

On Three Special Types of Subjects in the Punishment for Breach of Trust

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Abstract

The Provisions of the Supreme People's Court on Issuing the Information on the List of Dishonest Judgment Debtors specify that the primary target of punishment for dishonesty should be the dishonest judgment debtors. However, in practice, the scope of punishment has broadened to include their children and four types of responsible persons. This study conducts a thorough analysis and recommends that the punishment of the judgment debtors' children be explicitly prohibited. It also advocates for strict adherence to legal conditions when imposing consumption restriction measures on the four types of responsible persons. Furthermore, in cases where a government body is listed as a dishonest judgment debtor, this paper argues for the strict enforcement of accountability for both the agency and its responsible persons, aiming to establish a robust mechanism for penalizing governmental defaulters.

Key words: Children of dishonest judgment debtors; Government bodies; Four types of responsible persons

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Punishment for dishonesty is a crucial component of the social integrity system. The lawful implementation of

joint punishment for dishonesty against judgment debtors not only bolsters the rule of law and standardization within the social credit system but also fosters socialist values that honor trustworthiness and disdain dishonesty. The 2023 Work Report of the Supreme People's Court highlighted the effectiveness of the joint punishment system, which has led to 9.18 million individuals fulfilling their obligations due to the pressure of punitive measures. Additionally, the Zhejiang Lishui Court's initiative to engage elderly, trustworthy individuals in advocating for obligation fulfillment has motivated over 1,260 judgment debtors to settle their debts proactively. (Zhou, 2023)

According to Article 1 of the Provisions of the Supreme People's Court on Issuing the Information on the List of Dishonest Judgment Debtors (hereinafter referred to as Provisions on the List of Dishonest Judgment Debtors), the target of joint punishment is the dishonest judgment debtor, recognized as such by the people's courts after all execution, investigation, and control measures have been exhausted. (Liu, 2016)

However, the practice of joint punishment has expanded to include the children of the dishonest judgment debtor and the four types of responsible persons who are not the dishonest judgment debtors themselves - the legal representatives, main responsible persons, directly responsible personnel for the obligation fulfillment, and actual controllers of a unit. The extension of punishment to these parties raises controversy and could impact the effectiveness of the joint punishment system. To maximize the efficacy of the system, it is essential to accurately target and deter judgment debtors from engaging in avoidance, resistance to enforcement, and other forms of breach of trust. This paper analyzes the special subjects of punishment for dishonesty, aiming to provide a practicable solution that benefits the enforcement of mandatory measures.

1. CHILDREN OF DISHONEST JUDGMENT DEBTORS

According to Article 1(2) of the Supreme People's Court's *Provisions of the Supreme People's Court on Restricting High Consumption and Relevant Consumption of the Judgment Debtors* (hereinafter referred to as the *Provisions on Restricting High Consumption*), once an enforcee is listed as a dishonest judgment debtor, the court is mandated to impose punishment and restrict their extravagant consumption activities. Additionally, Article 3 of the *Provisions on Restricting High Consumption* states that if a dishonest judgment debtor is a natural person and is subject to consumption restrictions, their children are prohibited from attending high-fee charging private schools. This regulation has sparked debate and presents a contradiction: the children of dishonest judgment debtors are neither subject to enforcement nor officially recognized as dishonest judgment debtors themselves, yet they face joint punishment, which is restrictions on their educational choices.

