

On the Rules and Optimization of Betrothal Gifts

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Abstract

The stipulation of betrothal gift has a long history in Our country. From the end of primitive society, betrothal gift has already had its embryonic form, and began to be institutionalized in the Zhou Dynasty. After thousands of years of social changes, although the institution of betrothal gift has been retained in the process of marriage, its role has changed. And with the progress of national ideology and legal consciousness, the system of betrothal gift also needs to be improved and developed. As the betrothal gifts is a large expenditure of the groom's family, how to regulate the return of the betrothal gifts to both sides in the process of more fair, so that both sides in the marriage process to better protect their own interests? Marriage law should not only guide men and women to establish a healthy marriage relationship, but also avoid aggravating the conflict between the two parties when the marriage breaks down.

Keywords

Betrothal Gifts History; Betrothal Gifts Return; Freedom of Marriage; Betrothal Gifts Optimization

1. The Historical Evolution of Betrothal Gifts

At the end of the primitive society, polygamy was common, and women lost their independent status. In the patriarchal society, they could be bought and sold openly. Chinese betrothal gifts had a strong color of mercenary marriage from the beginning of its establishment. Until the Northern Qi Dynasty, the state law determined the recruitment, and continued to be used until the Qing Dynasty and even the Republic of China. Therefore, the most essential significance of betrothal gift in ancient China is as a token of engagement.

After the founding of new China, it was imperative to abandon traditional customs. At that time, the law regarded marriage registration as the only form to prove the existence of marriage relationship, and the law denied the legality of betrothal gift. However, although the country has taken various forms to eliminate the bad habits, the phenomenon of paying betrothal gifts and related disputes have not been abated, and the phenomenon of paying betrothal gifts still exists widely in social reality.

In order to better play the role of law in regulating people's behavior, the Supreme People's Court stipulated in article 10 of the Judicial Interpretation of the Marriage Law (II) that if the parties request to return the betrothal gifts paid according to the custom, if the parties have not gone through the marriage registration formalities, the people's court shall support it; If both parties go through the marriage registration formalities but do not live together or pay before marriage and cause difficulties for the payer, the bride shall return the betrothal gifts at the time of divorce. The Interpretation (I) of the Marriage and Family part of the Civil Code enacted and promulgated by the Supreme People's Court in 2020 follows this provision.

This regulation reflects that the attitude of the law towards betrothal gifts begins to ease, and treats betrothal gifts as conditional gifts, which to some extent provides a legal basis for solving

the problem of returning betrothal gifts, and has a certain guarantee role for maintaining social stability.

2. The Current Law on the Betrothal Gifts Provisions of the Existing Deficiencies

There has been a great change in our country's legislative attitude towards the problem of betrothal gift, and the current betrothal gift system is more in line with the reality of our country on the basis of summing up previous experience. but at the same time, the current provisions are relatively broad and vague, which is easy to cause the differentiation of judgment results in similar cases.

(1) The application scope of betrothal gift refund is too narrow

To did not deal with marriage registration as a condition of return the betrothal gifts of lifting, the conditions are rigid, the condition was supposed to make men and women both parties in the case of agreement to complete the marriage registration formalities, and then make the man to pay the dowry not failed, the purpose of the law in line with good vision, hope happy men and women both parties into the hall, however, Marriage registration as a legal form of review procedures, it cannot be a reasonable assessment of the true feelings of both men and women, the implementation of the legal procedures of marriage registration does not add too much obligation for both parties, it is inevitable that some people will take advantage of this legal loophole, through the "quick divorce" to obtain the betrothal gifts. Similarly, for some men and women who live together before marriage, there are various reasons for their not timely marriage registration, but their behaviour of living together has been recognized by both families, and has completed the delivery of betrothal gifts and other behaviors. At this time, betrothal gifts as a big economic source of cohabitating couples, they may be used for both life and acquire basic necessities and live for medical expenses, if live together a few years later, the man proposed cohabitational relation, and ask the women to return the original delivery of the dowry, such a case, for the protection of women's rights are not satisfactory.

