics

The author believes that the characteristics of China's misdemeanor governance system include the following: (1) Comprehensive governance. The system of misdemeanor governance with Chinese characteristics adheres to the principle of comprehensive governance, emphasizing the joint

participation of diversified governance subjects such as the judiciary, the administration and society to form a pattern of collaborative governance. Through close collaboration among judicial organs, administrative organs and social organizations, they work together to maintain a harmonious and stable social order. (2) Compatibility of leniency and severity. The system of misdemeanor governance with Chinese characteristics embodies the criminal policy of giving equal treatment to both leniency and severity, focusing both on cracking down on criminal behavior and on educating, reforming and rescuing offenders. Through the adoption of light and heavy criminal measures, the organic combination of punishment and education, discipline and salvation is realized^[1]. (3) Prevention-oriented. The system of misdemeanor governance with Chinese characteristics focuses on prevention and emphasizes governance at the source. When dealing with misdemeanor cases, not only should the offenders be held legally responsible, but the social reasons behind the cases should also be thoroughly explored, so as to prevent crime from occurring at the source and reduce the emergence of social problems. (4) Reform and innovation. The system of misdemeanor governance with Chinese characteristics actively draws on international advanced experience, combines China's national conditions and judicial practice, and constantly carries out reform and innovation. The effectiveness and adaptability of the misdemeanor governance system has been improved through the promotion of reforms in the areas of legislation, justice and law enforcement.

2. The necessity of China's misdemeanor governance system

General Secretary Xi once pointed out at a relevant conference that constructing and perfecting a misdemeanor governance system with Chinese characteristics is a necessary way to realize the precision and new era of criminal case governance. The construction of a perfect misdemeanor management system has the following necessities.

2.1 Favorable saving of judicial resources

The construction of a perfect misdemeanor governance system requires the judicial authorities to break the inherent mechanical judicial inertia, balancing the legislative incrimination and judicial incrimination, so that more misdemeanor suspects who are less socially harmful and have a remorseful attitude are given the opportunity to receive leniency, and to reduce the social instability and waste of judicial resources brought about by the heavier penalties. Thus, through the misdemeanor governance approach, the possibility of misdemeanor suspects receiving heavier penalties can be reduced, reducing the investment of misdemeanor judicial resources, focusing limited judicial resources on combating felonies, and realizing the effective allocation of judicial resources. Scholar Chen Jinyao believes that, to rationally allocate China's limited judicial resources, in the investigation stage, the public security organs can meet the conditions of some of the misdemeanor cases that do not need to be sentenced to imprisonment in many aspects of the comprehensive consideration of the case withdrawn from processing; in the examination and prosecution stage, the procuratorate should carry out the principle of non-custodial detention, detention is the exception of the concept of enhancing the application of the criminal reconciliation system, and at the same time can not be left out of the implementation of the system of non-prosecution. At the review and prosecution stage, the procuratorial authorities must implement the principle of non-custody as an exception, and strengthen the application of the criminal reconciliation system, while not falling behind in the implementation of the non-prosecution system^[2].

2.2 Contributing to a more humane handling of cases

Misdemeanor governance in the new era requires adherence to the concept of “people-centeredness”, The promotion of the humanization of cases by the misdemeanor governance system has become more obvious. For example, in a county in Huzhou City, Zhejiang Province, between 2019 and 2020, a number of violent mob criminal activities jointly committed by minors and adults often occurred. It was later found that this part of the minors have long been on the Internet to buy some non-prescription cough medicine, and often take it, and these drugs have the ability to make the human body to achieve stimulation of the state of hyperactivity, easy to produce berserk restlessness and other addictive physiological phenotypes, it is very easy to cause violent crimes. For example, a county public security organs will be this part of the minors suspected of mobbing, provoking crimes to be transferred to the examination and prosecution. After accepting the case, the county procuratorial authorities promptly conducted psychological tests on the minors involved, and visited and investigated their family members and friends and other social situations, and, after evaluation, made a decision not to prosecute them conditionally in view of the minor's subjective malignancy and the role they played in the commission of the crime. Subsequently, the procuratorial authorities also took the initiative of contacting the relevant psychological institutions and medical groups to carry out withdrawal treatment for these minors who were already addicted to drugs, and made the effect one of the conditions attached. At the same time, the procuratorial organs also took care of the parents and other guardians of the minors involved in the case, requiring them to take the initiative to provide psychological counseling and life care for the minors, and to make the implementation of the effect of the scope of the investigation. From this, it can be seen that the county procuratorial organs actively attach importance to the humanization of misdemeanor cases, especially non-prosecution cases, and strive to help criminal suspects and defendants return to society as soon as possible.

