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# Global Perspectives on Freedom of Association: China

**Shaoming Zhu**

Societās Exploring the Value of Freedom of Association

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# Global Perspectives on Freedom of Association Collection

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# Freedom of Association in Contemporary China: An Examination of its Structure, Content, and Nature

*Shaoming Zhu*[*]

## I. Background

China's journey towards embracing freedom of association has been shaped by a complex historical backdrop and ongoing socio-political developments.[1] While traditional Chinese society has a rich history of associations and folk organizations, the emergence of a modern legal framework that recognizes and safeguards freedom of association is a more recent phenomenon.[2] The development of laws on social organizations and associations has been influenced by the political, economic, and social factors along with the development of the State as a whole. On the one hand, changes in the economic system, such as the reform and opening-up period, and shifts in government functions and ideologies have shaped the legal environment for associations. On the other hand, the legal framework has responded to the emergence of civil societies and economic and technological organizations, as well as the needs of cultural movements. But overall, the alignment with government objectives and values has barely changed.[3]

## II. The Legal Structure Governing Freedom of Association

### *(i) Legislature, Administration, and Courts*

The legal structure governing freedom of association in contemporary China involves the roles of the legislature, administration, and courts. The National People's Congress (NPC) of the People's Republic of China plays a vital role in developing, supervising, and implementing regulations related to freedom of association. The Constitution of the People's Republic of

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[1] Zuoliang Zhang, 'Civil Organizations in Chinese History' in Xiaoyong Huang, Xiang Gao, and Chenguang Pan (eds), *Annual Report on Chinese Civil Organizations* (Beijing: Social Sciences Literature Press, 2008) 86.

[2] Ming Wang (eds), *Social Organization in China (1978-2018) - Social Co-Governance: A Future In The Making* (Beijing: Social Sciences Literature Press, 2018).

[3] Zhang Zuoliang, *Civil Organizations in Chinese History, Report on Social Organizations in China* (Social Sciences Literature Press, 2008).

China, established in 1954, recognises the right of association as a fundamental political right for citizens. And Article 62 of the Constitution empowers the NPC to amend the Constitution and oversee its implementation, which is supposed to be the leading role in shaping the legal framework for freedom of association.[4]

Within the administrative sphere, the Ministry of Civil Affairs holds the responsibility for the registration and regulation of associations in China. It adopts administrative tools and mechanisms to enforce compliance and issues penalties for non-compliance when necessary. Additionally, other ministries such as the Ministries of Labour, Taxation, Finance, and others may also issue regulations that impact the operations and management of associations They act as the competent authorities for associations in a certain industry or through their particular functions related to labour protection, taxation, financing, and so on, further influencing the practice of freedom of association.

In contrast, the role of the court system in safeguarding the rights and freedom of associations is relatively limited. Most cases related to freedom of associations are linked to labour unions, charitable organizations, and trade associations. When conducting searches for relevant judgments using keywords like "right of association" and "freedom of association," only a small number of cases were found, indicating a relatively lower level of judicial engagement in association-related matters or the exercise of freedom of association per se.

### *(ii) Constitutional and Legislative Provisions*

Within the legislative realm, the right to freedom of association is explicitly stated in Article 35 of the Chinese Constitution, which affirms that 'The citizens of the People's Republic of China have the freedom of speech, publication, assembly, association, procession, demonstration.'[5]

There are various statutes that are relevant to social organizations or associations in China. Some of the most significant ones include the Charity Law of the People's Republic of China (2016), and The Law of the People's Republic of China on the Administration of the Domestic Activities of Overseas Non-governmental Organizations (2016). In addition to these specific

[4] Article 62 of Constitution of the People's Republic of China.
[5] Article 35 of Constitution of the People's Republic of China.

legislations, there are broader statutes that could govern social organizations and associations in China.[6] The extensive range of statutes reflects the comprehensive legal framework within which social organizations and associations operate in China. It demonstrates that there are diverse legal sources that can influence the practice and compliance of freedom of association in the country.

### *(iii) The Administrative Regime*

Under the current administrative regime, associations in China are subject to government regulation and supervision to ensure compliance with legal requirements and prevent unauthorized or deceptive activities. Associations fall under the jurisdiction of the Ministry of Civil Affairs, and registration with the ministry is a prerequisite for engaging in activities as social organizations. The 'Suggestions on Preventing Illegal Associations from Deceiving and Enriching in the Name of Public Welfare and Charity' issued by the Ministry of Civil Affairs in 2021 further emphasizes the government's role in regulating associations. This Departmental Rule defines illegal social organisations as those that operate without proper registration or continue activities after registration revocation or suspension. It also provides guidelines for identifying such organisations based on their names, including common suffixes such as "association," "society," "research association," and others. These measures aim to ensure that associations operate within the legal framework and maintain the integrity of the social organisation sector.

