



A Study on the Assistant Behavior of Grassroots Self-government Organizations in the COVID-19 Epidemic Prevention and Control

Jingwen Xing*, Xiaodi Liu, Jiayi Gu, Yue Wang, Yanjia Ma

Capital University of Economics and Business, Beijing, 100070, China

*Corresponding author: xingjingwen12345@163.com

Abstract. As one of the core components of the social governance system, grassroots self-government organizations play an important role in assisting the Government in implementing management measures. However, problems such as grassroots self-government organizations banning people from returning to their homes, blocking villages and roads without permission, and disclosing personal privacy during emergencies in certain areas have also aroused widespread discussion in society. The root cause of the controversy over the practice of grassroots self-government organizations in assisting in acts is that it is not yet clear whether grassroots self-government organizations can exercise administrative emergency powers and the scope of their powers is not clearly defined in the legislation. To solve these above problems, legislators should start by defining the nature of the assistance act of grass-roots self-government organizations, categorizing their behaviors, and putting forward the following proposals on two main aspects, namely, making grassroots self-government organizations appropriate actors, reasonably delineating the scope of their functions.

Keywords: Administrative assistance; Emergency management; Grassroots self-governing organization; Source governance

1 Introduction

From a legislative perspective, China has formed a set of emergency control systems that are linked up and down and operate smoothly. The model is based on the Chinese Constitution Law, with the Emergency Response Law as the core, the Law on the Prevention and Treatment of Infectious Diseases, and other relevant individual laws and regulations as a supporting framework[1]. When a specific emergency event comes, to promote the implementation of the above model as soon as possible, the State Council and local governments at various levels also need to take into account the actual situation, and, issue relevant notices, statements, and other normative documents promptly. The above laws and regulations give grassroots self-government organizations the obligation to mediate conflicts and disputes in emergencies, conduct publicity and drills on emergency knowledge, report emergencies, etc. Together with

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the "self-management, self-service, self-education" and "assisting" functions stipulated in the Organic Law of the Villagers' Committees and the Law on the Organization of Urban Resident Committees, grassroots self-government organizations have gradually become a necessary part of the emergency management system. However, when it comes to a specific implementation, the relevant legal provisions are still abstract and the relevant theoretical basis is still vague, resulting in the staff of grassroots self-government organizations having too much discretionary power.

From a practical point of view, under the dual role of constructing a modern public administration system and the demands of emergency management, it has become difficult for a single administrative body to meet the multiple needs of social governance. Grassroots self-government organizations should be included in the scope of the main bodies exercising the administrative emergency power. But, since the blank of the above legislation, controversial control measures have frequently appeared in practice. In particular, during the COVID-19 Epidemic, grassroots government organizations in certain areas, without a specific legal basis, made their own decisions and adopted drastic preventive and control measures, such as closing villages and roads, forcing isolation, and locking doors with iron chains, which greatly infringed on legal rights of the public. The essence of such controversies can be boiled down to one question: can grassroots self-government organizations exercise administrative emergency powers or not? Although there are already plenty of articles on grassroots emergency management in academic circles, most studies still focus on discussing administrative organs, not grassroots self-government organizations. In the few studies related to grassroots self-government organizations, there is also a wide divergence, with some scholars still insisting that grassroots self-government organizations cannot exercise administrative emergency powers under any circumstances and that their actions should only be recognized as "cooperating with government decision-making".

All in all, there are certain problems with the operation of the powers of grassroots self-government organizations, both at the legislative and practical levels. Suppose we want to study the problems in this field thoroughly. In that case, we must start with whether the grassroots self-government organizations can exercise administrative emergency power, clarify the concrete content of their action, then try to fill the relevant legal blank, improve the corresponding operation mechanism, and ultimately solve the current assistance chaos.

