

Study of People's Mediation System from the Perspective of Social Management Innovation

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Abstract: As an effective means of social management, the People's mediation system plays an important role in resolving disputes, maintaining social stability and promoting social harmony and it enjoys the reputation of "Oriental Flower" and "Oriental Experience" in the world. However, with the development of market economy and the changeable of social contradictions types and the disputes subject, People's mediation system has many problems during its application. So it is necessary to further improve the People's mediation system and promote the realization of the value and function of the System in the context of social management innovation.

Keywords: Social Management Innovation; People's Mediation; Improvement

1. Introduction

After the founding of new China, the Chinese government established the centralized planned economy system, which combined the national political domination and social management. Although, this kind of management system played a certain role in specific historical period, it constrained the thought of the whole society and against the development of social management. After the reform and opening up, the planned economy system collapsed. The content and scope of the government functions changed a lot, the state and the government was no longer omnipotent, and the state had been unable to achieve highly centralized management to the society. The diversified social development trend needs to diversify the subject and measure of social governance, the market, enterprises, social organizations, and grass-roots organizations taking the stage, and the growth of "civil society" power can not be ignored. The report of the 17th National Congress of the Communist Party of 2007 put forward to "establish and improve the Party leadership, government responsibility, social coordination, public participation in social management pattern", in which social management is incorporated into a more complete system framework. In the end of 2009, national political and legal work in television and telephone conference stressed "to resolve social conflicts, innovate social management, and enforce the law with fair and honest", thus, the innovation of social management become one of the three key works. Social management innovation refers to an activity and a process that the government and social organizations grasp the political, economic and social development trend, research and apply the new social

management theory, knowledge, technology and methods, innovate social management concept, institutional mechanisms, means and ways according to the social operation and development law, in order to achieve social good governance. [1] Social management innovation requires the common governance of state and society. It emphasizes the government and the society to achieve a steady situation of mutual cooperation, power balance, coordination and complementary in the management of public affairs. The People's mediation system emphasizes the full mobilization of social forces to solve social contradictions, forming complementary to the state's judicial activities, which according with the requirement and concept of social management innovation.

2. People's Mediation System and Social Management Innovation has Consistent Value Goals

The value goal of social management innovation is to realize the good governance of the society. The essence of social management is the management and service of people, the fundamental requirement of socialist system and social management innovation is to realize and maintain the fundamental interests of the broad masses of people. The innovation of social management is to achieve the good governance of the society, realizing and showing the ethical values and moral ideal which contained in modern society. The so-called good governance is to make the people's basic human rights generally respected; citizens' Constitution and legal rights are protected according to the law; pluralistic society interest and social resources are allocated reasonably; social con-

traditions resolved effectively and social disputes solved according to the law; the overall interests of the society and social harmony order are maintained effectively; the social justice can be fully realized, and the people are satisfied with the social security, social justice and the happiness of life.

(1) The people's mediation system is conducive to saving resources and achieving efficiency. As the value goal of social management innovation, good governance requires the social management to reflect the efficiency, not only to save resources, but also to make full use of social capital. The people's mediation system is a kind of dispute settlement mechanism, which is from the society, serving the masses, its biggest advantage is flexible and efficient, and the result is easy to accept with high performance rate. Whether the setting of people's mediation committee or the arrangement of the conciliation procedure, they regard facilitating the parties as the starting point. The people's conciliation committee does not charge any fees in conciliating cases, which greatly saves the human, material and financial resources to resolve the disputes, and also create the conditions for optimizing the allocation of resources. Most of the parties who apply to people's mediation system to resolve the disputes are mostly having a more specific social relation due to the blood, the regional relationship. People's mediation system fully considers this social capital, and dispute settlement results are not only conducive to maintaining the existing social relations, but also contribute to the formation of social relations in the future.

(2) The people's mediation system is conducive to the realization of recovery and relief of the right, achieving fairness and justice. As the value goal of social management innovation, good governance is to realize and safeguard human's rights. The reasonable setting of the dispute settlement mechanism is directly related to the realization degree of the right. Resolving disputes through litigation, the dispute settlement results may deviate from the substantive justice due to the limitation of procedural justice. Thus, it can not relief the right and resisted by the parties. Based on simple fairness perceptions, people's mediation system combines the moral emotion and relative affection between the family and the neighborhood, providing a good interactive channel for the two sides of dispute in the basis of the consensus of parties. In a sense, it is far beyond the function of resolving disputes, but also playing a role in communication and balance of legal norms, moral rules, good habits, etc, which is conducive to the restoration and relief of rights, and easily accepted by the parties.