There are three predominant perspectives on this issue. The first viewpoint argues for the comprehensive use of available punitive measures against dishonest judgment debtors, including restrictions on their children's educational opportunities, viewing it as neither a rights violation nor an extended punishment. (Shi, 2018) Proponents of this view consider the prohibition of high-fee private schools for the children of dishonest judgment debtors as a crucial component of the governance strategy for dishonest behavior. (Li, 2019) The second perspective holds that linking a parent's breach of trust to a child's educational restrictions is a form of joint liability, which infringes upon the child's right to education and suggests that the punishment for breach of trust may be overreaching its bounds. (Li, 2018) The third viewpoint acknowledges the unique nature of prohibiting the children of dishonest judgment debtors from attending high-fee private schools and calls for careful application of such measures. It suggests that for the children of dishonest judgment debtors in non-compulsory education stages, punitive actions affecting their personal interests, such as orders to transfer schools, should be applied with caution. (Li, 2019) Furthermore, it proposes that the punitive measure prohibiting the children of dishonest judgment debtors from attending high-fee private schools could be refined through legal interpretation to enhance its effectiveness and equity.

In this analysis, the author posits that the application of punitive actions has shifted from the dishonest judgment debtors to their children, effectively extending the impact and scope of such measures to the offspring. This shift, the author argues, is a de facto recognition of the children as dishonest judgment debtors, which raises several concerns.

Firstly, the provision that prohibits attendance at high-fee private schools fails to differentiate between the minor and adult children of dishonest judgment debtors. This approach contradicts the principle that minor children should not be listed as dishonest judgment debtors. For adult children, it contravenes the principle of the relativity of contractual responsibility, suggesting that they should not be held jointly and severally liable for the breaches of their parents. (Li, 2019) Moreover, considering the independence of civil legal subjects, adult children should not be deemed to have lost credit capacity simply because their parents are recognized as dishonest judgment debtors, and thus should not bear the consequences of such punishment. Even in cases where the children of dishonest judgment debtors are full-time students who become judgment debtors due to "campus loan" disputes, the *Opinions of the Supreme People's Court on Further Strengthening Bona Fide Enforcement* (hereinafter referred to as the *Opinions on Bona Fide Enforcement*) stipulate that courts should not include them in the List of Dishonest Judgment Debtors or impose upon them consumption restrictions.

Secondly, the indiscriminate application of this provision does not fully consider the diverse nature of private education. Private schools serve both compulsory and non-compulsory educational needs and contribute to public service. They can be categorized into those that complement the limited resources of public education and those that offer efficiency improvements over public systems. Complementary private institutions, such as specialized education schools and private colleges, often take on educational roles that public schools are ill-equipped to handle. As noted by Zhao and Huang (2022), "In some cases, private schooling is the only avenue for disadvantaged individuals to exercise their right to education, and it forms a practical foundation for ensuring their educational choice rights." Additionally, while these are private entities, they should not be subject to restrictions if their fees are within normal limits. The blanket regulation and its enforcement may hinder the educational opportunities for the children of dishonest judgment debtors, potentially infringing upon their educational rights. The legality of the high consumption restriction is questionable and it encroaches upon fundamental human rights, which leaves ample room for debate. (Song, 2021) Furthermore, delineating what constitutes excessive fees in the context of private educational institutions poses a significant challenge. The absence of a unified, clear, and specific set of operational standards for evaluating these fees often leads to a dearth of legal enforcement against dishonest judgment debtors. Consequently, the lack of enforcement makes court punitive actions a mere formality. (Yang, 2016)

Thirdly, the underlying purpose of restricting the children of dishonest judgment debtors from attending

high-fee private schools is to prevent the debtor from utilizing their assets to finance their children's education at such institutions, thereby preventing an unjustified reduction in the property available to satisfy the judgment. However, current practices fail to differentiate between various sources of educational funding for these children. Given the diversity of tuition fee sources, it is common that the educational expenses of the children of a dishonest judgment debtor are funded by individuals other than the dishonest judgment debtor. In instances where the tuition fees are not paid by the dishonest judgment debtor, the punitive measure of barring their children from attending high-fee private schools may lack legitimate justification. Such a measure neither compels the dishonest judgment debtors to fulfill their obligations nor is it equitable to the children.