2.3 Favorable to enhance the quality of case handling

The construction of a perfect system of misdemeanor governance requires us to get rid of the inertia of thinking that only focuses on “punishment” but ignores “governance”, and to see the important role that “governance” plays in social development. governance” plays an important role in social development^[3].We are actively promoting the modernization of the misdemeanor governance system, improving the choice of misdemeanor governance methods through retrospective (source of prosecution) governance, non-penal punishment measures, and education and corrective treatment, so as to minimize social antagonism, promote social harmony, and enhance the quality of case handling. Penalties can bring bad records to offenders, affecting their future employment and life, thus exacerbating social conflicts. The misdemeanor governance system, on the other hand, can make offenders realize their mistakes and reform themselves through education and correction, thus reducing social conflicts and improving the effectiveness of case handling.

3. The main problems of China's misdemeanor governance system

Although China's misdemeanor governance system has basically been formed, there are some problems that need to be solved in practice.

3.1 Insufficient ideological understanding of the governance of minor crimes in China

First, the concept of change is not in place. Part of the prosecutors still exists heavy combat, light

protection of the idea, accustomed to “crime that is arrested” “can be sued” “a complaint”, more willing to ” Arrest to promote the transfer” “to capture instead of detecting” ‘a detention in the end’. This outdated mindset will have a greater negative impact.

Second, the implementation of the efforts are not enough. Some grass-roots procuratorial organs pay little attention to work that is included outside of assessment and evaluation, and pay little attention to many issues involving social repercussions after the conclusion of a case. This has easily led to the fact that the effectiveness of the work on misdemeanour management for which the procuratorial organs are responsible has not met expectations, and has not been conducive to the enhancement of the capacity of the procuratorial organs to handle their own cases.

3.2 The way we apply misdemeanor governance in China is not diverse enough

Nowadays, although the procuratorial authorities actively fulfill their duties regarding the governance of misdemeanors, they do not make good use of the governance methods regarding the effectiveness of misdemeanor governance. This is manifested in the following three areas:

One is the failure to standardize the application of the leniency system for guilty pleas and penalties. The relevant factors in the plea bargaining system, such as “voluntariness”, are inaccurately determined in individual cases, and cases are handled with too much pursuit of speed and efficiency, with no attention to detail. For example, some prosecutors, in order to apply the leniency of the plea system more smoothly, still accommodate the defendant or his or her attorney in cases where the fairness of the case is affected.

The second is the failure to make the mechanism for resolving conflicts and disputes in misdemeanor cases more diversified. For example, because of the large number of cases, the relevant authorities have not made all misdemeanor cases multi-side (e.g., in addition to the parties involved in the mediation organizations, village committees, neighborhood committees, (e.g., mediation organizations, village committees, neighborhood committees, and friends and relatives of the parties involved) to intervene and communicate with each other to resolve disputes. This has led to many problems in resolving disputes. The parties involved have many opinions about the outcome, thus failing to achieve the effect of “harmonizing the parties”.

Thirdly, the mechanism for investigative supervision and cooperation in misdemeanor cases has not been brought into full play. The inadequacy of this mechanism has led to a lack of synergy between the public security authorities, the procuratorial authorities and other political and legal authorities in the management of misdemeanor cases, and the existence of incompatible solutions to the handling of a misdemeanor case by the various authorities, which has led to unsatisfactory results in the management of misdemeanor cases.

