

The Rule of Law Guarantee of the Funeral and Interment Reform in China

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Abstract

Rule of law is the basic way of governing a country. In China, the rule of law orientation of the funeral and interment reform is the important guarantee to carry out the funeral reform, and also the inevitable requirement for our country to build a socialist country under the rule of law in an all-round way. The rule of law thinking and the way of rule of law are the guiding ideologies of funeral and interment reform; Scientific legislation and the perfection of funeral and interment legal systems are the premises of funeral reform; Rationalizing the management system according to the law is the key to the funeral and interment reform; The law enforcement of funeral and interment under the rule of law is the core of the funeral and interment reform.

Key words: Funeral and interment reform; The rule of law thinking; The law enforcement of funeral and interment; The funeral and interment law; The rule of law guarantee

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INTRODUCTION

Rule of law is the basic way of governing a country. Rule of law, as an ideology and value which has been universally acknowledged, is attracting more and more attention in

our country. Rule by law is being promoted in an all-round way in our country and the general goal is to establish the socialist rule of law system with Chinese characteristics and build a socialist country under the rule of law. Adhere to the joint promotion of ruling the country by law, governing by law and administering by law; stick to the integrated construction of the country under the rule of law, the government under the rule of law and the society under the rule of law; realize the scientific legislation, strict law enforcement, judicial justice and the whole people's abiding by the law and promote the modernization of national governance system and governance capacity.

Funeral and interment reform is the reflection of civilized China and also the requirement of promoting the national governance capacity. At present, the funeral and interment reform in our country is being steadily promoted and the rule of law degree of the funeral and interment reform is improving gradually. At the level of legislation, the funeral and interment reform has initially achieved the fact that there are laws to abide by. *Regulations on Funeral and Interment Control* provides support for the funeral and interment reform in terms of administrative law and regulation; as for the law enforcement, the consciousness of administration by law of the law enforcement officials is gradually enhanced and law enforcement means and ways are being increasingly normalized, thus violent law-enforcement is on the decline. In terms of ideology, concepts including funeral and interment under the rule of law, green funeral and interment, ecological funeral and interment and the humanistic funeral and interment are constantly gaining the widespread recognition of the society.

The funeral and interment reform has made some achievements, but its arduousness still exist. The funeral and interment reform is still the "most difficult thing in the world". To break through the difficulties and obstruction that the current funeral and interment reform has encountered, the rule of law must be adhered to. Rule

of law and the reform are both the tools to promote the social progress. Rule of law assumes the important mission to gather the reform consensus and through the rationality of rule of law, the legitimacy of the reform measures could be guaranteed to the uttermost. In the top-level design, rule of law should be the basis of the reform and the fact that there are laws to abide by is the basic principle that all reforms should follow. Funeral and interment reform should be carried out under the guidance of the rule of law, and it should be granted the legal authorization in accordance with legal procedures to avoid illegal reform. Carrying out the funeral and interment reform deeply and lastingly must depend on the rule of law which provides the necessary guarantee. The rule of law will provide unceasing impetus and support for the scientific development of our country's modern funeral and interment cause.

1. THE GUIDING IDEOLOGY OF THE FUNERAL AND INTERMENT REFORM: THE RULE OF LAW THINKING AND THE WAY OF RULE OF LAW

Enhance leading cadres' ability to apply the rule of law thinking and the way of rule of law to deepen the reform, promote the development, resolve contradictions and maintain the stability. Our country is in the period of social transition, and it is of important historical and practical significance for the administrative organs, especially the leading cadres, to adhere to the rule of law thinking and the way of rule of law to govern the country. The rule of law thinking refers to the process in which rulers, based on the rule of law idea, use legal norms, legal principles, the spirit of law and legal logic to analyze, synthesize, judge and think about the problems encountered or to be dealt with. Although the rule of law thinking is a kind of ideological understanding activity and process, it still needs to be externalized as the act of rule of law.

The rule of law thinking and the way of rule of law are the guiding ideologies of the funeral and interment reform. The funeral and interment reform of "transforming the social traditions, getting rid of the abuses and promoting civilized funeral and interment" involves the conflict between traditional customs and modern funeral and interment ideas. There is a process for the masses to adapt to and accept the modern funeral and interment ideas, such as the green funeral and interment. Especially the problems in the funeral and interment reform in the vast rural areas are always the key to and difficulties of the funeral and interment reform. The funeral custom formed thousands of years ago is still continuously exerting an influence on the funeral activities in rural areas in the new era. It should be said that the funeral and interment reform is a social reform of transforming the traditions. How to carry out the scientific, effective

