

Supervision of Village Regulations and Agreements and Their Paths

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Abstract: Village regulations and agreements are self-management rules of grassroots society. It is the premise of realizing the self-governance, rule of law and rule of virtue at the grass-roots level, and also the foundation of realizing the modernization of social governance at the grass-roots level. However, there may be some defects or even illegal situations in the formulation procedures and contents of village regulations and agreements. It will damage the rights and interests of individual villagers or village collectives, and effective supervision of them is conducive to the realization of the rule of law, moral governance and autonomy, as well as the realization of good governance of grass-roots society. The supervision path of village regulations and agreements mainly includes three supervision ways: prior supervision, archival examination and judicial examination.

1. Introduction

Village regulations and agreements play an important role in grass-roots social governance. It not only provides more elaborate plans for implementing national laws and policies, but also standardizes villagers' behaviors and provides settlement rules for village affairs. Since the 19th national congress of the communist party of China (CPC), general secretary Xi Jinping has repeatedly made important instructions on bringing village regulations and agreements into full play, educating and guiding poor people to change old rules and customs, and establishing new cultural traditions. At the end of 2018, the Ministry of Civil Affairs in combination with other six departments issued "Guidance on the Implementation of Village Regulations and Agreements and Residents' Conventions", put forward the goal of "formulating or revising practical village rules, conventions and residents' conventions for all villages and communities in China by 2020, and promoting the improvement of the modern community-level social governance mechanism under the leadership of party organizations that combines autonomy, the rule of law and the rule of virtue". It has great significance to give full play to the active role of village regulations and agreements and resident conventions, promote multi-dimensional law-based governance, and constantly improve the governance capacity and level of urban and rural communities. However, practice shows that there are still some problems in the formulation and implementation. Therefore, the key point to effective grass-roots governance is how to realize effective supervision of village regulations and agreements, so that they can not only reflect village habits, customs and villagers' autonomy, but also ensure their operation on the legal track.

2. The Meaning of Village Regulations and Agreements

Village regulations and agreements, also known as "local rules", "folk regulations" or "village regulations", are rules of conduct generally observed by the people in the area within a certain range of rural areas and formulated by certain mass organizations in accordance with the principles of self-management, self-service and self-restraint. [1] It is an effective way to guide grassroots people to practice the socialist core values, and an important form to improve and innovate the modern grass-roots social governance mechanism that combines autonomy, rule of law and rule of virtue under the leadership of party organizations. According to the Organic Law of the Villagers Committee, village regulations and agreements shall be formulated and modified by the villagers'

meeting. The process of formulating and revising is the process of villagers exercising their democratic rights. In this process, villagers can directly participate in the autonomy of village affairs and the governance of public affairs, and directly express their political views and interest appeals according to their own wishes. At the same time, villagers can respect the demands of others, learn to talk, negotiate, communicate and compromise with other villagers on the premise of equality, and finally reach a consensus. Even if no consensus is reached, villagers can grasp the essence of democracy through this process. This is an effective practice of democracy. Through direct democracy and consultative democracy, people at the grass-roots level can effectively exercise their democratic practical ability.

As self-regulation of villagers, village regulations and agreements can effectively make up for the deficiency of national law. In modern society, social governance is mainly based on a large number of national laws, but national laws are not and cannot be airtight, and should leave space for citizens' autonomy and autonomy. In the modern society, the National Law through the rational grasp of social justice and institutional arrangements for the effective operation of the society has laid the institutional foundation, the power function of the state law also penetrated into every corner of the society. However, the legal rules of national laws are limited, while social life is complicated and diverse, and the problems faced and dealt with will vary from place to place and time to time. Therefore, village regulations and agreements are active in the rural society of "living law", constitute a way of life in rural society, and are a guide to deal with the interpersonal relationship with the villagers.

Village regulations and agreements are the result of villagers' mutual consultation and self-legislation. Therefore, the villagers have the consciousness to accept it, which guarantees the legality and validity of the rules to a certain extent. Habermas thought that just as the language world is a public world, and there is no language of a man. The rule world is also a public world, and there is no one man's rule. A rule is a rule only if everyone agrees that it is a rule. Which means, if there is no case in which A's behavior can be criticized by B, a situation in which it is possible to reach a consensus in principle, a person cannot be sure that he is following a rule. If a subject is to be able to follow a rule, that rule must be valid between at least two subjects. [2] The action subject must reach a consensus on the rules of the action and the results obtained according to the rules, so that the action subject can accept the rules and adjust his behavior according to the rules. And will judge the actions of other actors according to the consciousness of rules. In the modern society of multi-culture and multi-value, the legitimacy and legitimacy of rules can no longer be established on the basis of religion and metaphysics, but must change the perspective and seek support from the negotiation principle based on the open democratic principle. To achieve autonomy, citizens must at the same time understand themselves as the authors of the rules to which they are subject as recipients and act in accordance with that understanding. In the process of formulating village rules and regulations, it should be the guarantee of effective governance of grass-roots society to listen to villagers' opinions, allow villagers to participate, and obtain consensus on rules in the process of continuous argumentation and game.

