



Labor Rights in the Chinese Constitution

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Abstract: Because of China's special national conditions, the scope and content of labor rights have been changing with the development of the times and have different contents at different stages. Therefore, the attributes and positioning of labor rights in China's constitution should be analyzed in the light of China's reality. The purpose of labor rights is determined by the constitutional structure, the target value of the object of rights, and the inherent relationship between the subject and the object of rights. This co-temporal institutional arrangement is a mixture of historical and philosophical factors, which forms the general construction of the purposefulness of labor rights. In this construction, the interpretation of labor rights should be carried out within a specific framework. Through the understanding of the ephemeral and the common time, the right to labor is not an instrumental right, but a purposive right that includes both rights and obligations.

Keywords Labor rights, freedom rights, social rights, Chinese Constitution

Labor rights, as a fundamental right of Chinese citizens, has been confirmed in the Chinese Constitution with significant theoretical controversies about the specific connotation of the constitutional labor rights. According to Western theory, the attributes of labor rights can be divided into freedom rights and social rights. However, an examination of Chinese history shows that the attributes of labor rights as stipulated in the Chinese constitution cannot be defined by such a dichotomy.

1 THE CONCEPT OF LABOR

Labor and labor rights are two different concepts. In order to clarify the connotation of labor rights, it is necessary to determine the specific meaning of labor, which can be defined from two different perspectives, vertical and horizontal.

From the vertical perspective, the concept of labor is specific and historical. As the chart below shows, the proportion of laborers employed in each industry is not the same in different

historical periods. In *On the Theoretical Construction of Constitutional Rights in China*, Wang Dezhi defines labor as "the activities performed by laborers or working people" by using the method of systematic interpretation. According to the relevant literature, "laborers" or "working people" is defined as a changing concept, and the connotation of labor is not the same at different times. In *Report on the Draft Constitution of the People's Republic of China*, Liu Shaoqi wrote about the working people: "Among the working people, in addition to the workers and peasants, there are a large number of individual craftsmen and other non-agricultural individual workers in the cities and villages in China who depend on labor for their livelihood, or who depend mainly on labor for their livelihood. The working class must unite these working people as well as the peasants to build socialism. Solidarity with these working people is within the scope of the workers' and peasants' alliance." The term "labor" in the 1954 Constitution refers mainly to "manual labor" and does not include intellectual labor or personal business activities.

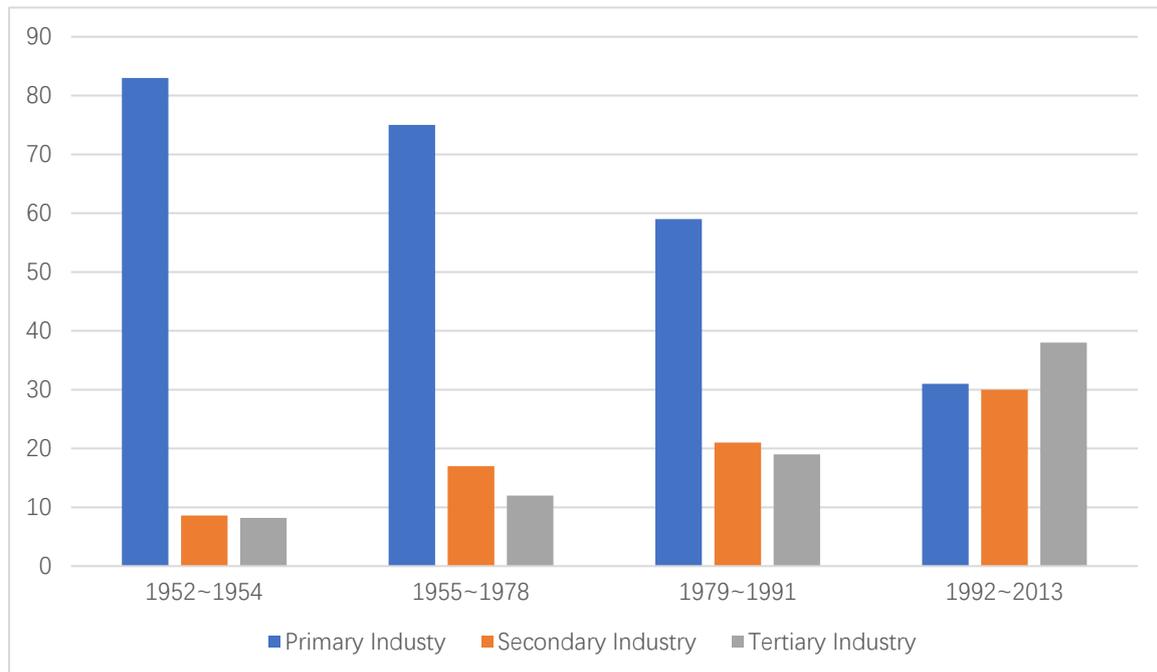


FIG.1 EMPLOYMENT OF THREE INDUSTRIES

The reason for the exclusion of non-manual labor was that China was practicing a planned economy, labor was subordinated to the government, and intellectuals were the object of transformation, so they did not belong to the working people. Since the 1982 Constitution, with the reform of the economic system and various institutions, the scope of laborers has been expanded and the number of labor methods has gradually increased. The concept of labor then encompasses material and spiritual production, commercial and service labor, and social service labor. The connotation of labor has thus been expanded. In terms of the connotation, labor is the activity of creating material or spiritual wealth for the purpose of earning a living.

