

The Supervision of Villagers Committee's Exercise of Power from the Perspective of Rural Governance

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Abstract: Over the years, the differences between rural and urban areas in economy, politics, culture, and social life have determined and influenced the dual state of China's rule of law construction. Most of the powers exercised by village committees can be characterized as administrative autonomy. In view of this, this article intends to focus on how to supervise the power of the village committee.

1. Introduction

China is a traditional agricultural country with a large rural population and a lack of awareness of the rule of law in rural society. The rule of law in rural areas faces the phenomenon of abuse of power by villagers committees during the special period of social transformation. We need to explore the establishment of the rule of law in modern rural areas from the relationship between rural governance and villagers' committees, and find out the supervision mechanism and solutions for the exercise of power by modern rural villagers' committees to build a modern overall rule of law society.

2. Analysis on the nature of the power exercised by the villagers committee

Villagers committees are grass-roots mass self-governing organizations, which is expressly stipulated in Article 111 of the Chinese Constitution. Even the so-called autonomy, it is different from other state organs -- enjoys the right of autonomy. Autonomy refers to the right to govern one's own affairs, including administrative autonomy, legislative autonomy and even judicial autonomy.^[1] Autonomy is a kind of public power^[2], which is manifested by central-local decentralization. As a general rule of thumb, you should be the most concerned and knowledgeable about your own affairs. From the perspective of the vertical division of state power, the power in the upper class can control affairs more comprehensively. Therefore, they put the things that they know and care about the most into the scope of autonomy, govern them by themselves, and pursue public welfare through cooperation between powers on clear mutual boundaries.

According to Article 111 of the Constitution and the Organic Law of Villagers' Committees (hereinafter referred to as "Organic Law of Villagers' Committees"), village committees enjoy autonomy in the following matters: mediation, public security, public health, public affairs (such as handling collective property), public welfare undertakings, election of village committees, election of villagers' representative meetings, establishment of self-governing articles and village rules and conventions, supervision of village committees, etc.

Since it is the right of autonomy, it also means that the public power of the state should keep a certain distance from it and can not interfere too much. As stipulated in Article 5 of the Organic Law of Village Committees, "The people's governments of townships, nationality townships and towns shall provide guidance, support and help to the villagers' committees in their work, but shall not interfere in matters within the scope of villagers' self-government according to law."

In short, the so-called supervision of the power of the village committee is, to a large extent, the supervision of the village committee's exercise of administrative autonomy.^[2]

3. Openness and transparency of village committee work

3.1 The meaning of openness

To supervise the exercise of power by the village committee, a prerequisite problem must be solved—the openness and transparency of village affairs. As is commonly said, villagers believe that the village committee's private disposal of village collective land highlights the lack of transparency in its work.

It seems that the supervision of power operation can be roughly divided into two ways: one is "direct supervision", that is, directly participating in the exercise of power in the process of decision-making, and showing the whole process internally as supervision; the other is "indirect supervision".³, that is, outside the operation of power, relying on certain data to indirectly present the operation of power. Since it operates according to power, it must be represented. These representations may be referred to as "information".

For the former, supervision can be carried out through the discussion and decision-making method of the villagers' meeting as shown in Article 24 of the Organic Law of the Villagers' Committee; For the latter, it can not only provide necessary information for the supervision conducted according to article 24 of the Organizational Law of the Village Committee, but also provide basic support for democratic evaluation and supervision of the daily work of the village committee. Therefore, from this point of view, if this system is missing, the operation is not smooth, it will inevitably have a negative impact on the supervision activities of the village committee's power operation.

Regarding the above analysis, Article 29 of the Organic Law of Village Committees states, "Village committees shall implement a democratic decision-making mechanism in which the minority obeys the majority and the working principle of openness and transparency, and establish and improve various working systems", which expresses this concept from the text of the law. Article 30 of the same law clearly lists the matters that the village committee needs to disclose, the time for disclosure, the village committee's obligation to ensure the authenticity of the data, and the villagers' right to inquire. In order to ensure the realization of the above-mentioned provisions, Article 31 of the same law also gives the town-level government the power to order the village committee to issue.

3.2 Disclosure and discretion

Judging from the above provisions, their nature should involve the interests of the villagers in the village, and the matters that the villagers are generally concerned about (Article 30, Paragraph 2, Item 5 of the Organic Law of the Village Committee) should be announced at any time (the Organic Law of the Village Committee). Article 30, paragraph 3). Whether or not to announce it should be within the discretion of the village committee. Whether it is to decide discretion or choose discretion, it is also an issue within the scope of the autonomy of the village committee. Therefore, external supervision should have considerable respect for it. Of course, although the village committee has discretion, it does not mean that it is not restricted. Generally speaking, it seems that unless there is a material misrecognition of facts, abuse of discretion, or the limit of discretion is reduced to zero, it is not appropriate for courts to intervene in the formation and judgment of discretion.^[3] And the judicial power immediately becomes involved, and it seems that it should also be done in a procedural way, excluding the substitution of judgment. As for the government that also exercises executive power, it is appropriate to have greater flexibility in review.^[4]

4. The system of consecutive election and reappointment of village committee

4.1 The rational basis for reappointment

Regarding public power, whether it can allow someone to hold it for a long time in the system is divided into the re-election system and the term system. In terms of existence and rationality, these two systems have their own advantages, but there are considerable tensions.

