

The Significance of Criminal Governance and the Rule of Law for the Bribery in Villagers' Election in China

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Abstract

The fair villagers' election is the logical starting point and the premise of fact for the villagers' autonomy mechanism and the development of grassroots democracy; and it has important significance for the stability of China's grassroots political order and the moral authority. However, the bribery has been in the tendency of wide spread in the current villagers' election. The 'bribery' is definitely harmful to the healthy and orderly development of grassroots democracy in China, leading to a huge hidden danger to the grassroots political order, in the meantime, there is still lack of effective regulation to the bribery in the election of village committee under China's legal system. To bring the Bribery in the election of village committee into the scope of criminal law is in accordance with the requirement of legal protection of the constitution law, and it has fundamental significance of the rule of law for rebuilding the grassroots democratic political authority as well as forcing the modernization of villagers' autonomy mechanism.

Keywords

Bribery in the election, social harmfulness, criminal punishment, the significance of the rule of law.

1. Introduction

The 'PR. China Village Committee Organization Law (Trial)' was approved after the 23rd conference to the 6 session of the Standing Committee of National People's Congress (NPC), then many parts of China began to frequently attempt to institutional innovation in practice of the democratic election according to the law, and the 'PR. China Village Committee Organization Law' revised in the 5th conference to the 9 session of the NPC Standing Committee clearly stipulated the legal mechanism for the members of villagers' committee directly generated by voting. Thus, along with the development of the village committee election system, the issue of bribery began to show up, more precisely, voters, candidates and even election staffs will be bribed by money or any other material benefits, making them participate the election in violation of their original wishes as well as play favoritism and commit irregularities in the election. [1]

Practice of primary election in recent two decades indicates that the bribery does not fade away along with the development of the society and the progress of the civilization in China, but showing a constant upward tendency instead. The bribery has serious harmfulness and negative influence to China's grassroots democratic self-governance mechanism, grassroots political moral credibility and authority, and even the entire of China's social stability; however, there is still no effective governance on the bribery. Therefore, this thesis intends to analyze the necessity, feasibility, legitimacy of bribery governance and the issue of the significance of the rule of law based on the level of norm and fact, from the perspective of the bribery in criminal law, expecting to bring benefit to the full completion of the rule of autonomy in rural areas and the task of constitution law for the protection of criminal law in China.

2. The present situation and issue of the bribery in villagers' election

According to practices in different regions in China, the phenomenon of the bribery has been existent in different extent since China tried to implement the direct election of village committee in 1987. However, at the beginning of the direct election of village committee, the phenomenon of the bribery was not widespread, its mainly demonstrated characteristics as following:

First, the scope of the bribery was relatively small at that time. Early bribery mainly occurred in the eastern coastal areas with comparatively developed economy.

Second, the form for transferring the interest of the bribery was relatively simple and single. Main form of early bribery consisted of production and materials applied for daily life as well as common dining treat, but bribery with money, property interests and even sex were comparatively rare at that time.

Third, fewer people participated into the bribery at that time. In aspects of early bribery, people who participating the election and their relatives mainly implemented activities related to the bribery, organizational bribery was comparatively rare at that time.

In recognition of characteristics of early bribery in the election mechanism, they were intimately bound up with the social background and political economic situation at that time in China. On one hand, the brilliant policy of 'reforming and opening up' has been just emerged, villagers' attention and energies were concentrated in becoming richer than usual at that time, so fewer people was supposed to attend to the issue of political rights and appeal, which leads to less enthusiasm for villagers to participated into the politics. On the other hand, most China's large scale economic construction has not begun yet at that time; power and resources mastered and controlled under the village committee and its member were relatively limited with less effectiveness. Therefore, villagers were not interested in the issue of village committee's election. In addition, people's ideas were seriously influenced by the extreme trend of 'the cultural revolution' at that time; they had rigid thoughts and weak consciousness to use illegal measures for personal gain.

