

Study on Path of Involvement of People's Organizations and Social Organizations in the Rule of Law

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How to cite this paper: Wang, X. F., & Ren, C. (2022). Study on Path of Involvement of People's Organizations and Social Organizations in the Rule of Law. *Chinese Studies, 11*, 172-184.
<https://doi.org/10.4236/chnstd.2022.113014>

Received: June 10, 2022

Accepted: August 7, 2022

Published: August 10, 2022

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Abstract

Our rule-of-law improvement needs better democratic involvement, and democratic involvement is necessary for the rule of law in modern society. The involvement of people's organizations and social organizations in the rule of law is a key form of well-organized public involvement. The basis for the participation of people's organizations and social organizations in the construction of modern rule of law in China lies in the theory of "limited government". Multi-subject participation can achieve complementarity and win-win results. In practice, the main content of people's organizations and social organizations participating in the rule of law is to restrict public power, soft law autonomy, and resolve disputes. It should be noted that the democratic participation capacity of people's organizations and social organizations is still insufficient, and it is necessary for the party and the state to give institutional guarantees.

Keywords

People's Organizations, Social Organizations, Rule-of-Law, Collaborative Governance

1. Introduction

In recent years, Chongming District of Shanghai has created "four batches" in the implementation of the important deployment of "promoting the focus of social governance to the grass-roots level and giving play to the role of social organizations" proposed by the 19th National Congress of the Communist Party of China. The "four batches" refer to the construction of a number of professional social organizations in the field of judicial administration such as convenient, ef-

efficient, and accurate mediation; the launch of a number of comprehensive and basic social organizations that actively participate in grass-roots judicial administration; encouraging and standardizing the development of a number of personal mediation rooms with leading and exemplary roles; and cultivating a group of localized and young professionals. Among them, the mediation room has built a brand, mainly accepting and mediating various civil disputes, petitioning contradictions, etc. Individual mediation rooms account for up to two-thirds of the relevant township mediation work, making great contributions to the effective resolution of local contradictions and disputes.

As a carrier of social order mechanism, people's organizations and social organizations will play a distinctive role in the development of social order of modern civilization, which is widely recognized and developed in other countries and in particular, has become an important path for democratic practice and public involvement. The idea of "polycentric order" put forward by Western countries and the theory of public governance developed from it reflect this view and practice it in the event. In urban planning in the United States, the government is not the sole decision-maker, and decision-making participation of organizations and groups in transportation, environmental protection and other related fields is strongly supported under the legislation. Since the beginning of the 21st century, Chinese associations in Canada have made great contributions to standing up for the rights and interests of Chinese Canadians by supporting their involvement in economy, politics, culture and society and encouraging them to participate in the administration and discussion of state affairs. It can be seen that in the governance of public affairs, the government is no longer the only subject in the tradition, but must cooperate with the market and society to jointly complete the provision of public goods and public services (Gao, 2016).

"Co-development, co-governance and sharing" according to law has become a new concept of social governance in China. Multi-participant social governance was proposed in China more than a decade ago. The 17th and 18th National Congress of the CPC have discussed this. The state has also issued a number of policy documents confirming the status of people's organizations and social organizations as important forms and channels of the country's deliberative democracy system, emphasizing their role in the construction of a rule-of-law society, and pointing out the direction for their participation in the rule of law. However, how people's organizations and social organizations can really play their unique role in the construction of the rule of law is still a question worth thinking about. Under the "limited government", the participation of people's organizations and social organizations is conducive to the interaction and mutual assistance between the government and other subjects in social governance, and to achieve a win-win situation of cooperation.

2. The Necessity of People's Organizations and Social Organizations to Participate in the Rule of Law

A society with rule of law exists relying upon, on the one hand, the formation of

social order in the society with rule of law and on the other hand, the operation of the society with rule of law. Both of these two aspects depend on joint efforts and practices of all members of the society. People's organizations and social organizations advance the formation of social order in the society with rule of law as well as the benign operation of the society with rule of law in the development of such society (Sun, 2015). The smooth operation of a society is dependent on supports from both the government and the society. In China, a new pattern of social governance "under the leadership of CPC committees, in the charge of the government and in conjunction with social coordination and public participation" has taken its initial shape, and the sole participant of social governance, i.e. the government, is gradually replaced with multiple participants. In such replacement, the involvement of people's organizations and social organizations is inevitably required.