Lastly, a fundamental tenet of modern legal systems is that legal responsibility for a violation should be borne by the violator and should not be extended to others. The prohibition of children of dishonest judgment debtors from attending high-fee private schools contravenes this principle of individual accountability. Such measures are at odds with the constitutional principles outlined in Chapter II, which delineates the "fundamental rights and duties of citizens." Moreover, by extending restrictions to the children of dishonest judgment debtors, these measures risk treating them as culpable parties, akin to the debtors themselves. This approach is antithetical to the constitutional mandate to respect and protect human rights and the spirit of the rule of law that modern society upholds.

In summary, the author suggests that future formulations of the *Civil Compulsory Enforcement Law of the People's Republic of China* should explicitly prohibit measures that restrict the children of dishonest judgment debtors from attending high-fee private schools. To achieve this, two key measures are proposed: First, the court's capacity to investigate and control the property of dishonest judgment debtors should be enhanced. "The online enforcement search and control system has facilitated streamlined inquiries and nationwide online monitoring of 16 property types, amassing a cumulative total of 85.35 million cases of property searched and controlled. This system has significantly addressed the challenges associated with locating individuals and identifying assets." (Zhou, 2023) Second, high-fee private schools should be obligated to assist in locating the property of dishonest judgment debtors, rather than being solely responsible for prohibiting the enrollment of their children. This shift would prevent the undesirable scenario where the school assumes the role of the enforcement authority, proactively reviewing and exercising enforcement powers, an action that contradicts the established principles governing the exercise of such rights.

2. FOUR TYPES OF RESPONSIBLE PERSONS

The *Provisions on Restricting High Consumption* stipulate that when an entity is listed as a dishonest judgment debtor, the court must restrict both the entity and its responsible persons from extravagant consumption. The four types of responsible persons - the legal representatives, main responsible persons, directly responsible personnel for the obligation fulfillment, and actual controllers of a unit - do not equate to judgment debtors or dishonest judgment debtors. Yet, they are subject to punishment for dishonesty, effectively expanding the scope of dishonest judgment debtors. This issue touches on the relationship between the high consumption restrictions placed on the four types of responsible persons and the listing of the entity as a dishonest judgment debtor. If the judgment debtor is an entity, its responsible persons are also subject to consumption restrictions. Yet, according to Article 16 of the *Opinions on Bona Fide Enforcement*, only the entity, and not its responsible persons, can be listed as a dishonest judgment debtor if it meets the criterion of breach of trust. Furthermore, Article 1(2) of the *Provisions on Restricting High Consumption* mandates that the court restricts the consumption of a dishonest judgment debtor for breach of trust. This implies that if an entity is listed as a dishonest judgment debtor, its four types of responsible persons are also subject to consumption restrictions. Both the high consumption restrictions on responsible persons and the listing of dishonest judgment debtors serve as sanctions to compel the fulfillment of obligations as determined by effective legal instruments. The comprehensive application of consumption restriction measures is considered a proper implementation of the system's intent. (Liu and Lin, 2016)

The *Opinions on Bona Fide Enforcement* posits that while the four types of responsible persons cannot be recognized as dishonest judgment debtors, they can still be subjected to consumption restriction measures. The rationale is twofold: their duty to supervise and assist the judgment debtor, and their potential contribution to the entity's failure to fulfill its obligations. (Shao, 2022) Directly restricting these responsible persons individually applies pressure on their work and life, addressing past difficulties in restricting dishonest judgment debtors and encouraging active compliance with legal obligations. (Liu and Lin, 2016)

In implementing consumption restriction measures for the four types of responsible persons, two key considerations should be addressed:

First, the criteria for imposing consumption restrictions must be explicitly defined. As per Article

3(2) of the *Provisions on Restricting High Consumption*, when a judgment debtor is subject to such measures, the associated responsible persons are prohibited from engaging in nine specified types of consumption behaviors despite the fact that they are neither judgment debtors or dishonest judgment debtors themselves. Accordingly, the scope of these restrictions is confined to the four types of responsible persons within the entity that is the judgment debtor and should not be extended to unrelated individuals. The court should not impose consumption restrictions on any other subject that may benefit the entity through consumption behaviors. It is also important to note that consumption restrictions pertain exclusively to actions directly associated with the judgment debtor to which the responsible persons belong. They do not encompass consumption activities by these responsible persons that are unrelated to the judgment debtor. Last but not least, the scope of restricted consumption is limited to the nine specified types and must not encroach upon essential life and work necessities.

