

Analysis of the Legal System of De Facto Marriage

Yueting Li

Beijing Institute of Technology, Zhuhai, China

Abstract

In modern social life, the phenomenon of de facto marriages still exists widely, especially in remote rural areas. This has led to the urgent legal problems, and the validity of de facto marriages has become the focus of controversy. This paper analyzes the legal system of de facto marriages in China and the loopholes in the legislation, and makes suggestions for improving the legal system of de facto marriages, based on the overview of de facto marriages.

Keywords

De Facto Marriage; Marital Relationship; Legal System.

1. Overview of De Facto Marriage

1.1. Definition

De facto marriage is the symmetry of legal marriage and is distinguished from non-marital cohabitation, which is an objective form of marriage in real life, referring to the union of a man and a woman without a spouse, who live together as husband and wife without being registered as married, and are considered by the public to be husband and wife. It is based on the fact that men and women live together and is characterized by its recognized nature. However, its definition is not clearly given in the Marriage and Family Part of our Civil Code. The Interpretation of the Marriage and Family Part (I) stipulates that if a man and a woman who live together as husband and wife have a broken relationship and bring a divorce action to the people's court, the court shall make an exception. The "man and woman living together in the name of husband and wife" described in this article is a general definition of de facto marriage.

1.2. Current Status

China has a strict marriage registration system, but de facto marriages still exist in large numbers in our society due to the influence of our traditional rituals, the inadequacy of the marriage registration system in the past and the lack of legal publicity. Whether in the city or in the countryside, a considerable proportion of de facto marriage groups still exist in some age groups. It can be said that the current situation of de facto marriage in our society is very serious, and the number of this group only this year also shows an increasing trend. If the group chooses to seek legal solutions to disputes, it will cause a certain degree of negative impact on society. At the same time, it will also face many problems in practice because of the legal disputes arising from de facto marriages, and it is difficult to protect the legal rights and interests of the parties in a timely manner.

1.3. Question

The law on the establishment of marital relations in China has been an evolving process of development, with the marriage laws of 1950 and 1980 and their amendments clearly stipulating that registration is a necessary condition for the establishment of marital relations; between 1980 and 1994, de facto marriages were recognized if they met the legal conditions, and after 1994, the legal effect of de facto marriages was not recognized at all. In the judicial

interpretation issued by the Supreme Court in 2001, a relative recognition doctrine was adopted for de facto marriages instead.

Despite numerous reforms, there are still contradictions within the legal system regarding the regulation of de facto marriages. First, there is a contradiction between the sectoral laws; a de facto marriage can be recognized as a cohabitation relationship in civil law, but can constitute bigamy in criminal law. Secondly, there is a disconnect with the public's concept of marriage, resulting in a hollowing out of the principle of monogamy.

2. The Legal System of De Facto Marriage in China

2.1. Establishment Elements

On the question of the criteria for determining a de facto marriage, the core lies in distinguishing the establishment of a de facto marriage from the validity of a de facto marriage, which focuses on the determination of the fact of the act of marriage between the parties, i.e., the determination of the act of marriage that is not registered but exists. The establishment and otherwise is the premise of the validity of the de facto marriage, whether the de facto marriage is valid is a value judgment, that is, from the interests of society, the interests of the state and the interests of third parties to judge the effect of the marriage. If the marriage is not yet sufficient to be considered established, then the effect can not be discussed. The Supreme Court's interpretation of the Civil Code on marriage and family clearly stipulates that men and women who have not registered their marriage according to the provisions of the Civil Code but live together as husband and wife should be treated differently if they file a lawsuit for divorce. From this point of view, because the de facto marriage lacks the formal elements of registration, the determination of whether the de facto marriage is established should be determined from the consent of both men and women and the objective facts of living together. The core element of establishment should be the consent of the parties to live together as husband and wife. Consent in the common law system since its inception has the meaning of establishing a relationship between the sexes for the purpose of husband and wife, and this relationship should also be lasting and intimate, not a transient cohabitation relationship. In traditional Chinese rituals and laws, consent is an essential element in the establishment of a marriage, from the time the man gives the bride-price letter to the woman to the time the woman accepts the bride-price, which has legal effect.