3. The Necessity of Supervision of Village Regulations and Agreements

The Organic Law on Village Committee stipulated in article 10: the villagers committee and its members shall abide by the constitution, laws, regulations and state policies, observe and organize the implementation of the villagers of village autonomy is the articles of association, and carry out the decisions of the villagers, the villagers' representatives meeting, resolution, handle affairs justice, integrity, enthusiastic service for the villagers, accept supervision of the villagers. It can be seen that village regulations and agreements are organized and implemented as norms with hierarchical effect secondary to the constitution, laws, regulations and national policies. It plays an important role in the process of villagers' self-governance, but it still needs supervision in the process of formulating and implementing village regulations and agreements. Although village regulations and civil agreements are self-legislation of villagers and norms to adjust villagers' behaviors and relations, there may be defects or even illegal situations in the formulation procedures and contents of village

regulations and agreements. It may damage the rights and interests of individual villagers or village collectives, and effective supervision of them is conducive to the realization of the rule of law, moral governance and autonomy, as well as the realization of good governance of grass-roots society.

First of all, the supervision of village regulations and agreements is to safeguard the rights of villagers. Village regulations and agreements are not only the behavior norms of villagers, but also the basis of guaranteeing their rights. Generally speaking, the voting of village regulations and agreements usually follows the principle of “majority decision”. When it comes to the distribution of economic interests, the transfer of household registration and the distribution of homestead, the resolution formed by this voting method may infringe upon the rights and interests of minorities. In particular, the rights of collective income distribution or relocation compensation for married daughters are deprived. For example, (2017) the Supreme Judicial Court administrative appeal NO. 5824 Xu Li and Xu Huiya retrial review and trial supervision administrative order describes that the village committee of Luzhaicun made “village regulations and agreements of Zhaicun village, Liulin town”. Article 8, paragraph 1, paragraph 4 of this article stipulates: “married girls can only enjoy the welfare benefits of the current year (according to the lunar calendar). If it is impossible to determine whether the villagers are married or not, the villagers' representatives shall examine and verify it once a year.” Another example, (2017) Supreme Judicial Court administrative appeal NO. 5157, Zhangxi Joint-stock Cooperative Economic Association, Shiqi District, Zhongshan, and Zhangxi NO.8 Joint-stock Cooperative Economic Association, Shiqi District, Zhongshan. The administrative order of trial supervision also refers to the provisions of article 5, paragraph 2, article 4 of the supplementary articles of association, article 4, item (3), the program of confirming the right of housing project, article 3 about the non-local married into the village, registered permanent residence has moved in, divorced women who remarry with other people outside the village shall not allocate shares. It can be seen from these administrative orders that village rules and covenants in many places have damaged the rights of married women by traditional concepts in the face of economic interests. But this kind of violation not only violates our Constitution's stipulation about the equal right, but also violates the related stipulation of the law on the protection of women's rights and interests. In addition, many village regulations and agreements set penalty clauses, such as fines, confiscation of the property, village expulsion and other compulsory measures. Penalty measures such as fine and confiscation of property are types of administrative penalty. On the one hand, the establishment of these penalty clauses violates the mandatory provision of the law, on the other hand, it also infringes the villagers' legitimate rights and interests such as property rights, personal rights and personality rights.

Secondly, supervising village regulations and agreements is an important way to ensure their legitimacy. Village regulations and agreements are the behavior norms of villagers' daily life, the main body, procedure and content of which should be “legal”, only in this way can it be effective. Article 27 of the Organic Law of Village Committees stipulates that the villagers' assembly may formulate and amend the villagers' self-government constitution, village rules and regulations, and report them to the people's government of the township, Nationality Township or town for the record. The villagers' articles of association for self-government, village rules and regulations, and the decisions of the villagers' assembly or villagers' representative assembly shall not contravene the constitution, laws, regulations or state policies, and shall not contain any content that infringes upon the villagers' personal rights, democratic rights and lawful property rights. The villagers' conference is not only the main body of making village rules and regulations, but also the institution for villagers to exercise their democratic rights. Through the villagers' meeting, the villagers participate in the formulation of village regulations and agreements and express their will. In real life, however, because of the village governance body hollowing out, “county, township and village” of the integration of administrative governance structure such as a variety of reasons, [3] the establishment procedure of village regulations for basic village township civil affairs departments to villages to provide a unified model, from the villages on the basis of model, modified and then submit the villagers meeting to vote. In this case, the villagers' meeting only becomes the voting body, not the

participant of the “social contract”. Even in many cases, the information asymmetry between villagers and cadres makes it very easy for grass-roots governments and village-level organizations to manipulate and control the formation process of such “contract”. [4] Program legitimacy is the premise of content legitimacy. Because village regulations and agreements involve the rights and interests of all villagers. In formulating the procedure, it must be decided by the villagers' assembly by secret ballot and cannot be done by the villagers' congress or the village committee.