(3) The people's mediation system is conducive to the establishment and maintenance of a harmonious social order. The society under good governance should be a good order society. In contrast to the order are various conflicts and disputes. Therefore, to resolve the disputes

effectively and restore the destroyed social order is the ideal state under good governance. The people's mediation is based on the party's self-solving and mediation, no need of following strict procedures and fact-finding. The people's mediation takes policy and law as the institutional medium, dispute and sense and reason as the important basis in resolving dispute. On the basis of compromise and concession, both of the parties achieve satisfying conciliation agreement, which resolve the dispute and maintain the social relation and the stabilization and order of the society. This order is a kind of "spontaneous order" formed by the agreement between the parties, which has an internal affinity with the masses. It is also the important driving force to build and maintain harmonious social order that is different from "the artificial order" build by the national laws.

3. Problems Existing in the Practice of the People's Mediation System in China

After entering the twenty-first Century, the people's mediation system has got the unprecedented attention in China. In 2002, justice ministry promulgated Provisions on People's Conciliation Work; the Supreme People's Court promulgated Several Issues Concerning the Trial of Civil Cases Involving People's Mediation Agreement. In August 28, 2010, People's Mediation Law promulgated, which is the first law specialized in people's mediation system. It greatly promoted the development of the people's mediation system. But because of the change of the social structure, the increase of the types of disputes and some defects of the system itself, the people's mediation system has many problems in practice.

(1) The application scope of the people's mediation system needs to be adjusted. According to the Civil Procedure Law and People's Mediation Law, the people's mediation system is applicable to "disputes among the people". But "disputes among the people" is a very general and vague concept, theoretical cycle has not yet made a unified concept. It is often understood as the disputes between citizens concerning personal and poverty rights. Therefore, many scholars define the application scope of people's mediation as disputes of the basic civil rights and obligations between citizens, such as the neighborhood, family, succession and so on. The parties are confined to the citizens, and the content is limited to the disputes in family, neighborhood and other basic civil rights and obligations. However, with the continuous development of China's economy and society, the parties in civil disputes have been significantly expanded, and the content is not limited to family, neighborhood and other basic civil rights and obligations. Many new contradictions and disputes have been absorbed in people's mediation in practice process, such as disputes due to the land acquisition, medical insurance, and immigration compensation and so on. In Beijing, Shanghai and other

places even minor criminal cases are also included in the scope of the people's mediation, and achieving a relatively ideal social effect. This shows that define the scope of people's mediation as "disputes among the people" in legislation resulting in the not-scientific and ambiguity of people's mediation's application scope, so that controversy coming out about whether people's mediation can be applied to some new social contradictions and disputes in practice.

(2) The effectiveness of people's mediation agreement. The effectiveness of people's mediation agreement is the key to whether the people's mediation system can get social recognition, and it also restricts the development of people's mediation system. Both the practice and the research indicated that the important factor of people's mediation developing into bottleneck is that the people's mediation agreement is not effective. [3] Several Issues Concerning the Trial of Civil Cases Involving People's Mediation Agreement stipulate people's mediation agreement has the nature of civil contract, strengthening the legal effect of the people's mediation agreement. People's Mediation Law stipulate conciliation agreement has legally binding, and clear the judicial confirmation system of the conciliation agreement. On this basis, Several Provisions on the Judicial Confirmation Process of People's Mediation Agreement promulgated by Supreme People's Court in 2011 and Civil Procedural Law (amendment bill) formally implemented in January 2013 regulate judicial confirmation process of people's mediation agreement, marking the people's mediation agreement judicial confirmation system formally established in China. It is undeniable that these Provisions solve the problem of the effectiveness of the people's mediation agreement in some extent, which is a big progress of legislation. However, these provisions do not fundamentally solve the problem of the low efficiency of the people's mediation agreement.

First of all, the people's mediation agreement itself can not be used as the basis of the compulsory execution, it can't be forced. Second, the judicial confirmation of the mediation agreement procedure requires the parties apply for the People's Court together. This provision is no doubt caused a certain obstacle for the parties to start the judicial confirmation process. At the same time, it offers both parties extra time to regret, affecting the effectiveness of people's mediation agreement. And also, legislation dose not make special provisions of the basis of court's review mediation agreement, leading to the court review the mediation agreement according to the juridical basis, and ignoring the specificity of mediation, which is not conducive to the development of the people's mediation system.

