

People's Mediation System Perfection and Reform Under the Multipartite Mediation Mechanism

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Abstract

Chinese primary level people's mediation system plays very important role in maintaining Chinese society stable, promoting economic society development, and other aspects due to its consistency of autonomy and coordination and convenience in disputes resolving process. However, the traditional people's mediation which is in the transformation period has formed a distinctive and flexible multipartite mediation mode by continuous exploration and innovation. This paper analyzes the current "N+1" linked-mediation mechanism and its related reform by practically examined the people's mediation reform and system innovation and gives further ideas in improving and perfecting people's mediation system.

Key words: Multipartite mediation; People's mediation; System innovation; Mediation concept

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1. CHARACTERISTICS OF PEOPLE'S MEDIATION UNDER THE MULTIPARTITE MEDIATION MECHANISM

1.1 Definition of Multipartite Mediation

The so called "multipartite mediation" is a shorten form for social contradiction disputes multipartite mediation.

It is a diverse resolution mechanism in China instead of a strict legal concept or system. The emergence of multipartite mediation is an attempt made by some regions of China in discovering diverse resolution mechanism according to their own social requirement and need which has obvious characteristics of emergency mechanism in the period of social transformation (FAN, 2007, p.561). There are different understandings on the definition or concept of multipartite mediation from quite different angles. There is no unified understanding about the multipartite mediation in the theoretical field and in practice. Some scholars think that for the ruling party in China, multipartite mediation is a mechanism that led by the Chinese communist party (CCP) and the government, coordinated by comprehensive governmental and judicial departments, directed by judicial departments, attended by other departments, interacted via various means and methods, and coordinated with each other to resolve and deal different kinds of disputes. Some think that for court, multipartite mediation includes court mediation that can help or assist other departments' mediation and can give effective connection with other mediations. There are also other scholars who think that for judicial departments, multipartite mediation is people's mediation based and jointly made by other mediations to resolve contradictions among the people. The "Suggestions from the Chinese central politic and law committee and the central leader group of peace maintenance in Promoting Social Disputes and Contradictions Resolving, Social Management Innovation, and Fair and Clear Enforcement of Law" forwarded by the General Office of CCCPC and the General Office of the State Council of China provides: every local and regional level government needs to make full use of political advantages and construct a multipartite mediation working system of which the political, legal, comprehensive management, peace maintaining, and petition department work harmoniously, related departments and units play their own roles properly, and

people's mediation, administrative mediation, and judicial mediation not only fully show their functions but also work together as a unified system.

This is the newest and most authoritative expression of the multipartite mediation.

The Chinese Communist Party and government are managerial leaders of the multipartite mediation working system. Management organs set up by the Party committee and government are governed by the Party committee and government's leaders. Leaders of public security organs and judicial departments and various administrative management organs are responsible for coordinating with the Party committee and government leaders in practicing multipartite mediation. The essence of the birth of multipartite mediation is a revolution and sublimation of thoughts and ideals which gets rid of irrational traditional mediation methods, connected with modern judicial formalism, creates a link of mediation among courts, public security organs, judicial administrative departments, and different organs, and injects vitality and energy for traditional mediation. Multipartite mediation is led by the Chinese Communist Party and the government, a quick and flexible method under various situations such as multiple subjects and ways, and an effective mechanism for resolving different sorts of social contradictions harmoniously.

1.2 New Features of People's Mediation Under Multipartite Mediation System

1.2.1 People's Mediation Led by the CCP Committee

From the organizational aspect, the people's mediation is unified and led by the CCP committee and the government via combining administrative departments and judicial departments' power to reach the aim of resolving disputes. The overall construction level of multipartite mediation in certain area depends on how much attention the CCP committee and the government pay to them. In the process of people's mediation, led by the CCP committee, different levels primary mediation organizations can acquire information timely and get the inclination of the development of dispute resolving, therefore, can play a more positive role which not only contains sub-functions like coordinating, guiding, and communicating, but also has the ability to judge. The concept of Chinese "service-orientated government" just hopes the government could allow full play of primary level organizations, government departments, and judicial organs in mediation in order to provide efficient and fast services and effectively resolve all kinds of disputes to keep society stable.