However, after the 21st century, throughout China's large scale economic construction and rapid development of economy, as well as changes of social structure and social psychology brought by the rapid social transformation, the bribery began to widely spread in the village committee in large areas, showing a series of new features as following:

First of all, the bribery has intensified it has become a very common phenomenon in many regions. In aspects of the spread of the situation to the bribery, its main reason must be that members of the village committee have comparatively bigger power along with the revolution of social and political life in rural areas as well as the implementation of villages' autonomy, they are able to control more and more types of resources, and their roles also increased significantly. The importance of the role for members in villages' committee will inevitably lead to the constant increase of the number of people participating the election, while the degree of the competition will also heat up. Because there is no corresponding laws and punishment mechanism for restricting, to win in the competition by unfair measures will become inevitable and universal phenomenon. An increasing number of people gradually accept and even recognize such bribery in the election, and they even consider the bribery is much deserved, that must be the worst should be worried about. The reversal and deviation of the public opinion on the issue of the bribery is a brand new phenomenon that is worth of paying attention to.

In addition, the bribery is usually organized, familization and even collectivized. In the village election in some regions, some candidates did not just solicit votes in the dark by themselves, but setting systematic scheme for soliciting votes, even organizing and dividing teamwork for organized operation. To solicit votes before the election, to let people fill in the votes and to supervise the on-site voting are all in charge by clear staff, showing a tendency of organization and collectivities. [2] In general, temporarily organized form in the bribery of villages' soliciting votes consists of family

group with the link of blood and marriage, neighborhood with the link of regions, communities with economic interests and the evil forces in rural areas.

Furthermore, types and scope of the bribery have become diversified gradually. As previously mentioned above, the form of bribery was relatively single in village election at early times, but at present, the form of bribery is already gradually diversified, mainly representing as bribery with affective commitment, bribery with materials, bribery with money and provision of property interests.

Last but not the least, the cost of the bribery has further improved, the final beneficiary's greed will become aggravated to grab public resources and benefits after the success of the bribery, then the contradiction between villagers and the village committee will be further upgraded, which may seriously affect the stability of the grassroots political power and moral image to the public and society.

Throughout the summary and conclusion on brand new characteristics of the bribery in villagers' election in recent years, it could be considered that the bribery has become a malignant tumor for grassroots political power and democratic autonomy. Meanwhile, the bribery has become a significant obstacle for fairly exercising the right of autonomy, and even become the major problem that influences the benign operation of the entire mechanism for villagers' autonomy. The government and related department should pay enough attention to such issue, giving priority of management to handle the bribery.

3. Analysis on the legitimacy of criminal law governance to the bribery in villagers' election

Applying the criminal law to regulate the bribery in the village committee election has sufficient adequate theory and legitimacy of practice, as well as fundamentally curb and change the status of bribery election in a relatively short period of time, in order to maintain the orderliness and stability of grassroots regime. Specifically, such legitimacy mainly has several reasons.

3.1 The social harmfulness of the bribery in the village committee election is extremely serious, it has reached the standard of regulation by the criminal law

The bribery in the village committee election is a serious damage to the mechanism of villagers' autonomy. The bribery made the democratic political rules become money transactions, which distorts the original meaning of the election, it has already violated the basic willingness and principle of justice for setting up a system of the Democratic Self-Government in fact, it makes a serious damage to the democratic political order. [3] In the meantime, election is the logical starting point and the foundation of the system for the democratic political life, so it has a fundamental significance for the democratic political life. If the candidate is voted through illegal measures, then the political implementation and official implementation are difficult to truly ensure the reflection and protection of massive peasants' basic interests; and the essence of the bribery is a kind of transaction with money, the successful candidate will certainly take advantage of the power after the election, grabbing the public resources for personal gain. So, not only the legitimacy of grassroots democracy has been questioned in rural regions, but also further affect the development of villages and the benign development of public affairs, and the bribery can even lead to the upgrading of contradictions as well as a series of black evil forces like acts of violence, intentional injury and crimes of blackmail and impose in rural regions, rising to become a non-controlled group events at last. Thus, in the consideration of confrontation and conflicts, villagers' sense of trust to the grassroots politics and even the degree of recognition of governance image will be greatly reduced, they may even do not trust the government any longer, leading to a strong centrifugal force to between villagers and the government. In accordance with such significance, to maintain the stability of the grassroots regime in rural regions as well as completely restrict the situation of bribery should be on the basis of the strong measures implemented by the government, may achieving significant consequence. And among massive powerful measures, the criminal law seems to be the most severe and effective way to deter the bribery.

