

Chapter 2

The Dynamics of Human Rights Protection in China

Abstract In modern history, Human Rights Movement and Civil Rights Protection Movement had profound influence. The founding of the People's Republic of China on October 1, 1949 set a significant milestone. Though China has learned a bitter lesson from the “cultural revolution,” it has also witnessed new developments in human rights protection. The release of white paper on Human Rights in China in 1991, the inclusion of “the state respects and guarantees human rights” in the Constitution in 2004, and the release of National Human Rights Action Plan of China in 2009, have marked the progressive development of human rights protection in China, and have made important contributions to the international human rights career.

In modern history, several events (e.g., The New Culture Movement, The Provincial Constitutionalism Movements, the Movements for Compensation of Unjust Verdict in the 1930s, the Human Rights Movements between 1929 and 1931 and the Civil Rights Protection Movement) showed the awareness and pursuit of human rights in China [1]. Among the events, the impact of the last two was most profound. New possibilities in progress of human rights were opened up by overthrowing the three mountains (of imperialism, feudalism, and bureaucrat-capitalism) that had suppressed Chinese people and by the founding of the People's Republic of China (PRC) in 1949. It is the founding of new China that has created the favorable national and international environments for Chinese people to enjoy human rights.

The founding of the PRC on October 1, 1949, is a milestone in human rights development for the whole world community. Chinese people, led by the Communist Party, fought bloody battles for more than two decades and finally overthrew the rule of imperialism, feudalism and bureaucrat-capitalism, and terminated almost the century-long humiliating history for Chinese nation. As the country won independence, its people were thus emancipated from oppression. Since the founding of new China, great achievements have been made in human rights protection, despite the bitter experience of “cultural revolution”. Especially after the reform and opening-up, China's economy develops fast and its people's living

standard has been improved. The rights enjoyed by its people are being increasingly enriched. The general level of human rights protection is being improved. Objectively speaking, thousands of years' cultural tradition, Marxism and communist party's experience accumulated from practice are determining the progress and direction in the cause of human rights in China.

Just before the founding of new China, civil rights protection was put forward in the Common Program of Chinese People's Political Consultative Conference (CPPCC), the first complete constitutional program of new democracy, adopted on September 29, 1949. After the founding of new China, the content and scope of human rights protection have tremendously been enriched and expanded through the promulgation of four successive versions of Constitutions of 1954, 1975, 1978, and 1982, and through four amendments of the fourth version respectively made in 1988, 1993, 1999, and 2004. In a word, over the past six decades after the founding of new China, the cause of human rights has gone through the catastrophe of "cultural revolution" and learned the painful lesson from it on the one hand, and on the other hand has made new great progress too.

2.1 Main Human Rights Movements in Modern History of China

Two movements have exerted profound impacts in modern history of China, namely, the Human Rights Movement and Civil Rights Protection Movement that took place in late 1920s and early 1930s.

2.1.1 Human Rights Movement

In late 1920s and early 1930s, college professors that had education background from Europe and America started the Human Rights Movement, demanding constitutional protection of human rights. This movement is "the political movement that was themed only human rights" [2]. It was led by Hu Shi, Luo Longji, and Liang Shiqiu, etc., who formed the "Human Rights School" with the journal of *New Moon (XinYue)* as a front to express their opinions. The article entitled "*Human Rights and Provisional Constitution*" by Hu Shi was so powerful that it seemed to "have shot the first cannon in human rights movement" [3]. Later, Hu Shi published several similar articles successively in this journal like "*When Can We Have Constitution.*" Meanwhile, Luo Longji also published articles like "*On Human Rights*" and "*Warning for Those Who Oppress Freedom of Speech.*" Liang Shiqiu published articles like "*On Unity of Thoughts.*" Some of these articles were later compiled in *Collection of Human Rights*, which played an

important role in exposing and criticizing the abuse of human rights and the absence of human rights protection under the rule of the Kuomintang (KMT).

