

# *Tibetan Folk Traditional Mediation System and Modern Judicature-- A Case Study of Zhagana District in Diabei*

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**Abstract:** The traditional folk mediation system in Tibetan areas is not only a way to deal with disputes, but also contains very important cultural elements, which is helpful to the implementation of modern justice in Tibetan areas. This paper selects Diapbe Zhagana area as the actual research object, through the description of the folk traditional mediation system in Diapbe Zhagana Tibetan area, analyzes the advantages and disadvantages of its own existence, compares and analyzes the conflicts and points of convergence between it and modern judicatory, and puts forward methods and suggestions on how to balance the two dispute mediation models. On the one hand, this paper combines the reality of folk events, and on the other hand, through the interview with the villagers and the staff of the temple mediation committee in Zhagana, Diabe County, this paper has a relatively objective understanding of the dispute mediation system in Zhagana, Diabe County.

## **1. Overview of the History and Culture of Zhagana**

Diapu Zhagana is a natural stone city, located in Yiwa Township, more than 30 kilometers northwest of Diapu County, Gannan Tibetan Autonomous Prefecture, Gansu Province, an ancient city, which means "home surrounded by sacred mountains" in Tibetan language. The terrain is not only like a huge palace, but also like a natural rock wall. Nomadic, farming, woodcutting and other production activities in the Tibetan villages are well combined and complementary, which has become a model of harmonious coexistence between man and nature. [1] The Diapitzhagaras call themselves the soldiers of Zambu, and in many ways they can be seen. Although located in the Amdo Tibetan area, the dialect is very different from the Amdo Tibetan language, which is more similar to the dialect of Weizang area. The social structure is consistent with the military structural units, and the natural social units from small to large are: "Cuowa", "Jiawa", "Mari", which means "barracks" in the local language.

## **2. The Integration of Zhagana Dispute Mediation System**

In any society has a way of solving its own contradictions, which are compared with unique historical and cultural characteristics, and in the Tibetan area is not exceptional also, since the ancient paleolithic, here has a footprint of human life, with the development of history and culture,

its also slowly brewing out their own unique way of mediation, This kind of mediation is one of the unique ways to resolve disputes in order to seek the guarantee of fairness and justice in the era from the common law to the creation of written law. Because of the differences in social, economic, natural conditions and other factors, different places have different mediation methods even if they belong to the same ethnic group. It is of great significance to understand and understand these civil mediation methods to understand the thinking of local dispute handling and to carry out the concept of legal system. Reasonable settlement of disputes and conflicts is conducive to social harmony and stability, people's happiness, and the healthy development of production and life. In Zhagana region, due to its unique natural environment and different production modes, a unique traditional culture has been formed, which has led to the formation of a relatively unique dispute mediation system, mainly including the following types:

#### (1) Temple mediation

Religious ethics have been explicitly exploited for rational economic purposes since ancient times, especially for the economic purposes of creditors. This is especially true when the question of debt in law relates only to the debtor's self, because then the creditor may appeal to the filial piety of the debtor's heirs. Due to traditional culture, customs and other reasons, religious life in Tibetan areas has always been a very important part of the life of the Tibetan people, of course, people here are no exception. When people encounter complicated problems that are difficult to mediate, they will unbidden to the temple to ask for the "help of the Lord" to obtain justice and justice from the Buddha. Generally, people will obey regardless of the outcome of the mediation, because they have faith. Temple mediation means that when conflicts between Tibetan communities are difficult to be reconciled due to land disputes, personal damage, property damage and other reasons, temple mediation is generally used to solve major issues concerning human life or conflicts between ethnic groups, which can be said to be the most advanced relief approach in a certain sense. [2]

In accordance with the sect and the living Buddha system, the temple is generally divided into the main temple and the main temple, to the department of Di Gana La Sang temple as an example, its main temple is the Ruoergai county Lang temple, also known as "da Cang Lang Mu Gerden temple" belong to the Gelug sect temple. If the sub-temple fails to resolve more complex cases, such as disputes over human life or grasslands, the local villagers can ask the main temple to mediate.

#### (2) Mediation by "Mari" mediators

Now "Ma Ri" has become an administrative village, that is, a collection of several villages. There are usually four to seven villages in one Maari. Tamar, mediation refers to when the day of natural unit because of land disputes between each village, personnel injury, property damage of dispute, or the day of a major contradiction between members and other organizations can't make a mediation, in the prestigious from manasseh ChangZheTuan mediation committee, as a representative of the date of on both sides of the dispute, Listen carefully and look for ways to reconcile the two parties. Mali-japanese mediation usually deals with relatively important matters, mainly the contradictions and disputes among villages within Mali-Japanese.

#### (3) "wrong" mediation

Colloquially, a fault is one of the smallest in the community, meaning kin (tribe); In Zhagana a wrong wow to 7 to 20 households as a unit, have a fixed name, and can not quit. Cuo is the most grassroots organization. All matters concerning marriage and funeral need to be contacted and discussed with the elders in Cuo. When members encounter disputes over marriage, loans, etc., the mistake is to assume the role of negotiator or referee.