4. Supervision Path of Village Regulations and Agreements

Village regulations and agreements is the important handle that realizes village management. However, in real life, village regulations and agreements still exist in the formulation of the main body, procedures and content of various problems. This shows that the village regulations and agreements are still necessary for further supervision.

(1) Supervision before the event. According to article 5 of the Organic Law of Village Committees, the people's governments of townships, nationality townships and towns shall provide guidance, support and assistance to the work of villagers committees. However, they shall not interfere in matters within the scope of villagers' self-governance according to law. In other words, in the process of formulating village rules and regulations, the township government can step in to guide, support and help the procedures and contents of formulating village rules and regulations. The specific way can be either by special legal staff of the township government to give opinions and suggestions on the proposed village rules and regulations, or by giving some subsidies to encourage the village committee to hire legal advisers to guide the formulation of village rules and regulations.

(2) Recording review. At present, the supervision means of village regulations and agreements in our country is recording review. Its legal basis is article 27 of the Organic Law of the Village Committee. That is, the villagers' conference may formulate and amend the villagers' self-government constitution, village rules and regulations, and report to the people's government of the township, Nationality Township or town for the record. The villagers' articles of association for self-government, village rules and regulations, and the decisions of the villagers' assembly or villagers' representative assembly shall not contravene the constitution, laws, regulations or state policies, and shall not contain any content that infringes upon the villagers' personal rights, democratic rights and lawful property rights. If the villagers' articles of association, village rules and regulations, or the decisions of the villagers' assembly or villagers' representatives violate the provisions of the preceding paragraph, the people's governments of townships, nationality townships or towns shall order them to make corrections. Although the organic law of villagers committee only stipulates the record of village regulations and civil agreements, the record means examination. Recording review is the premise of examination, and examination is the purpose of putting on record. However, the township people's government lacks of special filing and review institutions, as well as staff with professional knowledge. They are unable to carry out the recording and review work of village regulations and civil contracts with strong professional, legal and policy characteristics. Even because of the lack of rule of law consciousness among the members of the village committee, there is no record after the formulation of village rules and regulations. In this case, the supervision of village regulations and agreements is merely a mere formality, and cannot really effectively realize the original intention of system design. In order to avoid the virtual filing procedure, the filing system shall be refined and strengthened. Towns and townships where conditions permit shall set up special agencies or be equipped with special personnel to be responsible for the filing and examination. The town that does not have a condition should entrust the professional personage such as legal expert, lawyer to undertake examining. In view of the poor record and review of village regulations and agreements by the township government, some scholars even suggest revising the Organic Law of Village Committees. It will change the main body for recording and reviewing village regulations and agreements to the standing committee of the people's congress at the county level, and use the authority and ability of the standing committee of the people's congress at the county level to strengthen the post facto review of village rules and

regulations. [5]

(3) Judicial review. However, filing review can guarantee the legality of village regulations and agreements to some extent, but as filing review is abstract review, it is difficult to find the illegality of village regulations and agreements without combining with specific events. Therefore, the supervision of village regulations and agreements should also cooperate with specific review, namely judicial review. That is to say, during the implementation of village rules and regulations, villagers can bring a lawsuit to the court if they think the content of village regulations and agreements infringes their rights and interests. The court examines the legality of village regulations and agreements in the process of hearing cases. If it is found that the village regulations and agreements violate the constitution, laws, administrative regulations or national policies, it may directly deny the validity of the village regulations and agreements or indirectly deny the validity of the village regulations and agreements by means of non-application in the judgment. Village regulations and agreements are the product of villagers' autonomy, and the court has no right to directly make the decision to change or cancel. However, it may put forward judicial Suggestions to the township government that has put on record the village regulations and civil agreements, and the township government shall order it to make corrections. After the correction of the village committee, the township government shall timely feedback the implementation of judicial Suggestions, so as to achieve the purpose of correcting illegal village rules and regulations.

Village regulations and agreements are self-management rules of grassroots society. It is the premise of realizing the self-governance, rule of law and rule of virtue at the grass-roots level, and also the foundation of realizing the modernization of social governance at the grass-roots level. In addition to the official guidance and effective supervision after the event, the supervision of the legality of village regulations and agreements should also be conducted in the main body of its formulation. Therefore, it is necessary to constantly enhance villagers' awareness of the rule of law and enhance their ability to supervise the legality of village rules and regulations.

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