1) Limited Government

Rule of law, in essence, is to mediate the contradiction between the government and the society and keep within limits the tyranny and corruption of government power, so as to safeguard the democratic freedom and legitimate interests in the society. The essence of rule of law is a contest of power to achieve social democracy. The modern rule of law, with its focus on restricting government power and safeguard freedom, is a historical advance that accompanies democratic politics. An important manifestation of the improvement of the rule of law is the process of democratization, in which case the government under the rule of law must be a limited government. Based on the theory of limited government, the government is in a contractual relationship with the public, and citizens delegate, not assign, powers to the government. Therefore, the government is limited in nature.

A limited government under the requirements of the rule of law is mainly limited in functions, powers and responsibilities. From the perspective of government functions, the relationship between the government and the society should, in particular, be figured out in order to separate government administration from commune management and to build an independent society. Besides, it is equally necessary to rectify and standardize social organizations and bring their roles into full play so as to realize benign interactions between the government and the society. As regards government power, power cannot be in the hands of one governmental agency, but must be regulated and controlled by different governmental agencies in different areas, regions and periods under different principles and legal procedures. Besides, all conducts of the government must be subject to the supervision of different governmental agencies.

2) Win-win Collaboration

Under the rule of law, government, people's organizations, social organizations, and extensive public involvement work together to practice democracy. People's organizations and social organizations are able to independently carry out activities consistent with their functions and areas of expertise. The government transfers more of its functions to these organizations via divestiture, trans-

fer, or tendering or bidding. These organizations cooperate with the government under the principles of equality, mutual assistance and collaborative governance in achieving complementary functions and democratic supervision.

On the one hand, collaborative governance requires facilitating the division of labor and collaboration between the government and social organizations, so as to realize the complementarity between the government's administrative function and the society's self-governance capability, as well as the interaction between the government's administrative power and the society's regulatory power. It is essential to build a security warning mechanism as well as a mechanism for social organizations to interact with competent government authorities. In this process, various governance measures and comprehensive governance strategies will be formed.

On the other hand, these organizations work primarily through mass-oriented approaches such as demonstration and guidance, publicity and education, service delivery and voicing people's demands and grievances, and perform regular and social services and activities for the common good closely related to the needs of the people (Hua, 2007). Common characteristics of these organizations of, among others, being democratic and socially-oriented, enable them to innovate the mode of co-governance with the government and to further realize win-win and benign interactions between government governance and social governance. Society wins by the growth of these organizations, a growing trend of autonomy, and the development of subjectivity; and government wins in the efforts made to achieve good governance through pluralistic governance (Ma, 2014). Therefore, these organizations involve in social governance of democracy and rule of law with their distinctive attributes, which not only makes up for the weakness of the government in social governance but also exposes government functions to democratic supervision.

3. Basic Forms of People's Organizations and Social Organizations Participating in the Rule of Law

It was proposed at the Fourth Plenary Session of the 18th CPC Central Committee that social organizations and people's organizations must play their role in developing the society with rule of law. These organizations play a positive role in this process in three aspects: restraining public power with social power, exercising self-discipline and autonomy under soft law, and resolving social disputes by virtue of the advantages they have as mass organizations.

1) Restraint public power through social rights

The first essence of the rule of law is the restriction of power, and effective restriction of power is irreplaceable in maintaining the democratic and legal order of a country. Effective restriction of public power is one of the basics of modern rule of law. According to Dahl (1999), a US political scientist, Independent social organizations are of great importance in a democracy, at least in a large democracy... and the emergence of such social organization... is indispensable for the functioning of the democratic process itself to minimize government coercion,

safeguard freedom of organizations and make life easier for people. From the perspective of political system reform, an important goal of the reform of government institutions and the transformation of government functions is the establishment of a public service-oriented government and a limited government, and the establishment of a “limited government” will inevitably require the society to effectively restrict government power, adjust government and power relations between societies. Restricting power with social power is the fundamental requirement of a democratic society. The power of any single citizen is limited and weak; scattered and isolated individuals are even less able to compete with a powerful government. In the game theory, no effective game exists between an individual and the government as they two are unequal in their involvement in social governance and the former is prone to suppression of the latter. Only organizations which are strong enough could provide comparable conditions for individual citizens. People’s organizations and social organizations are more capable of restraining public power than individuals. In the process of using social power to restrict public power, people’s organizations and social organizations mainly achieve this through political consultation, participation in the deliberation of state affairs, and democratic supervision.