(3)The organization is not perfect. At present, the establishment of the people's mediation organization is very difficult to meet the requirements of various types of civil

disputes under the new situation, the requirements of the parties' diversified demand. From the actual operation of the people's mediation, the village committees and neighborhood committees generally set up a People's Mediation Committee. However, the establishment of the people's mediation organization in enterprises and institutions is not optimistic, many enterprises do not set up the people's mediation committee, when the staff of enterprises and institutions have disputes, many parties can only choose by the way of labor arbitration, litigation and other ways to solve, the people's mediation organization is difficult to play its due role in the real sense. Meanwhile, with the development of our country economy, emerging industry places are constantly emerging, people's mediation organizations of these new enterprises and institutions, markets, industrial parks and environmental protection, medical, health industry and other fields is still relatively weak, people's mediation organizations covering social network framework has not been formed, some new social conflicts and disputes cannot be resolved by people's mediation.

In addition, the overall knowledge level and professional literacy of the Chinese people's mediators is not high, the number of people's mediators is insufficient, and so it is difficult to meet the needs of mediation work. Relevant data show that China people's mediators have a college degree or above accounted for only 14.4 percent. [2] Many members of the local people's mediation committees are mostly local respected elders or members of grassroots autonomous organizations, they rely mainly on dispute handling practices of the local personal experience and prestige, use the "feeling reasoning" to resolve disputes, the capacity of using law or relying on policies to deal with disputes is a serious lack. When solving some complex cases or new disputes, this personal authority mediation model without institutional protection often appear less effective.

(4) The connection problem of people's mediation and other dispute resolution methods. People's mediation as a way of dispute resolution with Chinese characteristics, how to properly deal with the relationship with administrative mediation, judicial mediation, and civil litigation, is the important basis to ensure that the system functions maximize, it is also in favor of the system to be recognized and accepted by society. Each kind of dispute resolution has its own advantages and disadvantages, and it plays a unique role in resolving social contradictions and disputes. At present, the number of civil disputes in China has surged, and the types of disputes are changing, and the parties' demand is various, so it is necessary to build a sound and smooth dispute resolution.

Relevant laws and judicial interpretations made provision to the cohesion and coordination of people's mediation system and the civil action, First, to the disputes that suitable for people mediation, the Basic People's Court

and the Public Security Organs can inform the parties before the case, the parties have the right to submit an application to the people's mediation committee; Second, to the provision made by people's mediation system asked by the Court, we can say it basically solved the "the coalition of suit and mediation" problem. However, about dispute resolution, the people's mediation, administrative mediation and judicial mediation each performs its own functions, it is contrary to realize social management innovation.

4. Improving the People's Mediation System to Achieve Social Management Innovation

Social management innovation requires to use synthetically a variety of social management means, to improve the scientific level of social management and achieve a healthy operation of society. Under the requirements of social management innovation, the people's mediation system should make full use of social resources, improve the relevant procedures, so as to achieve the complete settlement of disputes, build a harmonious society, and promote the realization of social autonomy.

(1) Pay attention to the important role of the people's mediation system to resolve social conflicts. People's mediation system is a dispute settlement manner formed under the influence of Chinese traditional culture. By the "moderation", "harmony", "lawsuit" influence of Confucian traditional culture, Chinese people are more inclined to take the way of not intense, not confrontation, not destroy social relations to solve the dispute, and the people's mediation system precisely in line with this requirement, this system not only protect the party's "face", but also completely alleviate and eliminate social conflicts, maintain a harmonious relationship between the parties, which is the most welcome way to solve the dispute by social people. At present, China is still a "acquaintance society", using national judicial activities to solve social conflicts, the solution of the case too often pursue legal effects, while ignoring the social effects, the result of judgment is sometimes difficult for the parties to accept, and that often lead to intensification of social contradictions. Therefore, whether it is from the national conditions of our country, or the perspective of social management innovation, we should pay attention to the people's mediation system as an important role to public dispute settlement and the relief mechanism.

