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Study on the Influence of Informal institution on Rural Legal Construction in Northwest Ethnic Minority Region

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Abstract The Informal institution in Northwest Ethnic Minority Region has dual effects on rural legal construction. In the process of rural legal construction, it can make up for the defects of formal institution to reduce the cost of legal construction, and increase benefit. It also has negative influence on social function, and can't be conducive to the social stability, development and harmony. Civil law is to be more valued, thus avoiding and hampering the implementation of national laws and even covering the operation of national laws, so it is impossible to achieve rule of law. The coordinated development of Informal institution and socio-economic development in Northwest Ethnic Minority Region will contribute to stable and harmonious social development in Northwest Region.

Key words Northwest Ethnic Minority Region, Informal Institution, Rural Legal Construction

1 Introduction

The rural construction in Northwest Ethnic Minority Region needs to be ensured by the rule of law, and rural legal construction is inseparable from the local resources in rural areas. The Informal institution in rural community has become one of the key influencing factors. In parallel with the national formal institution, the rural Informal institution has a profound effect on rural legal construction, and there is a need to fully understand its connotation and strive to make the Informal institution closer to the formal institution. The Informal institution has both positive and negative effects on rural legal construction. Over the years, the government has attached importance to the negative aspects of the Informal institution but ignored the positive side so that the Informal institution is marginalized and suppressed. Overall, a good Informal institution has more positive effects on society than its negative effects, and vice versa.

2 Positive effects

2.1 Reducing the construction and operation cost of legal system Northwest Ethnic Minority believes that informal constraints can prevent opportunistic behavior in transaction; in order to reduce the uncertainty of the consequences of the transaction, help the transaction entities to form stable expectation, and lower transaction costs. If the legal system is unscientific and unreasonable or scientific but without being effectively implemented, the costs of operation and social risk costs will be increased. In the process of rural legal construction, Informal institution can also reduce the cost of the legal construction. The formation, implemen-

tation, monitoring and change of the rule of law can't be divorced from social reality, and is bound to be affected by ethics, customs and other Informal institutions. The provisions of formal institution have shortcomings or lag, and Informal institution pre-exists the fact, so it can prevent, control and make up for the shortcomings of the formal institution. In some areas that can be regulated by the Informal institution, it can replace the operation of the legal system to reduce unnecessary legal expenditure. In addition, in the process of implementing the system, if we disregard the traditional culture and customs of a region, it will easily lead to weak implementation of the system, and even increase additional system implementation cost. The long evolved customs and traditions are necessarily the best way after cost choice. Compared with the understanding, learning and operation of the formal institution and even high risk and high cost of "official charge", cost advantages of Informal institution really show its strong competitive side. Cost choice of system is heavily dependent on credit support and interpersonal communication and institutional functioning cost in a society with good faith is far less than in a society with bad faith. Zhang Weiying believes that the operation of legal system is inseparable from the credibility foundation. Good reputation contributes to the best equilibrium between high efficiency and low cost of system. In the society with developed Informal institution, acquaintance, religion, traditional culture may inherently contain reputation which enables the Informal institution to play a real role, partly supports the implementation of the formal institution, and reduces transaction costs and cost consumption brought by enforcement.

2.2 Induced change by Informal institution Informal institution can be transformed into formal institution, and formal institution can be also transformed into Informal institution. Economist Lin Yifu divides institutional change into mandatory change and induced change. Induced changes are usually caused by Informal institution. In legislation, China implements alternative provision on the national customs and habits in Ethnic Minority areas, which

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can not only maintain the harmony and stability in Ethnic Minority areas, but also contribute to legal construction. This exemplifies the induced change of formal institution by Informal institution. Only by the absorption and transformation of Informal institution in favor of social development can the institutional innovation be induced. For example, the Informal institution arrangement of Xiaogang Village in Anhui Province has a positive impact on agricultural production, directly contributing to the later rural reform adopted by the central government and inducing the system change. Finally, it evolves as part of the formal institution. An example of induced change of judicial system is trial. Now some local courts add some habits during the trial and increase some reasoning ingredients such as traditional culture and ethics. It certainly helps to identify with judgment, and this situation shows a growing trend in Chinese judicatory judgment. The factor of induced institutional change should blend with the rule of law, and it must not violate the basic principles of law and the rule of law. It is necessary to emphasize the rule of law and consider the contribution of Informal institution. The formal institution can also induce the change of Informal institution. In the current new rural construction, the state will use more policies, laws and other formal institutions, to directly guide and transform the humanities and social factors in rural areas. The rural Informal institution factors after being changed will absorb more consciousness and philosophy of modern society, and adapt to the national law background on the whole. The active use of these legal resources will play a role in promoting the rule of law in rural areas.