In addition, in reality, more and more men and women are not bound by traditional ideas. If they cannot bear the bondage of marriage within a year or two after marriage, they may not choose to run in and directly choose divorce. or because the other party has some physical defects he did not know before marriage and divorce, and at this time has no legal provisions of the return of the betrothal gifts requirements. If really feelings between the two sides have broken down, but because the woman didn't agree to return the property, the man may choose to maintain a broken marriage, divorce because once again unable to obtain payment before marriage dowry, for most men, it basically is hard to take the number of the dowry to remarry, however, the force to maintain the mentality of buried a hidden danger for the breeding of domestic violence, Fang Yangyang is a typical case.

(2) the legal provisions are not practical and operable

Although the law provides two exceptions, namely "the two parties have gone through the marriage registration formalities but do not live together" and "the marriage is paid before marriage and causes difficulties for the payer", the betrothal gifts should be returned even after the marriage has been registered. However, in judicial practice, this article is rarely applied. First, "living together" is hard to define. It is generally accepted that living in the same house is not the only criterion, but should also include mutual support and shared family responsibilities. However, if a man and a woman live apart from each other for a long period of time because they work outside the city or other reasons, does it count as living together? Moreover, it is generally believed that living together is not a point in time, but a process. But if living together for a short time, less than a year, or even just a month, does it count as living together? Moreover, living together faces the problem of difficult proof. According to the principle of "who claims,

who provides proof", the claimant of betrothal gifts return should bear the burden of proof, but it is relatively easy to prove that there is a common residence, other evidence is difficult to provide proof. Secondly, it is difficult to determine whether it is difficult to live. In the current situation where the amount of betrothal gift is generally high, paying betrothal gift will have an impact on any family, but the degree of impact is different. Especially in the rural areas where betrothal gifts is prevalent, especially for poor families, the living difficulties caused by the payment of betrothal gifts is beyond doubt. However, the law does not provide the standard for living difficulties, and limits the living difficulties to the scope of "the payer". Betrothal gifts is usually paid by the family. Should we consider the overall situation of the family when judging the living difficulties? Moreover, the difficulty of living also faces the problem of proof. In judicial practice, witness testimony, iOU, difficult life proof as evidence, although some witness testimony has a certain proof, but the strength is very weak.

(3) The refund of betrothal gifts shall not be based on fault

According to the law, the bride should return the betrothal gifts regardless of whether the couple has violated the marriage contract or had a romantic relationship with another person during the marriage contract, as long as the two parties have not gone through marriage registration formalities. The restitution of the betrothal gifts will not be affected even if the man is seriously at fault.

The biggest advantage of this rule is to protect men's freedom of marriage. If the betrothal gifts is given once, if the man violates the marriage contract, the betrothal gifts cannot be returned, so for most ordinary families, especially those with poor economic status, even if the other party is not suitable for marriage, the man will not dare to break the marriage contract under the pressure of betrothal gifts, and reluctantly enter the marriage hall, unless the woman proposes to break the marriage contract. Therefore, this provision is conducive to the realization of the principle of freedom of marriage.

However, on the other side of the rule, for women, a good love has been endowed with sacred significance from the beginning of engagement, women will make full preparations for further step into the palace of marriage, and pay most of their energy for the upcoming wedding. If the man breaks the engagement and wants to get back all the betrothal gifts, then for the woman, it not only loses a lot of money spent for preparing for marriage, but also causes mental damage based on trust. It's also a double whammy for women.

3. The Optimization of Betrothal Gifts Rules

(1) Changes in the nature of betrothal gifts

Regarding the nature of betrothal gift, the main viewpoints in the theoretical circle include deposit theory, contract theory, general gift theory and obligation gift theory, etc. The current judicial interpretation of China holds that the nature of betrothal gift belongs to gift with termination condition.

With the change of social concept, the above theories are no longer in line with the actual situation of China's development. This paper argues that the optimization of betrothal gifts rules should start from changing the nature of betrothal gifts. Compared with the above theories, the purist gift theory has more progressive significance. This theory holds that the betrothal gifts is a gift for the ultimate purpose of the establishment of marriage. If the purpose expected by the donor of the betrothal gifts cannot be achieved, the donor can request the recipient to return the gift. The pursuit of an end and an end is the mark that distinguishes end giving from other gifts.