2 Definition of Assistance by Grassroots Self-Government Organizations in Emergencies

2.1 Contrasting Viewpoints of Administrative Emergency: Affirmative and Negative

On whether the grassroots self-government organizations can exercise administrative emergency power, there are two completely opposing views in academic circles:

(1) "Affirmative". Yang Lin, and Wanyu Tang, believe that based on the characteristics of source governance, grassroots self-government organizations can be authorized or entrusted to exercise part of the non-deterministic administrative emergency powers;

(2) "Negative". Lin Zheng, and Cheng Quan, believe that administrative emergency powers should only be exercised by administrative organs. Grassroots self-government organizations are not administrative organs, so they can't implement administrative emergency powers legally.

If we insist on defining the subject of exercising the administrative emergency power following the current principles of administrative law, we will inevitably hold the views of "Negative"; if we emphasize the necessity of rapid emergency measures in case of emergency, we will inevitably hold the views of "Affirmative". Regardless of the method of interpretation, the essence of doctrinal differences in administrative emergency stems from the conflict between the legislative *status quo* and the actual needs in administrative affairs. In terms of the current legal system, "Affirmative" and "Negative" both have sufficient theoretical support, there is no absolute right and wrong. To break out of the theoretical ambiguity, we should base on the perspective of comparative law, analyze the historical origin and development direction of grassroots self-government organizations, and find their legal position following the national conditions of our country.

2.2 Analysis of Legal Status: Dual Sources of Authority

Neighborhood committees and village committees were established in the early years of New China to maintain social stability and combat reactionary forces. Because the legal system was still in its infancy and the people did not have a strong desire for self-government, the leaders of these organizations were almost appointed directly by the grassroots government. As the reform of the social management system continues, the selection of leaders has become more democratic, and the functions of these organizations have gradually moved closer to meeting the needs of the people. However, the restoration of the autonomous functions does not mean that their administrative functions have been curtailed. While village committees and neighborhood committees have developed and innovated, their rise and fall have always been under the control of the state's administrative power, leading these organizations to demonstrate a unique status as "dual agents"[2].

On the one hand, grass-roots self-governance organizations derive part of their power from the people for the common good, which is manifested in "self-management, self-service, self-education". In other words, grassroots government organizations are important bridges to the masses, and their actions are closely related to the interests of the people. In the event of a public health emergency, out of the need to protect the interests of the people to the greatest extent, grassroots self-government organizations can grasp and control the development of the epidemic promptly, and can quickly mobilize the masses to carry out unified action or formulate a targeted plan to protect people's livelihoods.

On the other hand, some of the power of grassroots self-government organizations comes from the decentralization of administrative law enforcement power by the grassroots government, which manifests by assisting the government in carrying out its work under certain or uncertain guidance. In practice, the direct democratic advantages of grassroots self-government organizations make them more capable of reflecting the majority's interests. When the government's functions are in line with the people's demands, these organizations' participation not only effectively solves the problem of manpower shortage, busyness, and financial constraints, but also improves the efficiency of the government's work. However, when the governmental decisions conflict with the people's demands, the strong suppression of the government's will often prevents the people's wishes from being fully expressed, and the actions of the village committees and neighborhood committees at this time are more similar to the extension of administrative policies.

This leads us to the following statements:

(1) "Autonomous authority": This part of power has existed for a long time in the social identity of the members of the organizations, not predicated on the emergency of an epidemic, and the implementation of self-governing measures pays more attention to expressing the will of the people.

(2) "Administrative authority": This part of power is not only exogenous but also shows the compulsory and managerial nature, focusing on expressing national will from the top down.

In contrast, with the gradual disintegration of clan aggregation and neighborly relations based on traditional morality, we cannot expect people to voluntarily give up part of their freedom or privacy to maintain the stability of the overall situation in epidemic prevention[3]. In the process of implementing laws and decrees, most uneducated people can hardly give up their short-sighted judgments and utilitarian measurements, so they should be in the position of being administrators rather than administrators in the layout of the upper-level policies. At this time, it is difficult to show the main role of the people. Additionally, some strict prevention and control measures can only be widely accepted by the public if they are authorized by the administrative organs. Therefore, the administrative emergency power of grassroots self-government organizations should be classified as the type of administrative authority, and the adoption of "Affirmative" is more in line with the legal positioning and practical needs of grassroots self-governing organizations in China.

