

Discussion on the "Freedom to Strike" in the Constitution of the People's Republic of China

Minxing Wang^{1,a,*}

¹*Zhengzhou Xinfengyang Foreign Language School, Cuizhu Street, Zhengzhou City, China*
a. JimmyWang0106@st.btbu.edu.cn

**corresponding author*

Abstract: This paper will discuss the issue of strike freedom in China's legal practice. A strike is a collective refusal of work by workers in protest. With the advent of the era of bourgeois revolution, the contradiction between capitalists and their employed workers increased rapidly and became the principal contradiction of society. The working class, which directly creates social value, is increasingly impoverished and unfairly treated. The workers spontaneously rebelled against the capitalist oppressors in various ways. Strikes, as a form of workers' struggle, also appeared in that era. The strike also received warm reviews from Marx and Engels. As the most representative socialist country in the world, the right to strike in the People's Republic of China is not allowed and recognized by law, which leads to a lack of reasonable ways for many workers to defend their rights and interests. This led to a series of social problems and unstable factors, how the development of the rule of law of the Chinese government at the end of the 20th century is related to today's rule of law pattern, and how the Chinese government's attitude towards the strike has changed since the 1950s, all of which need to be discussed and studied. In addition, the thesis focuses on the ordinary working class in China, focuses on the basic demands of the Chinese people, and discusses the right to strike from the perspective of the people.

Keywords: strike issues, Chinese constitution, Chinese national people's congress, communism, capitalism, working class, rule of law system

1. Introduction

A strike is a collective refusal by workers to work in protest. Strikes have a long history. It is said that during the reign of Pharaoh Ramses III in Egypt in the 12th century BC, workers at the royal cemetery staged a walkout to protest against their treatment by the royal family, which is considered to be the earliest strike in history.

After the arrival of the era of bourgeois revolution, capitalist relations of production were gradually and rapidly established in the world (especially in Western European countries). In many countries, the contradiction between the capitalists and the workers they employ is rapidly rising and becoming the principal contradiction of society. As the working class, who directly created social values, lived increasingly poor lives and suffered more unfair treatment, so the workers spontaneously used various ways to fight against the capitalists who oppressed them, such as the Ludd Movement, the Chartist movement, and even the armed uprising. Strike as a form of worker struggle also arose in that era.

Strikes have achieved great things before. The Chicago strike in the United States was a great victory for the eight-hour workday. The strikes were also warmly reviewed by Marx and Engels.

Strikes were illegal in most countries throughout the 19th century. With the development of history, some countries in the world have established workers' "freedom to strike" by law (of course, some countries have limited freedom to strike, such as the United States). However, as the most representative socialist country in the world, the right to strike in the People's Republic of China is not allowed or recognized by law, which leads to the lack of reasonable ways for many workers to defend their rights and interests.

The problem of "freedom to strike" cannot be solved by simply enshrining it in the Constitution, but the absence of the right to strike in the Constitution must be a lack of law. It must be acknowledged that strikes have had an impact on production and that a continuation of strikes without settlement would be detrimental to all parties; Moreover, collective protests such as strikes are indeed easy to be exploited by class enemies, endangering the society and the people. Therefore, the "freedom to strike" written into the Constitution, and even for the strike legislation, which is not only a test of the ruling party and the country's legislative mind, but also a test of the legislative level and governing, administrative ability. How to legalize, rationalize, control and actualize the "freedom to strike" in the form of law is a problem that needs to be solved continuously in the course of development. At the same time, trade unions and workers themselves, also should constantly improve the consciousness of rights and obligations, national consciousness, on the one hand, dare to use and only use the legal rights to protect themselves, on the other hand also should prevent people with ulterior motives use, to minimize the negative impact of the strike, of course, this also can't be achieved overnight.

With the deepening of reform and the development of society, the "freedom to strike" is more and more important to re-write into the constitution, and the right to strike is an important milestone in the process of human legal system. Method of literature review is applied in this paper to analyze the issue of strike power from the perspectives of social development and public demands. Data sources include but are not limited to China Government website, China People's Daily Website, China Political Literature Website. The author aims to contribute to the debate on the freedom to strike by comparing the different social environments between China and other countries and considering the response of the strike issue in the Chinese people.

2. Literature Review

At the beginning of the founding of New China, the Common Programme served as a provisional constitution. However, there was no reference in the Programme to the "freedom of workers to strike"[1]. In 1954, the first Constitution of the People's Republic of China was promulgated. This socialist Constitution also had no relevant provisions.