First, in Human Rights Movement, the “Human Rights School” disclosed and criticized the fact that human rights could not be protected under the rule of KMT. In “*Human Rights and Provisional Constitution*,” Hu Shi first questioned and criticized the so called human rights protection by analyzing the “*Human Rights Protection Decree*” issued by the KMT on April 20, 1930. After demonstrating the opposite to the KMT’s proclamation with hard facts, Hu proposed “to truly protect human rights, the rule of law must be established. The first thing is to draw up a constitution of the Republic of China (ROC). Or at least draft a transitional constitution” [4].

Second, the “Human Rights School” put forward the idea of protecting human rights through constitution. In “*When Can We Have Constitution*,” Hu Shi explicitly asserted that “a constitution should be adopted, and any office of the municipal government shall not exceed the limit of their rights stipulated by constitution, and shall not infringe on people’s rights—this is the practice of democracy. For the nation at the infant stage of democracy, not only its people need such practice, but also its government needs too” [5]. In fact, these words explicitly raised the question of protecting human rights through constitution.

Third, this school defined human rights. Luo Longji noted in “*On Human Rights*,” “Human rights, to put it simply, are the rights to be human. These rights are the necessary conditions for being human” [6]. In this school, Luo Longji is the one that went furthest in the research into human rights. He not only initiated the theory of the necessary conditions, but also substantiated the content of human rights that should cover not only the rights to food, clothes, accommodation so as to sustain life, but also the rights to happiness, individuality, and development [7]. What is more, he also illustrated the relation between human rights and nation, law, practice, location, etc. He thus was the one among the scholars of this school that gave the most systematic explanation of human rights. Profoundly influenced by Western theory and thoughts on human rights, Luo Longji could still take account of the social reality of China to expound human rights. Even today, some of his original ideas are still enlightening.

Finally, this school advocated that freedom of thought and speech is the most significant content of human rights. Liang Shiqiu argued that “we need freedom of thought, freedom to express our thoughts. We need law to ensure such freedom” [4]. He further proposed that “we wish freedom of thought for everyone, and must support liberal education” [4]. Luo Longji pointed out in “*Warning for Those Who Oppress Freedom of Speech*,” “Freedom of speech means the freedom from the interference of law. It means the congress cannot make law to prohibit people’s speech” [8].

In the Human Rights Movement, the criticism of the KMT government for not protecting human rights exerted undoubtedly some actual influence on the KMT so that they would restrain their Fascist arrogance. This movement is considered to be “the only real human rights movement, and the most significant enlightenment movement on thoughts of human rights” [9]. The “Human Rights School,” after

studying, assimilating and digesting Western philosophy of human rights, systematically raised their theories of human rights with reference to China's social reality. "Their theories are not only significant at that time, but also lend themselves to today's thoughts" [10].

2.1.2 Civil Rights Protection Movement

Later on December 18, 1932, Song Qingling, Cai Yuanpei, and Yang Xingfu proclaimed their manifesto, and started to organize and lead China League for Civil Rights. The League was officially founded on December 29, and presided by Song Qingling. The League specified its tenet as "to arouse the public awareness to protect civil rights" [11]. Its members could generally communicate in English and thus could win international support. With its rigorous tenet for organizing the league and its activities, it successfully rescued Communist Party members like Chen Duxiu, Chen Geng, Mu Chengzhi and the writer Ding Ling. The League's activities were terminated by the assassination of one of its leader, Yang Xingfu by the reactionary authorities. However, this movement played an important role in the history of China's human rights.

2.2 The History of Fighting for Human Rights by the Communist Party of China

At its early time, the Communist Party took a succession of measures to protect human rights. In 1922, it raised the question of protecting freedom of various kinds, like the one of association, assembly, speech, and press in its "*First Proposal to the Current Political Situation*." In 1923, the famed Great Demonstration on February 7th shouted the slogan: "Fighting for freedom, fighting for human rights." In 1934, the "*Constitution Outline of the Chinese Soviet Republic*" stipulated the rights to participation in political affairs, to freedom and to education. In 1941, the "*Administration Outline for the Border Areas of Shaanxi, Gansu and Ningxia*" provided general human rights for the people fighting the Anti-Japanese War, including the freedom to speech, assembly, association, religious belief, residence, migration etc. In 1942, the "*Shandong Provincial Regulations for Human Rights Protection*" stipulated the legal measures for protecting personal rights.

