

Analysis on the Legal Protection Mode of Intangible Cultural Heritage

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Abstract—Intangible cultural heritage is a magnificent treasure of Chinese ancient national traditional culture which has been inherited, innovated and accumulated over the years. How to effectively protect intangible cultural heritage and regulate the use of intangible cultural heritage has become an important issue in the field of intangible cultural heritage protection in China. This paper attempts to summarize the basic content of intangible cultural heritage protection, analyze the current situation and legal protection mode of intangible cultural heritage protection in China, and further put forward suggestions for improving the legal mode of intangible cultural heritage protection. Only in this way can we provide the foundation for the establishment of the intangible cultural heritage protection mechanism, in order to better cultivate the concept and spirit of the protection of the intangible cultural heritage in the public.

Keywords—intangible cultural heritage; legal status; legal protection mode

I. INTRODUCTION

Intangible cultural heritage itself is a highly generalized and abstract concept, which is a collection of a kind of cultural forms, indicating a class of intangible cultural symbols and the overall memory of civilization. How to understand the term intangible cultural heritage? "Cultural heritage" refers to the ancient cultural information carrier which is preserved on the ground or in folk customs, and it is a relatively intuitive part narrow of culture in a sense.[1] "Intangible" as the prefix of "cultural heritage" is used to describe the intangible characteristics of the "cultural heritage". The definition of intangible cultural heritage is defined in the Interim Measures for the Declaration and Evaluation of National Intangible Cultural Heritage Representative Works in China: "It refers to various traditional cultural expressive forms, which have been inherited by the people of all ethnic groups for generations and are closely related to people's life (such as folk activities, performing arts, traditional knowledge and skills, as well as related instruments, objects, handicrafts and so on), and cultural space." According to the definition, the main body of intangible cultural heritage in China is the people of all ethnic groups, and two important standards of intangible cultural heritage are clearly recognized, that is, people of all ethnic groups inherit from generation to generation and are closely related to people's life. Intangible cultural heritage has five characteristics such as intangibility, collectivity, liveness and diversity of forms. The term "intangible" has shown that it has

an intangible characteristic. Collectivity is reflected in the fact that the creators of intangible cultural heritage are usually tribes or ethnic groups rather than individuals, and the creative achievements are shared by the groups. Liveness refers to the fact that the intangible cultural heritage needs to give play to the initiative of the creative subject in the creative process, and its form of expression is also with the character of change. In the long process of creation and transformation, intangible cultural heritage has been continuously improved and developed to achieve better inheritance.

II. THE CURRENT SITUATION OF LEGAL PROTECTION OF INTANGIBLE CULTURAL HERITAGE IN CHINA

The research on the protection of intangible cultural heritage is always on the edge of social science, so it difficult to realize the comprehensive protection of intangible cultural heritage. On the whole, there is still a lack of attention on the legal protection of intangible cultural heritage. Throughout the domestic intangible cultural heritage projects, there are few or even no systematic investigations from perspective of national policies, laws and regulations into the relatively high proportion of intangible cultural heritage such as crafts, dances, arts and vocal music and so on. In addition, one of the reasons for the lack of research on intangible cultural heritage protection, especially legal protection, is the lack of practical research projects and protection methods, and there are only few places where all-round research can be carried out, mainly concentrated in museums, cultural centers and other participating units. It is not difficult to find out through network retrieval, and there are relatively few domestic investigations and researches on innovation, protection and inheritance of intangible cultural heritage. The research objects generally focus on innovation rather than inheritance, and on individuals rather than the whole. In many cases, it is based on intangible artistic objects and intangible heritage styles, for example, the current development and innovation of the various styles of intangible heritage performances such as Zen dance, national male and female vocal solo, cucurbit flute, harmonica performances, personal finger whistle and other intangible cultural heritage skills have carried out the corresponding creation and research, in fact, it only explored its concrete objects, without study the deep connotation of its cultural field. This phenomenon obviously runs counter to the original intention of intangible cultural heritage protection. In fact, in order to promote the protection of intangible cultural heritage, China has also carried out a series of work from