At the second Plenary Session of the Eighth Central Committee of the Communist Party of China on November 15, 1956, The chairman Mao Zedong expressed his views on the strike: "The workers should be allowed to strike and the masses should be allowed to demonstrate. There is a constitutional basis for demonstrations. In future amendments to the Constitution, I advocate adding a freedom to strike and allowing workers to strike. In this way, the contradictions between the state, the factory director and the masses will be resolved"[2].

In 1975, the Second Constitution of the People's Republic of China was promulgated. Article 45 stipulates: "Citizens have the freedom of speech, correspondence, publication, assembly, association, procession, demonstration and strike, and have the right to make loud noise, broadcast, debate and big-character posters"[3]. The third Constitution of 1978 also inherited Article 45 of the 1975 Constitution[4].

When the National People's Congress amended the Constitution in 1980, it abolished the ultra-left "Four freedoms" in Article 45, but kept the "freedom to strike".

However, in 1982, the fourth Constitution was promulgated, and the "freedom to strike" was abolished in the new constitution[5]. At that time, the jurist Zhang Youyu explained, "The freedom to strike stipulated in the 1975 Constitution is the product of far-left ideology, which is not in line with the interests of socialist development, and is not in line with the specific conditions of our country. The enterprises of our country belong to the people... To stop production after a strike is to undermine the interests of all the people, including the working class. Some say it is a punishment for bureaucracy. Not right. The way to deal with bureaucracy is through the normal channels, such as whistle-blowing, accusations, appeals, and so on, and not through strikes"[6]. "Our country has eliminated the system of exploitation," said another jurist. "The working class and state interests are fundamentally in line. Under social modernization production, even if work stops for a minute, the interests of the country and the people will suffer great losses, and may even be used by the individual bad guys. It is clear that the freedom to strike is detrimental to maintaining stability and unity, developing production and realizing modernization. Therefore, it is in the fundamental interests of the people to abolish the freedom to strike"[7].

To this day, citizens' "freedom to strike" is not confirmed in the Constitution. Although some jurists believe that according to the legal spirit of "not expressly prohibited" in the nationality law, the country itself does not forbid workers to strike through strike action, so workers can strike in China. However, the "freedom to strike" clause of the Constitution had been changed from one to another, indicating that the Government's attitude towards strikes was not acceptable. Moreover, without the express approval of the Constitution and the law, the workers' strike is not protected, that is, can be destroyed or even persecuted by other forces at any time.

3. The Root Cause of China's Strike and Public Demands

3.1. Discuss the Issue of Strike in Chinese Legal Theory and Practice

To some extent, the development of the rule of law in China is closely related to China's social and economic development, or the two are complementary and interdependent. In the process of China's legal system, often issue because of the strike America Britain and other western European countries are on strike, like Chinese workers if they don't strike, China is not so "gregarious", there is also a view that socialist countries is not to need to strike, this view is essentially a formalism wrong, this view only recognize the nature of Chinese society, But they fail to recognize the social situation in China.

From the legal point of view, Western capitalist countries allow strikes, mainly in order to coordinate the contradiction between the workers and the capital machine, especially when inflation, the right to strike is a reasonable means of protecting the rights of labor groups against exploitation. In today's global epidemic of the COVID-19, global prices are rising, and inflation seems to be a foregone conclusion. At this time, the legal protection of the right to strike is indispensable.

Although China's price inflation is relatively low, the imported inflationary pressure caused by the global inflation environment is still very strong. If China's inflation increases by 10% per month, or 120% per year, as in the United States, strikes are highly likely to occur.

According to the theory to discuss, in the case of the public sector of the dominant strike is not possible, on the basic theory of economics and the Chinese legal science defined by a strike is a product of commodity economy, and China's development of commodity economy is not dominant, so in theory the strike will not appear in China, and to the capitalist countries that inflation is not possible. Because the basic material materials are in the hands of the state, the expansion of production, increase of consumption and increase of internal circulation only need to go through

policies, and the state can enforce internal circulation through administrative means, that is, the planned economy.

China has already begun to deepen the reform, all the way because of the open road including area is A national strategy for a long time, but at the same time of deepening reform, China's high unemployment and high inflation risk is more and more big. More people face employment difficulties and exploitation and oppression.