At present, the election of village committees in our country is based on consecutive election and reappointment system. Paragraph 2 of Article 11 of the Organic Law of Village Committees stipulates:

"...members of village committees may be re-elected." It seems that the starting point of this article is: from a positive point of view, since the scope of the village is relatively narrow, the affairs are relatively simple, and the members of the village committee are elected through elections, so there is nothing to blame in terms of legitimacy and democratic legitimacy. Then, if there are people who are skilled in handling public affairs, and if they are popular, they can always be authorized to exercise public power, so as to achieve cost-benefit optimization. On the negative side, after all, a village has limited population, financial resources, and land. Even if the system of consecutive election and reappointment has institutional hidden dangers. However, it seems that the risks brought by hidden dangers are far less than the benefits brought by benign operations from the overall consideration of the whole country.

4.2 The tenure and reappointment system

As far as the tenure system is concerned, it is a system that limits the duration of work and is an effective means to ensure that power is not centralized or monopolized. China's Constitution stipulates that the term of office of the NPC chairman, vice-chairman (Article 66), chairman, vice-chairman (Article 79), prime minister, vice-premier, and state councilor (Article 87) shall not exceed two terms. This is macro-level control over the political officials who control the highest level of power in the country.

In China, self-management of rural society has existed for a long time. Before 1949, it mostly relied on the gentry class, and after that, democratic self-governance of the villagers was established. From this, we can see that the provisions of the Constitution on villagers' self-government have deep roots. Furthermore, the most basic small social unit, the village, has a relatively clear closure and internal circulation, so the state power cannot penetrate into it like it does in towns.

Therefore, it can be seen from the above that due to the closure and autonomy, interest groups (especially families) are more likely to monopolize a village due to the election of village committees within a village. Paragraph 2 of Article 11 of the "Organization Law of Village Committees" stipulates: "The term of office of each village committee is three years, and a general election shall be held in time when the term expires. The members of the village committee can be re-elected for re-election."

5. Rules of Villagers' autonomy

5.1 About the rules on villagers' autonomy

The villagers' self-government charter and village rules and regulations are the normative documents within the village, which are valid through the decision of the villagers' meeting. The villagers' self-governance charter mainly regulates those who are involved in the public power in the village; the village rules and regulations mainly regulate aspects such as folk customs, spiritual outlook, public morality, social order and so on. As far as controlling and supervising the exercise of the power of the villagers committee is concerned, its matters are generally covered by the villagers' self-governance regulations.

The formulation of villager self-governance regulations is based on legal (narrow sense) authorization. According to Article 27 of the Organic Law of Village Committees, "the villagers' assembly may formulate and revise the villagers' self-governance constitution and village rules and regulations, and report to the people's government of the township, ethnic township, and town for the record." However, it seems that China implements a centralized system of local autonomy under the unified leadership of the central government and considers that the concept of the rule of law in the village is relatively backward, so Paragraph 2 of Article 27 of the same law not only teaches that villagers' self-governance regulations are prohibited, and village regulations and contracts must not touch legal reservations (regardless of whether absolute or relative), and it is not too verbose to stipulate that it must not contradict the constitution.

5.2 The legality of the villagers' self-government constitution

China does not have a typical central-local system of decentralization and autonomy. However,

Article 111 of the Constitution seems to know that Article 24 of the Organic Law of Village Committees should be a matter of villager self-governance (issues of grassroots mass organizations) guaranteed by the Constitution. Within the scope of self-government, if it does not contradict the laws and regulations, self-regulation can be carried out for its own sake, and it will be applied preferentially within the scope of the village (for example, the establishment of the "Village Security Duty System"). If there are people who actually violate the laws and regulations, it will naturally be invalid. However, if we only observe from the clauses (forms of words), we find that it seems to contradict the laws and regulations, but in actual implementation, it does not hinder the achievement of the goals stipulated by the laws and regulations (that is, the villagers' self-government regulations and laws and regulations have their own goals to be achieved without conflict). In this case, it seems inappropriate to generally think that this villager self-government constitution is invalid because it is not consistent with the laws and regulations in form.

In addition, since the establishment of villagers' self-government constitutions and village regulations and regulations are within the scope of self-government matters, the government has to put their supervision on the record; and if the contents of the villagers' self-government regulations and constitutions are inappropriate, they can only be ordered rather than amended.