2.3 Making up for deficiencies in the operation of legal system The implementation of rural rule of law mainly relies on law, but the law can't fully control and govern society, and there are a lot of deficiencies and imperfections that must be made up for by Informal institution, so two systems coexist. However, the Informal institution only plays a supporting role, and the future of rural legal construction lies in the rule of law, and if we overplay the fundamental role of the Informal institution in rural social life, it will dilute and even exclude the influence of rule of law, which is extremely unfavorable to rural social development.

3 The negative impact of Informal institution on rural legal construction

3.1 Risk of coexistence of two sets of "laws" The current civil law study has become a new hot spot of jurisprudence research, but it is noteworthy that civil law must not override the official system because of emotional factors. Based on the political position, system is often unitary rather than plural, and dual legal structure can't be equally treated. In Chinese reality, civil law can only be placed in a secondary position in system, thus avoiding juxtaposition of two sets of legal systems without distinction. The presence of two legal systems will enable civil law to be more easily valued, so as to circumvent, hinder and replace the implementation of national laws, and even cover the operation of national law, so it is impossible to achieve rule of law.

3.2 Causing variation of rule of law A good Informal institution can make the formal institution more rational and cause the formal institution to change for the better. A bad Informal institution will lead to variation of the formal institution, and mingle the formal institution with the factors that breach social harmony and legal regulations, so that the formal institution retrogrades. Some behaviors in grass-roots legal practice, such as exploiting the connection, pulling strings and giving dinners or sending gifts in order to curry favor, can always reduce the formal institution performance, and worsen the law enforcement results, thereby bringing down the prestige of formal institution and weakening laws.

3.3 Obstructing the rule of law in rural areas In rural areas of China, the family system is the most widespread presence of Informal institution. The rural family is not only exclusive, but also powerful in terms of internal cohesion, so in face of law enforcement, it may form a powerful force to block law enforcement. Once law enforcement is stymied, both the family and government sides will bear a greater cost. The law is mainly established in a stranger society, and the acquaintances in rural community are reluctant to see the law in acquaintance groups, and probably exclude the law. Conspicuously, if the Informal institution is improperly used, rural legal construction will suffer.

3.4 Negativity of rule of man Some people think that the Informal institution is based on natural economy and commodity economy, which mostly reflect the identity features. The formal institution hinges on market economy, which mostly reflects the characteristics of the contract. Although there is a contractual element in Informal institution, the implementation of the system lacks public security mechanism, so identity factors are prominent in the operation of Informal institution, and the rule of man is placed in a key position. Fundamentally, the principles of the rule of man in Informal institution have impeded the realization of the principles of the rule of law in formal institution. The rule of man can influence people's life, but can't decide the future of society and the state.

4 Adverse impact of Informal institution

There may also be problems in some formal institutions, and there are loopholes and defects (such as bad laws) in the formal institution, so it is likely to generate the Informal institution to make up for these imperfections. For example, leapfrog petition is an Informal institution arrangement by the petitioners who believe that the appeal system at the lower level has limited ability to solve problems or even is impossible to handle. The failure of local petition system erodes people's trust in local government, and they believe that the government at higher levels can enforce the law impartially for the masses. Another example is the phenomenon of private debt collection, and the reason is that the decision made by the court can't be performed, and the litigant has no choice but to adopt the way of private debt collection to achieve better effect than litigation.

5 Regulating the regional ethnic autonomy and improving democracy and rule of law

5.1 Regional ethnic autonomy is a basic national policy and political system to solve the ethnic problem Regional ethnic autonomy is that under the unified leadership of the state, various places inhabited by the Ethnic Minority establish self-government bodies for the exercise of autonomy and implementation of regional autonomy. Implementing the regional national autonomy shows that the state sticks to the principle of realizing equality of all ethnic minorities, unity and common prosperity, and reflects the unification of ethnic factors, regional factors, political factors, economic factors, historical factors and realistic factors. In China, the enactment of regional ethnic autonomy laws and implementation of regional ethnic autonomy system show full respect for the ethnic minorities' rights to their internal affairs. China currently has established 155 ethnic autonomous areas, including 5 autonomous regions, 30 autonomous prefectures and 120 autonomous counties (banners). In addition, more than 1100 ethnic townships have also been established. According to the provisions of the Constitution and the Regional Ethnic Autonomy Law, the ethnic autonomous areas have extensive autonomy. The General Assembly in the ethnic autonomous areas has the right to make modifications to the laws and administrative regulations in accordance with local political, economic and cultural characteristics. The ethnic autonomous areas have autonomy to manage local education, science, culture, health and sports, protect and consolidate ethnic cultural heritage, develop ethnic culture, and independently arrange and manage local economic construction. The regional ethnic autonomy system also ensures that the ethnic minorities can independently manage the ethnic affairs and democratically participate in the management of state and social affairs.