1.2.2 Joint Working People's Mediation

People's mediation is a joint working supported by administrative mediation, and judicial mediation. Under the multipartite mediation system, mediation has turned from civil form into a new one that made up by people's mediation, administrative mediation, and judicial mediation connecting together. The

new people's mediation not only contains traditional primary organization mediation, but also includes administrative mediation and people's mediation getting involved in judicial mediation. Administrative mediation includes different government departments mediation, public security organs mediation, health and hygiene management departments mediation, and business administration departments mediation. Judicial departments mediation mainly refers to judicial mediation in courts. Presently, in cases mediated by administrative departments and courts, in order to resolve disputes as soon as possible and finish contradictions, they always ask help from primary mediation organizations or staffs from them. They wish that disputes about land transference, land acquisition and remove, management of village affairs, real estate disputes, medical tangles, insurance compensations, employee's salaries, and other disputes could be resolved at the primary level.

1.2.3 Administrative Mediation Attended by Various Subjects

Administrative mediation under multipartite mediation has multiple subjects. People's mediation under new circumstances makes traditional petition and letters link with administrative departments and courts functions. It does not change the position of traditional petition and letters but changes real problems that cannot be resolved by traditional petition and letters through departments coordination which has made civil disputes and petition cases resolve in practice.

2. CURRENT SITUATION OF PEOPLE'S MEDIATION UNDER THE MULTIPARTITE MEDIATION SYSTEM

2.1 Complexity of Contradictions and Disputes

Firstly, disputes have become more and more complex and disputes parties are diversified. In the past, the emphasis of people's mediation is on debts, marriage and family, house and land usage, and so on which are easy to deal with. However, at present, people's mediation mainly focuses on land usages, demolition and relocation, city expansion, forest ownerships, family support issues, enterprise restructuring, laid-off workers, land contract and other aspects. Disputes and contradictions arise from direct economic relationship, marriage and family relationship, administrative relationship, and non-material benefits relationships, etc.. From the subject of the disputes we can see that in the past the subjects of disputes and contradictions are simple and centralized which purely based on disputes between people and the nature. However, nowadays, disputes and contradictions subjects are diversified which does not only include human, various kinds of companies, social groups and organizations, institutions, and even government departments.

Secondly, disputes and contradictions are upgraded, the amount of petition cases increased. On one hand, more and more civil cases turned into criminal cases. There is an increasing tendency of the amount of criminal cases that are intrigued by civil disputes. Ordinary civil disputes have gradually turned into public security cases or criminal cases; On the other hand, mass incidents and disputes are increasing. These disputes usually connect with economic benefits. The petitioners always have the thought of “win by number” and attempt to resolve disputes by using organizational ways to “make troubles” in the government. This kind of disputes and contradictions are hard to resolve by using people’s mediation method. Besides, petition cases have been increasing. Collective visit and petition, petitions bypassing the immediate leadership, unreasonable petitions, and central government petitions are all very common, even some neighborhood disputes, family arguments, and support disputes have turned into petition cases.

Last, disputes and contradictions are difficult to be meditated. For example, company labor disputes, water, electricity, gas, and energy and other living utilities related disputes, mass incidents disputes, and disputes about problems left over by history cannot be resolved simply by persuading, preaching, advising, and counseling of the people’s mediation. For some petition cases, the petitioners have stronger angry against their object and higher expectation from the government which makes the difficulty in resolving the problem is even larger. At the same time, there are also some contradictions cannot be resolved by only one department of the mediation centre or mediation work station in village, town, or community. These cases can only be resolved with coordination from other departments, other industries, and different regions.

2.2 Selection of Mediators Lacks of Long-Term Mechanism

In the current mediators, no matter selection of city and street community mediators or village and town comprehensive managers mediators election does not form a unified standard and a long-term effective mechanism. Most mediators are local villagers or local residents who have great knowledge about their own villages, local residents, village rules and folk regulations, and customs. However, it just reflects that the selection of mediators and the operation of mediation depend greatly on people which lacks of a stable and long-term effective mechanism and may cause the mediation work totally depends on certain people and thus make the mediation difficult to operate stably and in a long-term. In addition, although the mediation director of the village or community has his or her working enthusiasm and working experiences, they only have little legal knowledge and their professional skills are needed to be improved.

