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Labour protests: Bringing the courtroom into the streets of Southern China

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The Chinese government has shown that it values social stability above just about everything else. Social stability is not merely a prerequisite for the current political system; it is also a critical success factor for the world's fastest growing economy, providing a steady, unfaltering climate for businesses to flourish. Yet, as dramatic changes occur, so inevitably will disputes. As such, labour laws are written, amended and passed.

The national labour law was enacted in 1995 whilst the labour contract law was passed in 2008. With these laws, basic rights of workers are covered, such as the right to salary, social welfare, safety, and fair working conditions. Previously, disputes over such issues had not been explicitly stated and disputes were resolved through extensive forms of mediation. While laws may provide comprehensive protection in writing, disparity describes the reality. Some workers may be denied labour contracts. Sometimes, compensations may not be paid and the workers may be subject to unreasonable or unsafe work environments.

So while labour laws are in place, enforcement has been nominal. This could be partly due to deficiencies within the laws itself, according to Xin (Frank) He, a law professor at the City University of Hong Kong. His paper, "Street as courtroom: state accommodation of labour protest in south China", co-authored with professor Yang Su from the University of California, Irvine, was presented recently at the 16th annual Comparative Law and Economics Forum held at the Singapore Management University (SMU).

Demonstrations and resolutions

Social protests in China have been on a rise. Between 1993 and 2005, there has been a significant nine-fold increase in the number of such events. However, the increase has slowed in recent years, notably due to the promotion of law as a means to resolve disputes. In southern China, the economic boom which saw the opening of large manufacturing plants – many of which are foreign-owned -- has also provided the area with some respite from protests, as people busy themselves with jobs.

Within the clusters of factories along the Pearl River Delta, a large number of labourers work cheaply. The present global recession has, however, caused many of the factories to go under. As a result, many workers have been laid off and denied their salaries. Employers have also been known to flee, often without first paying their employees. "When business is going well, they will stay and earn money, and if business is not very good, they leave. All the factory equipment that they leave behind would be worthless because they are mostly under mortgage and sometimes paid for by the government. So hundreds if not thousands of workers would be left unpaid for many months," He said.

Local laws, to some extent, will address labour disputes and aggrieved workers can go to arbitration or to the courts to hold their employers accountable. However, these processes are usually tedious and difficult. The next best alternative for workers, therefore, is to take to the streets collectively. "The local government would be worried because demonstrations can affect the social stability of the region, which is the number one concern for the Chinese government," He noted, adding that the Chinese government has learnt to respond quickly in brokering a resolution to the disputes. He also noted a tendency for government agencies to inadvertently privilege labour disputes that involve street demonstrations over individual complaints.

It is commonly believed that the Chinese authorities do not take kindly to protestors. Yet, the state seems to take a different position when it comes to labour disputes. Concerned with maintaining social stability than just about anything else, the Chinese central government is seen to have chosen a proactive form of engagement. The authors raised the example of a protest in 2005, where more than 300 workers protested against Baoli Gift and Decoration Company, after their American legal representative had disappeared. The workers gathered on a public road, blocked traffic and demanded for their back pay. The incident led the state's district court representative to meet with leaders of the local township government quickly. The case was then filed and approved promptly. "Before the aggrieved disputants took the initiative to file a lawsuit, the courts not only informed them of the availability of legal remedies, but also helped them through the procedure," the authors wrote.

Social stability as a response to protests

China reformed its civil procedures in the 1990s, where an inquisitorial style was replaced with an adversarial adjudication stance - this means that the parties involved will be obliged to bear the burden of proof; to present facts and evidence against each other. However, the court is seen to revert to an inquisitorial approach when workers demonstrate on the streets. In fact, the courts have been known to take it upon themselves to scour for

evidence and simplify legal processes, so as to broker outcomes efficiently. The authors refer to this as the “street as a courtroom” phenomenon, one where the government’s emphasis on peace and stability overtakes the norm. Many of the usual “obstacles” required for proceedings under normal circumstances are therefore bypassed.