The concept of labor in the constitution is different from that in the labor law from a horizontal comparison. Labor in labor law mainly refers to labor relations based on labor contracts, but labor in the Constitution includes both employment and business. Therefore, labor in labor law is a part or aspect of the concept of labor in Chinese constitution, and can be covered by the concept of labor in it.

In terms of the paid nature of labor, it is regarded that labor must be used as a means of earning a living, with paid labor as the mainstay and compulsory labor as the exception. However, in order to better fit with the current distribution system and economic system in China, the concept of labor in the Constitution should be expanded to include unpaid voluntary work, domestic work, and compulsory labor advocated by the state, in accordance with the constitutional provision that "the state advocates citizens to engage in compulsory labor. Consequently, there are arguments that labor must be paid work, which can be paid and earned.

The interpretation of the connotation of labor cannot be taken literally but must be explored in the context of the political and economic background of the time. In today's developing socialist market economy, labor must include both manual and non-manual labor, and it can be used as a means to earn a living and a way to realize self-worth.

2 SUBJECTS OF LABOR RIGHTS

According to Article 42 of our Constitution, it will be easy to reach such a conclusion that the subject of labor rights in Chinese constitution is citizens. However, it seems to exclude foreigners and stateless persons. As can be seen in definition of labor rights in labor law, the subject of labor rights is workers. But the explanation is far from accuracy, for it makes the concept of "workers" in labor law too narrow and excludes some citizens. The main subjects of rights in labor law refer to those who are employed and employed in labor relations, while civil servants and lawyers, who are not regulated by labor law, are excluded.

In addition, different conclusions can be drawn from the analysis of whether foreigners and stateless persons enjoy labor rights from different perspectives. If the subject of labor rights is citizens, which is a political concept as opposed to the concept of foreigners and stateless persons, then foreigners and stateless persons do not enjoy constitutional labor rights, but may enjoy labor rights under labor law. As long as a foreigner or stateless person has been approved by the relevant authorities, he or she can also become a "worker" and enjoy labor rights under the labor law if he or she establishes a labor relationship in China.



If the subject of labor rights is a worker, according to the principle of not lowering the standard of general civilization, foreigners and stateless persons should be entitled to it, only that the degree of enjoyment is limited.

3 CONTENT AND NATURE OF LABOR RIGHTS

The content of labor rights can be divided into three categories, the right to be paid for social work; the right to employment; and rights that includes the right to labor and employment, the right to be paid, the right to labor protection and the right to rest.

As one of the fundamental rights stipulated in the Chinese Constitution, labor rights can be divided into freedom rights and social rights based on the value attributes and the relationship with state rights. Based on different understandings of the content of labor rights, labor rights can be divided into three other categories.

First, labor rights belong to social rights. Social right is the constitutional embodiment of the value of equality, and it is the view of an active state or dynamic state, also known as "freedom from scarcity". By studying the history of labor rights, it is obvious that labor rights began in the Weimar Constitution of Germany after the First World War. With the rapid development of capitalism, wealth became more and more concentrated and the gap between the rich and the poor became bigger and bigger, causing unemployment to become increasingly serious. Since the majority of people had to be employed in order to survive, the constitution had to provide for the right to labor in order to protect people's livelihood, which meant that the state had an obligation to guarantee employment. Since the 20th century, society has placed more emphasis on social peace and the realization of the right to work, and therefore the protection of the right to work has become more important. Consequently, the right to work is the right of an individual to actively request the state to give him/her the opportunity to work.

Secondly, labor rights is a right to freedom. The right to freedom is the constitutional embodiment of the value of freedom, which is a kind of negative state view, also called "freedom from bondage". The right to benefit from labor rights (i.e., social rights), that under the planned economy, citizens have the right to demand jobs from the state because the state holds almost all the means of production and jobs. However, in reality, the state cannot eliminate unemployment in any case; it can only provide employment conditions as much as possible. Especially with the establishment of China's market economy, the share of the non-public economy has been increasing, and the number of jobs that the state can hold and provide is getting smaller and smaller. In response to this change, the Constitution has been amended accordingly, interpreting the labor rights as the right to freedom can guarantee citizens to engage in labor according to their own will, so as to better guarantee their own survival.