### 3. The Advantages and Limitations of the Traditional Mediation Model

(1) The positive role of the traditional folk mediation system

"However, history has long proved that when there is a conflict between national law and national customary law, it is the national law that loses the war". [2] The positive aspects of the civil mediation system are as follows: First of all, the traditional folk dispute mediation method is a valuable intangible cultural heritage, because many of its contents reflect the life and philosophy of the Tibetan people. For example, the mediator of a dispute needs to have a great deal of knowledge, including the history of the families or lands on both sides of the conflict and the wisdom of many ancient ancestors, which can be valuable advice to the people and parties involved.

(2) Limitations of the traditional folk mediation system

It is only applicable within ethnic groups, otherwise it is easy to evolve into a tool of local protectionism, which is not conducive to the effective implementation of judicial power and the equality of civil rights. In the process of dealing with the contradictions among its members, there are many situations that violate the basic provisions of the law.

Lack of force to guarantee its implementation. As for the traditional folk mediation system, people mainly rely on their own consciousness and habits, and are generally influenced by religion.

There is no specific text in the mediation system of the existing ethnic customary laws, which mostly rely on the oral transmission of local people to form conventions or are controlled by authoritative mediators. Such customary laws have very weak proof power and cannot be applied in judicial practice in many cases. The systematic compilation of the national customary law is the primary premise of its application to the judiciary. Therefore, in order to accurately apply the national customary law in the trial, it is necessary to organize and summarize the customary law in ethnic areas by chapters. Secondly, there are some practices in the national customary law that violate fairness, justice and good customs, which should be abandoned. [3]

### 4. The Conflict between Traditional Dispute Mediation Model and Modern Judicature

As two parallel dispute resolution models, the traditional dispute mediation model and the modern judicial system have conflicts in judicial practice. As far as the traditional dispute resolution system is concerned, it undoubtedly plays an important role in solving social contradictions, but it does violate the modern judicial spirit in some cases. "There are a large number of cases of atonement with money in the criminal customary law of ethnic minorities, so that" substituting punishment for punishment "has become one of the prominent features of the customary law of ethnic minorities". [5] For example, "price for loss of life", but on the contrary, the national criminal law strictly forbids "punishment instead of punishment", and the punishment of money and confiscation of property are only provided as additional punishment in the penalty system, and mainly applied to property crimes and economic crimes. In recent years, with the rapid development of social economy and the increasing awareness of the rule of law among the masses, the judicial concept and thinking determine the way of people's behavior and determine the value direction of the system. [4] The so-called "compensation for life" means that after the murder and injury case, the original tribal leader, his children and religious figures mediate, and the infringer compensates a considerable amount of money and property to the victim's family, and reaches a settlement between the two sides, so as to achieve the settlement of the lawsuit or exemption from criminal punishment. However, after this case was solved by using customary law, some judicial organs intervened and gave the penalty, which is exactly in line with the people's proposal that "to handle a homicide case now, there are two procedures: one is handled by the political and legal organs in accordance with the law; the other is handled by the folk in coordination and handling the procedure of losing the life price, which is doubly punitive. [5]

## 5. Balance between Traditional Mediation and Modern Judicature

Both modern judicial system and civil dispute mediation system play a pivotal role in the process of people dealing with contradictions and disputes, we can not ignore and deny the role of either of them. Current under the background of the rule of law in our country, universal access to modern justice, the rule of law thoughts is the overall direction, but this does not mean that the traditional mediation will lose its significance, whether past, present, or future, traditional mediation is the important supplement of the judicial system, will still play essential roles, cultural continuity also determines the system exist for a long time. The balance between the traditional mediation method and the modern judicature needs to make the traditional mediation method gradually evolve into a part of the contemporary judicature, that is, integrate into the specific legal system, so as to standardize the use of this valuable dispute resolution measure formed for a long time. No matter how efficient the traditional mediation method is, no matter how good the social response it has achieved, it must follow the basic principles and contents of modern justice, otherwise it is illegal and unreasonable, and it is the destruction of the whole judicial system.[6]

On the application of traditional dispute mediation system in criminal justice, "mediation, as an important part of our cultural tradition, was inherited during the new democratic revolution and continues to the present". This paper holds that the traditional dispute mediation system in Zhagana area is the result of a certain comprehensive function of history and culture, which has its existence significance and its limitations in space and time. With the expansion of people's social contact, the increase of population flow, the change of traditional production and life style, and the improvement of people's cultural level, there are many uncertainties in its future development trend.

The traditional dispute mediation system in Zhagana region of Diapbe is the result of the comprehensive function of history and culture. It has its existence significance and its limitations in space and time. With the expansion of people's social contact, the increase of population flow, the change of traditional production and life style, and the improvement of people's cultural level, there are many uncertainties in its future development trend. Practice of modern judicial system is the premise to realize the rule of law, understanding the cultural phenomenon and civilized achievement, seriously rethink their role for us to carry on the reasonable and good to prevent the spread of its advanced hinder judicial civilization, balance of modern judicial civilization and rural civilization, to prevent the occurrence of soil and water disaffected excellent modern judicial situation can have very good effect.

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