After the victory of Anti-Japanese War, the KMT government ignored the outcries of the Communist Party and the people, waged the Civil War and carried out the Nazi-like dictatorial rule, under which the patriotic democratic personages were arrested, imprisoned, and massacred, and the people were completely deprived of their democratic and personal rights. To counter the KMT's dictatorial

rule, the Communist Party led the people in launching the democratic movement to “fight against hunger, persecution, Civil War” and to “fight for freedom, democracy, human rights,” which contributed to the final victory of China’s New Democratic Revolution. In 1946, “*The Constitutional Principle for Border Areas of Shaanxi, Gansu and Ningxia*” stipulated “the people shall enjoy six basic rights,” and provided the measures to ensure such rights, e.g. “The government shall provide material help, shall reduce rents and interests to improve workers’ living standard, and shall develop education, medical care and medical equipments” [12]. The above-mentioned laws and regulations all provide precious experience for developing and improving the human rights protection system of China.

On September 20, 1954, in its first conference, the first National People’s Congress adopted the first *Constitution of the People’s Republic of China (PRC)*, which is the first constitution of socialist nature in China’s history. It was based on the *Common Program of CPPCC*. Chairman Mao participated in and led the whole process of drafting the constitution. This constitution established China’s political system and the basic system of constitutional government, reflected the will and interests of the people and thus was a good fundamental charter.

The basic contents and principles of the 1954 constitution laid a solid foundation for the later development of constitution and constitutionalism. Unfortunately, with the advent of “cultural revolution”, this constitution, drafted with the participation of Chairman Mao, was reduced to shadow, and a catastrophe in human rights protection started. In 1957, with the acting of numerous historical factors, the ultra-left trend of thought prevailed. Large numbers of cadres and intellectuals were oppressed and labeled as the Rightists. The total number of the alleged innocent Rightists amounted to 3.17 million [13]. In 1959, the Lushan Conference mistakenly made the resolution, namely the “Decision on the Mistakes Made by the Anti-Party Clique Headed by Peng Dehuai.” The nihilism of law began to prevail over the dignity and authority of the constitution.

Three decades has passed since the “cultural revolution”, during the period of which democracy and law were ruthlessly overridden, basic freedom and human rights deprived, and the whole country thrown into chaos. This bitter experience is still remembered by the Party, the country and the people. The people have learned the lesson that there will be no basic freedom and human rights without democracy and rule of law.

On the one hand, China should practice the rule of law, should develop its socialist democracy and legal system, which had been disastrously damaged by the “cultural revolution”. At that time, man’s dignity and value were completely deprived, personal safety and freedom not protected, and the whole country and society in a chaotic state, with the absence of democracy and of the rule of law. This agonizing experience has taught us that China should be ruled by law, and should develop socialist democracy and the rule of law so as to guarantee its long-term peace and order, enhance its people’s well-being and push forward its socialist cause. To govern China by law, the authority of the rule of law should be

established, and any organization and individual shall comply with the state law, shall not enjoy the privilege to override the law.

On the other hand, China should protect human rights, and should build and develop a harmonious society. Human rights protection plays a decisive role in China's socialist cause. In 2004, "the state respects and guarantees human rights" was included in China's *Constitution*. Thus, to respect and guarantee human rights has become a constitutional principle and has become the essential content in developing China's legal system. Therefore, to develop socialist human rights has become one important task for the Party and the country, and one major task of China's socialist construction in new period. A harmonious society cannot do without respecting and protecting human rights. The ambitious goal of a harmonious society can only be realized after the human rights are adequately respected and protected. To protect human rights is the core nature of a harmonious society, and a harmonious society must be one in which human rights are entirely protected.

2.3 The Rejuvenation of Human Rights Cause in China

After the founding of new China, some progress was made in the building of constitutionalism. But this progress was suspended by the "cultural revolution," the end of which was brought about by the crushing of the *Gang of Four* in October 1976, and was declared by the 11th CPC Conference in August 1977. The constitution adopted in 1975 was found to have severe problems, and thus it was put on the agenda to revise the Constitution. The third Constitution of PRC was adopted by the first conference of the fifth NPC on March 5, 1978. It made amendments to the 1975 constitution and put wrongs to rights. It basically resumed the provisions of the 1954 constitution about civil rights and structuring of government offices and their functions and powers. However, this constitution was "transitional" due to its historical context. It still showed inadequacy despite containing some right contents [14]. It failed to eradicate the ultra-left thoughts, the residue of the "cultural revolution." It still contained some incorrect political views and some impractical provisions.