3.2 To take the issue of bribery into the scope of criminal law is complied with the basic task of the comprehensive and complete protection for legal interests set by the constitution law, so it has constitutional basis

The present China's constitution law stipulates that the village committee is a mass organization of the masses. In recognition of such provision, China's villagers are given the right of autonomy from the level of constitution law in fact, and even established a mechanism of villagers' autonomy. It is undeniable that such provision is the supreme legal basis for both right and system of villagers' autonomy. In the meantime, China's constitution law also stipulates that 'the state should take responsibility of maintaining the social order, crack-downing on treason and other crimes against national security as well as crack-downing activities that endanger public security and disrupt the socialist economy and other crimes, punishing and reforming criminals', such provision provides a constitutional basis to recognize seriously harmful activities as criminal for China's legislative body. It means that the state is able to judge and choose harmful activities could be included into the crime circle and specific types, according to the change of social development and the requirement of social situation. Due to the spread tendency of the bribery and seriously social harmfulness, China takes such activity into the scope of criminal punishment, safeguarding the basic right of massive villagers, and there is nothing inappropriate.

3.3 Laws including the criminal law are lack of legal norms of governance to the bribery in rural regions from China's current legal system, so there is also a considerable urgency to improve the legal regulation for the bribery through legislation

Firstly, provisions about the election in China's current 'village committee organization law' are lack of unified specification for detailed operability. Implementation measures introduced in different regions are also lack of internal science and rationality in varying degrees, there are only basic principled provisions especially for actual situation of current villages, and there is no provision for reasonable operation; there is either no provision for some key issues or not to be in line with the current status of the development in rural regions, and there is also lack of effective legal systematic support when village level organization implements the relevant legal system.

Specifically, for the particular issue of the bribery, China's relevant laws are not very clear. At present, there is no specific explanation for the bribery in China's 'village committee organization law' and 'measures for election of village committee' established by different regions. The concept of the bribery has narrow scope of definition, and it also uncertain with epitaxial fuzzy, leading to difficulties to make the determination for activities whether should be belong to the bribery in practical work, as well as bring certain difficulties for handling events. For instance, what kind of activity should be considered as the bribery? Are there any limits to the amount of money and goods? Money and goods promised after the success of election could be recognized as the bribery, cannot they? How to distinguish between emotion and normal emotional communication bribery? That is to say, there is no strict and clear definition for the bribery of village in China's law, how can the identification and treatment of bribery governance be effectively curbed? How to truly implement the 'bribery reporting, investigation and solution' stipulated by law?

The current China's law is still lack of provisions for the supervision and management of the bribery as well. In accordance with provisions of the 'village committee organization law', the villages' self-governance is always carried out under the guidance of the township government in China. That is to say, whether the work of villagers' autonomy is good or not is intimately bound up with the guidance of the township party committee and government in a great extent. If the township party committees and governments cannot work according to law strictly, problems in the process of election will be shown up inevitably. At present, in the part of the village committee elections in China, the higher authorities and the relevant law enforcement agencies that are responsible for the guidance, do not take actions for investigation and reporting to the occurrence of such phenomena, and even some instructors and leadership of the election organized members to participate in the bribery directly,

which indicates the difficulties for the prevention and management of the bribery. If the phenomenon of the bribery occurs in the process of village committee election, the township level and even the district / county level have an unshirkable responsibility as a guidance mechanism, however, there is no provision of accountability to those superior department or direct leadership with suspected dereliction of duty, which would lead to the consequence that a few leadership of the higher authority cannot pay attention to the election work and the work of the villagers self-governance, serving opportunities for candidates who are supposed to take bribery in the election.