2.3 People’s Mediation Work Lacks of Necessary Guarantee

Firstly, staff team guarantee is not sufficient. From the current constitution of mediators, we can find that the number of mediator is very small and full time mediators are fewer. Secondly, incomplete management guarantee. From the aspect of the relationship between people’s mediation and rule by law, it can be seen that people’s mediation is an agreement made on the basis of mediating parties’ equal coordination and autonomy. However, due to the influence of benefits, policy application, or work performance examination and other elements, the people’s mediation and mediators only pursue the disputes resolving result and ignore the autonomous and equal characteristics of mediation. Thirdly, insufficient funds guarantee. Just for the people’s mediators, some villages (streets) have not account the working cost of people’s mediation committee as their financial budget or cannot make sure use the funds as ear-marked rather say the village (community) mediation committee’s funds. Some community secretaries do not have formations and their salaries cannot be guaranteed. Certain towns and villages hire people’s mediators but can only pay them little salary which does not help in starting people’s mediation work, but also does no good for timely resolving disputes and encouraging people’s mediators to work passionately. Last, professional training system has not been set up yet.

3. ADVICES ON PEOPLE’S MEDIATION REFORM AND PERFECTION IN THE MULTIPARTITE MEDIATION SYSTEM

3.1 Strengthen People’s Understanding on People’s Mediation System Development Features and Functions

People’s mediation under the multipartite mediation system has different features and characteristics from traditional mediation system. a). Modernized mediation concept. The change of market economy from planned economy and the change of diversification and complexity from simplicity have made people’s mediation, administrative mediation, and judicial mediation cannot meet the need of disputes resolving by separately on their own which generated the necessity of uniting various mediation methods together so that to get multiple effects of comprehensive management. b). Expansion of Mediation Object. Mediation changed from resolving folk disputes to civil disputes, economic disputes, and administrative disputes combined composite disputes. c). Diversification of mediation subjects. The expansion of mediation objects decides the changes of mediation subjects from previous the people’s mediation committee to led by the Party committee and

coordinated by administrative, legal, public security, civil administrative, judicial, land, forestry, courts, women's federation departments and so on. d). Diversification of Mediation methods. In the past, people's mediation mainly use persuade and convince as the basic method. Nowadays, the multipartite mediation not only depends on persuade and dredge their thoughts, but also led by the Party Committee use national power, legal, economic, administrative, and policy related methods to resolve disputes.

In the development process of modern multipartite disputes resolving mechanism, people's mediation of the "multipartite mediation" turns into an administrative act (LI & SUN, 2002). The completion of modern people's mediation requires correct functional orientation of mediation system. Since the found of the People's Republic of China, China once has set the function of people's mediation to comprehensive management which is the same as public security and guard and serves as preventing and attacking criminals' tool. In 1986, the first discussion conference of people's mediation set the functional position of people's mediation to educate and manage the public, resolve disputes, crime prevention and control, and safeguard nation stabilization. Currently, the focus turns into preventing internal contradictions intensification of the public (LIU & LI, 1998). However, under the framework of rule by law, thinking about and positioning people's mediation system's functions, responsibilities, and rights, and other related elements is necessary and important. People's mediation under the "Multipartite mediation" mechanism should function at resolving disputes and contradictions, protecting people's rights, and aims at realize thoroughly resolve problems and disputes which means the redefinition of people's mediation system functions must includes elements of rule by law.

3.2 Form a Modern Mediation Concept and "Double Effect" Evaluation Standard

Traditional people's mediation focuses on the disputes and contradictions resolving result instead of the process of mediation. The mediation objects expansion, subjects diversification, complexity of disputes and contradictions, and repeatability of mediation results characteristics of people's mediation in the "multipartite mediation" mechanism have made the traditional result focusing mediation concept and evaluation standards of effect cannot realize the mediation goals and functions nowadays and their effectiveness turns lower. Therefore, modern mediation concept and evaluation standards should transfer from result focused to process focused of which the rationality derives from the administrative features of the "multipartite mediation" system and the reality of the differences of people's mediation effectiveness, and also the autonomy and coordinating characteristics of people's mediation cooperated with modern administration concept.

Modern mediation thinks people's mediation as a process instead of a final result which means people's mediation effect and function does not come out from reaching the mediation agreement or mediating successfully, it happened from the start of people's mediation. The accomplishment of people's mediation is an ex post facto effect and function while before the accomplishment of people's mediation; it is a process effect and function. Compared with the result focusing people's mediation, the process focusing mediation usually decides traditional people's mediation's effect in resolving disputes and thus makes disputes and contradictions resolved more thorough and fundamental. "Cooperation is a process", [4] the core of people's mediation is by equal attendance of both parties, agreement is reached by cooperation of both sides, and then get disputes resolved.

