



Necessity and Practice of Flexible Governance for Mobile Vendors from the Perspective of the Protection of Vulnerable Populations

Xinyao Yang^{1,a*+}, Hanyu Jin^{1,b+}

¹School of Law, Shandong University, Qingdao 2662001

⁺These authors contributed to the work equally

*^ayangxinyao1@foxmail.com, ^bm13176766621@163.com

Abstract: It is a shared goal of countries around the world, including China, to foster inclusive and sustainable economic growth, boost employment, and guarantee decent work for all. In particular, the protection of vulnerable populations has all along been the priority of the Chinese government, of which mobile vendors deserve more care and inclusive treatment. The complete confrontation between urban governance and mobile vendors in China has been a thing of the past and the idea of flexible governance has been more highly respected and practically applied by more managers. This paper adopted questionnaires, qualitative interviews, comparative research, and desk research to collect data and summarize related literature and policies on business operators in J District, Q City, S Province. It seeks to clarify the vulnerable characteristics of mobile vendors and conclude flexible governance approaches available in China, with a view to providing a reference for government management and academic research.

Keywords: Urban Mobile Vendors; Flexible Governance; Vulnerable Populations; Protection of Rights; Freedom of Business; Urban Governance Practices

1 Introduction

Mobile street vendors refer to the people who engage in commodity sales and service activities in the way of setting up mobile stalls, including the individuals who have obtained or without the permission of the competent government authorities and choose places to set up stalls at will. On June 1, 2020, Premier Li Keqiang pointed out during his inspection tour to Shandong that street stalls and small stores, as important sources of job positions, have not only mirrored the real situation of ordinary people's livelihood but also, as other high-end economic entities have, contributed to the vitality of China's economy. In fact, taking flexible governance measures for mobile street vendors is not only a necessary measure to revitalize the national economy, but also an important expression of the humanistic care for the vulnerable groups.

© The Author(s) 2023

S. Yacob et al. (eds.), *Proceedings of the 2023 7th International Seminar on Education, Management and Social Sciences (ISEMSS 2023)*, Advances in Social Science, Education and Humanities Research 779, https://doi.org/10.2991/978-2-38476-126-5_109

2 Definition of Vulnerable Populations and Attribution of Urban Mobile Vendors

2.1 Definition of Vulnerable Populations

“Socially vulnerable populations are an influential concept in the fields of sociology and political science, which is generally characterized by the poverty of economic benefits, low level of quality of life and poor resilience in the distribution of resources of social nature.”¹ In other words, this group is disadvantaged in terms of economic benefits, quality of life and affordability compared to other groups in cross-sectional comparison. The vulnerable populations in the field of jurisprudence, however, besides economic poverty, are a combination of rights poverty and capacity poverty, i.e., the lack of enjoyment of rights and difficulties in obtaining remedies based on biological factors such as gender and age and institutional factors such as household registration and economic structure.

2.2 Urban Mobile Vendors Attributed as Vulnerable Populations

This paper conducted a study on mobile vendors within T street in the eastern part of J district of Q. Interviews (four in-depth interviews) and questionnaires (84 valid data) were conducted with mobile vendor operators, including their gender, age, education, identity, household registration, operating hours, location, form, and stall costs. Given the mobility, instability and limited capital of mobile vendors, the author chose to interview survey respondents by incidental sampling to obtain data. It was possible, however, that the sampling method might not be random enough to draw the most representative samples, which might lead to deviations between the sampling results and the actual conditions. Despite this fact, the author still assumed it could basically provide a reference for the attribution of the nature of mobile vendors as vulnerable populations.

1.2.1 Urban Mobile Vendors Disadvantaged in Economic Benefits

The per capita disposable income of the residents of Q City in 2022 is CNY 62,584, while the research team found that most mobile vendor operators have low and unstable economic income. More than half of the mobile vendors reported a disposable income of less than CNY 60,000, and their realistic economic income is below the social average.

