

The Alternative Dispute Resolution Mechanisms in a New Acquaintances of Society

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Abstract

With the advancement of market economy and modernization of the rule of law in China, the traditional acquaintance society, which has brought some negative impact on our rule of law, has gradually disintegrated and a new form of acquaintance society is being formed. We should give up the long-standing ideological prejudice against the acquaintance society and re-examine it with a neutral perspective, we will find the inherent connection between ADR mechanism and the acquaintance society. At the same time, the new acquaintance society also has a natural preference for ADR mechanisms. At present, ADR mechanism in China needs to be adapted to our local resources, and only by continuously improving ADR mechanism and resolving social conflicts and disputes through extra-litigation channels as far as possible, can we actively guide the people to protect their rights and resolve conflicts and disputes according to law, provide a good business environment for the development of market economy, and guarantee the rule of law for the overall situation of reform, development and stability.

Keywords

Alternative Dispute Resolution; New acquaintances of society; Non-litigation dispute resolution mechanism; Legalization.

1. Introduction

For China, the "new era" has become a label for its development, a process of value change, order reconstruction and civilization regeneration, an era of deconstruction and reconstruction - various theories and systems have been reinterpreted, and China's dispute resolution mechanism is no exception.

With the advancement of market economy and modern rule of law in China, the traditional acquaintance society has faded away from us. In the view of some sociological scholars, Chinese society is now a "semi-acquaintance society" [1] or "acquaintance society without subject" [2], while some scholars believe that the acquaintance society has disintegrated and modern society is moving from acquaintance society to stranger society, but some scholars also question and criticize these concepts. However, some scholars have questioned and criticized these concepts. Although these concepts are not based on in-depth arguments, they convey an important signal that the traditional acquaintance society no longer exists in the present.

According to the established mainstream view, the decline of the acquaintance society means the arrival of the spring of the rule of law, because the acquaintance society and the rule of law are mutually exclusive and incompatible. However, if we abandon the ideological prejudice against the acquaintance society and re-examine it with a neutral perspective, we will find that the disintegration of the acquaintance society is not necessarily a blessing for the rule of law. meanwhile, a large number of studies show that ADR mechanisms are precisely based on the acquaintance society, and the acquaintance society is a necessary condition for the existence of ADR mechanisms in this sense. In this sense, there is no ADR mechanism without acquaintance

society. The concept of new acquaintance society is also proposed to explain the social basis for the continuation and development of ADR mechanism.

2. Rule of Law Problems Faced by Traditional Acquaintance Society

In traditional acquaintance societies, there exists a complex set of cultural mechanisms and logics of action that effectively regulate the social order by acting on human behavior. Traditional acquaintance society is like Emile Durkheim's link society - "We speak of this society as link because it is born of the repetition of many mutually similar clusters, just as a link worm is integrated by many links " [3]. The term "acquaintance society" is generally believed to have been pioneered by Mr. Fei Xiaotong in his famous book "China in the Countryside", in which he argues that traditional Chinese society is a society of acquaintances, characterized by a personal relationship between people, who are connected through this relationship to form a network of relationships. [4]Background and relationship are the typical words of the acquaintance society. The saying "acquaintances are good" is also a simple expression of acquaintance society. This kind of acquaintance society is a set of face, favor, relationship and a set of familiarity-based system, and sometimes they will produce some bad negative effects, which is mainly reflected in the generalization and improper use of favor and relationship (favor), which will bring some negative effects to the social order, especially when the favor crosses the private life and is applied to the public sphere, it is easy to bring the corruption of public power and some social injustice. Some social injustice. The fundamental purpose of judicial activities is to be fair and neutral, and the forms of achieving fairness are physical justice and procedural justice. In the traditional society of acquaintances, where the rule of law is not ideal, it is difficult for individual judges to get rid of external interference even if there is a recusal system and a lifelong accountability system that can ensure procedural justice to a large extent.