The authors also observed that the courts are usually prepared to offer the protestors favourable settlements. This can include exerting pressure on the errant employer and freezing the company’s assets. While Chinese authorities have been known to be pro-business, instances of labour protests would seem to have brought about a mindset change. In a recent example, unpaid workers received cash from the courts almost immediately after an agreement was reached with the employer. Under normal circumstances, the process might take at least two days.

In a report filed by a district court, a success factor behind instances of conflict resolution can be attributed to the exertion of “appropriate pressure” in facilitating the mediation process. “In these kinds of situations, we find that the dynamic of the court has changed. Stereotypically, we see the judge as an independent and neutral adjudicator. However, in the scenario of the street-as-a-courtroom, we find that the court fights together with the protestors – the labourers. Their common enemy has become those businesses,” He said.

Bureaucracies within the public sector can be complex, especially for a country as big as China. So how does the government ensure effective and rapid turnarounds to appease angry protestors? He believes that the various governmental branches are clearly aligned on the criticality of social stability. As soon as collective action breaks out, legal and procedural requirements come second to the “stability doctrine”. The existence of a coordinating branch, the social stability maintenance office, helps.

A case for successful protest outcomes

However accommodating the Chinese authorities might seem towards labour protestors, the authors highlight several factors to consider. Based on past cases, the outcome of labour disputes seems to rely on whether direct collective actions have been initiated. Collective demonstrations that are visible to the masses seem to motivate a quicker government response.


Size matters. If the number of the protesting workers is small, it may not catch the authorities’ attention. So the larger the protest, the likelier it will produce a favourable response. The authors suggest that large-scale protests provide an overall negative impression. It also attracts undesired attention from the media and high-level officials. Nevertheless, the motivation for a governmental response goes beyond ‘saving face’ – large collective efforts indicate the severity of the situation to the courts.

The availability of funds is an important variable. Labourers commonly take to the streets because they are denied the money owed to them. In handling these protests, the government realises that the workers will only be appeased when they receive compensation. If the state manages to secure the money required, the demonstrators will likely get what they had gathered to seek. However, not every branch of the government will be able to pay the workers. The errant employer would likely be penniless. Even if the employer has money, it is highly probable that the money would be frozen. So the government sometimes fills the gap by digging into its own pockets. The extent to which a worker can hope to be compensated would depend on whether the local government can finance the payout. In the poorer regions, local governments might not be able to provide protestors with their desired payout.

Negotiations are important in resolving disputes. However, it is impossible to negotiate when protest leaders cannot be identified. “There are reasons to believe that the availability of leadership is positively associated with the chances of success. For one thing, an organised event tends to be large. For another, when it comes to negotiating, the crowds with leaders may be in a better position than a headless mob,” the authors wrote. Yet, when leaders are easily identifiable, they could just as well be targets for forceful repression. Past incidents have shown Chinese authorities to be more accommodating towards large, spontaneous demonstrations, compared to those that are well-organised by a few leaders.

Though local laws expressly prohibit demonstrations, aggrieved Chinese labourers have not been deterred. It is also noteworthy that such labour demonstrations have been quite successful in soliciting positive governmental responses. “In liberal democracies, people are allowed to demonstrate everyday but they get nothing out of it. In China, they’re not allowed to do that but they get something from it,” He remarked. However, it is noted that in these cases, the court does not behave independently. The concerns of the local government are taken into consideration – to resolve disputes pragmatically in the interests of social stability.

In tandem with the country’s economic expansion, more labour laws have been introduced in China to manage the complexities of labour-employer relationships. However, when labourers fail to see the effectiveness of exercising appropriate channels, demonstrations will likely continue to occur. To address this dilemma, the authors proposed strengthening established legal channels. This would facilitate the process of delivering justice to the aggrieved labourers. The rights of protests could also be regulated, so that disputes can be contained within established channels. With these moves, challenges to the legitimacy of the law can be avoided, and presumably, social harmony maintained and economic progress achieved.

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