1.2.2 Urban Mobile Vendors Disadvantaged in Quality of Life

The Engel coefficient represents one of the main criteria for measuring a household's income and quality of life. In general, the higher the Engel coefficient, the poorer the household life and the lower the quality of life, while the lower the Engel coefficient, the richer the household life and the higher the quality of life, provided that other circumstances are excluded. The Engel coefficient for all residents of Q City in 2022 is 28.1%; however, more than half of the urban mobile vendor

operators reported spending more than 30% on food based on visits by the research team, which is lower than that of the average urban resident of q-city, indicating that the material standard of living of the group is below the social average.

1.2.3 Urban Mobile Vendors Disadvantaged in Resilience

Regarding the source of income, 86% of mobile vendors in Q City were full-time operators, while only 14% of them were part-time and had other sources of income. Being asked about the choice of a way out under the premise of an absolute ban on mobile vendors, 39% of mobile vendor operators stated that they did not know what to do, 15% expressed that they would continue to be vendors, 12% said it was impossible to absolutely ban the industry, and 34% responded that they would find another way out. The author concluded from the survey that street vending is the only source of income and predictable job for most mobile vendors. Operators are characterized by vulnerability and poor financial capacity for unexpected accidents or policy changes, which will be vulnerable points for social risk outbreaks in the event of such accidents.

1.2.4 Urban Mobile Vendors Disadvantaged in Enjoyment of Rights and in Obtaining Remedies

Equality and fairness and justice for all are the most fundamental concepts of jurisprudence. However, the research team found during the visit that 71% of the operators considered the vending fees unreasonable, and most of the mobile vendors belonged to the foreign population, rural households, and fewer locals; according to the statistics, it was found that after excluding the influencing factors such as vending area, the foreign household operators faced much higher fees than local operators, and there might be illegal fees. In addition, 48% of respondents facing high vending fees chose to operate without a license, believing that their rights to survival, freedom of business and property rights have been infringed. These operators, however, opted for guerrilla warfare with urban administrators in their daily operations, i.e., operating illegally to evade the relevant fees so as to protect their normal living standards, rather than reflecting competent government departments through regular and legal channels. The Government-Public Communication Platform serves as an essential channel for transmitting public opinion. However, when retrieving keywords “vending”, “vending fee”, “vendors”, etc. in the platform of J district, there were only five cases reflecting the problem of unregulated fees. And these problems have not been positively responded to and solved by responsible departments; in other words, the reflectors did not obtain the right remedy they deserve through formal channels.

3 The Need for Flexible Governance of Mobile Vendors as Vulnerable Groups

3.1 Right to Subsistence

The right to subsistence is the primary basic human right, which refers not only to the right not to be deprived of life without due process of law but also to the right to the continuation of every life. Accordingly, the right to subsistence consists of the right to life and the right to the continuation of life, the former refers to a person's life cannot be harmed or deprived without due process of law, and the latter is the basic living condition that people should have as human beings². In 2005, the State Council issued the Human Rights Situation in China, which pointed out that for a country and a nation, the people's right to subsistence is the priority. As part of vulnerable groups, most mobile vendors including migrant workers, landless peasants, laid-off workers, low-income wage earners, widows, and orphans are not well educated, show limited labor capacity, and are under great pressure to survive. Considering the poor economic environment, their lives are further aggravated, which makes them more inclined to survive by running stalls. Local governments have also noticed the situation and a series of policies have been introduced to ensure stability in employment, people's well-being, and operations of market entities, reflecting their positive attitudes toward promoting people's well-being through ensuring employment stability. However, the protection of the subsistence right of mobile vendors is still insufficient. Based on existing policies, flexible governance methods for these vulnerable groups should be implemented to help them eliminate the worries of seeking survival through setting up stalls, which is also a kind of tolerance and care at the legal level.