2.3 Definition Reconstruction: The Dichotomy of Decision-Making Agents

As discussed above, the exercise of administrative emergency powers by grassroots self-government organizations is confirmed to a considerable degree of legitimacy and necessity. However, because China has always followed the management structure of "big government" and "small society", some grassroots self-government organizations just have a low administrative capacity, and should not be allowed to take over all the emergency powers. So, under the constraints of the government-led emergency management model, grassroots self-government organizations must not exceed the scope of

the government's decision-making in the exercise of emergency powers. For example, the declaration of a state of emergency, the formulation of emergency plans, and the decision-making of coercive measures belong to specific administrative organs or authorized organizations, in which there is no room for grassroots self-government organizations. Besides, if the government can respond appropriately and take timely measures to eliminate the adverse effects of the emergency, the grassroots self-government organizations, as the administrative assistant, only need to follow the government's arrangement to carry out certain instructions. Such performance is only a kind of "obedient" administrative participation, and should not be included in the scope of autonomous exercise. From this, we can see that the assistant action of grassroots self-government organizations can be divided into two parts, including active decision-making and passive compliance with the government's command.

According to the "Affirmative" theory, if the premise of the emergency state is met, even if the grassroots self-government organization does not have the status of an administrative organ, it should be given the legality and legitimacy to exercise the administrative emergency power through administrative authorization. Unfortunately, current laws and regulations do not entitle explicitly grassroots self-government organizations can exercise administrative emergency powers on their own; Therefore, the author will elaborate on this problem in the next parts.

Unlike the former part, in the pure implementation process of government decisions, the actions of grassroots self-government organizations sometimes do not reflect their own will, nor are they intended to achieve the organization's statutory functions. Compared with the aforementioned administrative-legal acts such as "administrative emergency", the passive part of action works concretely and materially, which is more correspond with the concept of "administrative factual act". Based on the definition of "purely high-powered administration" put forward by the German scholar Walter Jelinek and Professor Erbao Yan's earlier discussions related to "administrative factual act"[4][5], the passive assistance of grassroots self-government organizations tend to emphasize real contact with villagers and residents, without directly setting or changing the rights and obligations. Nor are the administrative factual acts they perform limited to soft measures such as collecting information and mobilizing the masses, but rather rely on the scope of functions of the governmental organs that make the decisions. When decisions are implemented, grassroots self-government organizations do not have the status of administrative organs, so the government is responsible for the consequences of the actions performed by grassroots self-government organizations. In practice, grassroots governments sometimes cite "administrative entrustment" to explain the administrative power of grassroots self-government organizations. Since administrative entrustment also does not result in a transfer of powers and duties, this interpretation is reasonable in most cases, while the entrusting authority needs to exclude certain unlawful matters in the trust agreements, such as the implementation of administrative coercive measures.

3 Difficulties in the Operation of the System of Assistance to Grassroots Self-Government Organizations in Emergencies

3.1 Ambiguous Identity

In the administrative emergency system, the Law on Prevention and Treatment of Infectious Diseases and the Emergency Response Law both stipulate that grassroots self-government organizations must participate in the prevention and control of epidemics. Still, the status and position of the organizations in the assistant process are ambiguous, it is difficult to judge whether grassroots self-government organizations should be recognized as independent operating entities or whether being covered by the governmental operating system. Under the current law system, some provisions use less obligatory phrases such as "to be guided" or "to provide support" to describe it, for example, Article 7 of the Law on the Prevention and Treatment of Infectious Diseases. However, some provisions use the more obligatory word "shall", such as Article 29 of the Emergency Response Law. This lack of uniformity could easily lead to ambiguity.

