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Position of Village Regulations and Folk Conventions in the Villager Autonomy System

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Abstract The Villagers' Charter of Self-government, as a senior form of village regulations and folk conventions, is the general charter of villagers' self-government. It is a small constitution of villagers, so it holds an important position in the villager autonomy system. Such position gives the credit to both historic and realistic objective factors. Rise of state power, vacancy of legislation, accumulation of excellent traditional resources, and democracy and contract spirit in village regulations and folk conventions will certainly accelerate development of village regulations and folk conventions and promote gradual improvement in the villager autonomy system.

Key words Village regulations and folk conventions, Villager autonomy system, Villagers' Charter of Self-government

1 Introduction

In the beginning of the 1980s, China launched the villager autonomy system in rural communities. Villagers should implement self management, self education and self services in accordance with laws. Rural autonomous organizations should implement democratic election, decision-making, management and supervision, to fully safeguard legal rights and interests of villagers and stimulate enthusiasm and creativity of villagers. Villager autonomy means rise of administrative power of the state, and villages practice self-governance in compliance with laws. However, the practical situation is that rise of the state power is not accompanied with implementation of laws in rural areas. Retreat of state power at village level and vacancy of legislation provide place for rejuvenation of grass-root village regulations and folk conventions. Accordingly, village regulations and folk conventions naturally become important folk rules restraining and regulating villagers' actions, realizing collective action of public affairs, and maintaining rural social stability. At this background, it is necessary to discuss position and functions of village regulations and folk conventions in the villager autonomy system.

2 Village regulations and folk conventions, and Villagers' Charter of Self-government and their position

Village regulations and folk conventions are codes of conduct for self management, self education, self discipline and self service of villagers. They are formulated on the basis of relevant laws, regulations, and policies, in combination with local realities, involving village customs, social public morality, public order, and security administration 1. According to this nature and background of the

villager autonomy system, village regulations and folk conventions have following characteristics. (1) Consensus: Village regulations and folk conventions are consensus of villagers, conform to interests and values of all villagers, and agreed and recognized by all villagers. (2) Autonomous: Village regulations and folk conventions are not implemented by force, but observed by villagers consciously. (3) Regional: Every village has its own regulations and conventions, so some regulations and conventions are suitable for one village, but may not be suitable for other villages 2 . (4) Fuzzy: Village regulations and folk conventions are not strictly implemented like formal laws. They are generally influenced by rural interpersonal relationship, blood relationship, and special situations of villages, so the implementation effect is various. (5) Conflicting and complementary: From the relationship between village regulations and folk conventions and national laws, the former must comply with the latter, however some constraint and punishment provisions of village regulations and folk conventions often conflict with laws. From the perspective of village administration, they are complementary, but still keep certain distance to each other, and not actively interfere with each other.

Village administration is mainly based on *Organic Law of the Villagers Committees of the People's Republic of China*, *Villagers' Charter of Self-government*, and various village regulations and folk conventions. The *Villagers' Charter of Self-government* is comprehensive rules formulated for villager autonomy by villagers committees in accordance with national laws, regulations and policies in combination with local realities. It is the highest and most integrated village regulations and folk conventions in villager autonomy system, so it is called a small constitution 3 . The *Villagers' Charter of Self-government* covers all rural affairs, including rights and obligations of villagers, forms of villager organizations, economic management, and rural social order. The state regards the *Villagers' Charter of Self-government* as a small constitution of rural areas, reflecting important position of village regulations and folk conventions with the *Villagers' Charter of Self-government* as representative in the villager autonomy system. Through analysis on

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existing *Villagers' Charter of Self-government*, we can clearly find out why village regulations and folk conventions hold the important position in the villager autonomy system. Practice has shown that rural decrees and regulations, as models of modern village regulations and folk conventions, establish village affairs leadership mechanism through public vesting of powers; insist on public decision making of village affairs, and set up and improve democratic decision making mechanism; insist on public trust, and set up and improve democratic management mechanism; insist on public review of results, and set up and improve democratic supervision mechanism, to turn original village officials administering villages to system administering villages 4 . Therefore, the *Villagers' Charter of Self-government* is the general charter for villagers managing their own village affairs and holds an important position in the villager autonomy system. Village regulations and folk conventions with *Villagers' Charter of Self-government* as the representative reflect its legal position through supervision over village committee and officials. In affairs involving interests of villagers, village officials are likely to seek their personal interests by means of their own legal status. In this situation, village regulations and folk conventions with *Villagers' Charter of Self-government* as representative set forth many rules, become important codes of conduct limiting officials, and thus safeguard interests of villagers to the maximal extent. In the practice of rural grass-root democratic autonomy, village regulations and folk conventions naturally become core parts of villagers, and become the legal basis of limiting careless administration of village officials 5 .

