

Study on the Application of Tibetan Customary Law in the Judicial Practice of Tibet Autonomous Region

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Abstract: Due to its vast territory, numerous ethnic groups and long history, Tibet Autonomous Region has formed many ethnic and regional customary laws in its long-term historical and regional life. These ethnic customary laws are closely related to their daily life. Therefore, we can not completely negate the customary laws of ethnic minorities, but also need to maintain the majesty of national laws. Here, the author will discuss the judicial application of Tibetan customary law: "Polygamy" "compensate price" and other customary law as an example to the Tibetan customary law on criminal cases and civil cases in the Tibet autonomous region to discuss two kinds of cases, discusses minority nationalities' customary laws in the civil and criminal cases, social effect analysis of customary law in the judicial practice and the applicable feasibility of customary law in the judicial practice, And put forward to perfect the Tibetan customary law in the judicial practice of the application of suggestions.

1. Introduction

The Fourth Plenary Session of the 18th CPC Central Committee put forward the theory of building socialist rule of law with Chinese characteristics, and to build a complete system of legal norms. In the process of rule of law construction, the customary laws of ethnic minorities, as the running rules of ethnic areas, are a useful supplement to the laws formulated by the state, and have extremely important practical significance for maintaining the social order of ethnic areas, promoting the development of economic construction, strengthening ethnic unity and ethnic legislation. It provides a research space for exploring the judicial application of minority customary law.

As the local legal resources of Tibet Autonomous Region, Tibetan customary law plays an indispensable role in the judicial practice of Tibet Autonomous Region and has received good social effects. And how to correct understanding of the value of customary law in the judicial practice, the customary law in the judicial practice in the field operation and running paths, customary law and national conflict and reconciliation, further explore the state of customary law in the increasingly perfect the feasibility of running in the enacted law, fully exploiting and utilization of local resources, It is a difficult problem that must be solved to promote the rule of law in Tibet and the building of a socialist rule of law system with Chinese characteristics.

2. Basic Situation of Customary Laws in Tibet

Due to its vast territory, numerous ethnic groups and long history, Tibet Autonomous Region has formed many ethnic and regional customary laws in its long-term historical and regional life. These minority customary laws are more or less related to the daily life of the corresponding minorities. Therefore, we can not completely negate the customary laws of ethnic minorities, but also need to maintain the majesty of national laws.

3. Customary Law and the Formulation of Theories of Adjustment by the State

Article 10 of the General Provisions of the first part of the Civil Code of the People's Republic of China stipulates: "Civil disputes shall be handled in accordance with the law; Where the law does not provide, customs may apply, but public order and good customs may not be violated." Customary law is a legal concept with definite meaning. National law is a law guaranteed by the coercive force of the state, and customary law is an effective supplement to the law enacted by the state. The function of customary law needs to be redefined and evaluated, and customary law is still an important source of law in the world. The conflicts between national customary law and national law are mainly reflected in: the conflict between the text structure of customary law and national law, the conflict between the civil and commercial norms of customary law and national law, the conflict between the property custom of customary law and national law, and the conflict between the behavior punishment of customary law and national law. The adjustment of national customary law and national law is mainly reflected in the following aspects: mutual supplement of customary law and national law in legal texts, mutual integration of customary law and national law in civil, commercial and economic transaction rules, mutual adjustment of customary law and national law in national property rights, mutual reference of customary law and national law in criminal punishment.

4. The Historical Origin of the "Compensation for Life" System in Tibet Autonomous Region

The customary law of "price for loss of life" is a very representative criminal legal system in the customary criminal law of the Tibetan people. It usually refers to a system in which the perpetrator compensates a certain amount of property to the victim's family after the occurrence of a murder case, such as intentional homicide or negligent death, in order to calm the contradiction between the two sides and exempt the perpetrator from criminal punishment. [1] As early as the Tubo period, the customary law of "compensation for life" had formed a relatively sound system. Since Tibet formally included in the map of our country in the Yuan Dynasty, the customary law of "loss of life" has been developing continuously on the basis of the inherited traditions in the Yuan, Ming and Qing dynasties, and was in use until the eve of democratic reform.

At present, some scholars believe that the customary Tibetan law of "price for loss of life" has no existing social judicial value in judicial practice and should be abandoned. However, it is worth mentioning that some spirit of the customary law of "price for loss of life" in judicial practice has a certain positive effect on maintaining social stability.

5. The Historical Origin of Polyandry in Tibet Autonomous Region

In the fifty-seventh year of Emperor Qianlong's reign, Tibet Chronicles recorded: "There were three or four brothers in a family, and they married only one wife. If you have children, brothers choose between them, and the woman who can live with three or four brothers is considered beautiful because she can run a family." [2] It is a relatively authoritative description of polyandry

marriage in Tibet. Luosang Gyatso, the fifth Dalai Lama, recorded in the Annals of Tibetan Princes: "In the 14th and 15th centuries, the family Zhongqian Jianxu had two sons, Zantang Gongza and Gongxie. The second son married Tashi Jimo, the daughter of Yarongwula, and her wife had three sons: Zhongqian Huixiang, the first son, Puchi, the second son, and Puziza, the third son." [3] is a more authoritative description of polyandry marriage in Tibet.