## III. The Content of the Freedom of Association

### *(i) The Rights*

The right to freedom of association in contemporary China refers to several key aspects. First of all, it is recognized that entities and individuals have the right to voluntarily form and join an association.[7] Secondly, associations, as nonprofit legal persons,[8] have the right to independent management and the freedom to engage in external activities.[9] This further extends to associations' authority and autonomy to independently determine the mode and scope of their external activities, establish branch offices, set up banking accounts, organise teams, and collaborate with other associations.

[6] Such as Civil Code of the People's Republic of China, Public Security Administration Punishments Law of the People's Republic of China, and so on.
[7] Article 2 of Regulation on Registration and Administration of Social Organizations (2016).
[8] Article 87 of the Civil Code of the People's Republic of China.
[9] Article 57 of the Civil Code of the People's Republic of China.

Regarding internal management, associations have the autonomy to create and amend their own constitution and rules, establish a suitable management structure, select leaders and staff,[10] and handle day-to-day operations. This internal autonomy allows associations to function independently and make decisions that align with their objectives and interests. However, it is not clearly stated in any statutes or administrative regulations regarding the right and process of withdrawing from an association, as well as how associations regulate their membership. It only appears that in Guangdong Province, an economically more advanced province than many other regions, there are rules stating that citizens have the freedom to organise and join associations, as well as the freedom not to join and to withdraw from associations.[11]

In recognition of the importance of social organizations and their lawful activities, Article 5 of the Regulation on Registration and Administration of Social Organizations (2016) explicitly states that the state is committed to protecting social organizations and their activities in accordance with relevant laws, regulations, and rules. It also prohibits any unlawful interference in the functioning of an social organization by any other organizations or individuals.[12]

### *(ii) The Restrictions*

*Restrictions on Association Members*

Certain restrictions apply to individuals who wish to become members of an association. These restrictions primarily refer to some specific groups of individuals.

Firstly, current laws in China impose subject-specific restrictions on the exercise of freedom of association. There are limitations for state servants, including military personnel, police officers, civil servants, judges, prosecutors, and others who are engaged in official state duties to participating in certain organizations.[13]

[10] Article 91 of the Civil Code of the People's Republic of China.
[11] Article 21 of the Implementation Rules for the Registration and Management of Social Organizations in Guangdong Province (1988), Article 16 of the Guangdong Province Social Organization Corporate Governance Structure and Governance Rules (2015).
[12] Article 5 of the Regulation on Registration and Administration of Social Organizations (2016).
[13] Article 22, Paragraph 1, of the Police Law of the People's Republic of China; Paragraph 9 of Article 46 of the Law of the People's Republic of China on Judges; Paragraph 9 of article 47 of the Procurator Law of the People's Republic of China.

Secondly, Chinese laws and regulations impose restrictions on the freedom of association for certain categories of prisoners. For example, individuals sentenced to deprivation of political rights are also deprived of their freedom of association.[14] And individuals who have been criminally punished with the deprivation of political rights cannot serve as initiators or proposed to be in charge of any association.[15]

Thirdly, foreigners could face restrictions when exercising freedom of association in China. While foreign associations should be protected under domestic law and foreigner's freedom of association should exist in accordance with the principle of national treatment, the special status of foreigners can lead to certain restrictions and specific regulations on their association activities. For instance, the Provisional Regulation for the Administration of Foreign Chambers of Commerce in China defines a foreign chamber of commerce as a non-profit organization established within Chinese territory by foreign commercial establishments and personnel and requires the association to only engage in non-commercial activities.[16] This regulation specifically governs the establishment conditions, procedures, supervision, and penalties applicable to foreign chambers of commerce.

Lastly, in certain professions or occupations, mandatory membership requirements can restrict the freedom of association. This approach, known as negative freedom of non-association, obligates individuals in specific fields like law and medicine to join a designated association or group in order to practice their profession. For example, lawyers or law firms must join the local lawyers association in the location where they operate. By joining the local lawyers association, lawyers and law firms automatically become members of the All-China Lawyers Association.[17] While these requirements may limit individual autonomy in choosing whether to associate with a particular group, they aim to uphold the professional integrity and accountability of practitioners within their respective fields.

*Restrictions on the Objective and Purpose of Association*

In addition to the restrictions on individuals, there are also restrictions on the objectives and purpose of the associations, which play a significant role in shaping the boundaries of freedom

[14] Article 54, paragraph 2, of the Criminal Law of the People's Republic of China.
[15] Article 13(3) of the Regulation on the Administration of Social Organizations; Article 11(2)(4) of the Provisional Regulations on the Registration and Administration of Private Non-Enterprise Organizations.
[16] Article 2 of the Provisional Regulation for the Administration of Foreign Chambers of Commerce in China.
[17] Article 45 of the Law of the People's Republic of China on Lawyers.

of association in China. These restrictions are commonly imposed to safeguard national security, public order, public health, and public morals.