Second, a nuanced understanding of the difference between consumption restrictions on the four types of responsible persons and their personal consumption acts is essential. While general provisions typically prohibit the responsible persons from engaging in nine specific acts of consumption, exceptions to these restrictions exist. In special circumstances, responsible persons who engage in these acts “for private purposes and with their personal property” may seek an exemption by petitioning the court. After reviewing the facts, the court retains the discretion to approve such requests.

When applying these provisions, the following considerations should guide the interpretation and enforcement. First, the subject of private consumption must be the responsible person themselves; other individuals are exempt from these consumption restrictions. Second, the scope of private consumption for the four types of responsible persons should encompass all activities unrelated to the affairs of the judgment debtor. This includes both personal affairs of these responsible persons and any actions they take for interests outside of the debtor’s unit, which could involve the nine specified types of consumption behavior. Third, personal property is defined as any assets that the responsible persons have the right to possess and dispose of. This definition extends beyond assets over which they hold legal ownership rights and does not include property that is owned by or under the control of the judgment debtor.

3. GOVERNMENT BODIES AS DISHONEST JUDGMENT DEBTORS

Government credit serves as a cornerstone of the social credit system. However, in recent years, instances of local government defaults have become increasingly common.

Reports indicate that in 2018, 480 local governments at various levels were designated as dishonest judgment debtors, including sub-provincial cities and provincial capitals. (Liu, 2021) The author argues that the inclusion of government bodies on the List of Dishonest Judgment Debtors has indeed negative implications, as it tarnishes the government’s image and significantly undermines the credibility of state organs. On the other hand, the punishment for dishonest judgment debtors exemplifies the integration and equalization of individuals, enterprises, and government bodies under the law, underscoring the principle of equality before the law. It also imposes systematic constraints on the exercise of administrative power by local governments. (Hou, 2021)

Regarding the punishment for dishonest government bodies, three points deserve attention:

Firstly, the question of whether a government body can be listed as a judgment debtor warrants consideration. Article 97 of the *Civil Code of the People’s Republic of China* stipulates that a government body, as a legal person and a civil subject, may engage in civil activities necessary for fulfilling its functions, such as constructing office spaces and purchasing office supplies. The *Guidance on Strengthening Integrity in Government Affairs* emphasizes key areas of integrity, including government procurement, cooperation with social capital, biddings, investment promotion and government debts. These areas involve civil and commercial contracts signed by the government as a civil subject with other subjects, where the contract’s principal terms and disputes are governed by market laws and where rights and obligations are reciprocal. (Cui, 2017) Even agreements with public welfare purposes, which might appear to be administrative agreements, do not fall outside the scope of civil contracts. For example, contracts for the concession of mining rights to state-owned natural resources and government investment guarantees for housing are considered civil contracts. (Wang, 2020) Therefore, as civil subjects participating in civil activities, government bodies may encounter civil disputes, become defendants in civil cases, and potentially become judgment debtors if they fail to fulfill obligations determined by legal instruments.