3. Alternative Dispute Resolution Mechanisms in China

Traditional China envisioned a commonwealth society, as described in "The Book of Rites - Rites of Passage": "The Way of the Great Way is to make the world a common place, to select the virtuous and the able, to speak of faith and to cultivate harmony. Therefore, people should not be alone with their relatives, not alone with their sons. So that the old have an end, the young have a use, the young have a place to grow up, the widow, the widower, the orphan, the lonely, the invalid, all have support. Men will have a share and women will have a home. The goods are not hidden in the ground; the power is not out of the body, not for themselves. That is why the plan is closed and not rise, theft and chaos and thieves do not make, so the outer door and not closed. This is called the Cosmos." In the Cosmopolitan world, people live in harmony with each other and get along well with each other. When disputes occur, people tend to settle disputes and conflicts by alternative dispute resolution mechanism and try to avoid using litigation mechanism to maintain the harmony among themselves.

3.1. Mediation System

The oldest alternative dispute resolution mechanism in China is the mediation system. In the early days of China, when disputes occurred, they were basically resolved by mediation, which was the most common and effective way to resolve disputes at that time. In the Analects of Yan Yuan, it was said that "I am a man who hears lawsuits, and I must also make there is no lawsuit". The history of the mediation system can be traced back to the Western Zhou Dynasty, in which there was an official system of "the post of mediator", that is, there was a special official responsible for mediation to resolve disputes among the people and strengthen the harmony among them. [5] In subsequent dynasties, both officials and people have tended to use

mediation to resolve disputes, and a certain system has been formed in the Ming and Qing dynasties.

China's modern people's mediation system is developed on the basis of traditional civil mediation. The modern mediation system fully respects the free will of the parties and enables the parties to freely dispose of their rights. On the other hand, the market economy requires efficiency, and one of the values of the modern mediation system to resolve disputes is efficiency, which can quickly resolve disputes between the parties and resolve them efficiently. People's mediation, also known as civil mediation, refers to an activity under the auspices of the People's Mediation Committee to persuade, educate, advise and guide the parties to a civil dispute on the basis of national laws, regulations, rules, policies and social morality, so that the parties to the dispute can reach an agreement voluntarily to eliminate the dispute by mutual understanding and compromise and equal consultation. [6] people's mediation is a basic system recognized by the Constitution of China.

3.2. Arbitration System

The arbitration system in China can be divided into commercial arbitration and administrative arbitration, and arbitration in China's traditional ADR mechanism refers to commercial arbitration, so the arbitration system discussed below is mainly commercial arbitration.

The scope of arbitration includes disputes between citizens, legal persons and other organizations concerning contracts and other disputes over property rights and interests. Administrative disputes that should be handled by administrative organs according to the law, such as disputes related to marriage, adoption, guardianship, custody, support and inheritance, cannot be arbitrated. To resolve disputes by arbitration, the parties should reach an arbitration agreement on a voluntary basis as a prerequisite for the initiation of arbitration proceedings.

China has established arbitration committees to govern arbitration cases. Arbitration committees are not hierarchically established according to administrative divisions and shall be registered with the judicial administrative departments of provinces, autonomous regions and municipalities directly under the Central Government. The arbitration committee shall be selected by agreement of the parties. Arbitration committees are independent of the administrative authorities, have no affiliation with them, and are not subject to interference from any social groups or individuals.

In summary, since ancient times, China has a tradition of "no lawsuit", especially the legal tradition of focusing on mediation, which is known worldwide as "one of the flowers of the East", and giving priority to the use of extra-judicial means to resolve disputes is an important experience of social governance in China. The ADR mechanism in China is a native system developed on the basis of the improvement of the traditional system. Unlike Western ADR, it is not a product of "litigation centrism" but a "social adjustment system" that integrates various dispute resolution methods, including mediation, to bring different social relationships to a balance, and litigation is only the final way to resolve disputes. [7] Since the reform and opening up, China has been exploring the construction of diversified dispute resolution mechanism, improving the mechanisms of notarization, mediation, arbitration, administrative adjudication and administrative review, which have effectively prevented and solved a large number of social conflicts and disputes.