3 Reasons for core position of village regulations and folk conventions in the villager autonomy system

3.1 Limited shrinkage of state power from villages providing space for rise of the villager autonomy system From the foundation of new China to the beginning of the reform and opening-up, state power went deep into the social bottom, and every aspect of rural production and life was directly limited by restraint of state power. The new government set up new structural form, *i.e.* state – collective – farmer individual 6 . People's commune type village regulations and folk conventions were abandoned. The Cultural Revolution started in 1966 and later Anti – Confucianist Campaign regarded village regulations and folk conventions from ideological and political levels as reactionary, decadent and backward products of feudal society 7 . Along with the establishment of new rural organization structure and infusion of new ideology, traditional clan organization and old ideas were destroyed deliberately, rural autonomy space was completely squeezed, and village regulation and folk conventions seemed to be dying down. After the reform and opening-up, the state power shrank upward within limited degree, and implemented new system of village administration of rural politics in grass-root rural areas. The state power set township level, and village level organization practiced villager autonomy, then village regulation and folk conventions as major system of villager autonomy obtained restoration and development.

Village regulations and folk conventions with *Villagers' Charter of Self-government* as the representative get widely concluded in various levels of village organizations, various single village regulations and folk conventions spring up and it forms the new upsurge of development of village regulations and folk conventions. Both the temporary rise of state power and retreat of state power from villages provide large space for autonomy of rural society, but also bring temporary not adaptable. At this background, the state pushes forward establishment of rural grass-root autonomous organizations, and advocates and regulates rural endogenous order, to fill the temporary "power vacuum" appeared in rural society. Therefore, some original valuable traditions of rural society are explored and used again. Village regulations and folk conventions play a significant role in maintaining rural production and operation order, coordinating rural relationships, stabilizing rural social order, altering old customs and habits, and promoting rural moral construction. Restoration and development of village regulations and folk conventions are inevitable results of rise of the state power after the reform and opening-up, are specific manifestation of villager autonomy, and also reconstruction of endogenous order of rural society.

3.2 Vacancy, misplacement and ahead of legislation providing possibility for village regulations and folk conventions bringing into play

Professor Zhang Jing believed that in ideal status, the state (legal order) enters rural order generally in two ways. One is legislation, namely, the state promulgates laws as standard for regulating grass-root order. In this situation, grass-root power is institution enforcing national laws, so it should not have independent legislative authority (unless specially authorized), but should take the supervision of implementation of national laws as work objective. The other is arbitration, namely, the state does not interfere with grass-root control rules, but settles the conflict by arbitration. Since arbitration result must be enforced by grass-root unit, the authoritativeness of arbitration should not largely depend on the executor, while grass-root unit generally apply its own rules to settle certain affairs. These rules are not promulgated by the state, and in most cases, they are not explicitly prohibited. In other words, they are in fact approved silently. In China, most cases in rural areas are close to the second type 8 . The summary of Professor Zhang Jing is comprehensive, but it is still necessary to study ways of arbitration to find out actual effect of national laws in rural areas. In general, existing quantity and quality of legal institutions, especially grass-root judicial personnel, obviously fail to satisfy demands of numerous rural disputes and cases. In modern society, legal system is relatively complete, but it still fails to cover every aspect of rural society. Village regulations and folk conventions have similar problem. They come from rural life, effectively make up for shortage of national laws in rural society, and become important parts of rural multiple regulation systems. Ahead and misplacement of national laws in rural areas are important basis for existence of village regulations and folk conventions. Cao Jinqing found that leaders of grass-root

government often make complaint, and have no way to settle conflict with villagers. Although the state has issued many laws and regulations, these laws and regulations often lose their effect due to failure to grasp realities of rural areas. Chinese legal history indicates that modernization of legal system should not simply copy western modern legal system. Foreign legal system should undergo the process of absorbing local resources, thus conflict appears between overall quality of backward farmers and leading laws. Thus, in the transformation period of rural society, it is obviously impractical to completely rely on national laws to solve problem of rural social order. Inevitable loopholes of national laws do not conform to actual life of villagers, and will reduce expectation and trust of villagers. Nevertheless, village regulations and folk conventions are consistent with production and life of villagers, and conform to willingness and feelings of villagers, so they are major systems regulating various relationships of villages and become quasi laws building harmonious rural endogenous order.