The purposal gift theory can make up the deficiency of the present marriage law. First of all, in ancient China, betrothal gifts was often directly donated to parents. However, with the enhancement of women's awareness of independence and the change of the expression of

betrothal gifts (from the physical form of gold and silver to the current bank deposit), betrothal gifts is gradually controlled by women themselves. If the law guides the use of betrothal gifts reasonably at this time, the bride can take it to the newly-married family, or it can be converted into a dowry by the bride's parents, and re-inflow into the newly formed family of the couple. It is mutually beneficial for both men and women to purchase property for common use. Compared with the current system of betrothal gifts, men are more willing to offer betrothal gifts on their own initiative rather than pay them out of social pressure. At the same time, it also objectively promoted the formation of a good social atmosphere and gradually got rid of the bad habit of asking for property through marriage.

At the same time, in modern society, young people tend to be independent from their original family and form a new family. After getting married, the daughter will not change her kinship relationship with her parents. She should not only support her parents according to law, but also enjoy the right to inherit. Men also live separately from their parents and their property is divided, even if not completely separated. The two families are in equal status. The male family will not benefit from the increase of labor force, and the female family will not suffer substantial damage. The function of betrothal gifts compensation for the female family has lost its foundation, and the concept of "raising children for old age" has also been greatly impacted. At this time for young people who have just into the society, to form a new family of relatively weak economic foundation, if the betrothal gifts for men and women to form a new family, so to some extent, independent life provides great convenience for them, in their foothold in the society as soon as possible, solve the new family property crisis, stable relationships. In addition, for other men and women of age, in the face of increasingly intense social pressure, there is a stronger desire to get rid of the secular. They do not adhere to the traditional marriage culture and no longer consider marriage registration to have children as a necessary choice in life, and many non-marriage cohabitation families begin to emerge. Although the emergence of unmarried cohabitation, the fact marriage does not conform to the current marriage law regulation of marriage form, however, some people are completely conform to the family of "living together, helping each other, mutual care of children, supporting the elderly," the essence of the conditions, the groom's parents likely to pay the dowry recognizes this behavior for if the law take purposeful donative said, The protection of women's interests will be greatly enhanced if the betrothal gifts can be used for family life.

This paper argues that if betrothal gifts is identified as a gift contract with special purpose, the special purpose cannot be realized, which will lead to the termination of the gift contract. With express or implied consent, it is more consistent with the practice of social communication in China that the betrothal gifts should be used for the purpose of establishing a new family by both parties when the betrothal gifts are given.

(2) Expand the litigation subject of betrothal restitution

In traditional Chinese thinking, marriage is a family event, in the betrothal gifts to pay, the groom's parents are a subject most betrothal gifts, in some poor rural areas, the amount of betrothal gifts does not match with the local economic development level, some parents end his life to save his son's betrothal gifts money enough, even with the help of relatives, friends, to make their children get married smoothly. When determining the subject of the lawsuit, the special circumstances of the case should be fully considered to avoid the subject being unsuitable:

First, if the dispute over the return of betrothal gift occurs when the marriage contract is terminated, and the provider of betrothal gift includes the parents and relatives of the man, and the recipient of betrothal gift also includes the parents and relatives of the woman, then the parents and relatives of the man or woman involved in the case should also be listed as the common subject of the lawsuit.

Second, assume that the parties in the process of divorce proceedings, a party put forward the request of betrothal gifts return, and the dowry providers and recipients, involving both sides of the parents, relatives and friends at this time, because of the divorce is the lawsuit involving both the male and the female identity relationship, so should be told that divorce proceedings the parties filed separately, and the betrothal gifts cannot be returned to a merger with divorce dispute processing, In order to avoid confusion, to avoid the case of outsiders to divorce both parties caused interference.

Third, no matter whether the two parties have signed a marriage contract or registered marriage, the betrothal gifts are only paid by the man himself, the betrothal gifts is only received by the woman himself, and the betrothal gifts is only used for their own life and consumption, then the subject of the lawsuit is only the man and the woman themselves.