4. The Intrinsic Connection between the New Acquaintance Society and Alternative Dispute Resolution Mechanism

4.1. Alternative Dispute Resolution Mechanism Is Based on The New Acquaintance of Society

In "A Lawless World: Reconciliation Rationality and the New Acquaintance Society," He Hairen argues, "Compared with the traditional acquaintance society, the new acquaintance society contains some elements of the traditional acquaintance society, and the social relations constructed through blood, kinship and friendship are still the object of people's efforts to maintain, and at the same time, it extends the traditional acquaintance society through the power of modern social division of labor. This power is also strengthened by the integration of the world economy and the formation of the virtual space of the Internet, and has a supranational significance." [8]

Justice is essentially a dispute resolution technique - and its value pursuit lies in fairness and neutrality. As a technical existence, justice requires a series of conditions and means to support it. It can be said that the richer the conditions and means on which justice operates, the more efficient the dispute resolution will be, and the easier it will be to achieve the ideal of fairness and justice pursued by justice. The new acquaintance society can, under certain circumstances, provide some new technologies and means to support justice. For example, it can make some legal decisions of declaration type, such as public notice, declaration of disappearance, declaration of death, etc., effectively reach a larger number of social subjects; at the same time, it also makes the investigation and evidence of the case more convenient; in addition, it also helps the smooth service of legal documents, etc. In short, in the context of the new acquaintance society, there are many favorable factors that can provide technical and instrumental support for dispute resolution (not limited to formal state justice, but also other unofficial dispute resolution methods).

4.2. The New Acquaintance Society Has A Natural Preference for Alternative Dispute Resolution Mechanisms

The legitimacy and legalization of ADR has continued to grow in countries and regions around the world, initially by simply allowing its use, then by actively encouraging its promotion, and now by being required to apply it as a priority or even as a conditional and mandatory use. [9] In this wave, the traditional justice system has been criticized for being delayed, expensive, formalistic, obscure, complex, inaccessible, coercive, and cold, as well as for its shortcomings in terms of dialogue, cooperation, and compensation. ADR, on the other hand, is favored for its accessibility, simplicity, inexpensiveness, speed, ease of communication, cooperation, warmth, peace, and humanity.

According to the theory of new institutional economics and the economics of law, various dispute resolution mechanisms, as institutions themselves, necessarily involve the issue of transaction costs. The lower the transaction costs of a particular system, the greater the parties' desire to apply it, and vice versa. Therefore, whether the parties choose litigation to resolve disputes or abandon litigation in favor of other non-litigation resolution mechanisms also depends to a large extent on the transaction costs of various litigation resolution mechanisms. If the transaction costs of litigation is too high, even if the dispute between strangers, also tend to use the relatively low cost of alternative dispute resolution, which is an important reason for the existence of a large number of strangers in real life, the phenomenon of reconciliation, mediation.

Transaction costs, also known as transaction costs. Coase proposed that transaction costs are "the most obvious costs of organizing production through the price mechanism, that is, all the costs of discovering relative prices", "the costs of negotiating and contracting for each

transaction that occurs in the market" and other aspects of using the price mechanism. costs. [10]

