Transformation of labour rights: a solution to protecting prisoners in China?

Abstract

In China the system of reform through labour persists in law and in practice, this paper will explore the possibility or necessity of transforming labour rights within the framework of international law and investigate whether such transformation produces any resolution to the rights conflict over the reform through labour programme in China.

Introduction

According to the protected interests and normative environments within the above international labour standards, labour rights may be transformed on the basis of three primary aspects. These aspects include transformation in the subject of labour, in its requirements with respect to content and in its intended objects and purposes. Among these aspects, a transformation in intended objects and purposes may be the core solution to the rights conflict, given that China has not ratified all of its international human rights treaties and that prohibition of forced labour is uncertain to be an international customary norm. Thus, the transformation of labour rights could be developed thorough labour reforms involving the Constitution, criminal law and justice or labour rights in China to solve the rights conflict, of which those in the Constitution is at the core of such transformation as follows:

The possibility of transforming labour rights

States may intend to provide a higher law to govern all forms of activities protecting labour rights; the Constitution regulates the primary principles concerned. The Constitution of the PRC, adopted in 1982, has been amended four times: in 1988, 1993, 1999 and 2004. These amendments have contributed to China’s economic, political, cultural and social development and progress, but they have retained the Constitutional right and duty to labour for three decades, leaving open the possibility of a justice system that includes forced labour. Article 42 of the 1982 Constitution stipulates that work is the right and “glorious duty of every able-bodied citizen.” This provision means that every able-bodied citizen has the obligation to work, whether the citizen wishes to or not; moreover, it deviates from the provisions on the right to work found in the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). Pursuant to Article 8(3)(a) of the ICCPR, State parties are obliged not to compel their citizens to work by any positive measure, including legal measures. The right to work is optional and does not imply the duty to work; a duty to work suggests that work is compulsory in nature. Article 6(1) of the ICESCR also provides for a right to work, comprising the individual’s claim or opportunity “to gain his living by work which he freely chooses or accepts”. Hence, the general duty to work that could be imposed by States through penal sanction constitutes forced or compulsory labour and is therefore contrary to Article 8(3)(a) of the ICCPR and Article 6(1) of the ICESCR. Even though compulsory labour is inconsistent with international labour standards, the above constitutional clause was reasonable when China had a planned economy. Provisions for the duty to work contributed to good social order and income equality, thereby upholding the notion of egalitarian ideals and a stable living standard among citizens participating in the planned economy. As a result, the labour system was able to successfully overcome the disordered state that prevailed in China when it had a market economy and to establish a good social order. The State undertook the obligation to assign to every citizen some form of employment; thus, citizens enjoyed the equal right to employment and income equality. Without the risk of unemployment or bankruptcy, every citizen had stable work and enough income for a peaceful life. The belief that “an advantage of a socialist society is that everyone has food and work” was generally accepted by the Chinese public.

The necessity of transforming labour rights involving the constitution

After the establishment of a market economy in the 1980s, however, the duty to labour has increasingly demonstrated a series of shortcomings that are inconsistent with contemporary life in China. The outdated idea of a duty to labour has led to a lack of understanding of the nature of work in a market economy, practical difficulties and inconsistencies among laws. Such negative influence will be addressed in detail as follows. First, in theory, a legal duty is compulsory, and a legal right is optional. If work is a right, citizens can choose at will whether to work. If work is a duty, citizens must fulfill their legal obligations or face punishment. Therefore, it does not make sense to refer to work as both a right and a duty. Moreover, neither the Constitution of China nor any other law provides for any sanctions against able-bodied citizens who refuse to participate in the labour market. As the 1999 Amendment to Article 6 of the 1982 Constitution states, the State adheres to “the distribution system with the distribution according to work remaining dominant and the...
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Many of these States do not have workforce participation rates that are significantly lower than China's. China should consider this fact when further reforming its legal provisions. Second, historically, there were express provisions mandating a duty to work in the 1954 Constitution and the 1975 Constitution, and it does not appear that Chinese people worked any less prior to 1982. Third, work has become a practical necessity and even a lifestyle for most Chinese citizens. Specifically, work is the essential and primary means through which the majority of citizens obtain their livelihood, develop socially and enhance their social welfare. Since the abolition of the exploitation system in China, most Chinese citizens have had a negative attitude towards all forms of unearned income. Thus, most Chinese citizens are willing to do some form of work as the primary means of maintaining their own subsistence, development and welfare. Moreover, many citizens consider work to be interesting and structure their lifestyle around their job. These citizens would be unwilling to give up work because work contributes to their happiness. Fourth, Chinese morality includes the idea that citizens should work for both social development and to enhance the wealth of their nation. Chinese citizens understand the important correlation between the public interest of China and the personal interest of its citizens. This moral idea and strong awareness would encourage Chinese citizens to work, even if the 1982 Constitution abolished their duty to do so. Finally, the fact that some citizens obtain income outside of work tends not to cause any direct harm to the State, society or other citizens. Therefore, it is not necessary to resort to legal means to prohibit such income; rather, protecting such means of income to an extent may be desirable.

Conclusion

In brief, it is not necessary, reasonable or feasible to stipulate work as a legal obligation of Chinese citizens; thus, labour should not be considered a legal duty. The Constitutional basis of work should be revised so that only the right to work is protected, not the duty to work. This revision would not only correct inconsistencies in Chinese law but also bring China into compliance with the ICCPR and ICESCR.

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Conflicts of interest

The author declares that there are no conflicts of interest.