China now faces the problem is that some people rich, the rich great changes have taken place in a part of the mind, no longer for labor glorious steadfast to create wealth, not out of the hand property abroad is idling in financial institutions such as Banks, thinks of the empty set of white Wolf, exploitation, laborer can't will benefit the social wealth, let the economic depression. In such a state of society, the right to strike must be guaranteed, but China's current constitution just lacks the supplement to the right to strike.

3.2. Discuss the Rule of Law Society after the "Freedom to Strike" is Abolished in China's Constitution

First of all, there are necessary reasons and causes for workers to strike. Lenin once said: "The cause of strike and struggle in a state governed by the proletariat can only be that the proletarian state still suffers from the malfunctions of bureaucracy and that various remnants of the capitalist system still exist in its organs"[8]. There is no doubt that bureaucracy is a great cancer in the development of socialist parties and countries, and its destructive power is long-term and fatal. It is only in theory that the strike will hurt the whole country. In fact, the strike saved the factory by striking those factory managers and officials who deviated from the essence of socialism. Just imagine, the workers' strike may affect the temporary production, but it effectively strikes the bureaucracy, forces the superiors to correct the major mistakes, improves the motivation of production, and brings about long-term and efficient production and development. The priorities are obvious.

Secondly, Zhang Youyu's claim that "the way to deal with bureaucracy can be solved through normal channels, such as exposing, accusing and appealing, instead of going on strike" is logically unreasonable" [7]. There are other ways to deal with bureaucracy" does not justify "strikes should not be the way to deal with bureaucracy". Zhang Youyu only negates the huge role of strikes in dealing with bureaucracy from the perspective of the negative impact of strikes, which is not objective and advisable. More importantly, prosecutions and so on, work both ways. That is to say, it is not enough for workers to report their behavior, and relevant government departments must deal with it objectively. Once there is a chain of interests between those who are reported by workers and those who are reported by workers, the problem cannot be solved and more serious consequences may result. But strikes are a one-way street, often quickly gaining the attention of governments and the public. It can be seen that the strike not only has no conflict with the prosecution and other ways, but also can achieve the effect that the prosecution and other ways can not achieve.

Thirdly, one of the reasons for abolishing the "freedom to strike" was that "under social conditions, the fundamental interests of the working class and the state are the same, and the strike of workers will harm the interests of the workers themselves, the state and the people of the whole country"[9]. This statement is sweeping and irresponsible. It is true that the interests of the workers and the state are fundamentally the same, but in actual work, the contradiction between the workers, the factory director and the state always exists and may be intensified. Individual factory director, for example, there are serious bureaucracy and the concept of individualism, the factory as their own, their behavior is essentially riding roughshod of workers, especially after the reform and opening up, these people are doing everything they can, to their own assets, state-owned assets can be converted to the ordinary workers gradually lose host status, many of its people were laid off. The shift from being a master of a factory to being a servant, or even being relegated to the bottom of society, is not a reason for

workers to go on strike. It is a mistake to think that the fundamental interests of the workers and the state are the same, but to ignore the actual contradictions, which may even be very serious. As the chairman Mao Zedong said, "The world is full of contradictions... If they do not do well and are divorced from the masses rather than working hard, then the workers, peasants and students will have reason to disapprove of them"[10].

Finally, the question of the system of exploitation. As mentioned above, strikes should be justified even when exploitation has been eliminated. What about today? As is known to all, after the reform and opening up, private ownership developed again in China, and exploitation naturally existed in some conditions. In other words, the contradiction between the workers and the capitalists reappeared. Should the workers strike the capitalists when the tension intensifies? Should this freedom of strike action be recognised by the state? During the democratic revolution, the Party once led the workers to go on strike. Why did the semi-colonial and semi-feudal Socialist party support the strike, while the socialist society changed its attitude and the strike was exploited by the capitalists? Some people may explain that in the past, strikes were against capitalists and reactionary governments, but now economic development is conducive to the development of the country, and the interests of the state and workers are fundamentally the same, so strikes are a boycott of themselves and the people, and so on. According to this logic, if capitalists exploit workers in a manageable and acceptable range, then the workers will tolerate it for the time being, let those "some people get rich first", and then wait, or benefit the country, the people and themselves; However, if the exploitation of capitalists has gone beyond a certain limit, that is to say, when the capitalists have been madly squeezing the workers, can we still say that the workers are working to death, suffering from hunger and cold, and falling to the bottom of the society, but they are fundamentally protecting their own interests? So, in today's conditions, although the "fundamental interests is consistent," but when the capitalists not the starting point of the reform is "common prosperity" implement in action, and blindly pursue their own interests, so workers have more reason to fight with them, and a strike would be more suitable to represent the working class of the party and the people's government of the recognition and protection. To sum up, whether public ownership or private ownership, contradictions run through production; However, the possible bureaucracy and capitalist residual in public ownership as well as the class contradiction in private ownership can and should be the cause and reason of strike action. In today's China, there is undeniably the above problems, therefore, in both theory and practice, the author is opposed to the cancellation of "freedom to strike" by the Chinese Constitution.