Using the theory of law and economics, it is possible to explain the reasons for the natural preference of the acquaintance society for alternative dispute resolution mechanisms. First, in terms of search costs, the search cost of an ordinary dispute is the cost of searching for basic information about the other party to the dispute. The cost is obviously lower than that of a dispute with a stranger because acquaintances know each other "through and through". Secondly, in terms of information costs, the parties must collect sufficient evidence, and in this process, the costs of investigation and evidence collection, notary fees and related expenses for the maintenance of rights can be called "information costs". Due to the existence of closer daily communication between acquaintances, the collection of personal and physical evidence is often easier than that of strangers, and the information cost is lower. Third, in terms of bargaining costs, the parties negotiate/bargain on the basis of evidence, such as the cost of going to a specific place to attend mediation, arbitration or mediation, are all "bargaining costs. In comparison, the price advantage of bargaining costs among acquaintances is very obvious. Both traditional and commercial societies have developed their own set of mature informal norms, which are reflected in folk customs, township rules, community conventions, professional norms, and industry practices. Due to their spontaneity, these informal norms are often easier to apply because they are psychologically recognized and accepted by the parties to disputes. More importantly, in the absence of formal norms, these informal norms play an important role in filling the gaps. In short, the acceptability and operability of informal norms make the bargaining cost between acquaintances much lower. On the other hand, the "intimacy" and "insider perspective" among acquaintances make the atmosphere of negotiation more warm and harmonious, and the willingness and probability of cooperation are higher and the cooperation surplus is greater, which further reduces the bargaining cost. In terms of decision-making costs, the application of certain dispute resolution mechanisms requires the payment of certain "user fees. Since these "user fees" are not directly related to the social structure of the parties to the dispute, there is basically no difference in the decision cost between disputes between acquaintances and strangers. Fourth, in terms of supervision cost, since acquaintances have closer daily contact with each other, it is relatively easy to supervise the implementation of the agreement, so the supervision cost is lower. Fifth, in terms of the cost of breach of contract, the cost of breach of contract between acquaintances is undoubtedly higher. Of course, we should also note the expected loss cost (the product of the loss and probability of losing the possibility of cooperation) brought by ADR mechanism to the parties to the dispute. In this regard, the ADR mechanism can be considered as the least expected loss cost for both disputes between acquaintances and strangers.

4.3. The Practical Necessity of Constructing and Improving the Alternative Dispute Resolution Mechanism in China

Nowadays, people's interests are more diversified, and people are not only satisfied with their needs for material and cultural life, but also put forward higher requirements for a society under the rule of law. People not only look forward to the realization of fairness and justice, but also thirst for justice in a high-quality, efficient, convenient and diversified way. Justice is only the last line of defense, litigation-centric mechanism will inevitably lead to supply imbalance, more cases and fewer people, delayed litigation, which is the two confrontation, must fight for right and wrong, black or white inherent limitations of judicial athleticism. General Secretary Xi Jinping pointed out: "China's national conditions determine that we can not become a litigation power. China has a population of 1.4 billion people, large and small things to litigation, that is bound to be overwhelmed! To promote more rule of law forces to the guidance and diversion end force, improve the preventive legal system, adhere to and develop the new era of

maple bridge experience, and improve the comprehensive mechanism for the prevention and mediation of social contradictions in multiple ways." [11] The connotation of alternative dispute resolution mechanism includes both diversified choices of dispute resolution based on value diversification, and also unified procedural system and operation system, "diversification is a means, systematization is the real goal", [12] and the construction and improvement of alternative dispute resolution mechanism legislation is the main way to realize the systematization of dispute resolution mechanism The main way to realize the systematization of dispute resolution mechanism is to construct and improve the ADR legislation. Only by continuously improving the ADR mechanism and resolving social conflicts and disputes through extra-judicial means as far as possible can we actively guide the people to protect their rights and resolve conflicts and disputes in accordance with the law, provide a good business environment for the development of the market economy, and guarantee the rule of law for the overall situation of reform, development and stability. At the same time, the local government should, according to the local situation, timely introduction of simplified procedures, tax breaks and other preferential support policies to encourage social forces to participate in dispute resolution by actively purchasing dispute resolution services from social mediation organizations. [13]

In conclusion, ADR in China needs to be adapted to our local resources and strictly follow the requirements of the socialist legal system and the programmatic requirements of judicial reform; at the same time, it should gradually shift its focus from litigation or ADR as the priority to the concept of dispute resolution. [14] We expect the future ADR mechanism in China to deliver justice that is accessible to all, and that the road to a good life is open to all rather than being blocked by the courts. In such a dispute resolution mechanism, anyone, rich or poor, whether they are facing neighborhood or family conflicts, trivial or important international disputes, insignificant disputes of one dollar or interests of hundreds of millions of dollars, will be able to find a suitable solution to their problems easily.

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