At present, provisions about agency to report and appeal the acceptance and investigation of the bribery are inconsistent in China's relevant laws and legal regulations. A common problem of such inconsistent provisions could blame for the massive authorized organizations to accept related reporting, but there is no clear definition about specific organization and various organs' respective effects to make decisions, and there is also no definition for how to process the issue that authorized organs do not handle in accordance with the law, as well as what kind of legal responsibility should be investigated. Massive management may easily come up with situations like multiple criteria, a variety of investigation results by multiple departments; and even suffer from the phenomenon of massive authorized organs without any actual actions at last.

Related laws and legal regulations in China basically concentrate on the bribe only for the punishment of identified bribery cases, and they are lack of necessary disciplinary mechanism to the bribee, especially to relevant leadership and directors. In addition, specific provisions on the punishment to people who participated the bribery is comparatively lighter than people imagined. In the 'village committee organization law' and 'measures for the election of village committee' in different regions, provisions about the punishment for the bribery only announced the election is invalid, giving criticism, instruction and administrative treatment; for those violated the 'public security administration punishment law', the public security organs have authority to process; if it constitutes a crime, it should be investigated criminal responsibility according to the law. Those disciplinary measures are comparatively lighter on one hand without any deterrent effect to the briber. On the other hand, due to the principle of disciplinary measures and the deprivation of rigidity, so related departments have comparatively large discretion to process such issues, sometimes they are too strict and inappropriate, or too lose to not investigation without any principles. From the investigation to major bribery cases with harsh impact, authorized organs basically cancelled the qualification of candidates as well as confiscated the funds of the bribery. If there are no any disciplinary measures for the punishment to the bribe, candidates cannot aware of the illegality of bribery in the election, so it is impossible to eliminate the market of the bribery.

Secondly, as the protection and auxiliary backing method for all kinds of laws, the criminal law is still lack of effective regulation for the bribery in villages. The article 265 of the criminal law stipulates the crime of disrupting elections: 'while voting representative of people's congresses at various levels and the leadership of the state organs, for those people who undermine the election or prejudice the implementation of the right to vote or to be elected freely by representative, through violence, threat, deception, bribery, forgery of electoral documents false ballots and any other methods with serious fact and details, they will be given a sentence of three years of fixed-term imprisonment, criminal detention or deprivation of political rights'. Apparently, in accordance with provision of 'the village committee is an autonomous organization of the masses' based on China's 'organization law of the villagers committee', members of the election of village committee are natural management for the election of mass autonomous organization at the basic level, and they do not belong to the scope of election of deputies to the National People's Congress and leadership of state organs specified in the crime of disrupting elections. Thus, China's criminal law is still lack of the legislation for the adjustment of the village bribery in the election process. Such deficiency and vacancy have reserved enough space and room for taking the bribery in rural regions into the scope of criminal law in fact.

It is necessary to explain that to take the villagers' bribery into the scope of criminal punishment does not violate the principle of China's criminal law and its labeling theory.

At present, in the basic theory of China's jurisprudence of the criminal law, an increasing number of literatures prefer to apply the principle of modesty of the criminal law to analyze on whether some harmful activity should be deserved to be a crime, evaluating the legitimacy of such crime. [4] However, in fact as an issue in the criminal legislation, the state has its own legislative discretion and right to choose, the principle of modesty does not have absolute direction and value that must be followed. [5] In aspects of the issue of the bribery in rural regions, the huge social harmfulness of such activity affects the stability of the order to grassroots political authority and the public attitude for or against the peasants, so, to take such activity into the criminal punishment, why not? Moreover, from the existing legal provisions, village committee also has comparatively big public power, for instance, the management of the land and other property belonging to peasant collectives, organized economic cooperation, settlement and management of public affairs and welfare undertakings, the construction of water conservancy, roads and other infrastructure, the assistance of maintaining the social security in villages etc., from the actual operation, because the village committee acts as the role of 'agent' of the township level government, the village committee also has many power with the nature of the state power institutions except for texts. In recognition of characteristics above, the judicial interpretation of the Article 93 of current China's criminal law stipulates that members of the village committee who expropriate the collective property should be punished as a corruption, recognizing members of the village committee as national staffs. Under these circumstances, as the upper and front activity that are in intimately bound up with the corrupt activity of village committee members, why not to convict the bribery by the criminal law, regarding as a violation of public authority? In addition, from China's social situation at present, because legal norms related to the bribery is relatively lack of interoperability, as well as the lack of punishment dynamics and supervision strength in practice, other legal measures that regulate the bribery are nearly failure; in case of the failure of other legal protection, introducing the criminal law into the bribery, it is the so-called principle of modesty to the righteousness by scholars, isn't it?