5.2 Managing state affairs according to law, promoting law-based administration and improving the ability of local governments Government's capacity is an important issue that must be addressed for the rural grass-roots democracy and social autonomy in Northwest Ethnic Minority Region. It is necessary to enhance the grass-roots government's capacity building, in order to improve the level of social management in Ethnic Minority areas, and promote economic, political, cultural and social development in Ethnic Minority areas. It is necessary to strengthen the building of grass-roots democracy system, petition and surveillance system and make government affairs transparent, so that a variety of platforms are established for the ethnic minorities' political participation. It is also necessary to improve the administrative legislation planning, pay close attention to the priorities that people are most concerned about, further expand the public participation in the legislative work, broaden the channels to listen to the advice, and constantly enrich the form of public participation in government legislation; extensively carry out legal education and publicity activities for different objects, and further publicize laws to local institutions, enterprises and urban and rural communities, in order

to increase the legal knowledge of the cadres and masses; strengthen the publicity and education of laws and regulations that can maintain social stability, and strengthen the publicity and education of laws and regulations closely related to rural reform and development, social harmony and stability, people's production and life, and national unity and progress. On the one hand, it can meet the growing needs of political identity of ethnic minorities; on the other hand, it can strengthen the legal construction in Ethnic Minority areas, to promote social equity, prevent corruption, and improve ethnic minorities' identification with state authority, government authority and political authority. There is a need to improve the existing legal system, and develop relevant laws and regulations in accordance with the special social environment and political environment of Ethnic Minority Region, to promote coordinated and orderly social development.

References

- [1] [USA] Clifford Geertz. Local knowledge: From the perspectives of facts and law [M]. DENG ZL (Translator), Beijing: Sanlian Bookstore Press, 1990. (in Chinese).
- [2] YANG JX. Chinese northwest minority history [M]. Yinchuan: Ningxia People's Publishing House, 1988. (in Chinese).
- [3] YANG P. Study on the customary law of the ethnic minorities of western China [M]. Lanzhou: Gansu People's Publishing House, 2012. (in Chinese).
- [4] WANG SY. Study on the government deeds civilization and right guarantee of franchise in the ethnic minorities of western China [M]. Beijing: People's Publishing House, 2011. (in Chinese).
- [5] YI J. Study on the formal institution in the rural legal construction [M]. Beijing: China University of Political science and Law Press, 2012. (in Chinese).
- [6] WAN MG. Study on the value and national identity from the multi-culture horizon [M]. Beijing: Nationalities Publishing House, 2006. (in Chinese).
- [7] GENG XZ. The course and basic experience of treating religious problems in the national minority of new China [M]. Beijing: Religion and Culture Publishing House, 2010. (in Chinese).
- [8] WANG WG. The interaction and coupling: Informal institution and economic development [M]. China Social Sciences Press, 2007. (in Chinese).
- [9] FEI XT. Discussion on the northwestern development and regional economy [M]. Qunyan Press, 2000. (in Chinese).
- [10] NAN WY. On the social life of Islam and northwestern Muslim [M]. Xining: Qinghai People's Publishing House, 1994. (in Chinese).
- [11] WANG ZL. Study on political behavior of farmers and herdsmen in the northwestern areas in China [M]. Lanzhou: Gansu People's Publishing House, 1995. (in Chinese).
- [12] YUE TM. Study on China's west minority areas economy and society coordinated development [M]. China Social Sciences Press. 2009. (in Chinese).
- [13] WANG ZL. The relation on creating new institution and the modernation of western minority region [J]. Journal of the Northwest Adult Education, 2002 (4): 26-31. (in Chinese).
- [14] ZHAO LS. An analysis of the contents, characteristics and necessity of the modernization of the ethnic society [J]. North West Minorities Research, 2003(2): 67-73. (in Chinese).
- [15] QIN H. The movement of peasantry, urbanization, labour rights, and the exploitation of the western China [J]. Zhejiang Academic Journal, 2002 (1): 33-45. (in Chinese).
- [16] WANG HY. The cognition of democracy and the rule of law [J]. Lanzhou Academic Journal, 2015(2): 136-142. (in Chinese).