Secondly, the question arises whether a government body can be recognized as dishonest judgment debtors. This issue can be examined from two perspectives. From a theoretical standpoint, public legal persons carry out certain public duties, and enforcing against them in civil procedures necessitates a careful balance between public order and the realization of private rights. For instance, property enforcement against a public legal person could impair the entity’s ability to provide normal public services or fulfill its public management functions. However, failing to enforce could undermine the seriousness and authority of the legal instrument. Scholars have noted the importance of maintaining a

good social image and reputation for public legal persons, suggesting that procedural courtesy is necessary and that the application of certain enforcement measures, such as detention, should be limited. They argue that the listing of public legal persons on the List of Dishonest Judgment Debtors should be conditional and consider whether it impedes public administrative functions. (Gu, 2018)

From a legal perspective, according to Article 1 of the *Provisions on the List of Dishonest Judgment Debtors*, if a government body as a judgment debtor fails to fulfill obligations determined by an effective legal instrument and meets one of the six statutory circumstances, the court shall recognize it as a dishonest judgment debtor and impose punishment. This confirms that government bodies, as judgment debtors, can be included in the List of Dishonest Judgment Debtors. However, when a government body is recognized as a dishonest judgment debtor, the question of whether to include its legal representative or main responsible person in the list is less clear. The *Provisions on the List of Dishonest Judgment Debtors* do not explicitly address this issue. Yet, the *Opinions on Bona Fide Enforcement* stipulate that if a government body is a dishonest judgment debtor, its legal representative or main responsible person should not be included in the list. Similarly, Article 67(2) of the *Civil Compulsory Enforcement Law of the People's Republic of China (Draft)* states that if a government body is a dishonest judgment debtor and its legal representative and main responsible person are not judgment debtors themselves, they should not be recognized as dishonest judgment debtors. It is recommended that future revisions of the *Civil Compulsory Enforcement Law* provide clear guidelines on this matter.

Thirdly, the issue of punishment for government bodies listed as dishonest judgment debtors warrants examination. Initially, according to Article 8 of the *Provisions on the List of Dishonest Judgment Debtors*, when a government body is listed, the court is required to notify its superior units and competent authorities. Such notifications can predictably impact the department's organizational evaluation, creating pressure that urges the agency to fulfill its obligations. As noted by Hou (2021), "The inclusion of a defaulting government in the List of Dishonest Judgment Debtors triggers not only the court's list but also a notification system, interview mechanism, and successive punitive action and breach of trust assessment systems, embodying the principle of 'a breach of trust leads to limitations everywhere.'" However, as Qin (2018) observes, "Of the 319 cases of governmental breach of trust, only in 15 cases did the government fulfill some of its obligations, with the rest 300 cases remaining in a state of 'not fulfilling all'." Additionally, the *Directive of the Supreme People's Court on Matters Relating to the Inclusion of Governmental Bodies in the List of Dishonest Judgment Debtors* specifies that when a government body

is listed as a dishonest judgment debtor, the court will only publicize the information without imposing consumption-restriction measures. As Hou (2021) points out, "If it is merely a superficial registration on the blacklist of breach of trust, its symbolic significance far outweighs its substantive power to constrain and protect rights, at which point the function of justice in promoting the construction of a rule of law government also merely becomes a kind of rule of law under the discourse of social declarations." Lastly, the enforcement of punishment for government bodies often lacks substantive punitive measures. To address this, it is crucial to establish strict accountability for government entities in cases of breach of trust. (Zan, 2022) This ensures that government bodies bear the corresponding responsibility for their actions and are subject to an effective punishment mechanism. The goal is to create a system where the government's breach of trust is not easily absolved, thereby ensuring that the blacklist for such breaches has tangible consequences and serves as a deterrent. On top of that, it is essential to enforce strict accountability for those responsible within government bodies. The breach of trust by the government is, in essence, a breach by its officials, particularly the senior leadership. To establish a robust constraint on governmental breaches of trust, it is imperative to hold these officials accountable. This accountability should be reflected in the evaluation processes for merit and promotions, ensuring that those responsible for breaches of trust face appropriate limitations. Furthermore, government bodies should operate under the principles of the rule of law. They must enter into contracts and perform them strictly in accordance with legal provisions. They should also respect the authority and seriousness of the judiciary and actively fulfill their obligations under enforceable legal instruments in a timely manner.

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