The Regulation on Registration and Administration of Social Organizations (2016) outlines specific restrictions on the purpose and profit-making nature of associations in China. Firstly, the purpose of an association must align with the fundamental principles of safeguarding national security, public safety, unity of the country, public order, social morality, and the rights and freedoms of others.[18] Social associations are prohibited from engaging in profit-seeking activities.[19] Associations involved in political, religious, or labour-related activities are subject to additional restrictions specified in relevant laws or regulations, such as the Regulations on Religious Affairs and the Trade Union Law of the People's Republic of China.

*Restrictions on the Establishment of Associations*

The process and requirements of establishment for associations in China is also subject to specific restrictions and regulatory requirements. Associations and private non-enterprise units are generally required to undergo review and approval by the relevant authorities and register with the civil affairs department to obtain legal recognition.

Most associations in China follow the principle of double censorship licensing, and associations operating without the necessary permission and proper registration are considered "illegal." The Provisional Measures on Banning Illegal *NGOs* identify three categories of illegal organisations: (a) those engaging in preparatory activities to establish social associations without authorization; (b) those conducting activities in the name of social associations or civil non-enterprise units without proper registration or authorization; and (c) those that continue to operate under the name of social associations or civil non-enterprise units after their registration has been revoked.[20]

Chapter 3 of the Regulation on Registration and Administration of Social Organizations (2016) provides comprehensive guidelines on registration procedures and requirements for establishing associations. It specifies conditions such as minimum membership numbers, standardized name and structure, a fixed location, qualified staff, legal assets and funding

[18] Article 4 (1) of the Regulation on Registration and Administration of Social Organizations (2016).
[19] Article 4 (2) of the Regulation on Registration and Administration of Social Organizations (2016).
[20] Article 2 of the Provisional Measures on Banning Illegal NGOs.

sources, legal liability, and compliance with naming regulations.[21] There are restrictions on using certain terms in the names of social organizations, especially for organizations at the national level or local level. Associations may face the possibility of being banned under specific circumstances, including engaging in activities contradicting constitutional principles, profit-making activities, redundancy with existing organizations, involvement of disqualified individuals, fraudulent registration, or inappropriate naming conventions.[22]

These restrictions and registration requirements are in place to ensure compliance with legal procedures, monitor organisational activities, and prevent the operation of unauthorised or unlawful associations.

## IV. In Practice

While the laws aim to establish and provide a solid framework for understanding and exercising the freedom of association, in practice, the situation can be more complicated. There are hundreds of thousands of social organisations in China, but their legal identity can be confusing because some terms are only customary names and are not legally defined, or some of them seem to exist outside the above structure due to the unique political system.

The first and perhaps the easiest distinction to make here is that social organisations in contemporary China usually refer to three types of entities: social associations, foundations, and private non-enterprise units, each subject to different registration regulations. The regulation governing the registration of social associations is the previously mentioned Regulation on Registration and Administration of Social Organizations (2016), although it primarily pertains to social associations, excluding the other two types.

According to the 2022 Civil Affairs Development Statistics Bulletin released by the Chinese Ministry of Civil Affairs, as of 2022, there were a total of 370,093 registered social organizations in China. Among them, 1,995 were registered with the Ministry of Civil Affairs, 32,210 were registered with provincial civil affairs departments, 90,761 were registered with municipal civil affairs departments, and 245,127 were registered with county-level civil affairs

[21] Chapter 3 of the Regulation on Registration and Administration of Social Organizations (2016).
[22] Detailed regulations can be found in Articles 29, 30, 31, 32, 33, 34 and 13 of the Regulations on the Registration and Management of Social Organizations (2016).

departments. In the same year, there were 9,319 foundations and 511,855 private non-enterprise units.[23]

The second distinction has to be understood is that social organisations (or social associations) defined in the Regulation on Registration and Administration of Social Organizations (2016), differ from people's organisations or people's associations. People's organisations (or associations) is not a defined legal entity, although this term appears in the Preamble of the Chinese Constitution and the Charter of the Chinese People's Political Consultative Conference. According to Regulation on Registration and Administration of Social Organizations (2016), the difference between social organisations and people's organisations is that the latter participate in the Chinese People's Political Consultative Conference.[24] Trade Unions, the Communist Youth League, and Women's Federation are classic examples of people's organisations; they are part of the People's Political Consultative Conference and participate in the deliberation and administration of state affairs.[25]

The third distinction is that grassroots mass self-governing organisations (*Qunzhong Zuzhi*), such as villagers' committees and residents' committees, are also massively existing associations but are social organizations that are defined in the above legal structure. According to the Civil Code, an urban residents' committee or a villagers' committee has the status of a basic self-governing mass organization legal person, and may conduct civil activities necessary for performing its functions.[26] And the restrictions mentioned above to other associations don't apply to them.