a) People’s organizations participate in political consultation and deliberation of state affairs

Political consultation and participation in the deliberation of state affairs are an important part of my country’s democracy and rule of law. People’s organizations are an important component of the Chinese People’s Political Consultative Conference; and the main tasks of the Chinese People’s Political Consultative Conference are political consultation, democratic supervision, and participation in state affairs. At the middle level of consultative democracy and with the nature of social consultation, the consultation of people’s organizations mainly occurs in government governance and is the “system of social consultancy and dialogue” to be built by the CPC (or the “Party”) (Bu, 2014). As far as participating in politics is concerned, it means reflecting social conditions and public opinion, participating in seminars and special conferences, conducting research and inspections. Provide opinions and suggestions to the Communist Party of China and state organs through research reports, proposals, proposals or other forms.

b) Power supervision of people’s organizations and social organizations

The pursuit of self-interest is an innate functional attribute (Gong, 2009). With its own clear interest inclination, a people’s or social organization resists the encroachment of government power in the pursuit of their interests, and grows into a way of restricting social power. People’s organizations and social organizations get involved in supervision in several ways, with the former of which get involved in supervision via the CPPCC which is regarded as the most direct way of supervision. Democratic supervision is a “bottom-up” non-power supervision realized by the participation of people’s organizations in the People’s Political Consultative Conference. It mainly assists the Party and state organs to

improve their work, improve work efficiency, and overcome bureaucracy by making suggestions and criticisms. Social organizations can involve themselves in supervision by, for example, voicing their opinions, directly partaking in government decision-making and relying on news media. Among them, public opinion supervision through news media is an important form. Due to the advantages of large number and wide range, social organizations can form an extensive supervision network, so that public power is always under supervision. Besides, people's organizations and social organizations have their advantages in resources and expertise. They influence government public-policy legislation by engaging themselves in hearings, academic conferences and researches and keeping a close eye on online government platforms, with a view to making the process of such legislation more democratic and the results of the legislation more scientific and effective, and therefore to restraining the government power (Pan & Lu, 2015).

Moreover, their active involvement in administration of public affairs can also play a positive role in eliminating rent-seeking public power.

2) Self-discipline and autonomy based on soft law

The object of a society ruled by law is its own self-governing order and its relationship with the country. To be specific, the self-governing order of such a society primarily lies in normative constraints of social organizations and the monitoring of social power. In other words, such a society practices self-regulation and self-governance according to "soft laws", including social customary rules, corporate autonomy statutes, village rules and civil conventions, which are spontaneously formed or voluntarily enacted by the society (Wang, 2015). The realization of self-governance by people's organizations and social organizations in an organized form is the beginning of social self-governance. It is great significance to the formation of a rule of law order.

a) Forming self-management and restraint by self-government according to law

People's organizations and social organizations are the components of a rule of law society. Their autonomy in accordance with the law is the primary content of their participation in the rule of law. On the one hand, as the core elements of a civil society, such organizations are organized and autonomous, and they must maintain their daily operations and manage their members based on certain norms. Each of these organizations is organized under its articles of incorporation, and is subject to the supervision of the competent government authorities. This sound form of organization itself institutionalizes the internal governance of such an organization. On the other hand, the obligations conferred upon members of people's organizations and social organizations include not only those required by their own groups or organizations, but also citizens' obligations provided for by law. These organizations have many of their regulations closely tied to legal rules and regulations, and have their autonomy built on observing their own obligations and fulfilling legal obligations. They improve public trust and enhance their social power through autonomy, which is also a key

way to fulfill citizens' obligations, perform civic behaviors and enhance civic awareness. Thus, the autonomy of such organizations based on soft law is the general trend of developing the rule of law in modern society, and a significant path to push for the realization of rule of law as well.

b) Promotes the formation of external order with its organizational characteristics