3.3 Unclear application of non-criminal penalties after non-prosecution

As we all know, non-prosecution includes relative non-prosecution, statutory non-prosecution, and non-prosecution for lack of evidence. However, non-prosecution does not mean non-punishment, taking relative non-prosecution as an example: the Criminal Law stipulates that, for crimes with minor circumstances that do not require a sentence, they may be admonished or ordered to compensate for the relevant losses, make amends to the victim, or write a statement of repentance according to the actual situation. However, it is now imperative to make the activation of non-penal punishment measures after non-prosecution smoother and to make non-prosecution follow-up related governance issues well resolved.

At present, China's Criminal Procedure Law and Criminal Law do not make explicit provisions on the application procedures, conditions and scope of application of relevant non-penal punishment measures, and a systematic system of non-penal punishment measures has yet to be

formed. For example, in terms of types, compared with foreign countries, China's seven types of non-criminal penalties are fewer in number, and the three types of penalties of admonishing the offender, ordering the offender to make reparation to the victim, and writing a written statement of repentance, despite their different names, have roughly the same meaning; at the same time, the conditions for applying them are not sufficiently clear, and the boundaries are very blurred; moreover, the idea of education is not adequately embodied. In short, the current measures are difficult to apply in a targeted manner in conjunction with the characteristics of specific cases, resulting in non-criminal penalties in judicial practice being used less frequently or even being left in limbo.

4. Response to the main problems of China's misdemeanor governance system

In order to promote the modernization of China's governance system and governance capacity, the improvement of the misdemeanor governance system needs to be urgently put on the agenda. This paper believes that China should promote the concept of misdemeanor governance from crime to governance, focus on the diversified use of misdemeanor governance in China and strengthen the application of non-penal punishment measures and non-prosecution of these three aspects to promote the improvement of misdemeanor governance system.

4.1 Promoting the Concept of Misdemeanor Governance from Cure to Governance

At present, China's development has entered a new period, the heavy task of social governance, through the “governance” system construction initiative close to the demand for protection, to “I manage” to promote “all manage”. Promoting the concept of misdemeanor governance for caseworkers to change from crime management to governance is conducive to focusing on the relevance and effectiveness of the work of the development of the new era through the construction of the misdemeanor governance system, adhering to the service of the overall situation, the people's justice, and the rule of law, and continually enhancing the appropriateness of the construction of the misdemeanor governance system to meet the needs of the country's high-quality development. In addition, adhering to the governance-centred approach is also conducive to the implementation of criminal justice concepts and policies for the new era, to the cultivation of the governing foundation, to adhering to the people-centred purpose, to enhancing people's well-being, to serving and safeguarding people's livelihoods and warming the people's hearts, to continuously improving the public service system, to raising the level of public services, and to advancing the modernization of the country's governance system and governance capacity.

4.2 Focusing on the diversified use of China's misdemeanor governance

At present, many judicial staff handle misdemeanor cases only at the end of the case, and do not consider whether the disputes between the parties have been resolved, whether the damaged social relations have been repaired, and other deep-rooted results^[4]. Therefore, in view of the fact that the governance model for minor crimes in China is not yet perfect, it is necessary to combine theoretical research and judicial practice to promote the transformation of the effectiveness of minor crimes governance in China from “case closure” to “peace of mind”.

First, the procuratorial authorities should do a better job of recommending sentences for misdemeanor cases, and should pay attention to improving the quality of sentencing recommendations for misdemeanor cases. Most cases of guilty pleas and misdemeanor cases are simple, with sufficient evidence and little controversy, and prosecutors should generally make recommendations for determining the sentence. To this end, the procuratorial authorities should

refine the sentencing guidelines, strengthen capacity training, and make full use of big data and other auxiliary means to improve the quality of sentencing recommendations in misdemeanor cases involving guilty pleas and penalties.

This will help to give better play to the role of the plea-bargaining system in safeguarding the legitimate rights and interests of criminal suspects, and make the governance of misdemeanors more consistent with the principle of human rights protection. At the same time, on the basis of improving the quality of sentencing recommendations of the procuratorial authorities, it can promote the settlement of disputes between the parties and the repair of social relations.