How should we determine whether there is consent between the parties? The author believes that the determination should be made by holding a wedding. Consent is essentially a subjective emotion in the human heart, in the legal regulation, it is difficult to determine a person's inner thoughts, therefore, should require both parties through a certain behavior as the external expression of meaning. From our historical traditional customs as well as modern marriage customs and practices, holding a wedding means that both parties have the will to tie the knot and pursue the effect of the effect of the law, and the folk custom of holding a wedding also prevails and is feasible.

2.2. Legal Effect

A de facto marriage is a legal act in which a man and a woman do not register their marriage, but pursue the same marital effects as a legal marriage registration. The legal effect is an evaluation of the effect of a de facto marriage from the perspective of the state, society and third parties, and if a de facto marriage is not recognized as legally valid, it will face the consequences of being recognized as invalid and annulled. From the viewpoint of the world's legislation, there are three main legislative doctrines on the recognition of legal effects, namely, non-recognition, recognition and relative recognition.

At present, there is a trend towards recognitionism and relative recognitionism in all countries on the issue of recognizing the legal effect of de facto marriages. In China, there is no clear definition in the civil code on the issue, but in the form of legislation, China has adopted a combination of negative and affirmative legislativeism from a realistic point of view around how to follow up. From this viewpoint on the issue of determining the legal validity, it can be considered that China has adopted a relative recognitionist viewpoint.

3. Existing Problems and Suggestions

3.1. Issues

China has implemented a supplementary registration system in the legal protection of de facto marriages, and the Marriage and Family Part of the Civil Code as well as the relevant judicial interpretations specify that those who have not registered their marriages should do so. This provision indicates that China does not recognize de facto marriages, and for a man and a woman who have not registered their marriage and file a lawsuit for divorce, they must first make up the registration of the marriage before registering the divorce. This provision may seem to make up for the legislative shortcomings, but from a practical point of view, there are certain loopholes.

3.1.1. Insufficient Practicality of Procedural Rules

The law requires that if the marriage is not registered, but the man and woman living together as husband and wife filed a divorce suit, the court shall inform them to make up the marriage registration. From a realistic point of view, both men and women have filed a divorce lawsuit, that means that the feelings of both sides have broken down, if the parties are then required to register the marriage process, personally for marriage registration, is obviously inappropriate. And men and women have filed a divorce lawsuit, proving that the two sides are difficult to reach an agreement, there is a certain degree of disagreement between the two sides or one does not agree to divorce, then, in the process of marriage registration, there is a high probability that a party will deliberately delay, do not cooperate with the situation. In summary, the problems described above, and those similar to them, are not clearly addressed by the law.

3.1.2. Weakening the Value Function of the Registration System

Marriage registration system is the formal elements of the establishment of marriage between men and women, one of its important purposes is to formally establish marriage in law, and marriage is a legal civil relationship, is able to be protected by law a serious, non-children's play spirit conveyed to both sides. However, the registration system, which undermines the authority and seriousness of the law, to a certain extent, the legislative purpose of the marriage registration system to reverse the direction set up for divorce, to both men and women, if they have not been divorced, there is no need to consider the value of marriage registration issues, invariably weaken the value of the registration system and the spiritual core.

3.2. Recommendations

Some domestic scholars believe that to improve the loopholes in our legislation, we should follow the basic guiding principle that de facto marriages are "illegal" in legal nature, that is, to take a relatively conservative attitude in the law, should adhere to the registered marriage system, the existence of de facto marriages as an exception to the situation. On the one hand, the system of registration can be retained, adding a court confirmation system. Allow the court to hear a party to the "divorce" proceedings in the process of incidental confirmation, confirmed by the court as a marriage, the legal documents in force and the marriage certificate can enjoy the same legal effect. On the other hand, if the marriage relationship cannot be recognized, the relationship can be recognized as illegal cohabitation, and the implied partnership contract

system and other relevant provisions of the civil law will be applied to the property and personal rights issues, respectively.

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