In terms of the election method, the members of the grassroots self-government organizations are directly elected by the residents and villagers, without a strict hierarchical relationship. Thus, they can deal with general public affairs, but not a series of "emergencies" discussed in this paper in a timely and effective manner. As mentioned before, the passive action of grassroots self-government organizations is covered by the state authority system generally, which is inextricably linked with the operation system of the administrative organs. In the epidemic, if we want grassroots self-government organizations to take on more administrative tasks, we need to give them enough administrative emergency power through the administrative authorization or administrative entrustment. However, the conflicting terms in the law, not only make it difficult to give grassroots self-government organizations legal status but also make it impossible to differentiate between the "active" pattern and the "passive" pattern. This condition has greatly weakened the endogenous power of grassroots self-government organizations to prevent and control problems and almost added their staff with bureaucratic impressions, which is apt to heighten the distrust and skepticism of the people being managed[6].

3.2 Unclear Scope of Authority

China's provisions on the participation of grassroots self-government organizations in emergency management are scattered throughout individual laws and regulations, with most of them treating the village committees and neighborhood committees as the object of governmental organization and mobilization. Although it improves the relevance and professionalism of the law system, but lacks of capability to adapt to the overall context of the epidemic. When comes to emergencies, without the government's endorsement, it is difficult to quickly invoke the power by the law and naturally allocate it to the community. Suppose the government is allowed to define the identity of neighborhood committees and village committees and to decide on the appointment

of personnel. In that case, grassroots self-government organizations will become an "appendage" of the administrative system[7].

At the same time, the existing legal provisions are still thin. The Emergency Response Law, which is the only one at the high level, only regulates the exercise of administrative power for administrative organs and fails to give grassroots self-government organizations independent legal status. In the absence of clear instructions from the Government, the so-called "one-size-fits-all" management phenomenon has emerged in certain areas due to the delay in obtaining a clear standardization of the distribution of powers[8]. In these areas, grassroots self-government organizations have not only exceeded their authority in deciding on segregation measures on their own but have also taken unlawful methods to block the passage of returning people. This makes the public antagonistic and resistant to grassroots self-government organizations, even to the government, and the "credibility" on which public power depends is also greatly diminished.

4 Ways to Improvement the Assistance System for Grassroots Self-Government Organizations in Emergency Situations

4.1 Clarify the Position and Distinguish the Sources of Authority

Considering the current situation, China's existing laws and regulations only define grassroots self-government organizations in emergencies as organizations that assist the government in exercising its administrative power, ignoring its independent status, which is not conducive to giving full play to their strengths in collecting information, resolving social conflicts, and coordinating and deploying resources. In this regard, legislators should consider clarifying in the legal norms of emergency management that grassroots self-government organizations can exercise part of the administrative emergency power, granting them to independently take non-administrative coercive measures, such as carrying out publicity and popularization of emergency response knowledge, collect and report information on epidemics, organize the dispersal of people for isolation.

Considering China's "one-issue-one-law" emergency management system, in the course of improving the law, legislators can stipulate some abstract authorization clauses in the Organic Law of the Villagers' Committees and the Law on the Organization of Urban Resident Committees, to lay down the status of grassroots organizations as administrative subjects, and stipulate the general content and prerequisites for the organizations to exercise emergency power in the Emergency Response Law, allowing them to exercise the power to decide on temporary measures if an emergency has just occurred or if the administrative organs have failed to take effective measures promptly after the occurrence of an emergency. In other individual laws like the Law on the Prevention and Treatment of Infectious Disease, the legislators can add some clauses to differentiate the "active" and "passive" types of power, refining the conditions and the process of exercising such powers. Then, the staff of grassroots self-government organizations can follow the instructions to distinguish between their

different terms of reference for exercising emergency powers. When grassroots self-government organizations exercise the power to implement government decisions, their actions should be strictly limited to the functions of the decision-making body; when grassroots self-government organizations independently exercise administrative emergency powers, they need to rely on the authorization of laws and the list of matters entrusted by the government.

