Research on Legal Issues in Minority Intangible Heritage Conservation

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DOI: 10.37420/j.mlr.2021.016

Abstract: *Among the ways of minority intangible heritage conservation, legislation undoubtedly plays a decisive role. Only by improving relevant laws and regulations and establishing a standardized and complete legal conservation system can the precious minority intangible cultural heritage be revitalized and vigorous. In recent years, China's ethnic minority intangible heritage conservation legislation has achieved great results, and conservation measures have been continuously strengthened, but there are still some problems and shortcomings. It is suggested to improve the administrative legislative system and mechanism for the conservation of minority intangible heritage, strengthen the conservation system and the intellectual property protection, and improve the relevant supporting system in the legislation of minority intangible heritage conservation.*

Key words: *minority intangible cultural heritage; conservation; legislation; system; intellectual property*

Strengthening Legislation Is of Great Significance to Ethnic Intangible Heritage Conservation

"Intangible cultural heritage refers to the expressions of various traditional cultures that have been passed down from generation to generation by people of all ethnic groups and are regarded as part of their cultural heritage, as well as objects and places related to traditional cultural expressions." This definition comes from the United Nations. UNESCO's "Convention for the conservation of Intangible Cultural Heritage." The intangible cultural heritage of ethnic minorities is a major spiritual and intellectual achievement of human society. The legislation for the conservation of intangible cultural heritage of ethnic minorities is an effective form of legislation that regulates and adjusts the conservation of intangible cultural heritage of ethnic minorities through a unified code. Among the many ways of protecting minority intangible cultural heritage, legislation undoubtedly plays a pivotal role. Only by further improving relevant laws and regulations and gradually establishing a standardized and complete legal conservation system can the precious cultural heritage be rejuvenated and rejuvenated. As the country and the public gradually pay more attention to the related content of intangible cultural heritage, various countries in the world have set off an upsurge to attach importance to the conservation of intangible cultural heritage. International Convention. In October 2003, the 32nd session of UNESCO passed the "Convention for the conservation of Intangible Cultural Heritage", which became an international convention that echoed the "Convention for the conservation of the World Cultural and Natural Heritage." It requires that "each State Party shall take necessary measures to ensure that

the intangible cultural heritage on its territory is protected". These "necessary measures" include appropriate legal, technical, administrative and financial measures, through drafting lists, formulating conservation plans, and establishing conservation institutions. , Cultivate conservation teams, and strengthen publicity, dissemination, education, etc. to confirm, display and inherit intangible cultural heritage. After China joined the United Nations "Convention on the conservation of Intangible Cultural Heritage" in 2004, the concept of "intangible cultural heritage" gradually replaced the term "national folk culture". The "Intangible Cultural Heritage Law of the People's Republic of China" is the "Intangible Cultural Heritage Law of the People's Republic of China" passed and promulgated at the 19th meeting of the Standing Committee of the 11th National People's Congress of the People's Republic of China on February 25, 2011. The law is formulated to inherit and carry forward the excellent traditional culture of the Chinese nation, promote the construction of socialist spiritual civilization, and strengthen the conservation and preservation of intangible cultural heritage. The formulation and promulgation of the "Intangible Cultural Heritage Law" is a manifestation of China's comprehensive fulfillment of its obligations under international conventions, and it is a positive contribution made by China to promote the conservation of intangible cultural heritage in the world and maintain the diversity of human culture. In addition to the "Intangible Cultural Heritage Law" at the national level, China's legislation on intangible cultural heritage conservation also includes special legislation for the conservation of intangible cultural heritage by local governments. The types and characteristics of cultural heritage in different provinces, autonomous regions, and municipalities are different, and the measures and methods adopted should also be analyzed in detail based on their own actual conditions and specific issues. At present, more than 20 provinces and regions including Zhejiang, Jiangsu, Shanxi, Shaanxi, Hebei, Henan, Xinjiang, Tibet, Yunnan, Anhui, Liaoning, etc. have issued regulations on the conservation of intangible cultural heritage or national and folk traditional culture. A multi-level legal conservation system for intangible cultural heritage has taken shape.

