

Research on the Civil Disputes Private Relief ——A Case Study of the Civil Dispute Resolution in the Tibetan Folk

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Abstract

Anthropologists provide a lot of evidence to prove that the early civil society resolve disputes with private relief as the norm, while the Tibetan people resolve disputes with their own habits and wisdom, usually by the family of authority came forward to mediate, followed by the temple monk mediation, they often can achieve effective results. Therefore, the communication and cooperation of public power relief and private relief form a diversified dispute resolution mechanism and safeguard the Tibetan legal order commonly. The development of a diversified dispute resolution mechanism and the pluralistic coordination of conflicts of interests are the hallmarks of China's modernization and the symbol of the establishment of a harmonious society in the modern sense.

Keywords: Tibetan folk, dispute resolution, legal order, family, private relief, lawyer

1 Introduction

Dispute resolution is directly related to the control of the conflict, the realization of public rights and the stability of social order, we are now too concerned about the "book of law" how to resolve disputes, as "Act of Act" The role of contention is often overlooked by legislators. How to move from static to dynamic, from books to reality, is worthy of the law of thinking, to Professor Fan Yu, represented by academic experts has been committed to this problem. It can be said that the dispute resolution mechanism is a core part of the rule of law, its

reasonable allocation for the maintenance of social order and promote social harmony is essential. "Law embodies the order of national life, social life, spiritual life and economic life, but in any case is not their only order; in parallel with the law there are many of the same value, to some extent may be more effective order. "China is now in a period of social transformation and transformation, to effectively solve all the social contradictions and disputes, just rely on the judiciary is not enough, but also the formation of multi-level, diversified pattern of comprehensive management of social order. The Tibetan experience is to introduce folk customs Justice, and effective social governance, the formation of a holistic organic harmonious social order.

2 The civil disputes private relief

In the civil law remedy model, the court becomes an arena controlled by judges and lawyers who master the skills and methods of litigation. The parties as the main body of power embodied more symbolic meaning, unfamiliar with the law, in the process of the strange, obedient, it is difficult to decide the direction and outcome of the case, this relief system limits the scope of the right relief, due to judicial relief Limitations, leading to the relief effect and the expectations of the huge gap between the ultimate, the logic of the strict relief system may often lead to the overall disappointment of the law. The cost of private civil action involves: economic cost, time cost, opportunity cost and ethical cost. Many parties do not count the cost to win the litigation, resolve disputes, more parties are the least input, the largest output, so many people in public relief after the disappointment turned to find other ways to resolve disputes.

Representatives of the natural law school, Comte, Spencer, Durkheim, Malinowski, Radcliffe Brown, etc., argue that all cultural or social phenomena have a certain function, but the function is not irreplaceable. Similarly, the law as a social phenomenon is also functional and its greatest function is to resolve disputes and maintain social order, of course, the law also has alternative products. We should give space to other forms of social control that are conducive to the protection of civil rights and preserve its existence. Anthropologists provide a lot of evidence to prove the early civil society to resolve disputes with private relief as the norm, the state and the court has not fully established public relief to maintain social order, people rely solely on private relief to resolve disputes. The Greek law of private relief is prevalent, and the history of Roman law is a private force from relief to the development of public relief. Modern society, according to Black and others research shows that: in the United States when citizens encounter legal problems, most of the small and medium-sized cases they will not pass the court, even if the police or lawyers informed, the possibility of help is also very small. For more than \$ 1,000 in civil cases, only 1/10 of the Americans will contact lawyers, lawyers only about 1/2 of these cases prosecuted, prosecution after more than 90% of the cases outside the court settlement, civil proceedings only 1% ratio. In Japan, private disputes, both procedurally and physically, try to avoid the Court's solution through

extrajudicial channels. Through the ancient and modern facts show that all expectations of civil disputes through the court to determine the way to resolve is almost impossible, and in Tibet to rely on private relief to resolve disputes is not uncommon.

3 The Tibetan regional resolve disputes

"In the pursuit of the rule of law in China, perhaps the most important thing is not to copy the Western legal system, but to pay attention to those in China's social role, perhaps inconspicuous habits, practices, people pay attention to repeated games and proved effective and useful Otherwise the formal law will be circumvented and may bring catastrophic damage to social order and culture. "The state allows people to use various means and means to resolve social conflicts and to deal with social disputes rather than A single dependence on national power and the operation of the national legal system, which means that the national legal mechanism of action outside the dispute resolution mechanism of the parties to take the initiative to choose the status of the Tibetan people to resolve their own habits and wisdom, usually by the family authority People come forward mediation, followed by the temple monk mediation, often can achieve less effective results.

The settlement of dispute in Tibet is a kind of special private remedy, which involves the parties of the dispute to welcome the authority of the family or the monks of the local temples to mediate and settle the contradictions and disputes between the two parties. According to the local morality, As well as the practice for the two sides to open solution, after the parties reached a mediation agreement, under the auspices of the mediation agreement reached, the parties will actively perform..

Case 1:

A village in Tibetan village A and B village adjacent to the grass, B village in 2008 to a piece of grassland-based village all the grounds, occurred several cross-border grazing behaviour, after the local Living Buddha mediation, the two villages are recognized the original boundaries. The case is a typical Tibetan folk dispute resolution methods, the traditional Tibetan legal culture, as well as the local special geographical environment, economic conditions, determines the Tibetan region has its own unique civil mediation mechanism, especially religious people involved in mediation civil disputes Become customs and traditions.