3.3 Deposit and inheritance of excellent traditional resources making village regulations and folk conventions survive as a type of culture and lifestyle From the perspective of the form, village regulations and folk conventions are not initiated by contemporary villagers. They have their history and they are contemporary manifestation of traditional village regulations and folk conventions. From the viewpoint of the content, contemporary village regulations and folk conventions reflect basic relationship of modern rural society. Although contemporary village regulations and folk conventions are different from traditional ones that advocate Confucian ethical codes and rite order, excellent parts of traditional village regulations and folk conventions are absorbed by contemporary village regulations and folk conventions and become basic reference of contemporary village regulations and folk conventions. Traditional and contemporary village regulations and folk conventions come down in a continuous line, so they are basically consistent with each other in essence.

Traditional village regulations and folk conventions enlighten villagers, formulate disciplinary rules, prohibit bad habits such as gambling and fighting, guide value concept of villages, regulate behavior of villagers, and realize pure and nice social custom^[10]. Therefore, traditional village regulations and folk conventions not only educate villagers through Confucian culture and ethics, but also regulate and settle disputes of villagers. Even in the period when the state power directly controls rural society and actual life of farmers, traditional ideas and folk order with village regulations and folk conventions as representative have not disappeared. Some ideas of traditional folk order have not disappeared, especially in rural areas, strict household registration system fixes farmers in rural land, and then basic content of folk order implemented and maintained by folk organizations are kept and continued in such fixed groups. For example, in property inheritance, children bearing, wedding and funeral, house and tomb building, a lot of aspects keep traditional customs^[11]. Rise of contemporary village regulations and folk conventions reflects that traditional folk order,

to a great extent, conforms to actual life and emotional demands of villagers, and their content and form are not separated from traditional resources^[12]. Close attention of the state to reasonable parts of traditional village regulations and folk conventions directly promotes development of village regulations and folk conventions. Therefore, in the context of villager autonomy, important position of village regulations and folk conventions obviously comes from education, regulation and coordination values of traditional village regulations and folk conventions.

3.4 Village regulations and folk conventions containing democratic and contractual spirit promoting constant improvement and development of villager autonomy system

The implementation of villager autonomy is in fact the process of establishing contractual relationship, awareness of governing by laws, and advocating democratic spirit in rural areas, while democratic and contractual spirit contained in village regulations and folk conventions just meet demands of villager autonomy. Etymology of village regulations and folk conventions can better explain for this. Village regulations and folk conventions are codes and rules concluded by villagers after discussion and negotiation of certain matter of their village, for common compliance of participants. These rules, no matter in oral or written form, reflect willingness of villagers and conform to realities of village life. Therefore, no matter in conclusion form, contract content, or attitude of villagers to regulations, they manifest certain contractual and democratic spirit. However, some scholars express different opinions. Dang Xiaohong believed that most traditional village regulations and folk conventions, from initial proposal to later formulation and implementation, are guided and led by rural elite class, so they have remarkable mark of knowledge and value of rural elite class, which directly influences value orientation of traditional village regulations and folk conventions^[13]. For this question, Japanese scholar Hiroaki Terada gave full explanation "although there is initiative institutional relationship in the conclusion of village regulations and folk conventions, it is undoubtedly that their basic part lies in consensus between participants"^[14]. The *Organic Law of the Villagers Committees of the People's Republic of China* specifies that villagers committee can formulate and revise villagers' charter of self-government, and village regulations and folk conventions. Thus, consensus of villagers is the precondition of village regulations and folk conventions, while the approval of villagers committee or assembly is an inevitable process. After approval, village regulations and folk conventions may become written or be disclosed on the wall, and become actions of villagers. Village regulations and folk conventions fully respect willingness of villagers at the time of conclusion, and the content also fully reflects nature of villager autonomy. Some provisions involving control of village environment, administration public affairs, protection of collective resources, maintenance of village security, and punishment measures also fully reflect realities of villages and willingness of villagers. Thus, as one of institutional arrangements of the villager autonomy system for rural social classes participating autonomous

management, village regulations and folk conventions have strong democratic and contractual features¹⁵. In sum, no matter in content or conclusion process, village regulations and folk conventions manifest modern contractual and democratic spirit, although there is certain deviation in practice, the general direction of villager autonomy will not change, so the village regulations and folk conventions still hold very important position in the villager autonomy system.

4 Conclusions

The *Villagers' Charter of Self-government* is a senior form of village regulations and folk conventions, and also the important system basis of villager autonomy. Together with other single village regulations and folk conventions, the *Villagers' Charter of Self-government* makes up the important rules and basis for self management, self education, and self service of villagers. Both history and experience have proved that village regulations and folk conventions initiated by villagers and advocated by the state will certainly further promote improvement and development of rural villager autonomy system. In addition, bringing into play the right to participate and speak of villagers in formulation and implementation of village regulations and folk conventions can not only ensure practical effect of village regulations and folk conventions, but also ensure achievements of the villager autonomy system fundamentally.

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