People's organizations and social organizations are the result of freedom of association, which takes an organized form. The functions and roles of these organizations in promoting social autonomy are embodied in 1) self-discipline of industry associations and chambers of commerce; 2) self-management and service of professional and academic groups; and 3) involvement in self-discipline and autonomy of the grassroots micro-environment, in development of community autonomy and in rural economic and social development, as well as self-development of philanthropy (Wu & Wang, 2011). The play of these autonomous functions can form an order pattern under non-legal functions, but it is undoubtedly not a promotion for the realization of legal order. Meanwhile, the soft law nurtured by the autonomy of such organizations has also become an important supply of and a major legislative resource for Chinese laws. Therefore, the autonomy of people's organizations and social organizations based on soft law is the general trend of the development of the rule of law in modern society. It's an important path to promote the realization of the spirit of the rule of law.

3) Resolution of disputes through folk advantage

As organized groups rooted in the people with the purpose of safeguarding people's rights and interests and voicing people's demands, people's organizations and social organizations practice self-governance and resolve social problems by gathering the power of the people in a diversified and organized way, and they also play an essential role in expanding channels for citizens to express their demands and eliminating social conflicts. At the same time, its autonomy in resolving disputes also lies in respecting the autonomy of the subject of the dispute (Hong, 2015).

a) Positive significance of dispute resolution

First and foremost, these organizations can effectively smooth over government failures. These organizations can respond to conflicts and disputes in a timely manner with their close ties to the people, also offer diverse options for administrative and judicial dispute resolution by virtue of their professionalism and diversity. Furthermore, they can alleviate the imbalance of interests caused by the inequality existing among market players, give support to disadvantaged groups, and promote equal consultation among the parties involved. Moreover, they can develop mechanisms for expression and integration of interests in dispute resolution, promote the coordinated development of society and accelerate the establishment of a rule-of-law guarantee mechanism, ultimately forming a long-term mechanism for settling public conflicts and disputes.

b) Method of dispute resolution

Disputes are settled primarily through prevention and resolution.

In terms of dispute prevention, increasing interest friction stake place between interest subjects in the context of market-oriented economy and socialized production. The interests of disadvantaged groups, however, can hardly be guaranteed. Particularly in the face of advantaged groups, the disadvantaged are prone to social conflicts due to their own inability to seek assistance or dependence. In the meantime, the refinement in division of labor and the awakening of rights consciousness also contribute to the emergence and collision of diversified interests, throwing the society into local shocks. The civic nature of these organizations enables them to detect and provide assistance or support in a timely manner, helping stakeholders to voice their demands for interests in a comparatively equal environment. Such organizations provide public support to promote integration and communication throughout the society, thereby reducing the sense of distance and separation between different interest groups and different social classes and mitigating social tensions arising from social transformation and gain differentiation.

With respect to dispute settlement, these organizations, on the one hand, are advantageous in settling some industrial and professional disputes, and, on the other hand, are advantageous for being familiar with the unprivileged population and can timely find and mediate disputes among the people. More importantly, as far as procedures are concerned, these organizations are more neutral in resolving social disputes. They tend to intervene in the settlement of disputes as third parties, which is more conducive to the fairness of dispute resolution. In terms of the way they resolve disputes, their unique identity enables them to perform functions in different forms. Firstly, when the government is a party to a dispute, such an organization is more likely to be recognized and accepted by the other parties to the dispute by virtue of their neutrality and impartiality, and it gets involved in mediation of the dispute by stabilizing emotions of, facilitating negotiations between and providing rational solutions to the parties to the dispute in a neutral way. Secondly, such an organization provides the vulnerable party to a dispute with the assistance necessary to achieve fairness and justice and prevent grassroots social conflicts or disputes from becoming mass disturbances. Thirdly, such an organization offers services involving information, psychological counseling, conflict management skills, assessment information, advice on solutions for the parties to a dispute in the dispute-settling process. Fourthly, such an organization provides ex post facto supervision and management of dispute resolution, filling in gaps in government supervision and management of the consequences of dispute resolution. Fifthly, such an organization files public interest suits according to law to safeguard public interests. It is hard to defend public interests when infringed because of the uncertainty of the parties involved in public interests. For one thing, such organizations have easy access to social life and are able to detect and respond quickly to infringement of public interests. For another thing, their neutral nature enables them to make independent value judgments based on public interests. Even more importantly, their extensive influence enables them to act more effectively and make them

more acceptable than single individuals.