and reasonable funeral and interment reform that accords with the national traditions on the basis of fully respecting peasants' emotion and will and guaranteeing peasants' interest is an important practical problem that concerns the sustainable social and economic development of our country and the construction of new socialist countryside (Wang, 2009). In addition, at present, our country is in the profound zone of social transformation and reform, and various interest conflicts in the society are getting increasingly complicated. Some local governments adopt improper ways and means when implementing the funeral and interment reform, infringing upon citizens' legitimate rights and interests, such as the personal right and property right, which result in the resistance psychology of the masses. Thus the funeral and interment reform encounters greater obstruction and even the mass disturbance has occurred. In order to solve the above-mentioned contradictions and disputes, the rule of law thinking and the way of rule of law must be regarded as the guiding ideology of the funeral and interment reform.

In the funeral and interment reform, follow the rule of law thinking and the way of rule of law, and also ensure the legitimacy of purposes, legality of authority, lawfulness of means and legality of procedure. The legitimacy of purposes requires the government and the relevant departments to conform to the purposes prescribed by law and regulations when carrying forward the funeral and interment reform, and they cannot run counter to the purposes and original intention of the funeral and interment reform. Legality of authority requires the government and various departments to abide by the principles of exercising power in accordance with the law and the integration of power and responsibility and carry out activities within the limits of the statutory authority. All departments including the Civil Affairs Department, Land and Resources Bureau, Public security Department and Housing and Urban-Rural Construction Bureau must perform their own duties and should not overstep their legitimate authority. The lawfulness of means requires various departments to take the means conferred by the law when they perform their duties and carry out the funeral and interment reform, and they cannot resort to illegal means to achieve the purposes. The legality of procedure requires the administrative organs to follow the legal procedures in terms of methods, steps and time limits when they conduct the administrative acts, whether they are benefiting or infringing upon the interest.

In 2014, the incident that two civil administration cadres in Guangdong province "bought corpses and cremated them in order to fulfill the cremation task" reflected that some local governments and their civil servants failed to follow the rule of law thinking and the way of rule of law to carry out the reform. As a result, the reform deviates from the correct way and has influenced the effects of the reform. The town in Guangdong province where the civil administration cadres of Mr He

and Mr Dong live has cremation quota every year, while inhumation prevails there according to the local tradition. In order to fulfill the task, the two people bought corpses from Guangxi that had been buried but were stolen later and they passed themselves off as the local people to conduct the cremation. The root cause of the incident “buying corpses for cremation” which has become a hot issue arousing various public opinions consists in the insufficient rule of law degree in the work of the funeral and interment form, exposing the disadvantages of simple indexation management of the funeral and interment in our country. Pushing forward the cremation is an important part of the funeral and interment reform, however, in many areas of our country, traditional funeral concepts that “burial in the ground brings peace to the deceased, and burial in a coffin shows filial piety” are deeply rooted. The funeral and interment tradition of the prevalent inhumation has become a hindrance to some local authorities’ carrying out the funeral and interment reform. Some local governments simply take coercive measures and issue administrative orders to push forward the cremation. They use the examination and evaluation index and cremation rate as the conducting baton, increasing the public’s resistance. In practice, the illegal acts, such as the “penalty index” and “buying corpses for cremation” are all the consequences of unduly pursuit of the index assessment. The simple prohibition and some compulsory policies carried out could not help to achieve the effects of the reform, and seriously damage the public trust of the governments, deviating from the original intention of the funeral and interment reform. Carrying out the funeral and interment reform cannot be accomplished overnight and in the end, it comes down to the strict enforcement of the rule of law, using rule of law thinking and the way of rule of law to guide the reform.

Make efforts to foster the ability of cadres in civil affairs department to use rule of law thinking and the way of rule of law to carry out the management. First of all, strengthen the education and training of rule of law idea. The idea of rule of law is the basis of the rule of law thinking, and only people with the rule of law idea could think of using rule of law thinking and the way of law to deal with practical problems. Constantly strengthen the socialist rule of law idea of civil servants, especially leading cadres in multiple ways including the case teaching method, and establish the rule of law thinking including people oriented and control over the public power. What is more, strengthen the cultivation of officials’ awareness to use the way of rule of law to solve problems. Our country has a vast territory, and faced with complicated practical situation, the funeral and interment management departments should adjust measures according to the local conditions, guide and educate the public through multiple approaches, adopt strongly operable ways, such as administrative rewards, to encourage the public to change ideas, get rid of the

outmoded customs and transform social traditions, thus accepting advanced funeral and interment modes including the cremation and ecological funeral.