(2) Further expand the application scope of the people's mediation system. First, the people's mediation system is a way of dispute resolution that closest people, its application scope should not be limited to the disputes of the rights and obligations between the parties, in the social life, there are many disputes arising by violating public morality, it not involve either the law or the rights and obligations, but the dangers of them are great, and they are easily intensified and transformed. Therefore, it is

necessary to put this part of the dispute into the application scope of the people's mediation, and maximize the function of the people's mediation system. Second, at present, social contradictions presents the trend of diversity in our country, new contradictions emerge one after another, such as the dispute between the cadres and the masses caused by the contract disputes between the farmers and the village collective, family planning, collection, etc, and service disputes, labor disputes, relocation disputes, which far exceed the scope of civil rights and obligations, the people's mediation need to face the reality bravely, give full play to the role of settling disputes, put the new conflicts and disputes into the scope of work, to build a "mediation" pattern. Finally, minor criminal cases should be incorporated into the scope of people's mediation, which is not only beneficial to the prisoner, but also make full use of social resources to resolve disputes, so as to protect the reasonable and centralized use of judicial resources.

(3) Enhance the effectiveness of people's mediation agreement. To strengthen the people's mediation agreement and protect its effective performance is an important way to give full play to the functions of the people's mediation system. In the United States, Norway and other countries, the mediation agreement has execution efficiency. The author believes that we should draw on the provisions of foreign countries to strengthen the effectiveness of the people's mediation agreement. In view of the fact that our country's mediation personnel business ability and professional knowledge is not high, it is not suitable for giving mediation agreement enforcement potency, but it can set up an objection period for the people's mediation agreement. During the objection period, if the parties do not make an objection, the agreement will get enforcement. In addition, we should reform the judicial confirmation process. First is to reduce the conditions for the start of the judicial confirmation process, make stipulation that one party can apply for the start of the judicial confirmation process. The second is based on the specific nature of the people's mediation, it made special provisions for the reason that the courts examine people's mediation agreement, in order to distinguish them from resolving disputes by administering jurisdiction by the courts.

(4) Strengthen the building of people's mediation organization and team. People's mediation organization is the "frontier" of people's mediation work, for protecting smooth settlement of civil disputes, we should continue to establish and improve grassroots people's mediation organizations, formed people's mediation network covering the whole society. Meanwhile, at the area where the people's mediation needs large and economic conditions relatively good, we can learn from Shanghai, "Li Qin studio" experience, fully mobilize social resources to

promote market-oriented and community-oriented people mediation organizations.

In order to improve the mediation quality of the cases, we still need to further strengthen the mediators' mediation capacity and level. People's mediation system derives from the people and serves the people, therefore, the threshold should not be set too high, we can improve their operational capacity by enhancing judicial business training for mediators. On the set of training content, in addition to the relevant laws and regulations and theoretical knowledge of policy, we must also pay attention to the mediators conduct training, such as modern mediation principles, mediation concept, ethics and mediation skills, techniques and methods and other aspects. Additionally, we can expand the scope of people's mediators, such as hiring retired judges, prosecutors, academics or experts, lawyers in a particular field, and other staff for people's mediators, play their strengths, so as to improve the overall quality and enrich people's mediators team.

(5) Build the work system of the "multipartite mediation". "multipartite mediation" refers to under the unified leadership of Party committees and governments, coordinated by the comprehensive management department of political and legal departments, business guided by judicial administrative departments, specific operated by the mediation center, functional departments full participate in, by integrating various mediation resources to deal with the social conflicts and disputes. The purpose is to integrate civil mediation, administrative mediation, judicial mediation, and other kinds of mediation resources, to resolve disputes in the grass root. [4] Under the new social situation, constructing multipartite mediation system smooth and functional complementary consisted of the

people's mediation, administrative mediation and judicial mediation is practice needs to solve various disputes and maintain social stability and orderly harmony. From the people's mediation to the "big mediation", it is not only a simple expansion of the scope of mediation from the civil disputes to social contradictions, but also a kind of sublimation and revolution of mediation concept; It is not only from the traditional mode to the innovation mode, but also attitude and policy that maximum limit protect the legitimate interests of the people when the state and the government solve the social contradictions and disputes; it is not only a dispute settlement mechanism from center on lawsuit to mediation priority to choose, but also higher value pursuit to the dispute settlement mechanism of fair, justice, efficiency, harmony, and it is very fit to social management innovation value target. At present, the legislation does not make clear rule to the "multipartite mediation", many places actively explore and establish the multipartite mediation mechanism with local characteristics according to the local characteristics, and has achieved good results in practice.

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