The Current Problems in Legislation

The Legal System Is Not Yet Sound

In recent years, the conservation of intangible cultural heritage of ethnic minorities has made gratifying achievements. A large number of intangible cultural heritage of ethnic minorities has been selected into the world-class and national-level conservation lists. The value of intangible cultural heritage of ethnic minorities has been continuously explored and recognized, and conservation measures continue to be taken. It has been strengthened, and the cultural matters, ethnicities and regions involved are also expanding. In terms of the current concept of minority intangible cultural heritage in China, the main purpose is to promote national cultural prosperity and national cultural exchanges. There is no complete legal system for the inheritance, development, enjoyment, and conservation of intangible cultural heritage, especially at present. Administrative laws at the national level that specifically protect intangible cultural heritage of ethnic minorities. In 2011, China promulgated the "Intangible Cultural Heritage Law". Although the law has made up for the lack of national administrative legislation to a certain extent, it still has problems such as weak forward-looking and inadequate connection with other laws. At the same time, China adopts a top-down guarantee mechanism. As creators, enjoyers and inheritors of national culture, ethnic minorities have a low awareness of rights and participation in decision-making due to cultural level and other reasons.

The Legislation Is Not Sufficiently Connected to Each Other

Ethnic minority intangible cultural heritage is diverse in form, rich in content, and diverse in interest subjects. There are conflicts and entanglements between group and individuality, inheritance and innovation, resulting in weak legislative supply. As China's basic law with administrative conservation as the mainstay, the "Intangible Cultural Heritage Law" provides public law conservation for intangible cultural heritage, mainly adopting administrative conservation measures, and there are still problems in linking with other departmental laws. The law does not clearly stipulate the rights of non-genetic inheritors and groups, nor does it make specific provisions on infringements. The provisions on legal liability are also limited to the staff of the cultural authorities and other relevant departments. For example, Article 40 of the law stipulates: “Whoever violates the provisions of this law and destroys objects and places that are part of the intangible cultural heritage shall bear civil liability in accordance with the law.” There is no specific legal subject that bears civil liability, but cultural The competent authority is still the inheritor who shoulders the responsibility of inheritance, which needs to be clarified in the relevant legal supporting documents or amendment process of the "Intangible Cultural Heritage Law". Article 6 of China's "Copyright Law" stipulates: "The conservation measures for the copyright of folk literary and artistic works shall be separately formulated by the State Council." So far, no administrative regulations have been issued to specifically protect the copyright of folk literary and artistic works. In the "Traditional Chinese Medicine Regulations", there is very little content concerning the conservation of traditional medicine. The inconsistency and in coordination between the "Intangible Cultural Heritage Law" and other departmental laws makes it difficult for relevant departments to coordinate and cooperate when formulating and implementing intangible cultural heritage conservation policies.

The Ambiguities in Intellectual Property Law

Minority intangible cultural heritage is the crystallization of wisdom accumulated and created by the entire nation in the long-term production and life, and has been in a process of constant change for a long time. The subject of rights is vague, and it is no longer possible to determine the specific creator and creator. However, the subject of current intellectual property rights in China must be determined, not an uncertain social group. The uncertainty of the subject of minority intangible cultural heritage rights has brought certain difficulties to the conservation of intellectual property rights by the legal system. The particularity of minority intangible cultural heritage makes it difficult to be included in the scope of conservation by the existing intellectual property system. In order to balance the interests of right holders and the public, China’s Intellectual Property Law limits the conservation of intellectual property rights such as copyrights and patent rights for a certain period of time, which conflicts with the long-term needs of intangible cultural heritage conservation.