2. THE PREMISE OF FUNERAL AND INTERMENT REFORM: SCIENTIFIC LEGISLATION AND PERFECTING THE LEGAL SYSTEM OF FUNERAL AND INTERMENT

Rule of law is the rule of good law in the first place. Establishing a complete and unified legal system is the premise and basis of carrying out the funeral and interment smoothly. Establishing and perfecting the complete legal system of funeral and interment based on the constitution and made up of laws, regulations and rules could provide a legislation guarantee for the funeral and interment reform.

2.1 Formulate the *Funeral and Interment Law* as the Basis Law of Funeral and Interment

With the development of society, the current funeral and interment regulation and its supporting system have obviously lagged behind and the main defects are as follows: Firstly, the regulation belongs to administrative regulation, and according to the legal hierarchy, it is below the constitution and laws. In practice, its lower rank has directly affected the legal force, thus affecting the wide development of the funeral and interment management in a deep-going way. To be specific, there exist conflicts between the *Regulations on Funeral and Interment Control* and the upper law of *Administrative Compulsion Law*. The twentieth article of the *Regulations* endows the civil affairs department with the right to compulsory execution aimed at the illegal acts including burying the body in the ground that should be cremated. However, when the administrative compulsion law came into effect, it explicitly stipulates that the enforcement of administrative compulsion could only be set by the law. Therefore, the stipulation in the regulation that endows the civil affairs department with the right to compulsory execution is no longer legitimate due to the conflict with the upper law. Certain restrictions are imposed on the law enforcement power of the civil affairs department. Thus they are no longer directly entitled to the compulsory executive power and have to apply to the court for compulsory execution. Secondly, there has been gap in the *Regulations*. Under the trend of funeral and interment marketization, the *Regulations* has not made stipulations on the access mechanism for the industry and personnel, as well as the qualification standards, and it could not respond to the new situation and new problems springing up in the funeral and interment reform. Thirdly, the current *Regulations* have a strong management color and are far from the service-oriented government. Confined

by the formulation background and the time, it focuses on the control and constraints over the funeral and interment activities, and citizens are in the position of being managed, which does not conform to the idea of service-oriented government. Problems like basic funeral and interment service and the boundary of selective funeral and interment service have not been stipulated in the regulation. The funeral and interment regulation could not handle a series of illegal acts timely and effectively due to its lack of rigidity.

Countries with developed rule of law in the world all attach much importance to the standardization of funeral and interment legal systems. Complete and perfect legal systems have been established. At present, when making great efforts to build a country under the rule of law, our country is in urgent need of a comprehensive *Funeral and Interment Law* to be as the basic law for funeral and interment management, which stipulates the matters including the guarantee of basic funeral and interment service, the marketization of funeral and interment service and the market supervision, as well as the law enforcement of funeral and interment. As for the legislation idea, the funeral and interment law should pay attention to the protection of public interest, put stress on the respect for the deceased's dignity and at the same time, protect citizens' consumption rights and interest. Centering on the *Funeral and Interment Law*, establish the related supporting regulations and rules to protect the reform.

2.2 Fix the Achievements of the Reform in the Way of Legislation

Many advanced practices in the funeral and interment reform of our country need to be fixed urgently in the way of legislation. Documents, such as the *Opinions on Party Members and Cadres' Taking the Lead in Promoting the Funeral and Interment Reform* and the *Guiding Opinions on Further Deepening the Funeral and Interment Reform and Promoting the Scientific Development of the Funeral and Interment Cause* institutionalize the policies and measures of the funeral and interment reform in the form of party regulations and ministries and commissions normative documents. The deficiencies are that the legal hierarchy of the above-mentioned documents is relatively low and they have no compulsory binding effect. When the time is ripe, promote the content in the normative documents to be the law and fix the advanced practices in the reform in the way of lawmaking, and then form the long-acting mechanism.

3. THE KEY TO THE FUNERAL AND INTERMENT REFORM: STRAIGHTENING OUT THE MANAGEMENT SYSTEM ACCORDING TO THE LAW

The key problem of the funeral and interment reform consists in how to establish a scientific and reasonable

management system for the funeral and interment according to the law. At present, the funeral and interment management system in our country is not smooth. The funeral and interment administrative organizations and its law enforcement agencies and the service organizations have not clarified their function division, personnel allocation and benefit distribution, which results in the chaos of the funeral and interment management in practice. Some civil affair administrative departments take advantage of the monopolized management of the funeral and interment service and non-separation of the management from the handling to share the high profits in the funeral and interment industry; illegal social intermediaries collude with some hospital staff and obtain the death information of patients first time. They contend with legitimate funeral parlors for sources of dead body, induce and even force the family members of the deceased to buy the costly funeral and interment service; most of the cemeteries in the city are overpriced commercial cemeteries, which are called "shy-high cemetery" (Guo, 2013).