The incorrect political views and thoughts were only corrected after the mass debate, which was brought about by a special commentator article titled "*Practice Is the Only Criterion to Test Truth*" published on *Guangming Daily*. The debate "stirred up the tide of liberating minds in Chinese academia" [15]. The mistakes of the "cultural revolution" were thoroughly sorted out by the Third Plenary Session of the 11th CPC Central Committee. It was in this session that lessons were summed up and learned from the practice after the founding of new China, correct principles and policies made, civil rights protection specified, the idea that all men are equal before law raised, and democracy and rule of law emphasized. This session marked the new beginning of the cause of human rights, and signified the historical turn in the history of new China. Furthermore, the political line "to free our mind, to seek truth from facts" and the principle "*Practice Is the Only*

Criterion to Test Truth” were established in the Sixth Plenary Session of the 11th CPC Central Committee in June, 1981. In 1979, seven laws were promulgated successively, namely, the Criminal Law, the Criminal Procedural Law, Organic Law of the PRC on the Local People’s Congresses and Local People’s Governments, Electoral Law of the PRC on the National People’s Congress and the Local People’s Congresses, Organic Law of the People’s Court of the PRC, Organic Law of the People’s Procuratorate of the PRC and Sino-foreign Joint Venture Law. The guiding principle for making such laws was to ensure citizen’s lawful rights.

The fourth Constitution of PRC was adopted by the fifth session of fifth NPC on December 4, 1982, in order to adapt to the new situation of the reform and opening up. This constitution is still in effect. It carried forward and developed the basic principles of the 1954 Constitution, summed up scientifically and profoundly the experience of Chinese socialism development, and assimilated precious experience from international constitution drafting. It entered the “Four Cardinal Principles” and carried out them from its beginning to end. It specified that China hereafter shall concentrate all its efforts on socialist construction and modernization. It provided that all citizens are equal before law. In a word, this 1982 Constitution is a fundamental charter of Chinese characteristics that accommodates to the need of China’s socialist construction and modernization. It has undergone four amendments, each of which has greatly pushed forward China’s socialist construction and modernization.

On November 1, 1991, Chinese government issued its first white paper on human rights—*Human Rights in China*, which marked the entry of “human rights” as a political notion into China’s political life. It illustrated objectively the human rights practice in China, and put forward China’s propositions on human rights. The Chinese government for the first time raised the banner of human rights with assured justice, thus preserved China’s international reputation and brought about favorable influence at home and abroad.

“The state respects and guarantees human rights” became a constitutional principle and was for the first time written into the fourth Constitution Amendment [16], which was reviewed and adopted by the second session of the tenth NPC. This marked the new age China has stepped into in terms of human rights protection. This entry of human rights into the Constitution is a new milestone for China. If human rights were considered man’s ideals or imperatives before, then after this amendment, human rights have become a constitutional principle and become lawful. Undoubtedly, this is a big leap forward in the cause of human rights and provides legal basis for the exercise of human rights.

National Human Rights Action Plan of China (2009–2010) was issued by the Information Office of the State Council. This plan is “the first human-rights-themed national plan, and is a policy paper of the action program to put into practice the constitutional principle ‘the state respects and guarantees human rights’ and advance China’s human rights cause” [17]. It provides not only the guarantee of economic, social and cultural rights, the civil rights and political rights, but also the measures to ensure the rights for ethnic minorities, women, children, old people, and the disabled. Besides, it also maps out human rights

education, performing international human rights duties, and the communication and cooperation in human rights in the international arena. It has established a joint-conference review system. Its measures are specific, proper, feasible, and workable and above all fit for the specific national situations. It will greatly contribute to the development of China's human rights cause.