Meanwhile, literature also prefers to oppose the bribery into crime through the labeling effect brought by criminalization. To demonstrate the negative effect of the crime by labeling theory actually ignored the protection for the majority of the citizens' basic rights. And, for people who does not comply with the law of villagers' autonomy, the bribery implemented by them has caused serious damage to the national democratic political order and self-governance system, for this kind of 'failure' people, posting criminal label is a kind of punishment and retribution for actors, and it can objectively promote other people who are motivated to form a moral taboo on the activity, in order to avoid implementing the crime of bribery again. [6] That is to say, to make the bribery criminalization and make full use of the label effect can help the majority of villagers to establish a modern legal concept for correctness and mistakes, forming a moral taboos and the bottom line for the crime, so this positive effect is more worth being paid attention.

It is more necessary that to take the bribery in rural regions into the scope of criminal punishment will not undermine the formation of the rural self-organizing order of self-government, and even not cause the regression to the practice of autonomous system.

Some people are worried about the intervention of the criminal law to rural autonomy, they consider the criminal law stretched too wide with strong interference, and that will hit and destroy China's grassroots democratic self-governance system, which was just developed. In fact, there is no need to worry about that. The premise of the so-called self-organizing theory emphasized is that each individual and organization fully enjoy freedom as well as do not carry out illegal acts as basic bottom line and premise under the framework of autonomy. Criminal law is the bottom line of social laws and legal regulations, it is obviously that there is undeniable for any country to interfere and combat for activities that violated the bottom line of the national basic system. Historical experience also

shows that the stability and autonomy of any social order are nothing, if a country's democratic autonomy in order without any stipulation of powerful measure of criminal law as the auxiliary and the bottom line, and any kind of moral education and discipline are weak and feeble. [7] In short, the application of the criminal law set up the bottom line of activity norms for villagers' autonomy, to shape the moral taboos for the 'bribery is a crime' can truly guarantee the healthy development of villagers' self-governance system in China.

4. Conclusion

It is undeniable that clear definition for the bribery in villagers' election has positive meaning of the rule of law to the governance of the criminal law.

Initially, in the period of China's rapidly social transformation, to take the bribery of village committee into the scope of criminal punishment can effectively prevent the spread of bribery of election in rural regions in short period of time. It is also significant to comprehensively and completely protect rights of peasants' autonomy granted by the constitution law, as well as maintain the orderly stability and moral authority for villages' grassroots political power. As a result, on the basis of the completion of temporary tasks, the spread of the bribery could be controlled from the perspective of mechanism, providing necessary period of time to develop and improve the mechanism of villagers' autonomy, so as to complete the 'cure' task.

Additionally, to curb the bribery of election in rural regions through criminal measures can achieve the task of the constitutional protection of legal interests, meanwhile, speeding up the design for legislations and system than any other relevant legal area, which will help to rapidly establish modern mechanism of self-governance in rural regions.

Eventually, to take the bribery of election into the scope of criminal punishment can effectively break a variety of hidden rules and relationship network formed over the years, and to use the 'specific and clear rules' of national mandatory bottom line instead of 'hidden rules' to bring up brand new thoughts and habits on the basis of the rule of law in accordance with rules and regulations. Because most of people feel fear to the criminal law, so once taken the 'prohibition of bribery' into the criminal law as a doctrine, such rule of the bottom line would be bound to be effectively observed, so as to gradually desalinate the factor of human relationship in the causes of bribery, ultimately promoting massive villagers to exercise the right of villagers' autonomy in accordance with national rules of modern rule of law.

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