Straightening out the funeral and interment management system according to the law should firstly accurately pinpoint the role and functions of the funeral and interment department in the funeral and interment reform. The misplacement, absence and offside of the government's functions will weaken the credibility of the government and affect the effective allocation of resources, therefore, the role positioning of the government is especially important. "Organs of power cannot do what has not been expressly stipulated by the law". Civil affairs departments should change the omnipotent, all-embracing and all-powerful image in the management of funeral and interment, and mainly play the role of being "at the helm". Moreover, realizing the equalization of basic public service of funeral and interment through a series of funeral and interment policies that benefit the people and guaranteeing that the masses have places to be buried when they die are the basic responsibilities of the government. Secondly, conduct cooperative governance, build and perfect the funeral and interment management system which is led by the government with the cooperation of departments and social participation. Modern funeral and interment management could not only depend on the government, and multiple subjects including the society, market and citizens all should fully participate in the management of funeral and interment. Public and the private joint in a common effort and cooperate to achieve the goal of the administrative management together. In our country, marketization is the development trend of the funeral and interment service industry. The marketization degree of the funeral and interment reform in our country is still low. Breaking free of the barriers of various departments' interest and building the funeral and interment service market is the irresistible trend of the next-step reform. Of

course, funeral and interment service could not realize the marketization completely. Funeral and interment service has certain public good property, and the government should make a strict distinction between the providers of guarantee service and market service. Actively explore the marketization and industrialization of the funeral and interment service, allow various investment subjects to participate in the operation, enhance the service level through competition and satisfy the masses' requirements for personalized service in the funeral and interment. Civil affairs department should be gradually separated from the commercial cemetery and funeral and interment service enterprises, and should not participate in the building and operating activities any more. The staff in the civil administrative organs cannot work or do part-time jobs in business enterprises and cannot directly or indirectly make profits from them. Thirdly, perfect the supervision system. The marketization of the funeral and interment industry also bring about some negative issues. Enterprises may blindly raise the prices of funeral and interment service and products regardless of the public interest to pursue high profits, which results in the market chaos. As for the problems including the illegal construction of cemeteries and profiteering in funeral and interment market, the government should investigate and punish them according to the law and carry out the necessary supervision and control to create a normative and orderly funeral and interment market.

4. THE CORE OF THE FUNERAL AND INTERMENT REFORM: RULE OF LAW ORIENTATION OF THE FUNERAL AND INTERMENT LAW ENFORCEMENT

Legislation and law enforcement are both the fundamental elements of the rule of law; at the Third and Fourth Plenary Session of the 18th Central Committee of the Communist Party of China, series of documents issued by the central government and speeches the central leadership have delivered many times recently all emphasized the strict law enforcement, deepening the administrative law enforcement system and pushing forward the comprehensive law enforcement. Rule of law requires the exercising of the public power to be based on the guarantee of civil rights, avoiding the infringement upon on civil rights caused by the abuse of power. The rule of law in the funeral and interment law enforcement is the core and important guarantee of the funeral and interment reform. The funeral and interment law enforcement is directly related to citizens and exerts an influence on citizens' rights and interest. Whether the funeral and interment law enforcement is just or not directly affects the citizens' trust in the government and concerns the social stability. In the funeral and interment reform in

Anqing, Anhui province, villagers' coffins were taken back by force, and in Henan province, there has been the digging graves movement, which all reflect the lack of way and means of rule of law in the management and law enforcement of the funeral and interment. These incidents, to a certain degree, suggest that funeral and interment law enforcement has become the complicated social problem. Funeral and interment reform is often related to land management and land expropriation of the local government. The funeral and interment law enforcement has encountered multiple difficulties in practice: first, the official rules are avoided and rejected by the counterparts who often show discontent and a lack of understanding of the funeral and interment law enforcement, and do not follow the decisions made by the administrative law enforcement departments; second, the law enforcement effects of the civil affairs departments are not good. Civil affairs departments could not realize the objective of the law enforcement, often due to the understrength of the law enforcement team and a lack of effective law enforcement means. When it needs the cooperation and assistance of other departments, such as the public security, industry and commerce and land and resources bureaus, their overlapping responsibilities often result in the controlling and restraining among each other, buck-passing and running after profits in the law enforcement. Incidents including the "violent resistance to the law" and "violent law enforcement" frequently occur, thus reducing the administrative law enforcement to a plight. Overcoming the multiple difficulties should start from the following aspects to promote the smooth development of the funeral and interment cause.