People's mediation is a dispute resolution mechanism with Chinese characteristics and an effective social governance method. In resolving social conflicts and disputes, people's organizations and social organizations more directly reflect the advantages and effects of people's mediation.

4. Institutional Guarantee for People's Organizations and Social Organizations to Participate in the Rule of Law

The current development of social governance in China shows that people's organizations and social organizations play a significant role as an important driver of the rule of law. The CPC and the state have also stepped up its support and regulation of them. There is, however, no denying that these organizations, in participating in the rule of law and realizing co-governance, still face many problems in their development. In practice, the specific circumstances and actual process of the participation of people's organizations and social organizations in the rule of law are affected by many factors. The realization of democracy is often not obvious, and sometimes the so-called "participation failure" occurs. In a way, this damages their image and weakens their ability to involve in social management under the rule of law. This requires the improvement of the system to confirm the legal status of their democratic participation, and to provide them with sufficient resources such as talents and funds to ensure their independent participation ability. The CPC and the state should at least strengthen the institutional guarantee for the participation of people's organizations and social organizations in the rule of law from the following aspects.

1) Strengthen leadership and supervision

The party's leadership and the socialist rule of law are consistent, and the socialist rule of law must adhere to the party's leadership (Xi, 2019). The "Constitution" clearly states that "the leadership of the Communist Party of China is the most essential feature of socialism with Chinese characteristics". Consultative democracy of people's organizations and involvement of social organizations in rule-of-law construction cannot be achieved without the leadership of the Party. President Xi Jinping has clarified the importance of strengthening Party organization development within the vast array of social organizations. This is, above all, a fundamental guarantee for the sound development of people's organizations and social organizations. On the one hand, maintaining the Party's leadership over these organizations ensures that they are on the right track and that the Party's policies are fully implemented within them. On the other hand, strengthening the party's leadership can enhance the people's recognition of the value of people's organizations and social organizations' participation in the rule of law, and form a political advantage to unite the masses. Moreover, upholding the Party's leadership over them is an imperative to modernize the nation's system and capacity for governance. These organizations have become important participants and practitioners in advancing the modernization of national governance system and capacity, and are playing an increasingly important role in,

among others, boosting economic development, flourishing social undertakings, innovating social governance and offering public services. Strengthening the Party structure of these organizations is helpful to energize and drive them to better participate in national governance and to pool powerful positive energy for comprehensively in-depth reform.

In particular, party committees at all levels should play a leading role in coordinating the overall situation, and include the consultation of people's organizations and the involvement of social organizations into the overall planning on developing the rule of law. First of all, the committees should enforce policy rigidity for these different organizations of different natures, include their involvement in the rule of law into the institutional framework of the Party and the government, draw a clear distinction between the scope and manner of activities of these organizations by guiding legislation, respect their legitimate activities, and crack down on their defiance outside the state system. Secondly, the committees should shift from command-led leadership to resource-oriented leadership by, to be specific, supporting these organizations with resources, nurturing and engaging them in the rule of law, and supporting these organizations in self-transformation to serve as a bridge or bond. Thirdly, the committees should innovate the way they exercise leadership and optimize the leadership management system of these organizations in Party organization development so as to enhance flexibility. These organizations are organized and run based on different models because of their different functions. Hence, the committees should adapt to individual characteristics of these organizations, and take good advantage of flexible, diverse, small and decentralized social activities to motivate Party members and the public. Last but not least, the committees should use the initiative of Party members. These members should play an exemplary role in these organizations' involvement in the rule of law, abide by the law, actively perform their respective functions, and seek recognition from other members in these organizations so as to play a vanguard role.

The rule of law in social governance requires strict regulation over the involvement of people's organizations and social organizations in the rule of law. Any activity conducted by these organizations is legally subject to certain rules and included in an integrated supervisory mechanism. This prevents them from pursuing their own special interests. With regard to the regulatory model, state supervision and social supervision are equally necessary, but the former is more direct and binding. We may learn the "quality control" experience from Australia by replacing "annual inspection" with routine supervision of public service accreditation, industry standards, agency ratings and casual inspections. At the same time, it can also evaluate the effectiveness and level of participation of people's organizations and social organizations in the rule of law, and further improve the normative control of their behavior (Wang, 2011).