3.2 Freedom to Operate a Business

Freedom to operate a business is a collection of specific rights, including equal enjoyment of business opportunities, free acquisition of business qualifications, voluntary choice of business areas, independent setting of business matters, self-determination of business modes, independent decision-making of operation, and relief of business infringement requests³. A mobile vendor usually starts a business in the form of individuals, friends, and families. As a means of making a living for these groups, setting up a stall not only embodies the concrete implementation of freedom to operate a business stipulated in the Constitution but also shows humanitarian characteristics. Although China currently develops provisions for mobile vendors to operate a business without registration, in practice, they are often restricted to areas designated by the government, such as the convenience stalls in city "q" and the diversion areas in city "g". However, the number of these designated areas is extremely limited. Taking city "g" as an example, according to scholars' statistical predictions, there are 147 diversion areas with 10,760 booths for mobile vendors in Guangzhou, but the number of vendors in city "g" is between 280,000 and 390,000, showing an imbalance between supply and demand of stalls. Flexible governance of

mobile vendors, such as relaxing business threshold, reducing business restrictions, ensuring their business qualifications, and allowing vendors to operate independently need to be conducted to show the connotation of freedom to operate a business, reflecting the concern of Chinese laws and regulations for the legitimate rights and interests as well as living conditions of vulnerable groups.

4 Flexible Governance Practice in China

The core of the quotation and point-record system is flexible governance, the core content of which is “respecting, caring, cultivating, and motivating individuals, as well as developing their potential”. In the governance of mobile vendors, with the attitude of the CPC Central Committee towards mobile vendors ushered in a change from “strict prohibition” to “combination of guidance and blockage”, local governments gradually began to actively explore applicable law enforcement strategies. Nevertheless, the law enforcement strategies adopted by local governments still inevitably expose a series of defects⁴.

4.1 Practice in the Construction of Vendor Diversion Area

In 2010, Guangzhou first put forward the concept of vendor diversion area governance, which has since been promoted nationwide with the construction of diversion areas, such as Liuyang, Ningbo, Suzhou, Nanchang, and Chongqing.

As a mode of spatial governance, the construction of diversion areas is concerned with spatial fixation. The Trial Measures for the Administration of Temporary Diversion Areas for Mobile Vendors in Guangzhou issued by Guangzhou stated that the purpose of diversion areas is to turn disorder into order, extensive management into refined management, and mobile booths into fixed booths, showing the idea of flexible governance and the practical achievements of “guidance is better than blockage”, but there are still some defects. Taking Guangzhou as an example, a survey report by Guangzhou Urban Management Committee shows that the satisfaction of vendors with business situations is low. Some scholars believe that the theory of diversion area transforms disorderly informality with orderly regularity is a manifestation of “Regulatory Selfish Departmentalism”. Besides, there are tensions among the regulatory elements of diversion areas, such as fixed area, rent payment, contract constraints, product control and the inherent mobility, low cost, flexibility, and autonomy of the vendors themselves, which is easy to fall into a vicious circle of “Irregularization - Regularization - Irregularization”. It can be seen that this model still needs to be further explored and improved⁵.

4.2 Deduction Penalty System

As a disciplinary supervision mechanism, the foul-scoring system is first put forward by Singapore Environmental Protection Agency in 1987. The hawker bureau under the Ministry of Environment and Development of Singapore is responsible for the

unified management of vendors and points are recorded appropriately for their violations. According to the accumulated scores, some vendors will be punished by suspending business for rectification, conducting off-job training, and suspending and revoking their business licenses⁶.

In China, Chancheng District, Foshan City, Guangzhou has also applied the penalty deduction system in practice. Article 27 of the document Measures for the Administration of Temporary Occupation of Roads by the City Management & Administration Execution Bureau of Chancheng District of Foshan City (Trial) stipulates that officers of urban management shall supervise and assess vendors to implement the penalty system according to the Measures for Supervision and Assessment of Temporary Occupation of Roads (Annex), in which, vendors who fail to pass the examination will be disqualified, the business scope, types, periods, and regions of vendors are defined, and the assessment criteria are quantified to guide vendors to standardize their operations. However, in China, this model is still rarely applied in governance practice, so more governance pilots are needed to improve its feasibility.