Over the past few years, China has been actively seeking cooperation and dialogue with the international community, has contributed tremendously for the international human rights cause, and has made great achievements that have attracted world-wide attention. On December 9, 2008, Wang Chen, Director of the Information Office of the State Council, pointed out in an exclusive review by the journal *Human Rights*, "China human rights cause has made progress of historic significance. China's human rights practice is at the best time" [18]. The major achievements he believed are seen in the following five aspects: "First, unprecedented attention has been given to respecting and safeguarding human rights, which has become an important principle for the CPC and Chinese government in managing state affairs. Second, the people's rights to subsistence and development have been ensured in an unprecedented way. Third, the people's civil rights and political rights have been practically guaranteed. Fourth, the people's economic, social and cultural rights have been continuously improved. Fifth, the international communication and cooperation have been constantly expanded" [18].

2.4 Progress of China's Human Rights Viewed by Human Rights Experts

Since the founding of the PRC in 1949, both practice and theory of human rights in China have made great progress. Particularly in the past 30 years, the cause of China's human rights has made great achievements, which are obvious to the whole world. Professor Qi Yanping and Zang Zhen once systematically reflected on the progress and development of Chinese human rights since the reform and opening up 30 years ago, believing that the human rights protection thought has been established, the human rights theoretical system has been formed, the human rights safeguarding system has been improved, and the human rights safeguarding practice has made a progress [19].

2.4.1 The Establishment of Human Rights Protection Thought

Regarding the establishment of human rights protection thought, Professor Qi and Zang believed that it has included two aspects: one is the establishment of rights first concept, changing from duty first to right first and changing from power first

to rights first; another is the establishment of human rights protection concept. They point out:

China's human rights legal circle has reached a consensus in the classification of human rights, namely, the deserved, legitimate and practical rights. The real condition of human rights of a country is just the proportion among the three types. If the deserved becomes the legitimate and the latter becomes the practical, the proportion of the three is one, meaning the ideal reality of human rights. In contrast, if there is a big gap in the proportion, the country's human rights situations are not good. The human rights situation of a country should not be judged by only one type. If we regard the legitimate human rights as the practical ones, the protection of human rights will only stay at the legal level. Such judgment is not conducive to human rights practice [19].

After further analysis from the political circles, Professor Qi and Zang summarized as follows: "The concept of human rights protection has been gradually established, with deepened research and knowledge about human rights among academic and political circles, and social, economic and cultural development and people's knowledge of the importance of human rights issue. The protection of human rights has become a basic principle and core value for the construction of a complete, systematic legal system and of a socialist country under the rule of law" [19].

2.4.2 The Form of Human Rights Theoretical System

With reference to the formation of human rights theoretical system, Professor Qi and Zang discuss the extension of human rights subjects and the improvement of human rights content. When discussing the extension of human rights subjects, they insist that "the 30 years of the development of China's human rights subjects theory is represented by two marked changes, namely, 'from limited subjects to general subjects' and 'from general subjects to special subjects'" [19].

Then they move on to discuss the improvement of human rights content, stating that China not only views all the social members as subjects of human rights protection, but also attach great importance to all kinds of human rights, setting the highest priority for the right to subsistence and the right to development. They strongly insist that "to a country and a person, man's subsistence right comes first. Without subsistence rights, there will be no other human rights at all" [19]. They continue with the following statement: "The right to development mainly means the right of all members of society to share all kinds of fruits brought by the overall social progress and development" [19]. Then they summarize that "over the past 30 years, China has basically set up the human rights theoretical system with Chinese characteristics, which regards everyone (all members of society) as its subjects and the rights to subsistence and development as core contents" [19].

2.4.3 The Improvement of Human Rights Safeguarding System

The improvement of human rights safeguarding system can be analyzed from the following perspectives: first, China has made remarkable achievements in the legislation area.

The socialist legal system with Chinese characteristics has basically been established. The system, consisting of seven law divisions and three tiers of laws and regulations, has the constitution as its core, the laws its main body and includes regulatory documents such as administrative and local regulations. The laws have covered the country's economic, political, cultural and social life, providing a strong legal backing for rule by law and the building of a socialist country under the rule of law and safeguard of all human rights [19].

