Enforcement of Amended Criminal Procedure Law in China: Trends and Patterns

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Abstract:
The enforcement of the Criminal Procedure Law (CPL) in China is politically embedded in the power/right relations between public and private procedural participants. The structural configurations of these powers and rights are shaped by formal laws as well as dynamic negotiations conducted in daily practice. But no matter in laws or practices, procedural authorities consistently remain in positions superior to private participants. In this paper, it is argued that strong authorities together with weak social participation lead to the appearance of several trends in the enforcement of the 2012 CPL. First, although the CPL encourages witnesses to testify in open courts, it is still rare for witnesses to do so because judges have wide discretion to exempt them from testifying and the accused has no opportunity to contest the exemption decisions. Another trend is the occasional exclusion of illegally procured evidence, which is partly because judges have broad discretion to manipulate the standard of “doubt” as well as defense lawyers have difficulties in adducing relevant clues or materials to initiate the exclusion procedure. Third, although the current CPL intends to reduce the use of arrests, arrest rate still remains at a high level. The reasons for the high rate of arrest include the substantial discretionary power held by the authorities in the decisions to arrest and the poor application of the surveillance of residence, a socially enforced compulsory measure and an alternative to arrests.

About the speaker:
Dr. LI Li is Assistant Professor at the School of Law, Sun Yat-sen University. Her research interest includes criminal procedure law and legal system, with a special focus on the case of China. Her recent work includes Judicial Discretion within Adjudicative Committee Proceedings in China: A Bounded Rationality Analysis and High Rates of Prosecution and Conviction in China: The Use of Passive Coping Strategies. She teaches the subjects of the Criminal Procedure Law of the People’s Republic of China, Legal System, and Legal Writing.