2) Improve the legal system

The premise of the rule of law is the supremacy of the law. The rule of law in China emphasizes good law and good governance. Good law is not only to have

laws which are made excellent, but also to have a complete legal system. People's organizations and social organizations participating in the rule of law should also abide by the requirements of the rule of law and have laws to abide by. Judging from the current development of people's organizations and social organizations in China, there are few laws and regulations specifically governing these organizations, and especially for social organizations, there are only a few administrative and departmental regulations at low overall effectiveness levels; in particular, the absence of laws in a narrow sense has resulted in a lack of uniform standards in legislation. Existing legislation has shortcomings in operability. Vague and principled legislation restricts the self-development of people's organizations and social organizations. It also becomes an obstacle to their functioning.

Provisions for the formulation of uniform laws on the management and regulation of social groups are widespread in various countries in the world (Xin & Zhang, 1998). It is necessary for our country to improve relevant legislation and increase the applicability and pertinence of the system. It is therefore advised to enact laws and implementation rules under the guidance of the Constitution so as to provide institutional support for the effective operation of these organizations and bring them onto the development track of the rule of law. Besides, civil rules and regulations, registration rules and other procedural norms also require improvement to ensure the legal status and operation of these organizations.

In terms of personnel support, the government should actively nurture and provide talents to these organizations in order to ensure their capacity building; besides, the government should loosen personnel control over these organizations and optimize their internal staffing through position recruitment, contracting with employees and professional title appraisal.

3) Provide more support

In the process of participating in the rule of law and realizing cooperation and co-governance, there are still many problems in the development of people's organizations and social organizations, such as low public recognition, lack of independence, unbalanced development, imperfect internal management, lack of talents, and insufficient funds. The main reason for these problems is that people's organizations and social organizations have poor self-hematopoietic functions. They rely too much on the government in terms of personnel and funds, which damages their unique characteristics and causes them to gradually appear "administrative management tendencies". To a certain extent, this weakens the basis for its participation in the management of a society governed by the rule of law.

Under existing rules and regulations, the funding for people's organizations and social organizations in China comes from a variety of sources, including government subsidies, social donations, etc. But the government's financial subsidy should be the most important source of funds and be implemented and strengthened as soon as possible. This has become an experience in places such as Hong Kong and Taiwan, as well as in many Western countries. For example,

35.6% of NGO income in the United States comes from state funding (Feng, 2013). Tax incentives are also an important source of funding for them. Legislation should strengthen tax incentives for donors and establish fund-raising and management practices to encourage private donations to support social organizations.

In terms of personnel support, the government should actively nurture and provide talents to these organizations in order to ensure their capacity building; besides, the government should loosen personnel control over these organizations and optimize their internal staffing through position recruitment, contracting with employees and professional title appraisal. On the flip side, it is necessary to encourage people to volunteer and form a normalization of volunteer activities. From the perspective of long-term development, if people's organizations and social organizations want to achieve greater development, they must have the support of the masses. If they want to participate in the rule of law in an organized and normative manner, they must have a broad base of public opinion. This is in line with the characteristics of democracy, and it also makes the participation of people's organizations and social organizations in the rule of law more legitimate.

5. Conclusion

The active involvement of people's organizations and social organizations in the rule of law goes beyond the original "government-market" dual legal framework and has increasingly emerged as a new mechanism of social adjustment with a different influence than that of traditional forms of social governance. All activities conducted by these organizations, however, should be regulated by law. In view of the growing role played by these organizations, it is a must to legislate and regulate their rights and obligations, their use of assets and their activities in an all-round way. First and foremost, these organizations must be legitimate in their coming into being and existence if they get involved in the rule of law. Secondly, these organizations should: 1) exercise their rights and fulfill their obligations to manage their funds and finances within the authority and scope defined by law, 2) operate internally and partake in external activities through a common mechanism of autonomy and heteronomy, subject to applicable laws and internal regulations, and 3) compete in the marketplace in a fair and legitimate manner. This is the basic prerequisite and requirement for their involvement in the rule of law.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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