Similarly, another Chinese expert, Han Yanlong, believes that "China has developed a relatively complete human rights law system compatible with its current level of political, social, and economic development. This system consists of the following four parts: the Constitution, the laws, the administrative regulations, and local regulations" [20]. Han further summarizes the following characteristics of China's human rights law system:

(1) It consists of both provisions stipulated in the Constitution and provisions stipulated in general law. It should be mentioned that China belongs to the continental law system, and legal precedents could not be taken as the basis for the administration of law, but only as references. The judicial interpretations of the Supreme People's Court and the Supreme People's Procuratorate should be regarded as a part of China's human rights law system, playing an important role in the judicial practice. ... (2) It consists of both comprehensive or principled legislations and specific human rights protection laws. ... (3) It consists of both the legislations of the Central Government and those of local governments. A wide range of issues is dealt with by local regulations, which are formulated under the premise that they shall not contravene the Constitution and the laws [21].

In China, the Constitution, drafted and ratified by highest organ of the state power, is the fundamental law of the country. Therefore, the Constitution has supreme legal effect in the Chinese system of law. The citizen's fundamental rights and freedom stipulated in the Constitution are sacred and inalienable, and no laws and regulations may contravene the Constitution. Laws specify and supplement some of the citizen's rights provided in the Constitution and they are drafted and ratified by the National People's Congress or its Standing Committee. Administrative regulations are promulgated by the highest organ of administration and the ministries and commissions under it while local regulations are formulated and promulgated by the local people's congresses of provinces, autonomous regions and municipalities directly under the Central Government, according to the actual situation in their respective areas.

2.4.4 Progress in Human Rights Safeguarding Practice

In 2004, “the State respects and guarantees human rights” was written into the Constitution, which turned a new leaf for human rights protection in China. When talking about its significance of the inclusion of human rights concept into the Constitution, Professor Qi and Zang made the following statement from five different aspects:

The first is the modification on the outlook on subject of human rights, which changes the formerly used citizen subject into the adjusted subject of ‘everyone’ or ‘all people’. The change challenges the differentiation outlook of subject and legislation and the dual structure of rights. The second is the change from closedness to openness of the established human rights system. The third is about the human rights standard and value. ... The international human rights standards, are also the country’s domestic ones except for declared reservations. The human rights modifications unite domestic and international standards. The fourth is the adjustment of governance idea. ‘Governance for the people’ should be transformed into legal judgment to safeguard human rights. The ‘for the people’ in governance should become ‘for the people’s rights’ in law. The fifth is the modification on law enforcement idea. The state respects and safeguards human rights, indicating law enforcement departments should regard this as their own duties [19].

Progress in human rights safeguarding practice is also a focus in Professor Qi and Zang’s article, subdividing this section into four components: (1) rights to subsistence and development; (2) citizen’s rights and political rights; (3) economic, social and cultural rights; and (4) judicial safeguard of human rights. At last, the article gives a very good summary:

The 30 years of reform and opening up is also a period of China’s all round economic, social and cultural development and of the flourish of its human rights undertakings, which have experienced a fundamental change from being a cold field to being a hot issue. In the 30 years, China’s human rights thought was established, its human rights theoretical system formed, human rights safeguarding system improved and human rights safeguarding practice promoted. The report of the 17th CPC National Congress said ‘we must respect and safeguard human rights’ in the part of speeding up the building of a socialist country governed by law. It puts more emphasis on the relationship between human rights and rule of law. Human rights are changed from a political concept to a legal one. Human rights become legal rights which make it a legal duty for the state to respect and safeguard human right. This not only points out the direction for the development of China’s human rights undertakings, is also the action principle and guidance for us to push forward human rights work and strengthen the construction of human rights thought and theory. It is believed China’s human rights undertakings will achieve greater progress with the deepening of political system reform and sustained economic and social development [19].

However, when we talked about socialist legal system with Chinese characteristics, we had better answer the following questions: (1) Why can we say that socialist legal system with Chinese characteristics has basically been established and confirmed in 2010? (2) What are the fundamental characteristics of this socialist legal system? (3) What is the significance of the formation of Chinese socialist legal system? Circling around the three questions listed above, I would mainly refer to Wang Zhaoguo’s speech [22] at the Sixteenth National Symposium

on the local legislation (See Chap.10). To introduce his ideas to the Western scholars, I would like to translate Wang's speech from Chinese into English as Chap.10. The original Chinese version of this article can be found in *People's Daily*, November 15th, 2010.

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