Statistics: Tibet Shannan Zetang town has simple folk customs, the traditional culture of deep areas. According to statistics in January 2010 to August the local court is only one civil case, other disputes in the village with the customary law mediation. Zetang town stammer, Bureau Lin, colour wheat three villages, virtually there is a more effective civil rights relief system. In these villages, for the general principles of civil law, marriage law and inheritance law and other laws and regulations, not to mention well-known, is to understand some of the contents of the few people who live in the natural formation of the order. These

villages are not without disputes, but disputes are relatively small, even if disputes occur, but also in the village in accordance with customary law to resolve their own mediation, and sued the court civil disputes almost no.

In summary, the civil rights of private rights in the Tibetan model of rights protection since ancient times, the national statute law in the local more to play a deterrent effect and its symbolic significance is far greater than its practical significance, but we have to say: Culture, morality and ethics are the soil of its growth. Once formed, folk customary law will deeply influence people's thinking mode.

4 The communication and the complementarity between private relief and public relief

The complexity of social relations and diverse, so that the rulers of the social relations and legal relations with the goal of a dream. In a society with a low degree of rule of law, people's legal consciousness is weak and the scope of the law is very limited. The imperfect law itself, the deterioration of the rule of law environment, for moral, religious and other non-legal control means to provide a broad space for development. For example, the "ritual" of Chinese social traditions and the "teaching" of Islamic society have formed good social order. Because of the economic factors, geographical environment and cultural characteristics, the Tibetan areas cannot fully play the burden of maintaining the social order in Tibet. Therefore, the Tibetan public relief and private relief coexist, and jointly safeguard the local civil law order.

4.1 Private relief can effectively compensate for the deficiencies of national statutes

Due to the limitation of human reason, it is impossible to exhaust all the social relations of mankind, and it is also bound to the existence of the problem of the adjustment of social order in the law system, which is not only the folk law but also the law of state. In order to remedy this shortcoming, various informal sources of law play a complementary role. In the area of community governance at the township level and below, the formal state law cannot and does not necessarily exhaust all aspects of rural life, Of the blank area should be handed over to the rural autonomous organizations in accordance with local conditions and local conditions to develop the relevant norms, at this level, the rural rules and regulations have irreplaceable features. Second, the rural rules and regulations have a strong binding force. It is precisely because the rural rules and regulations are generally the villagers in accordance with their own needs to develop social norms, the resulting system of the statute is closer to the life of the villagers, targeted, and develop procedures to carry forward the spirit of democracy, and its binding based on people's Participation and consent will also become stronger.

4.2 Private relief model can save national legal resources

One of the basic effects of local self-government lies in resolving the contradictions and disputes in the region through the self-decision of the public, effectively saving the limited judicial resources of the country and using the power of morality, ethics, custom and authority to safeguard the local social order. Folk way to resolve disputes, you can intangible repair interpersonal relationships between acquaintances, to resolve the righteous resentment, compared with national legislation in terms of more effective.

4.3 National enactment is the protection of civil rules

The state enacted by the national coercive force to protect its implementation of the different forms of illegal acts of accountability. Unlike the statute law, civil rules and customs do not have the guarantee of state coercive power, and its implementation mainly depends on the consensus among members and the pressure of public opinion. Because of the lack of compulsory security force, folk custom and so on sometimes cannot be effectively implemented, so the national statutory law is the protection of folk rules, the effectiveness of civil rules to play, still rely on the majesty of national law.

4.4 Civilian private relief and public relief is more conducive to the stability of Tibetan social order

Professor Chen Xingliang in "the greatest feature of the law is to make people into its people," said: the perfect law should have a human touch, so the law should have a human foundation, containing a reason, the law should not only sweep autumn leaves as harsh, But also a warm spring-like warmth, the only way we pursue the law. "Order does not mean that disputes and contradictions of the cover, which means the settlement of disputes and conflicts, conflicts and dispute resolution process is undoubtedly the subject of relief mode choice exercise of the process. Whether it is to choose public relief or private relief model, the ultimate goal is to achieve the normal operation of social order. Law developed law is not an increasing number of signs, nor is the scope of the law is growing, but the law and its surrounding folk resources, organic combination of Tibetan folk In the construction of the legal order, the cohesion between the national statute law and the native local resources is more harmonious, the happier cooperation and the better social order.

"Referee is a very luxury dispute resolution, so let all the civil disputes are resolved through the referee to the idea is unrealistic. While ignoring the constraints of reality and wantonly advocate referee omnipotent, but most disputes through the referee "" Some laws are not intended to be enforced, but may simply convey a signal that a law encourages or opposes an act. "As can be seen from the above case, it is clear that, No court, no judge, no state coercive intervention, but the Tibetan areas still maintain the order of peace, to convey the concept of good governance of the world. Therefore, we believe that: public relief and private relief in Tibetan areas the perfect combination of private relief

in the "public power" figure, the public power of relief in the "private power" figure, so private relief and public relief Even the horizontal, for the comfort of social order will be no better.

As a professional legal person should guide social organizations to actively participate in the handling of civil disputes, and through the exertion of the power of special social organizations, such as disputes in Tibetan areas can play the family and the temple monk power, enhance the settlement The Effect of Civil Disputes.

Conclusion

For the country, private relief is an indispensable force; for the private, the choice of relief is a very important part of private autonomy. Although our country often carries on the activity of "sending law to the door ", "judiciary to the countryside" and "popularizing of law education", it has not fundamentally reversed the status of the civil code in the civil society. Therefore, some people think: maintaining the relationship between Chinese society and people is the etiquette rather than the law, it is not just rights and obligations. Building a harmonious society has become a long-term direction of our efforts, and harmonious society must be the society which recognizes the pluralistic, and the development of a wide range of dispute resolution mechanisms, the interests of the diversity of coordination is the logo of Chinese modernization, but also the harmonious society symbol of the establishment of a modern sense.

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