Suggestions on Further Improving the Relevant Legislation

Improving the Administrative Legislative System and Mechanism

Establish a special ethnic minority intangible cultural heritage management organization to be responsible

for the general survey, confirmation, registration, conservation, and publicity of ethnic minority intangible cultural heritage in the administrative region, and in particular, give full play to the role of the ethnic township government. The principle of special legislative conservation must emphasize the need to formulate a special legal system, rather than simply improving the current intellectual property system or related legal systems. It is necessary to have a special intellectual property legal system when legislation is required. Detailed legal regulations are required to clearly adjust the legal relationship between the parties, which constitutes an important guarantee for the legal system. Promulgate the detailed implementation rules of the "Intangible Cultural Heritage Law" and local intangible cultural heritage conservation regulations at an appropriate time, revise and improve the "Interim Measures for the conservation and Management of National Intangible Cultural Heritage" and "Recognition of Representative Inheritors of National Intangible Cultural Heritage Projects" The Interim Measures for Management and Administration of Intangible Cultural Heritage, so that intangible cultural heritage conservation agencies at all levels and rights subjects clarify their legal rights, obligations, and consequences of legal actions. At the same time, it is necessary to establish an effective mechanism for the coordination and cooperation of the "Intangible Cultural Heritage Law" and the "Cultural Relics conservation Law", "Copyright Law", "Traditional Arts and Crafts conservation Regulations", "Traditional Chinese Medicine Regulations" and other laws and regulations. Governments at all levels should proactively carry out intangible cultural heritage conservation work, strictly abide by relevant laws and regulations when enforcing the law, regulate administrative enforcement actions, and avoid improper interference in intangible cultural heritage conservation; on the other hand, through copyright, patent rights, trademarks Intellectual property conservation laws such as rights, contract law, company law, and other civil and commercial laws protect intangible cultural heritage. By constructing a legal conservation model of intangible cultural heritage that combines public law conservation and private law conservation, it is more targeted and operable, can avoid and overcome the one-sided conservation of a single conservation method, and realize the comprehensive conservation of intangible cultural heritage.

Strengthen the Protection of Intellectual Property in Ethnic Intangible Heritage Conservation

Incorporate the conservation of minority intangible cultural heritage into the intellectual property conservation system, and build a private law conservation system for intangible cultural heritage with national characteristics. In terms of copyright, it breaks through the traditional restrictions, and the relevant government departments shall evaluate the declared cultural heritage through strict procedures and decide whether to grant copyright conservation. Social anthropologists of the functional school believe that the construction of a social system must be to meet certain social needs. In terms of the identification of the subject of rights, folk literature and art works have been continuously processed and created during the long-term circulation process, and have certain national characteristics and regional styles. Therefore, the subject of rights should belong to the ethnic group in the region. In order to protect the intangible cultural heritage that is on the verge of extinction, it is also possible to give corresponding copyrights to the organizers who have devoted themselves to the sorting and restoration of the intangible cultural heritage. In terms of rights, the personal rights and property rights of non-genetic inheritors of ethnic minorities should be better protected. The life of the law lies in its implementation. Legislation on the conservation of intangible cultural heritage of ethnic minorities needs to build an operational system that is efficient, rigorously supervised

and guaranteed. The operability of laws and regulations should be fully considered in the phases of project establishment, drafting, and deliberation, and the basis for social participation should be expanded.

Improve the Supporting Systems of the Relevant Legislation

Combining the successful experience and practice accumulation of intangible cultural heritage conservation in China, we put forward targeted ideas to improve the supporting legal system of intangible cultural heritage, such as formulating detailed rules on the implementation of the cultural heritage law or judicial interpretation, in order to make the specific implementation rules of intangible cultural heritage projects consistent with each other. The intangible cultural heritage method is more practical and proposes identification methods, projects, time limits, etc. Strengthen the multi-faceted conservation of intangible cultural heritage and form a complete legal network. At the same time, reform the administration, introduce administrative litigation and other judicial remedies, change the current situation where the government's leading role is overexposed, and consolidate the legal basis for administration according to law. Building a special conservation fund In order to effectively strengthen the management and conservation of intangible cultural heritage, various government departments should immediately establish a special intangible cultural heritage conservation subsidy fund. First of all, the people's governments at all levels in China should establish a special cultural relics conservation and rescue fund financial account based on actual work conditions, and the government's financial department should coordinate and supervise it. For such funds, local governments generally provide funds directly from various expenses. Secondly, government agencies can go for financing. The intangible cultural heritage rights conservation fund bonds can be issued regularly to absorb a large amount of social public funds and increase the public's attention to it.

Funding

This study is supported by Guangxi Cultural Tourism Master Studio "Guangxi-ASEAN Culture and Tourism Development Research Center".

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