Secondly, improve the diversified dispute resolution mechanism: (1) Promote reconciliation and mediation between the two parties in a case through coordination of all parties. (2) Further improve the system of depositing compensation deposits, so that the relief mechanism for misdemeanor cases with clear facts and sufficient evidence can be more diversified.

Third, bringing together the combined forces of misdemeanor management and promoting transformation of the various departments of the political and legal system from “single-handed combat” to “system integration”:

First, through joint research on special topics, joint meetings and discussions, training sessions, regular briefings on the work, etc., to strengthen working exchanges, promote mutual learning and exchange, and to unify the main points of evidence collection, admissibility standards, and penalty scales, so as to avoid mismatches during the processes of evidence collection, specification, and application, as well as in other aspects of the linkage.

Second, the Office of Investigation Supervision and Collaboration and Cooperation has improved its substantive operational norms, strengthened pre-arrest triage filtration, focused on guiding and reducing detention at the source, and constructed a new type of pre-arrest linkage between the prosecution and the police, working together to keep the application of custodial coercive measures within reasonable and necessary limits. Thirdly, it fully communicates with the investigating authorities and relevant competent authorities, listens to opinions from many sides, understands the circumstances such as previous convictions, basis of punishment, and statute of limitations of punishment of the person to be non-prosecuted, and puts forward procuratorial opinions after comprehensive consideration.

4.3 Focusing on the diversified use of our misdemeanor governance approach

The most important thing for our country at present is to do a good job of applying non-punitive measures in cases of non-prosecution. Non-prosecution is not the same as not assuming responsibility, the key in the choice of governance, should be to “punish the wrong”, and to standardize the conditions of application, process, to ensure that misdemeanor governance is not biased, not adventurous, and effective. Positive reference to foreign legislation and judicial practice in China, governance measures can be divided into three types: First, the prosecutor's discretionary type. For example, the suspect is given an admonition, ordered to make a statement of repentance, apologize, and pay compensation for damages. Second, the procuratorial organs recommend to the functional organs. For example, it is recommended that disciplinary and administrative penalties be imposed. A full mechanism has been established for the articulation of penalties and administrative penalties for non-prosecutors, with “full coverage” of the review of whether or not administrative penalties need to be imposed. Through the issuance of procuratorial opinions, it is recommended that the relevant administrative authorities impose heavier penalties within the bounds of the law, in order to address the imbalance in the penalties imposed after non-prosecution and the lack of adequate disciplinary measures. Third, the perpetrator to the procuratorial organs commitment type. The commitments include voluntary participation in social welfare services, public welfare

donations, ecological restoration, corporate compliance, etc. For the perpetrator commitment type, the focus should be on guidance, including reasonable determination of the length of voluntary service and the standardization of its content. It should also explore an alternative labor and economic compensation system, and reach a consensus with the civil affairs, judicial administration, and other departments. Additionally, it should jointly work with volunteer associations to build a evaluation mechanism and a volunteer service platform[5].Upon completion of the volunteer service, the effect of the perpetrator's volunteer service is validated and assessed, and it is judged whether he or she has sincerely confessed to and repented of his or her crimes.

By classifying non-criminal punishment measures, it is conducive to applying measures appropriate to the circumstances of different cases, in accordance with the principle of maximizing effectiveness, which not only ensures that the procuratorial authorities play a leading role in the governance of misdemeanours, but also gives the perpetrators a certain amount of room for choice, helping them to better reform themselves and repair damaged social relations.

5. Conclusions

Through an in-depth analysis of minor crime governance in the new era, this paper has developed a preliminary understanding of the relevant governance system and proposed several countermeasures and suggestions for improving the current framework. It aims to contribute to the refinement of China's minor crime governance system. With the continued expansion and deepening of future research, it is believed that a reasonable, effective, and Chinese-characterized minor crime governance system, well-suited to national conditions, will be gradually established.

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