

Research on Labor Law Protection of Multinational Workers in China

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Abstract: When Foxconn sweatshop incident was exposed, China's society briefly paid attention to the living conditions of Chinese laborers. But when the wave of public opinion passed, no one paid attention to the exploitation of workers in foreign-owned factories, but the inadequate protection of workers in the field of labor law in China still exists. The purpose of this paper is to explore the current shortcomings of China's labor law in the field of foreign-funded factories, as well as the deficiencies in the supervision measures of foreign-funded factories, as to solve the plight of Chinese workers who are suffering from oppression. After studying the labor laws and regulations of China by consulting the labor cases of foreign-funded enterprises, the labor background of China, and combining with the current social situation, this paper finds that there are certain defects in China's labor law and certain system loopholes in the supervision of foreign-funded factories and puts forward relevant suggestions.

Keywords: labor, multinational factory, case law, Chinese supervision, legal aid.

1. Introduction

China has been known as the "factory of the world" for a long time since 2001, which means the important position of China's manufacturing industry in world trade. In recent years, with the decline of labor costs in Africa and other regions, although China's position as the world's factory has been shaken, the number of multinational companies establishing factories in China is still very considerable.

However, in the whole world trend that the cost of global labor is falling, the situation of Chinese workers is becoming more and more miserable. Multinational companies enter China in search of higher profits, they do not care about the rights and interests of Chinese workers but focus on their own immediate interests. Therefore, the Chinese government, as the host country of transnational corporations, should pay more attention to the protection of labor and the restraint of transnational corporations.

Clearly, China still has shortcomings in this regard. The Foxconn sweatshop incident in China has become a sensation in China, causing social concern, and the protection of labor has also entered the public's vision. However, to this day, the phenomenon of labor oppression still exists, which indirectly indicates that there are still some shortcomings in China's labor protection system.

When we talk about Chinese workers, we have to mention the background of Chinese workers. The vast majority of China's working class is made up of peasants. In China's rural historical tradition,

the guiding ideology of peasant behavior is "rule of propriety" rather than "rule of law", emphasizing morality and ignoring the rule of law, and emphasizing groups over individual interests. This had a profound impact on the farmers' awareness of the law, so that when these laborers were pressed from the factories, they often did not choose the legal route to solve the problem. As a result, this puts forward higher requirements for the legal supervision in the field of labor law in China

Whether it is the legal gap filled by administrative regulations in the system, or the inadequacy of the legal aid system in law enforcement, which needs Chinese government to pay attention to and solve.

This paper will start from the two aspects of law and supervision, review the relevant policies in the field of labor law, combine the relevant research results in the field of labor law with the current situation in China, make a comprehensive analysis of the system, devote itself to exploring the deficiencies and improvements in the system, make evaluations, and put forward suggestions for improvement, so as to better protect the relevant rights and interests of Chinese workers. Maintain good cooperation and win-win relationship with multinational companies.

2. Chinese labor law

2.1. Current situation of labor protection in Chinese multinational enterprises

In 1979, Chinese government published the "Sino-foreign Joint Venture Law", since then, multinational enterprises start to set up factories in China. The first enterprise which builds factories is Charoen Pokphand. Until 2024, MNEs still play an important role in Chinese economy development. Relevant data displayed, between 2011 and 2022, foreign-funded enterprises contributed 22.5 percent of industrial added value, 28.3 percent of industrial profits, 16 percent of taxes, 38.7 percent of imports and exports, and 20.7 percent of R&D input. The contribution of foreign-funded enterprises to employment is also obvious. Between 2011 and 2022, foreign-funded enterprises have absorbed more than 45 million jobs, contributing to nearly 10% of urban jobs [1]. Although nowadays the cost of hire Chinese labors had raised, multinational enterprises are still likely to use Chinese labor. Such as Apple Inc. In recent ten years, China's share of Apple's total cost and retail value has increased six to seven times. What's more, when Tim Cook, the CEO of Apple Inc visit China, he said in the interview that more than 95 percent of Apple Inc's products are still manufactured and assembled in China.