(3) introduce subjective fault system

Equality between men and women is one of the principles advocated by the Marriage Law. In order to implement the principles of the Marriage Law and fully protect women's rights and interests in solving the problem, we should objectively analyse the subjective faults of both parties, to consider the degree of fault as a factor to determine the amount and proportion of the return of betrothal gifts. Traced back, pay the dowry after a party go back on our word don't want to get married not only includes the cause of emotional problems such as personality, also made other party, one party is unforgivable fault, etc., should be guided by the lawsuit of divorce mediation fails, granting a divorce to build system of subjective fault, the comprehensive aspects, appeared the following circumstances, shall be deemed a party has fault: First, if both men and women have already contracted marriage but have not, the payer of the betrothal gift violates the duty of loyalty, contacts with other members of the opposite sex or even contracts marriage, or has domestic violence, gambling, alcoholism, drug abuse and other bad habits, and the receiver of the betrothal gift proposes to dissolve the contract for this reason. Second, the receiving party discovers that the paying party conceals the fact that it is suffering from a disease that should not be married medically. Third, the marriage is annulled or declared invalid because of the other party.

4. The Summary

Betrothal gifts is a problem that every family has to face, and it is also a difficult problem that the society faces. The development of betrothal gifts is a historical process, with the brand of history, betrothal gifts though "mercenary marriage" of the original function has been gradually fade in the development of The Times, but its feudal ideas remain still exists, its nearly one thousand years of history has a far-reaching influence on national, is not can purify, the improvement should not be rushed but it should not be too slow, It should be adapted to the process of social development and the openness of people's hearts. In an increasingly fickle society, the rising price of betrothal gifts also reflects the anxiety of people's lives. People intend to change their living status through betrothal gifts, and the change of the status quo is most likely at the cost of the decline of another family life. As the product of social rationality, law should guide people's irrational behaviour reasonably and cool down the fanaticism of the society. The law should seize the opportunity of the transformation of the function of betrothal gift, make it better serve new families, make betrothal gift play a better role, reduce people's fear of betrothal gift, reduce the beneficial nature of betrothal gift, make family relationship more harmonious, marriage relationship freer, ease the social "inner roll", alleviate social anxiety.

References

- [1] Hao Haibo. Changing customs and reshaping rural social order from the perspective of institutional change -- An investigation centered on the governance of rural high betrothal gifts in N County, Henan Province [J]. Governance Research, 201,37(02):92-101.
- [2] He Qianqian. Dual analysis of the change of rural betrothal gifts: Structure of sex ratio and intergenerational responsibility. Journal of Huazhong Agricultural University (Social Science Edition), 2021(02):120-127+181.
- [3] Li Fulei. On the Function transformation and rule reconstruction of betrothal gifts [J]. Journal of Graduate School of Chinese Academy of Social Sciences, 2021(01):68-78.
- [4] Sun Diliang. Moral Governance of high betrothal gifts in rural areas: Rationale and direction [J]. Lanzhou Academic Journal, 2020(09):146-158.
- [5] Yang Zhe, Xu Haijiao. The causes and governance of excessive marriage consumption in rural areas [J]. Study and Practice, 2020(07):114-122.
- [6] Shi Leilei. The change of betrothal gifts payment structure and the climbing logic of betrothal gifts [J]. Contemporary Youth Research, 2020(03):60-66.
- [7] Wang Xiangyang. The generation mechanism and governance of "sky-high betrothal gifts" in rural China [J]. Journal of Southwest University (Social Science Edition), 201,47(05):37-46+223-224.
- [8] Li Shanping. On The Damage Compensation of Engagement and its Dissolution [J]. Law Science (Journal of Northwest University of Political Science and Law), 201,39(05):171-189.
- [9] Jin mei. On the reconstruction of the claim right foundation of betrothal gift refund [J]. Forum of politics and law, 2019,37(05):149-158.
- [10] Wu Juan. Legal analysis on the return of betrothal gifts after termination of cohabitation relationship [J]. Journal of southeast university (philosophy and social science edition), 2017,19(S1): 110-113.