various aspects. As early as the beginning of this century, China has promulgated a large number of laws based on the needs of intangible cultural heritage protection, including the Opinions on Strengthening the Protection of Intangible Cultural Heritage in China and the Law of the People's Republic of China on Intangible Cultural Heritage, and designated the second Saturday in June each year as "Cultural Heritage Day" to publicize and appeal to the whole society to participate in the inheritance of cultural heritage. In terms of capital investment, China has invested a total of 8.5 billion yuan in intangible cultural heritage protection projects during the 12th Five Year Plan period. Such huge financial resources have improved the inheritance conditions, intangible cultural heritage learning environment and inheritance vitality to a certain extent. However, most of the intangible cultural heritage projects deviate from modern life, so although many people know the intangible cultural heritage projects, but lack of attention and thinking, they do not feel the important value of intangible cultural heritage. Many intangible cultural heritage projects are die out in such an environment, which is regrettable. Different arts, different nationalities and different regions have different dilemmas in the protection of intangible cultural heritage, so how to effectively protect the intangible cultural heritage has become a hot topic of the times, and there are more and more voices questioning the protection mode of intangible cultural heritage. In particular, it is reflected in the following aspects: First, there is a lack of specific protection measures in intangible cultural heritage law, and in practice, law enforcement agencies have also expressed concerns because there are no clear standards. Second, the concept of inheritors of intangible cultural heritage is obsolete, and they are unwilling to impart the performance form of the intangible cultural heritage to more people. There are fewer and fewer people who understand and master the intangible cultural heritage there are fewer and fewer people who understand and master the intangible cultural heritage. Different arts, different nationalities and different regions have different dilemmas in the protection of intangible cultural heritage, so how to effectively protect the intangible cultural heritage has become a hot topic of the times, and there are more and more voices questioning the protection mode of intangible cultural heritage, especially in the following aspects. First, there is a lack of specific protection measures in intangible cultural heritage law, and the law enforcement departments are worried about the lack of clear standards in actual operation. Second, the concept of inheritors of intangible cultural heritage is old, and they are unwilling to transfer the performance form of intangible cultural heritage to more people. Fewer and fewer people know and master intangible cultural heritage technology, and the inheritance of intangible cultural heritage is unitary. It is difficult to promote the long-term development of intangible cultural heritage by relying on the self-development of traditional skills.

III. THE MODE OF LEGAL PROTECTION OF INTANGIBLE CULTURAL HERITAGE

From the perspective of the current regulatory system in China, the protection of intangible cultural heritage still focuses on the public law protection mode. This public law method is mainly reflected in two aspects: First, establish the

list of intangible cultural heritage through the identification of the government, in order to further take administrative means to protect it, such as the national intangible cultural heritage protection catalogue system and the identification system of "representative inheritor" determined by China; the other is to formulate special administrative regulations to protect the intangible cultural heritage in an all-round way. It is stipulated in the Constitution and other relevant laws and regulations. As far as the legal protection mode of intangible cultural heritage is concerned, there are two main views in the academic circle on whether to adopt intellectual property protection for intangible cultural heritage and how to make it: opponents believe that it is too utilitarian to adopt the private law protection mode, especially the intellectual property protection mode to protect intangible cultural heritage, which may easily lead to some people to protect intangible cultural heritage in a way that can obtain the most benefits, rather than protecting it in the most suitable way of cultural inheritance and preservation, so that gradually distort or destroy the cultural basis of intangible cultural heritage. Scholars who agree with the protection of intangible cultural heritage through private law models, such as intellectual property rights, also have different opinions on the methods of protection. Some scholars believe that the intangible cultural heritage can be protected based on or modified from the existing intellectual property system, and some scholars believe that there are differences in technical characteristics and description forms between intangible cultural heritage and intellectual property. However, in terms of the existing laws, the protection mode of private law is not used to protect intangible cultural heritage in China.

IV. THE COUNTERMEASURES TO IMPROVE THE LEGAL PROTECTION MODE OF INTANGIBLE CULTURAL HERITAGE IN CHINA

Before putting forward the improvement and perfection countermeasures of the legal protection mode of intangible cultural heritage in China, it is necessary to make it clear that the intangible cultural heritage belongs to the product of human intellectual activities, then as a part of intangible intellectual achievements, intangible cultural heritage can establish other protection modes other than public law, such as intellectual property protection mode. In fact, there are indeed many benefits to protect intangible cultural heritage by the intellectual property law model. First, through intellectual property law, strictly control and punish the malicious damage of intangible cultural heritage skills by criminals, and safeguard the rights and interests of old craftsmen. Second, the intellectual property law is relatively complete, and there are specific and feasible methods and means to guarantee the inheritance of intangible cultural heritage based on it. Third, the protection of such a model can indeed bring certain objective benefits to the owners of the intangible cultural heritage, which can ensure the development environment and learning environment of the intangible cultural heritage, and better support the development of the intangible cultural heritage by creating local wealth, give confidence and motivation to the owners of intangible cultural heritage, and improve the enthusiasm of spreading intangible cultural heritage.