Thirdly, labor rights have the dual attributes of social rights and freedom rights. On the one hand, the issue of labor and

employment is not only a personal issue, but also a social issue. It is not possible to solve the problem of labor and employment in the whole society by merely stipulating that individuals have the right to "be free from forced labor and choose their own occupation". The problem of labor and employment is a social problem, which requires the active intervention of the government. On the other hand, after the completion of the second industrial revolution and the transformation from free competitive capitalism to monopoly capitalism in the late 19th and early 20th centuries, the problem of unemployment in society became increasingly serious. The intensification of labor-management conflicts and the rise of socialist movements forced the major capitalist countries to change their attitudes toward labor rights. Conceptually, it was realized that negative freedom from forced labor could not solve the problem of labor and employment. As a result, the concept of negative freedom was revised. Economically, governments began to adopt a policy of state intervention in the economy, known as Keynesianism, to regulate the national economy, which included intervention in labor issues. This is reflected in the constitution by the inclusion of positive rights such as labor insurance, labor safety and health protection, labor standards, and labor training. The Constitution of China provides that "the State shall, through various means, create conditions of employment, strengthen labor protection, improve labor conditions, and, on the basis of the development of production, increase labor remuneration and welfare benefits. The state provides the necessary training for pre-employment citizens in labor and employment. From the content, most of the constitutional provisions are labor rights that belong to social rights (positive rights).

On the other hand, labor is also stipulate as a kind of duty of Chinese citizens. How to understand labor as a duty of citizens? Some scholars argue that since the right to labor is a liberal right, the obligation to work is a moral obligation and the state does not force citizens to work. Another view is based on Article 45 of the Constitution, which stipulates that citizens have the right to receive material assistance from the state in case of incapacity to work, i.e., they have the obligation to earn a living through labor, otherwise they will lose this right, and that the obligation of labor is a legal obligation. However, with Hegel's and Marx's philosophical examination of the essence of labor and Alexei's view on the normative standard of rights, and the relevant provisions of other constitutional documents of the Chinese Communist regime in history, the norm of labor rights in the Chinese Constitution is based on the "master-slave dialectic" (different periods contain different labor rights norms in different periods of time reflect different political recognition or class content).

Obviously, the analyses above do not fully explain the meaning of labor rights and why labor is a duty of citizens. Although the academic history is helpful to understand the development of labor rights, it is based on comparative law and implies the premise that the rights are universal. This approach neglects the examination of the real political evolution of labor rights in China, and does not provide explanations for some phenomena associated with or distinct from the West that are consistent with China's constitutional characteristics. The interpretive approach



of the Constitution, on the other hand, cuts off the internal connection between this article and other constitutional provisions, without going deeper into the interpretative background behind the text and the words, and without real ideological examination, thus failing to reveal the unique legal nature of the labor rights, in addition to the right to freedom and social rights, in line with Chinese constitutional history and ideological position.

4 LABOR RIGHTS IS A PURPOSIVE RIGHT THAT ENCOMPASSES BOTH RIGHTS AND OBLIGATIONS

From the analysis of the nature of society under the Constitution, China belongs to a socialist society without class distinction, which is different from the capitalist society that regards labor as an instrumental right. This also means that labor is a self-improving social relationship, a purposive right. At the same time, socialism also requires that the individual be subordinated to the best interests of the collective, so labor is also an obligation to achieve the best interests of the whole, but this obligation is unified with the development of the individual. Labor, as a right, is the worker's self-consciousness in order to obtain his own mastery; and as an obligation because, for the state united by the worker, it is his commitment to the state, in order to obtain his recognition of the political community.

According to the object of labor rights, it is a kind of right with its purposive value determines that the process of labor is also a process of self-realization of the subject of the right, and therefore is the same in time. It is not an instrumental right and can only serve as an intermediate state for the realization of ends. In the process of labor, man transcends sensual perception and thus reaches the state of freedom. Therefore, labor as an object of right has an independent purpose and is a purposive right.

Analyzed from the intrinsic relationship between the subject and object of labor rights, it embodies the integration of subject and object. In the course of human historical development, labor indicates the essence of human beings, but is reduced to a means of livelihood for each person, which eventually alienates labor. China's socialist system reduces labor to its goal and enables workers to achieve self-improvement in the process of labor, thus overcoming social contradictions caused by oppression and exploitation. Therefore, the right to labor itself contains this inherent purposefulness and is a purposive right.

5 CONCLUSION

Labor rights is both a right and an important duty granted to citizens by the Constitution. Through the analysis of the subject, object and content of labor rights, the purposefulness of it can be naturally introduced. The political and legal nature of the Constitution requires that the understanding of its content should be based on its legal attributes while interpreting it in conjunction with its political nature. Although the Constitution stipulates that China is a socialist state led by the working class

and based on the worker-peasant alliance, every citizen enjoys labor rights equally under the reality that domestic class division has become history. The structure of labor rights is the same as the structure of other rights in general, and it has sufficient subject, object and content. The clarification of these three parts of labor rights further returns it to its legal nature. From the perspective of legal positivism, the evaluation of specific laws by the Constitution is a kind of contingent evaluation. The clarification of labor rights in the constitution can promote the improvement and development of labor rights in labor law. Therefore, the controversy on the content and nature of labor rights will not stop in the future, and this is an important reason why legal theory and human society can develop continuously.

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