Since capitalists seek higher profits, the situations of exploitation and coercions to laborers seems common in multinational factories. As a result, a new word is invented, the "sweat shop". Multinational "sweatshops" exist in which multinational companies, driven by their own self-revenue, buy what they need from low-cost subcontractors spread across the globe. Since these subcontractors compete based on price, they achieve low-cost advantages by ignoring workers' working conditions, working hours, treatment, use of child labor, and so on [2].

As the representative example, Foxconn factory, which is the agent manufacturer of Apple Inc, used to request labors to work more than 10 hours a day and refuse to pay for labors over work. Labor has tried to revolt, but the factory quickly settled the matter by moving the workshop [3]. As a result, regulatory measures are the only weapons the workers can take to protect themselves. What's more, the protection from law not only depends on regulatory measures, but also relies on enforcement.

2.2. Defects of Chinese labor law

2.2.1. Gap in Chinese labor law

Here is the matter, China is a country where labor laws are sometimes ineffective. In fact, Chinese labor law is just a structure, but not an entire law system. It overdependent the administrative law and regulations to fulfill it, which lead to the result of people can easily use the gaps in labor law.

With The Labor Law of 1994 (“Labor Law”) issued, Chinese labor law have had a lot of progress. It establishes a contract-based system of employment regulation based on “voluntary” and “equal” negotiation [4], and replaces the former communist system based on administrative allocation [3]. The Labor Law also stipulates several minimum standards with which employment arrangements must comply. What’s more, Chinese labor law also match the “international labor standard” and implement the Constitution of the International Labor Organization [5].

Undoubtedly, Chinese labor law is a major legislative achievement. But when they get closer to it, the flaws of it will appear. It has serious limitations. It provides only the skeleton of a regulatory framework, but overdependent regulatory measures to fulfill it. As Chinese labor law was enacted in 1994, many situations appear in nowadays haven’t been discovered, so in Chinese labor law, it just stipulates approximate range but not provide accurate things.

For example, according to Article 46 of the Chinese Labor Law, it stimulate that “The employ unit should make economic compensation to the workers”. In this law, we cannot understand which kind of economic compensation could be made by employment, because economic compensation includes many parts, such as medical benefits. Whenever facing these problems, Chinese Labor Law use regulations to fulfill it. For example, many Chinese labor regulations have defined the word of “medical benefit” and regulate how the amount of compensation is calculated accurately.

Chinese society develop rapidly, and the situation of Chinese labor changed rapidly, which leads to the dislocation caused by regulations not keeping up with the development of The Times.

However, the rudiment of Chinese labor law is the 1994 Labor Law. After that, Chinese government haven’t published the new law but only edit it, as a result, Chinese labor law is hardly to match the real social situation.

2.2.2. Compare with case law country

The most important defect is, China is a written law system country, which means judge are not that flexible in court and judge do not have equivalent law-making function, compare with German labor law, German court decisions not only elaborate general provisions of the law, but also close loopholes in the legislation [6]. In China, all judgments made by judges should be fully accordance with the law. Under this precondition, the requirements for the law are extremely high, requiring the law to take into account all the details of the field, all the circumstances that may occur to provide for, without the slightest error and deviation.

The dilemma that Chinese labor law faced now are the situation that the United Kingdom and the United States faced in 19 centuries. In that era, Cooperate Status was at the beginning of its development. Many corporation law issues did not receive enough attention when the legislation was drafted, but there is always some corporation law issues requested to be solve. For this, United Kingdom and United States are benefit by its case law system, respond to this urgent problem efficiency and accurately with the wisdom of judges and layers [7].

In addition, although there are precedents of the Supreme Court in China for judges to refer to for judgment, the precedents of the Supreme Court are not comprehensive, and they cannot specify all questions and give standard answers. Therefore, it is difficult for Chinese judges to make fair judgments in the field of labor law under this system.

The United Kingdom, the United States and other case law countries obviously do not have to worry about this problem. Up to now, the 100-year development history of corporate case law in British and American countries has covered almost all the categories of corporate legal issues [7]. As far as the number of cases quoted in the current mainstream corporate law textbooks in Britain and the United States is concerned, it is roughly consistent. In all, there are more than 1,000 cases (about 1,400 cases in the United Kingdom and about 1,800 cases in the United States) [8][9]. Although most of the cases are more than a hundred years old, the reasons for the decisions written by the judges are still praised by lawyers, judges, and scholars who study these issues today. In the present judgment, we can still see the discussion and analysis of these cases, which shows that the company law precedent has a long history. More importantly, these seemingly scattered precedents have come together to form a complex system. The seemingly random case law system has shown its full face after the passage of time and gradual evolution. Therefore, as far as the system of corporate case law is concerned, it can be self-contained to a certain extent [7].