6. Advantages and Disadvantages of Ethnic Minority Customary Laws

The advantage of the customary law of ethnic minorities is that it can be recognized by the same ethnic minorities in the same region, which can handle the conflicts and disputes between the same ethnic minorities in the same region well and avoid further intensification of contradictions.

The customary laws of ethnic minorities have certain national and regional limitations, which cannot be used in a wide range, and may violate the national laws on some issues, or even challenge the legal authority and judicial authority.

7. How to Apply the Customary Laws of Ethnic Minorities in the Judicial Practice of Ethnic Autonomous Areas

In judicial practice, the application of national law and ethnic minority customary law is a problem worth exploring and pursuing. The movie "Court on Horseback" does a good job of telling us how judges handle criminal and civil cases in minority areas.

8. Conflict between the Principle of Legality and the "Price of Death"

In Tibetan-inhabited areas, it is still popular to adopt the customary law of "price for loss of life" in dealing with various murder and injury cases. Some people said: "Kill people to pay for their lives, hurt people to pay for their blood." Grassroots leaders also reflected: "Now to handle a homicide case, there are two procedures to go through. One is to go through the procedures of the political and legal organs; Second, we should handle the procedures for the loss of life through the coordination of the people." Otherwise, first, disputes and related problems among the people will not be completely solved, leaving a potential source of instability. Second, the social effect of rigid punishment is not good. The defendants and their relatives will be condemned and threatened, and even their lives will be threatened, which will affect social stability. [4] Tibetan people agree more with the customary law of "price for loss of life", have different understanding and pursuit of fairness and justice, and the law itself has loopholes and insufficient supply and so on.

9. Use of State Law and the Customary Law of Minorities in Criminal Cases

If Party A causes the death of Party B due to negligence or intention, according to the customary law of the Tibetan People's Republic of China, Party A needs to compensate the family members of Party B with the financial compensation equal to the price of Party B's life. Party B's family will no longer hold Party A responsible for the death[5]. In fact, this is against the legal spirit of our country, because there is no shortage of rich people in Tibet Autonomous Region, so this kind of "losing one's life" and not being legally liable is irresponsible to the low-income Tibetan families. However, in the present judicial practice of China, the Tibetan customary law of "loss of life" can be used in the pre-court civil mediation of criminal supplementary civil litigation. The two sides reached an understanding agreement, and the criminal part will be judged by the judge according to his discretion and the wishes of the victims' families. As shandong dongying city intermediate people's court, of course, the original Zhang Shizhu judge in criminal trial team says, the judge will

give full consideration to the victim in the criminal verdict families will, but not in the victim's family intend to decide, but on the basis of national law, after listen to the will of the victim's family, the comprehensive decision of case nature, social influence. Therefore, in the trial of criminal cases, the family of the victim is a very important reference standard, but it is not the decision standard of the case outcome. For judges, the decision standard of the case outcome is the national law.

The Criminal Law of the Republic of China is the last bottom line that the state and the people can tolerate for criminal acts, represents the highest will of the state and the people to punish criminal acts, and is the lowest code of conduct that every citizen must abide by.

The "revenge of blood relatives" in some places of the Tibet Autonomous Region is a challenge to the bottom line of our law and contempt of judicial authority. For the phenomenon and behavior of "blood relatives revenge", judicial organs should deal with it in accordance with national laws.

10. Use of State Law and Customary law of Minorities in Civil Cases

Because there are many ethnic groups in Tibet Autonomous Region, and the distribution of all ethnic groups is in a state of large mix and small settlement, the selection of national laws and ethnic minority customary laws should be done with caution.

When civil disputes between different ethnic groups are involved, judicial decisions must be made in accordance with national laws, which can best show fairness in such cases. When civil disputes involving the same nationality in different regions are involved, due to the differences in customary law, judicial decisions should be made in accordance with national laws.

When THE civil dispute involving the same region and the same nationality, the pre-litigation mediation can be conducted according to the customary law of the ethnic group, if the pre-litigation mediation fails, the judgment should be made according to the national law. For example, the Tibetan "polyandry" marriage and family still exists in some areas of Tibet Autonomous Region. When the family property division problem arises, Tibetan customary law is given priority to mediation. If the mediation fails, the judicial organs will use the relevant marriage laws of our country to make a judgment. In this way, the "law" of national law and the "sentiment" of Tibetan customary law can be reflected, which is an important expression of "sentiment" and "law" in the judicial system.

11. Conclusion

The criminal Law of the People's Republic of China must be used for the conviction and sentencing of criminal crimes, which is the bottom line of the state and a reflection of the public power of the state. For general civil disputes, the customary law of the local ethnic minorities is preferred for mediation, and the Civil Code of the People's Republic of China as a supplementary means of settlement is a reflection of the private rights of ethnic groups, which conforms to the spirit of the system of regional ethnic autonomy.

In the judicial practice of Tibet Autonomous Region, the main reason for the problems in the application of national laws and ethnic minority customary laws is that the power organs at all levels shirk each other and the popularization of laws is not in place. The popularization of the law is related to the fairness of judicial trials and social stability. If the popularization of the law is not in place, it is easy to cause the parties to question the fairness of the law and judicial organs in judicial trials, which will cause social unrest and is not conducive to the social stability of Tibet Autonomous Region. In case trial, both the national law and the customary law of ethnic minorities should be taken into account to ensure the stability and harmony of the society.

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