5.3 The application of villagers' self-government regulations

Since the villagers' self-government charter has the function of regulating the public power in the village, it is natural to consider using it to supervise the power operation of the village committee. In this regard, the villagers' self-governance constitution mainly contains detailed and creative provisions. The so-called detailed provisions refer to the detailed content of laws, regulations and other documents that are relatively extensive, and combined with the actual provisions of the village; on the other hand, creative provisions refer to the creation of unregulated and non-existent contents on self-government matters on the premise of not contradicting relevant laws and regulations.

In a place where the power of the village committee is well supervised, the laws and regulations can be refined by formulating villagers' self-governance regulations, and combined with the situation of the village, the control of the power of the village committee can be better realized and a virtuous circle can be formed.

As for civil covenants and articles of association, if the village committee blatantly violates it, how should it be remedied? It seems that only the town-level government can be ordered to make corrections in accordance with Article 36 of the same law. Courts appear to have difficulty obtaining judicial relief as they are not bound.

6. Village affairs supervision agency

6.1 Internal and external monitoring system

The village affairs supervisory agency is composed of personnel with knowledge of accounting and management in the village, and is an organization that supervises the operation of financial affairs and other powers in the village. The village affairs supervisory agency, together with the villagers' assembly and the villagers' representative assembly, constitutes the internal support of the system of supervising the power operation of the village committee. Correspondingly, the government and the judiciary are the external support of this supervision system.

For external judicial organs that are also externally supported by the supervision system, in accordance with Article 36, paragraph 1 of the Organic Law of Village Committees, if a decision made by a villagers committee or members of a villagers committee infringes upon the lawful rights and interests of the villagers, the injured villagers can apply to the people's court for revocation.

6.2 Organization and convening of village affairs supervision agencies

The village affairs supervision organization, mainly represented by the village affairs supervision committee, is an organization that supervises the financial and open system in the village, and is responsible for presiding over the democratic appraisal of the village committee and the organization

of the establishment of the village affairs archives.

According to Article 32 of the Organic Law of Villagers Committees, those who serve in the village affairs supervisory agency shall have accounting and management knowledge, and shall not be members of the village committees. In order to facilitate its supervisory function, the right to attend village committee meetings is also stipulated. If the village committee refuses the members of the supervisory agency to attend the meeting, in accordance with the provisions of Article 36, paragraph 2 of the same law, the supervisory agency may petition the town-level government to order the village committee to allow it to participate.

In addition, Article 33 of the Organic Law of the Village Committee stipulates that the village affairs supervisory agency may preside over the democratic evaluation of the village committee by the villagers' meeting or the villager representative meeting. Then, should the democratic appraisal work be held in conjunction with the villagers' meeting or the villagers' representative meeting, or should it be convened separately? If another call is made, who will initiate it?

The author believes that the work should be convened and presided over by the village affairs supervision agency. As for whether to conduct comments at the villagers' meeting and the villager representative meeting held in Articles 21 and 26 of the Organic Law of the Village Committee, the village affairs supervision Institutions should act by chance. The reason is that, according to the two articles above, the village committee can convene a villagers meeting and a villager representative meeting. If the supervisory agency conducts democratic appraisal work, it must rely on the villagers' meeting and the villager representative meeting convened by the village committee, then the village committee itself will mobilize others to supervise itself. At this time, if there is a conflict of interest between the village committee and the supervisory agency, it will be difficult to carry out democratic appraisal work. In addition, if the villagers' meeting and the villagers' representative meeting are convened based on the initiative of the villagers or villagers' representatives, even if the review work is attached to this, it is better to avoid the work stagnation caused by the conflict of interest, but in this case, it requires more people to propose a meeting. It is not as good as directly giving the village affairs supervisory agency the power to convene for democratic deliberation.

6.3 Village Affairs Supervision Organization and Village Affairs Archives

Finally, according to Article 34 of the Organic Law of Village Committees, "Village committees and village affairs supervision agencies shall establish village affairs archives", so the problem of separate establishment and joint establishment arises. The same clause lists (but is not limited to) the types of data that should be archived. The author believes that, in order to facilitate the supervision, the principle of establishing separate files should be used. For different materials, according to their respective nature, if they are unreproducible or the cost of copying is too high (such as ballot papers), they should be stored in the village affairs supervision agency; if they are reproducible, they should be copied and stored in the village committee and the village respectively. (The original document seems to be more suitable to be stored in the village affairs supervision agency), so that it can be checked and verified in the future.

7. Conclusion

Firstly, by analyzing the background and premise of the imperfect supervision—the obstructing effect of the re-election system on power supervision and the lack of openness of village affairs, in order to clear the basic obstacles of supervision work. Furthermore, it will focus on analyzing the villagers' self-governance regulations and the village affairs supervision organization in the village, in the hope that the two can play an active role in the means and the interior of the supervision system.

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