Therefore, in Chinese court, judges usually cannot use the past case to suit the actual situation, as a result, they sometimes may give some unfair judgments.

2.2.3. Compare China's supervision system for domestic enterprises with that for foreign enterprises

In China, there is a system called the "State-owned Enterprise petition work system". This system refers to a set of standards for the work of letters and visits formulated by state-owned enterprises in order to protect the rights and interests of employees, maintain the corporate image and promote the development of enterprises. It is used to restrain China's state-owned enterprises, and for foreign-funded enterprises, it is applicable to foreign-funded enterprises complaints.

Before the two, the biggest difference is that the protection of the petition system is much stronger than the complaint system of foreign-funded enterprises. The petition system is a system with Chinese characteristics, which has a certain historical background. It can be considered that the petition system is the inheritance and development of the direct complaint system. In Chinese history [10], there exists a system called the "direct complaint system", which is known by the alias of "entering the capital to inform the royal court". In ancient times, if people suffered unfair treatment, they could enter the capital, play the Dengwen drum (the drum used to notify the emperor in ancient China), directly state the case to the emperor, and ask the emperor to directly judge the case.

In modern China's petitioning system, if someone appeals to the letters and Calls bureau and the issue is not resolved, that person can continue to appeal to the central authorities. If a complaint goes to the central government, leaders at all levels will be punished to a certain extent.

In contrast to the complaint system of foreign-funded enterprises, according to the Measures on the Handling of Complaints and Reports of Foreign-related Labor Disputes, the Ministry of Commerce, the Ministry of Foreign Affairs, the Ministry of Public Security, and the State Administration for Industry and Commerce shall guide and supervise the handling of complaints and reports of foreign-related labor disputes. Under this condition, the complaint will not receive the same support from the central government as the petition system, and the protection is naturally not as strong as the petition system. At the same time, the supervision of foreign-funded enterprises also involves diplomacy, which means that there are more restrictions on the supervision of foreign-funded enterprises, and the relevant agencies are not completely free to punish foreign-funded enterprises.

In addition, the supervision of Chinese domestic enterprises includes the Bureau of Industry and Commerce, the tax bureau, the environmental protection department, the audit department, the State-owned Assets Supervision and Administration Commission, etc. Under the leadership of the Bureau of Industry and Commerce and the tax Bureau, all departments cooperate and jointly supervise to

ensure the supervision of domestic enterprises and the protection of domestic workers. However, in the field of labor law, only the Industry and Commerce Bureau can supervise foreign-funded enterprises. From the number of regulatory authorities alone, it is obvious that the supervision of foreign enterprises is not as strong as that of domestic enterprises. Not to mention diplomatic restrictions on complaints against foreign-owned companies.

3. Suggestion

3.1. From the perspective of laws

Considering the above discussions, the question arises as to whether it is necessary to overhaul China's labor law and issue a new, more comprehensive Chinese labor law. From the prospective of writer, this is clearly necessary. The writer believes that since the nature of China's statutory law cannot be changed, the new labor law can be improved from two aspects.

First, the new labor law can integrate past legislation, study past cases and critically revise them, and fill in the labor law framework to ensure that the labor law considers all possible situations in the field of labor law.

Second, affected by the complex and changeable social relations regulated by law, in order to maintain its universal applicability, legislation has to sacrifice individual applicability and tolerate abstraction and ambiguity. To maintain its relative stability, it will have to sacrifice flexibility in favor of inclusiveness. In the field of labor relations, which is changing drastically, the contradiction between the stability and adaptability of the law is even more prominent[11]. compared with the practice in the field of labor law in the United Kingdom and the United States, the case law system does show great advantages in this field. Therefore, it is necessary to use the judge's discretion and power to interpret the law to overcome the systemic shortcomings of statutory law. Perhaps the Chinese government can strengthen the existing guidance case system in the field of labor law, integrate and develop case law and statute law in practice, find the balance point between case law and statute law, and build a legal system with China's actual characteristics. At present, the number of guiding cases in the field of labor law in China is only 43, which is obviously too few compared with more than 700 in the United Kingdom. In the future, it may be possible to strengthen the emphasis on the preparation of guiding cases, start from most disputes existing in society, and issue relevant guiding cases to guide judges' decisions.