The content of intangible cultural heritage is extremely extensive, and its protection by private law requires, first of all, it is necessary a clear understanding of the basic purpose of the intangible cultural heritage law and the foundation of the intangible cultural heritage legal system, and at the same time innovate the traditional intellectual property system to make up for the shortcomings of the traditional intellectual property system in the field of intangible cultural heritage protection, that is to say, the acceptance of intangible cultural heritage through the innovation of the intellectual property system, thereby establishing a comprehensive approach based on the entire intellectual property system. As a legal system of intellectual property, its legislative purpose is to protect the rights of intellectual creators, maintain social justice, promote the wide spread of knowledge, and effectively allocate intellectual resources. This is the double value goal of justice and benefit. All the basic systems of intellectual property revolve around the above-mentioned legal value goals play the social functions of protecting rights, balancing interests, promoting scientific and technological progress and economic growth.[2]The intellectual property law protection of intangible cultural heritage should also adhere to this concept, further improve the right system around the goal of intangible cultural heritage protection, balance interests, reduce conflicts, and promote intangible cultural heritage to give full play to the spiritual motivation of cultural self-confidence and the social function of economic growth in the new era. In principle, on the one hand, the intellectual property protection mode of intangible cultural heritage should actively use the existing intellectual property system for protection; on the other hand, it should consider whether the intellectual property system can be properly modified and adjusted from the perspective of technology, so as to include intangible cultural heritage which is close to the requirements of intellectual property protection but not up to the standard into the protection scope. Expanding the interpretation of the scope of the object and the subject of the intellectual property right, not only including the intangible cultural heritage suitable for the use of intellectual property protection in the object of intellectual property, the scope of subjects of rights can also be extended to individuals, legal persons and unincorporated organizations, specific ethnic groups, regions, or groups, and so on. When necessary, non-corporate organizations (such as social groups, etc.) may be authorized to claim rights on behalf of the ethnic and group intangible cultural heritage. It is also possible to establish a special intellectual property protection system, further clarify the subject of rights of intangible cultural heritage, establish an intangible cultural heritage registration system and a benefit and rights restriction system for intangible cultural heritage rights holders, and use the intellectual property system to protect intangible cultural heritage, implement defensive protection and adjust policies in a timely manner in accordance with the development stage and the changes of the times. The realization of all aspects of intangible cultural protection refers to the protection of intangible cultural heritage through the formulation of special laws and the creation of new types of intellectual property rights in addition to the traditional intellectual property law. In this way, the obstacles that traditional intellectual property rights cannot adapt to the particularity of intangible cultural heritage can be broken to a

large extent. The realization of all aspects of intangible cultural protection refers to the protection of intangible cultural heritage through the formulation of special laws and the creation of new types of intellectual property rights in addition to the traditional intellectual property law. In this way, the obstacles that traditional intellectual property rights cannot adapt to the particularity of intangible cultural heritage can be broken to a large extent. Legislators can design specific legal system according to the characteristics of intangible cultural heritage completely without the restriction of the original protection mode, and avoid act in a procrustean way under the traditional intellectual property mode. For those intangible cultural heritage objects that cannot be included in the above protection mode, special separate laws can be formulated to protect them. On the basis of improving the traditional single legal protection mode of intangible cultural heritage, the government, social organizations and individuals should take the important responsibility of publicity, so that the legal protection mode can be effectively implemented, especially to give full play to the characteristics of the times, take the big data express to spread the legal protection mode of intangible cultural heritage, attract more young people to join in the development and innovation of intangible cultural heritage, and make the intangible cultural heritage closer to life so that the legal protection system of intangible cultural heritage can be more applicable.

V. CONCLUSION

In summary, it is imperative to establish the public and private law protection mode with the core of administrative law and intellectual property system. This paper focuses on the concrete construction of the intangible cultural heritage intellectual property protection system, and expounds the concrete proposals for the perfection of the intangible cultural heritage legal protection system.

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