4.3 Exemption from Punishment for the First Time and Minor Exemption from Punishment

In 2021, the provisions of “minor exemption from punishment” and “exemption from punishment for the first time” were added to the newly revised Law of the People's Republic of China on Administrative Penalty. According to the principle of “combination of punishment and education” stipulated in Article 6 and “no punishment situations” stipulated in Article 33, no administrative punishment shall be imposed on vendors who violate the law slightly and have taken corrective action promptly and without causing harmful consequences. Vendors who violate the law for the first time with a minor harmful consequence, and that have corrected the mistake in time, may be exempted from administrative punishment.

On October 8, 2022, the Guiding Opinions on Regulating the Discretionary Power for Administrative Punishments in Market Supervision and Administration issued by the State Administration for Market Regulation further clarified the circumstances of exemption from punishment, lighter punishment, and mitigated punishment. After the policy is introduced, it has been widely promoted and implemented nationwide. For example, in the Provisions on No Punishment and Lighter Punishment for Minor Violations in Market Supervision in the Yangtze River Delta Region, the discretion of minor exemption and first exemption has been further refined.

The provision embodies China's development thought of “people-centered” and the combination of strict law enforcement with humanistic care in administration is also a beneficial practice in terms of inclusive governance.

4.4 Exemptions for Privately or Individually Owned Business

Considering that mobile vendors account for a large proportion of privately or individually owned businesses, applying the exemption for privately or individually

owned businesses to mobile vendors is also a focus of some scholars. Article 54 of the Regulations of the People's Republic of China on the Administration of the Registration of Market Participants states that the administration of vendors without fixed business premises shall be developed by the people's government of a province, autonomous region, or municipality directly under the Central Government following the actual local circumstances, in which, autonomy in the management of local mobile vendors is granted. However, in many areas, the relevant legislation is still not complete and a unified, comprehensive, and definite standard has not yet been formed⁷. The relevant provisions are scattered in many laws, regulations, and normative documents, among which provisions related to the registration exemption system of mobile vendors can be divided into the following three categories. First, in Measures for Investigating and Punishing Unlicensed Business Operations and Regulations of the People's Republic of China on the Administration of the Registration of Market Participants, there are some items about vendors without fixed business premises and people who sell agricultural products, by-products, and daily necessities or provide labor for the convenience of other people by individuals using their skills. Secondly, a series of departmental regulations indicate that lawfully operating rural mobile vendors selling self-produced agricultural and by-products are exempt from industrial and commercial registration. Finally, local laws and regulations such as Regulations on Commercial Registration in Guangdong Province indicate that there is no need for commercial registration for food vendors to operate and farmers to sell their own or unprocessed agricultural and sideline products. Therefore, the model still needs to be further explored and improved.

5 Conclusion

In the process of economic development, any country in the world will face the problem of surging the number of mobile vendors, and most of the mobile vendors belong to the vulnerable groups. For this group, we should not blindly prohibit it, but realize the unique position of mobile vendors in the contemporary urban economy, and adopt the way of combining dredging and blocking to seek the balance between the urban order and the survival rights of mobile vendors, so as to realize the win-win situation between urban economic development and the protection of the rights of mobile vendors.

References

1. Wan W. H. Analysis of public policies supported by NGO society-targeting vulnerable groups [J]. Chinese Public Administration, 2004(03):28-31.
2. Gong X. H., Gong X. T. Analysis of the true meaning of the right to subsistence [J]. Search, 2008, No.187 (03): 120-122. DOI: 10.16059/j.cnki.cn43-1008/c.2008.03.
3. Xiao H. J. On Business Rights [M]. Beijing: Law Press, 2007:41-43.
4. Yang X. Y. (2023). Feasibility Research on the Quotation and Point-record System for Mobile Vendors from the Perspective of Flexible Governance.

5. CHEN M A. Informalisation of labor markets: is formalization the answer? [M]/RAZAVI S, ed. The gendered impacts of liberalization: towards “embedded liberalism”. New York: Routledge,2009.
6. Sun Z. J. Marginal governance of urban governments: a comparative study of vendor supervision policies [J], *Public Administration Review*, 2012, 37-65+186-187, 37-65+186-187.
7. Xiao H. J. Construction of China's commercial registration exemption system [J]. *Law*, 2018, No. 437(04):128-138.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