Last one is to unify legislative policies when legislating, and at the same time abolish, modify and create new rules and regulations, and timely conduct relevant legal norms after the completion of legislation, especially the sorting out of lower-level legal norms to ensure that the differences between the old and new laws are eliminated.

3.2. From the perspective of legal supervisions

3.2.1. Legal aid

Workers are the group most likely to be coerced and exploited. Multinational companies are always coming into China and establishing cooperation with Chinese factories. In order to obtain higher profits, they painstakingly take advantage of legal advantages, by extending working hours, pay cuts and other methods of forced labor. And limited by their level of education, this group does not know how to protect their legitimate interests. To make matters worse, they are too poor to hire lawyers for themselves due to their meagre salaries.

Therefore, legal aid becomes the only way for them to protect their legitimate interests.

China's legal aid began in 1992 [12], and China's Legal Aid Law will be issued in 2021, which stipulates relevant systems of legal aid. However, compared with Western countries, China's current legal aid system obviously has some imperfections.

First of all, the main body of legal aid in China is lawyers who have worked for several years and gained a certain reputation. For their part, they provide legal aid simply to build a good relationship with judges and the government and pave the way for future development. From then on, they were always busy and could not be patient with legal aid clients.

Moreover, China's legal aid system has not established a complete protection system, although the law requires legal aid applicants to fill in a lawyer appraisal form after handling a case, but this form often only plays a formal role, no practical impact.

Compared with Western countries, the legal aid system in Western countries is obviously more reasonable and efficient than that in China. Legal aid originated in the United Kingdom, when it was seen as a social charity and moral act. With the progress of society, modern state legal aid has evolved into judicial relief for citizens by the state [13].

Chinese labor also has its particularity. Due to the historical tradition of Chinese countryside, the guiding ideology of peasants' behavior is "rule of etiquette" rather than "rule of law", which profoundly affects peasants' legal consciousness [12]. If there is no one to guide them, then they will continue to swallow their pride and accept all the oppression.

Considering the actual situation of Chinese workers, perhaps China can refer to the British legal aid system and include some law students in the legal aid subject. Make use of students' enthusiasm for legal work, encourage students to actively contact factory workers, understand the actual work situation of workers, understand the needs of workers, stimulate their awareness of rights protection, and provide them with legal help.

3.2.2. The supervision system for the factory

There is a marked difference in the extent to which foreign and local factories are monitored in China today. We can see this from the regulatory system. Since foreign enterprises can bring huge benefits to China, how to balance the attraction of foreign factories with the strength of labor protection has become an urgent problem.

In this regard, perhaps a special institutional system should be set up to supervise foreign-funded enterprises and listen to the voice of foreign-funded enterprises. Instead, as at present, the administration of Industry and Commerce is in charge of foreign-funded enterprises. In addition, factories should be regularly inspected, arranged to listen to the views of workers, and actively solve problems for workers.

4. Conclusion

Through research, this paper finds that in the cooperation between multinational companies and China, the demand for Chinese labor has not decreased, and the situation of Chinese labor oppression has always existed, with Foxconn sweatshop being the most vivid example. Even though China's labor law has been revised several times in the past decade, and the Chinese government has demonstrated its importance to labor protection, it is obvious that the revision of the labor law alone cannot fully match the current situation of Chinese society because of the rapid development of Chinese society.

To better safeguard the legitimate rights and interests of workers, perhaps it is necessary to reformulate the labor law, and modify it from the perspective of fulfill the gap of labor law and write and promulgate more instructional cases.

However, the emphasis on changing the law alone is far from the protection of the labor. Chinese government should pay more attention to the enforcement of labor law area, try to eliminate

inconsistencies in China's supervision measures of domestic and foreign enterprises. Therefore, how to find the balance between protecting Chinese labor and appealing multinational enterprises become an issue which should be consider in the future.

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