3.3 Correctly Understand the Relationship Between Rule by Law and People's Mediation

Multipartite mediation is a new mode and new method for dispute resolving created by practice and based on traditional people's mediation, administrative mediation, and judicial mediation. However, its legality, authority, and legitimacy have been doubted for a long time. The mediation under multipartite mediation system is led by the Chinese Communist Party and its committee, attended by government and its related functional departments which is a new mediation mode and have strong public power elements in it. In practice, it has the features that social power highlighted, administrative power involved, and judicial power retreated. This mode helps in timely and efficiently resolving disputes and contradictions but may also bring dangers and risks in the legality of mediation in practice. To avoid problems like "mediation for mediation", "have to mediate", and "mandatory mediation", it is argent to correctly handle the relationship between the leadership of the Party, act of administrative power, and the application of judicial power. Firstly, strictly follow the mediation principles of "People's Mediation Law". In the premise of governed by law, follow voluntary and negotiation principle, give fully respect to the mediation parties on their autonomy of will, and treat voluntary negotiation as the first principle. Secondly, set rational orientation of the extension of power usage. The Party Committee should act as a coordinator among multiple participators of mediation, make full use of its leadership ability, focus on policy grasp and guidance, and express its function in coordinating main power relationships instead of actually attending the people's mediation. Government departments should show its advantages in integrating resources and providing system guarantee. From funds, personnel selection, supervision, standard stipulations, legal support, and policy publicity, it should avoid violation and interferences of people's mediation autonomy brought by administrative power and do harm

to the autonomy characteristics of people's mediation. The judicial departments should make full use of the judicial judgmental functions so that to prevent the situations like mediation works instead of judgment or court decision and therefore lose the original attributions and functions of judicial power and bring harm to the mediating parties' right of action for delaying in acting judicial power. Thirdly, establish relevant supervision system. In order to prevent the Party Committee, administrative departments, and courts lose their standards or misuse powers in acting their powers in people's mediation, it is necessary to set up supervision and guarantee system. The details for doing so are: by setting up offense reporting system, performance evaluation system, and accountability system to ensure people's mediation organizations and mediators work and the mediation parties' rights and benefits. Last, correctly locate the relationship between rule of law and social autonomy. Make use of social autonomy functions under the framework of rule by law for the legal system connected with state laws exist with folk tradition connected with folk rules and standards (Yu & Liu, 2007, p. 40).

3.4 Fasten Construction of Multiple Mediation Net Work

Set up a rigorous mediation net is an important way for realizing diversification of mediation subjects and also a fundamental guarantee for doing good job of multipartite mediation. To adopt "multi-levels, wide-covered, multi-fields" placement rule, systematically map out net work construction, try best to make sure local mediation team first deal or resolve disputes in its locality. First, strengthen construction of basic level comprehensive management and people's mediation net work, extend current net work, accredit comprehensive working station (room) and comprehensive commissioners, and by connecting with them to set up mediation team and mediators in villages, groups, residential buildings, property management company, construction corps, working spots, and so on to enlarge the coverage of mediation net work. Second, highlight the focal point of people's mediation net work construction. Pay more attention to markets, migrant communities, poor communities (villages or groups), administrative planning removal areas, and so on in which disputes often happen. To set up people's mediation room or mediation committee in these places is the focus of mediation net work construction. Last, build professional mediation organizations in professional fields. Investigate and establish professional mediation committee and allocate related staff in fields of labor disputes, traffic accident, property disputes, and medical disputes in order to improve public trust and professionalization of mediation, actively resolve social hot issues, and difficult disputes.

3.5 Improve Related Guarantee Mechanism

First, set up salary guarantee system. It has been a long time that people's mediators are acted by retired people, directors of neighborhood (villagers) committee, and village secretaries, etc. who do not have stable income or successfully receive subsidies. People's mediation committee does not have special fund to support its operation and only social responsibilities, profession honors, and enthusiasm supported active work of people's mediators. However, with the development of social economy and people's values change, voluntary and free mediation cannot guarantee a long effect of mediation. Therefore, according to the stipulations of "People's Mediation Law", it is needed to fasten the construction of mediation working funds, subsidies and salaries of mediators, appropriation budget of rewards and guarantee system to make sure the proper operation of mediation work. Second, complete related laws and regulations. It is the necessary trend of modern mediation system development that to standardize mediation from the legislation level. Based on "People's Mediation Law" to make out related details for practice has important means for providing detailed, direct and standards to people's mediation. Third, complete and perfect related supporting system. Four, strengthen construction of people's mediation team. To train current people's mediators, invite professional people's mediators, set up lawyers supporting communities system, and promote transference of people's mediators from evidence supported to profession supported.

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