4.2 Identification of Administrative Competencies and Conclusion of Delegation Agreements

After clarifying the status of grassroots self-government organizations in emergencies, to avoid cross-powers or management default, the docking organs should promptly distinguish between the different patterns to prevent any impact on the normal operation of the internal self-governance system of the organizations. Taking the collection of personal information as an example, the registration of basic information by neighborhood committees in their daily work should fall within the scope of their autonomy, while the collection of privacy information to assist the government in emergencies should fall within the scope of their administrative powers.

Besides the identification of administrative powers, the government also needs to regulate in-depth their actions by regulating the conclusion of delegated agreements. Reflecting on the prevention process, the reason why grassroots communities were able to independently implement many anti-epidemic measures such as sealing doors with barbed wire and blocking roads with stones was that a large number of grassroots governments entrusted the grassroots self-government organizations the power to implement coercive measures. Such entrusted behavior is a serious violation of the Administrative Compulsion Law, which states that administrative coercive measures shall not be entrusted with mandatory provisions, resulting in chaos in practice. For this reason, grassroots governments must strictly abide by laws and regulations, control the exercise of public power, and not entrust the right to implement administrative coercive measures. At the same time, in the process of formulating entrusted matters, the government should follow the principle of entrusting only when it is "urgent" and "necessary", and never entrust matters that can be completed independently with the government's manpower. To prevent grassroots self-government organizations from abusing their power, the government should elaborate the entrustment agreement as much as possible, setting out the entrusted matters, stipulating the specific measures and means that can be used, and emphasizing the prohibited matters, such as prohibiting the sealing of doors with wire, prohibiting the blocking and breaking of roads, and prohibiting the culling of pets. When implementing entrusted matters, grassroots self-government organizations should strictly follow the agreement, adhere to the principle of proportionality, and adopt an approach that minimizes the damage to the rights and interests of the public. Take health monitoring for example, when the government draws up the entrustment agreement, it must specify that the concrete tasks include supervising the registration of information on key persons, maintaining close contact with the public, reporting any abnormalities promptly, and prohibiting the adoption of illegal measures[9].

4.3 Guaranteeing Independent Autonomy and Preventing Identity Confusion

In light of the foregoing, to safeguard the independent status of grassroots self-government organizations, it is also necessary to prohibit the government from defining them as its subordinate organs.

Firstly, the government needs to change its mindset and correctly view the important role played by grassroots self-government organizations in the improvement of social governance structure, and should not directly regard the relationship of guidance and supervision as command or control. Grassroots self-government organizations should also face up to their special role, assisting administrative organs in their work while also effectively safeguarding the legitimate rights and interests of the people. In terms of the division of powers, the government should use the power list, give grassroots self-government organizations full trust, and reduce its intervention within the scope of the list.

Secondly, weakens the financial links between grassroots self-government organizations and the grassroots government. By reforming the existing financial management system, the power over the financial affairs for emergency management matters should be delineated, to reduce the government's suppression of grassroots self-government organizations. Both sides should also focus on broadening the sources of financial support, introducing enterprises, residents (villagers), and other inputs, and cutting off the financial dependence of grassroots self-government organizations on the grassroots government[10].

Lastly, government interference in the election of members of grassroots self-government organizations should be halted. It is necessary to step up publicity efforts to raise people's awareness of elections and to ensure that election procedures are fair, open, and transparent. In this way, not only can we stop the grassroots government from imposing unauthorized tasks on grassroots self-government organizations in the name of "reducing burdens", but we can also optimize the traditional grassroots management mode into pluralistic participation.

5 Conclusion

By reflecting on the disorders during the epidemic, we should recognize that the problems that have arisen in the participation of grassroots self-government organizations in the management of public health emergencies are not affected solely by the imperfections of the grass-roots social governance system in a given geographical area, but rather by the inadequacy of the legal system. However, the rule of law is the best measure of order and freedom. Suppose we want to truly regulate the assistance system of grass-roots self-government organizations under epidemic prevention and control, we must spare no effort to clarify their identity and delineate the scope of their functions. Through using these measures, our state can systematically promote the pluralistic and co-efficient advancement of social governance, to continuously expand the space for democratic consultation, social coordination, and public participation.

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