3.3. Attitudes and Basic Demands of Chinese People towards the Right to Strike

As a matter of fact, the people's emotions are simple, especially in socialist countries, and what they need is nothing more than basic living security. Moreover, if the right to strike can be written into the Constitution, it should be beneficial to China's socialist centralized management, that is, to further strengthen the people's democratic dictatorship. Why would restoring the right to strike now help strengthen centralisation, benefiting both the state and the common man? This has something to do with the extreme imbalance of social power in China. Although its internal legal logic needs to be further elaborated, the restoration of the right to strike should be a major issue of The Times.

Recently, an "illegal assembly" broke out in Zhengzhou, capital of central China's largest agricultural province Henan, but the definition of "illegal" actually hurt the plain feelings of the people. In this case, most of the farmers and peasants deposited their money in the bank, which was withdrawn by the government and bank staff, and eventually lost their income, which led to collective strikes and protests by these workers and peasants. However, the nature of the Chinese government's definition of such a good strike as "illegal", even if it conforms to the spirit of the Chinese Constitution and the rule of law, fundamentally hurts the people who gathered, and also makes the social level feel strange and panic about China's governing methods.

At present, the free workers group under the market economy is just a trapped beast that has lost its power. The restoration of the right to strike means that the autonomous power and enthusiasm of workers will be released, which will stimulate the potential of civilian social activists and form a strong constraint on the dominant position of the powerful groups in the local society. For the strong and powerful, the workers' right to strike is a variant of the joint sitting for them, but for the centralization, the strike does not necessarily represent all-round chaos. In fact, the realization of the right to strike should have become a political correctness and even a political ceremony in China or socialist countries.

The strike movement, at any rate, is dominated by real workers with clear demands and may grow into an independent social force, while other social movements are likely to be kidnapped by a motly-powerful group. The legitimate strike movement is also the starting point for the centralized power to restrain the powerful social forces. The strong power of the common people means the squeeze on the powerful forces, which means that the low-intensity "mobilizing the masses" will be revived after more than 70 years, and the powerful group's image will be revealed in the demon-mirror of the strike movement. Social forces will eventually reach a relatively balanced state.

In today's Chinese society, "rat race" and "laziness" have become the norm for people to work. This is very terrible, because the working class has lost their enthusiasm, not only labor enthusiasm, but also the enthusiasm against exploitation and oppression. The deprivation of the right to strike may be the essential reason for this social phenomenon. The working class needs a power that they can control to protect their rights and interests, namely the right to strike. Appropriate re-incorporation of the right to strike into the Constitution can promote the social activity of China and improve the labor enthusiasm of the people, which requires the Chinese government to make a strong and significant decision.

4. Conclusions

In view of China's current legal system and workers' rights from the perspective of overall social stability, the issue of "freedom to strike" cannot be solved by simply enshrining it in the Constitution. The authors acknowledge that the strike has an impact on production and that it is bad for all parties if there is no resolution to the strike. Therefore, to write the "freedom to strike" into the Constitution, and even to legislate on strike, is not only a test of the legislative mind of the Communist Party of China and the Chinese government, but also a test of the legislative level and the ruling administrative ability. How to legalize, rationalize, control and realize the "freedom to strike" in the form of law is a problem that needs to be solved continuously in the process of development. At the same time, trade union organizations and workers themselves should constantly improve their consciousness of rights, obligations and national awareness. In addition to the cooperation of the working class, it is also necessary for all sectors of society to follow the legislative principle of strike power, that is, to protect the legitimate rights and interests of workers and maintain the rationality and stability of production. Similarly, the Chinese government, especially the law enforcement agencies with the force of force, should clarify the boundaries of law enforcement, respond to and protect the demands of the public reasonably, and should not destroy the legality of strikes by force, nor should they expand strikes by force. The author firmly believes that with the deepening of reform and the development of society, "freedom to strike" will be re-written into the Chinese Constitution in the near future and become an important milestone in the world legal history.

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