4.1 Combination of Flexible Law and Compulsory Administration, Coupling Hardness With Softness

The administrative power in our country is developing towards democracy, consensus and communication. Traditional administration often conducts a unilateral administrative act in the way of giving orders and taking compulsory measures. The means of law enforcement are relatively simple and rude, which makes it very easy for counterparts to produce resistance sentiment, while flexible law enforcement effectively overcome the unilateralism, compulsion and rigidity in traditional law enforcement, which satisfies the counterparts' psychological needs for feeling respected and affirmed, and is also a centralized reflection of modern rule of law idea.

Using flexible law enforcement ways in the funeral and interment law enforcement is reasonable and legitimate, which is closely related to the features of the funeral and interment law enforcement. Compared with other law enforcement, funeral and interment law enforcement bears the features of complexity and pragmaticity. The complexity is reflected in the special identity of the

counterparts, who are mostly the family members and relatives of the deceased who are immersed in the grief of loss. Moreover, the funeral and interment administrative law enforcement is a heavy blow to the funeral customs and it could easily cause the increasing public indignation of the administrative counterparts. Therefore, the funeral and interment law enforcement encounters relatively great resistance and difficulties, and if blindly adopting compulsory measures instead of the flexible ways, such as the guidance, conflicts and confrontation are very likely to occur, which will affect social stability and unity, thus the law enforcement objective will not be achieved. The pragmatism is reflected in the high requirement for the efficiency of the funeral and interment law enforcement. "Burial in the ground brings peace to the deceased". The time node of the funeral and interment law enforcement is usually before the burial, which requires the law enforcement officials to quickly and very efficiently deal with the case.

In funeral and interment law enforcement, compulsory and commanding means should be reduced as much as possible. If indirect compulsion and direct compulsion could both realize the management objectives, then the indirect compulsion which will inflict a relatively small infringement upon the counterparts' rights and interest should be chosen. If flexible administration and compulsory administration could both realize the law enforcement objectives, then the flexible one should be chosen. The funeral and interment law enforcement officials should show equal respect for the human dignity of the counterparts and carry out equal communication and exchange with the counterparts, making them so sincerely convinced that they change ideas, voluntarily build modern funeral and interment idea, transform the social traditions and cooperate with administrative organs to realize the administrative goals. Besides, strengthening the publicity of modern funeral and interment idea is an inherent part of the flexible law enforcement. Traditional funeral and interment customs have been formed gradually in people's life for a long time and they depend on the power of tradition to make people voluntarily follow. Changing the traditional funeral and interment customs and making people accept modern funeral and interment ideas could not be achieved overnight, and multiple ways needed to be adopted including the continuous publicity.

4.2 The Rule of Law Orientation and Normalization of the Funeral and Interment Administrative Law Enforcement Acts

The rule of law orientation of the administrative law enforcement acts is the core content of the rule of law orientation of administrative law enforcement. Civil affairs departments at different levels have made some achievements though many measures and ways including issuing regulations and rules, improving law

enforcement means, regulating law enforcement acts and increasing the training efforts. Violent conflicts in the law enforcement process have been greatly reduced and the law enforcement level has been improved significantly. However, some problems still exist in funeral and interment law enforcement, and institutional constraints are still needed to realize the rule of law in the administrative law enforcement acts.

The subjects, authority, content and procedures of the administrative law enforcement should all comply with the stipulations of the law, and shall not violate citizens' legitimate rights and interests. The normalization of funeral and interment law enforcement requires the subjects of the law enforcement, such as civil affairs departments, to strictly abide by the basic principles of administration by law and realize the clear and controllable process of the administrative law enforcement when they execute and apply legal norms to fulfill the daily law enforcement, thus ensuring the objectivity and justice of the administrative law enforcement results.

4.3 Strengthening Comprehensive Law Enforcement

Funeral and interment law enforcement are restricted by many factors including the traditional customs, ethical and moral ideas and the environmental protection, thus it could not only rely on civil affairs departments who "fight the battle alone". It needs various departments to pull together and join forces. Comprehensive law enforcement system should be built through the related system design. Organize the comprehensive law enforcement system which is led by the government, centers on the civil affairs department and integrates the efforts of various departments including the industry and commerce, public security, health, housing and urban-rural construction and urban management and establish the trans-department funeral and interment law enforcement team. On the one hand, various departments should perform their duties within the limits of their own functions and powers, and prevent the buck-passing among each other, nonfeasance and arbitrary conducts; on the other hand, communications should be strengthened. Establish the information sharing mechanism and information ledger, carry out the linked law enforcement, increase law enforcement efforts and improve the actual effects of the law enforcement practically.

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