The fourth distinction is that organisations that are established and active within a State organ, an association, an enterprise or a public institutions are also not governed by the Regulation on Registration and Administration of Social Organizations (2016).[27]

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[23] Chinese Ministry of Civil Affairs, '*2022 Civil Affairs Development Statistics Bulletin*' <https://www.mca.gov.cn/n156/n2679/c1662004999979995221/attr/306352.pdf> accessed 16 December 2023.
[24] Article 3 of the Regulation on Registration and Administration of Social Organizations (2016).
[25] According to the 'Notice Regarding Certain Issues Concerning Exemption from Registration for Some Organizations' issued by the Ministry of Civil Affairs in December 2000, people's organizations participating in the Chinese People's Political Consultative Conference (at the national level) include: the All-China Federation of Trade Unions, the Communist Youth League of China, the All-China Women's Federation, the China Association for Science and Technology, the All-China Federation of Returned Overseas Chinese, the All-China Taiwan Compatriots Association, the All-China Youth Federation, and the All-China Federation of Industry and Commerce.
[26] Article 101 of the Civil Code of the People's Republic of China.
[27] Article 3 of the Regulation on Registration and Administration of Social Organizations (2016).

In addition, there are a few organisations that are exempt from registration with the approval of the State Council. [28] These organisations are specific, and they include: China Federation of Literary and Art Circles, the China Writers Association, the All-China Journalists Association, the China Association for Friendship, the China Society of Diplomacy, the China Council for the Promotion of International Trade, the China Disabled Persons' Federation, the Song Qingling Foundation, the China Law Society, the Red Cross Society of China, the China Association for Ideological and Political Work among Workers, the China Alumni Association of Europe and America, the Sun Yat-sen University Alumni Association, and the All-China Vocational Education Society.[29]

## V. Nature

As advocated on the Chinese government's official website, [30] 'social organizations are considered a vital component of contemporary Chinese political life. These organizations have branches in both urban and rural areas, uniting and mobilizing workers, youth, women, and individuals from various sectors across the nation. They actively participate in national and local political activities, coordinate public affairs, safeguard the legitimate rights and interests of the masses, and play a significant role.'

The article explicitly underscores that freedom of association is a political right in China and points out that, at present, most of China's social organizations possess a quasi-official nature.

First, the establishment of a social organisation necessitates approval documents from the competent authorities, in addition to registering with the civil affairs department. Competent authorities refer to government departments at or above the county level and organisations authorised by them. Social organisations, in practice, operate under the supervision of these competent authorities.

Secondly, among the previously mentioned 1995 national social organisations, approximately 200 of them operate under the administrative and budgetary systems. While these organisations

[28] Article 3 of the Regulation on Registration and Administration of Social Organizations (2016).
[29] Article 2 of the Notice Regarding Certain Issues Concerning Exemption from Registration for Some Organizations, Ministry of Civil Affairs, December 2000.
[30] 'Chinese Social Associations' <https://www.gov.cn/ziliao/zgjk/2005-05/24/content_531.htm> accessed 16 December 2023.

are non-governmental in nature, they significantly fulfil some governmental functions. Their work tasks, organisational structures, and leadership appointments are directly determined by central administrative agencies. They receive full financial support from the national budget.

Additionally, another reason supporting the argument that freedom of association is a political right in China is that the establishment and development of these organisations reflect a close alignment with the state's goals and interests. They are often viewed not only as supplements but also as extensions of the government and play a substantial role in implementing government policies. On one hand, those receiving significant government funding and performing functions traditionally associated with the government often play a role in promoting and implementing government policies. On the other hand, social organisations are expected to align with government values and priorities. Organisations advocating positions contrary to government values or mainstream values are unlikely to be registered. Organizations conducting activities in the name of national strategies, using terms like "China" or "the State" in their names, or performing mysticism will face closure, as reported on the official website of the Ministry of Civil Affairs.[31] Despite the fact that most social organisations in China primarily focus on civil society activities and have limited involvement in political life, their need to secure approval and consensus from government departments for their establishment and growth underscores the political nature of freedom of association in contemporary China.

[31] 'China's Crackdown on Illegal Social Organisations Escalates' <https://www.mca.gov.cn/zt/n201/n213/c1662004999979988969/content.html> accessed 16 December 2023.