

Legal Analysis of Prenuptial Bribery in China

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Abstract: As an important component of traditional Chinese marriage culture, Bride price has undergone thousands of years of historical evolution in China and still exhibits strong vitality in modern social life. At present, there is no clear provision in China's law regarding premarital Bride price. However, with the increasing number of disputes arising from Bride price, the content of disputes has also become more complex. Therefore, exploring the legal attributes of premarital Bride price is particularly important for judicial practice.

1. Introduction

As the most important marriage custom in ancient China, bride price was first used to express the man's love and sincerity to the woman, and later gradually developed into a kind of protection of women's rights and interests. In ancient my country, betrothal gifts were generally called "nazheng", which meant that the man or his relatives paid a certain amount of property to the woman or her relatives before the wedding ceremony was held, thereby expressing the man's willingness to enter into marriage with the woman. After the woman receives the property paid by the man, she indicates that the marriage relationship between the two parties has been established. It can be seen that only the property that the man gives to the woman for the purpose of marriage before marriage can be called a bride price.

In ancient times, first of all, women's status was low. In order to prevent men from abandoning women, high betrothal gifts were an effective means. A single betrothal gift may consume most of the man's family property, which greatly increases the cost of abandoning his wife. Therefore, the man will be more inclined to live a responsible life with the woman. Secondly, since the woman mainly lives in her husband's family after she gets married, and does not fulfill or does not fulfill her support obligations to her parents, the bride price is also an economic compensation for the woman's parents to raise her up, and it is also a support for the woman's parents when they get old. The obligation is transformed into the man's financial compensation. Therefore, paying a bride price was a necessary procedure for concluding a marriage in ancient times and was of great significance to the ancient marriage system.

With the current social and economic development, women's status has been greatly improved. The man's payment of bride price to the woman is no longer a necessary condition for concluding a marriage contract. It is only a folk marriage custom that has a certain degree of moral restraint and does not have legal force.

Betrothal gift, as a kind of ethics, has already changed its taste. At present, it is relatively common in rural areas of our country, and there are many cases of disputes caused by betrothal gifts. At present, only the judicial interpretation issued by the Supreme People's Court has made some provisions on

issues related to bride price, but there is no formal legislation. The issue of bride price is quite controversial both in academic circles and in practical circles. This article will research and analyze the legal issues related to bride price based on the problems existing in judicial practice and combined with what I have learned.

2. Definition of Bride price

2.1. The meaning of Bride price

What is a Bride price? A Bride price refers to the property paid by a man to a woman on the premise of marriage. A Bride price, also known as a Bride price. In ancient China, the conclusion of a marriage required six processes: asking for a name, taking a concubine, accepting a concubine, inviting a date, and welcoming the bride in person. Among them, accepting a concubine refers to the Bride price. The standards for Bride price vary in each region, and now there are exorbitant dowries in some parts of China, which have attracted national attention.

2.2. The scope of Bride price

A Bride price with a profound history of development, with diverse forms, generally including Bride price money, gold and silver jewelry, meeting gifts, wedding banquet expenses, etc.

Generally speaking, the amount of Bride price money given by a man to a woman varies from place to place, mainly based on local customs. The money mentioned above refers to the traditional meaning of Bride price money, which generally refers to the amount of money given to the other party at once, which can be included in the scope of the Bride price.

It is also common for the man to purchase the three gold items, namely gold and silver jewelry, for the woman, which also account for a large proportion in daily weddings. Therefore, it is necessary to determine whether it should be included in the scope of the Bride price based on the actual situation.

In many parts of China, especially in rural areas, male parents usually give a significant amount of meeting gifts to the female partner.

At engagements or wedding banquets between men and women, various nominal expenses given by relatives account for half of the Bride price.

3. The legal nature of the bride price

3.1 On the legal attributes of the bride price theory

Although the legal nature of the bride price research has not been stopped, but the legal nature of gift, scholars are still controversial, there are probably the following points of view.

The common gift theory [1]. According to this point of view: “The engagement is based entirely on the free will of both parties, the man is aware of their non-obligation to pay the bride price, but still take the initiative to pay the bride price, when the bride price, the ownership of the bride price will be transferred, the man cannot break off the marriage contract as a reason for the return of the bride price.”

With the lifting of the conditions of gift said. The point of view is that: “The bride price is a gift with a condition of rescission, the attached condition is ‘the dissolution of the marriage contract’, if the marriage contract is not rescinded, then the gift continues to be valid, the bride price belongs to the recipient’s woman; if the marriage contract is rescinded, the gift loses its legal effect, the bride price woman should return to the donor’s Man.”

The betrothal gift is the deposit of the certificate. This view that: “The betrothal is a civil legal act,

and the bride price is as a guarantee that the betrothal can be performed.” In short, a dowry is a down payment made by a man to ensure that a marriage contract is fulfilled. The bride price will not be refunded if the bride price is rescinded upon the request of the husband and the bride price is rescinded upon the request of the bride price recipient.

3.2 The bride price should be “Gifts with discharge conditions”

Although the nature of betrothal gifts varies in theory, People’s Court and most scholars agree that gift was a “Gift with a release condition” [2]. Professor Shi Shangkuan also thinks: “The bride price is a kind of gift which proves the marriage contract is established and takes the future should establish the marriage as the premise and shows the sincerity of the mutual affection which takes place because of the kinship.” I think, a dowry given by a man in the hope of marrying a woman in the future and entering into a formal marriage shall be regarded as a gift subject to the conditions of dissolution. If the marriage is not consummated and the man’s purpose as the giver fails, then the dowry, if still owned by the woman as the recipient, is contrary to the man’s original intention as the giver.

4. The status quo of marital contract property disputes

4.1 The legal problems existing in the disputes of bride price in judicial practice

In judicial practice, the legal problems of the dowry are as follows: it is difficult to determine the scope of the return of the dowry after the dissolution of the marriage contract, the standard and proportion of the return of the dowry are difficult to practice under the existing rules, and the agent’s power of agency is abused in practical cases, etc.

4.2 The law provides for the return of a bride price

At present, our country deals with the disputes over the betrothal gifts mainly according to the provisions of Article 10 of the Supreme People’s Court interpretation on the application of certain issues of the marriage law of the People’s Republic of China (II) :“If a party requests the return of a betrothal gift paid in accordance with the customs, the People’s Court shall support (I) if the parties have not gone through the marriage registration procedures, (II) if the parties have gone through the marriage registration procedures but have not lived together, and (III) if the betrothal gifts are given before marriage and the life of the giver is difficult. Where the provisions of subparagraphs (2) and (3) of the preceding paragraph apply, the two parties shall divorce as a condition.”

After the dissolution of the marriage contract, the request for the return of the bride price, should also distinguish between different situations to deal with. One is under the guise of love or betrothal, in fact, is a fraud of property, regardless of which of the two parties to the dissolution of the marriage contract, in principle, should be swindled all the property returned to the injured party. The other is under the guise of betrothal, with property gifts as bait to deceive each other’s feelings of the person, their property delivered to the other party is to achieve illegal purposes and the voluntary delivery, should be in accordance with the voluntary gift of property treatment, it is not refundable regardless of whether the marriage is dissolved by one of the parties [3].

4.3 Follow the principles of fairness and local betrothal customs

Since the law does not specify the issue of the bride price, the payment of the bride price is generally based on the local customs and customs of marriage, with the moral as the criterion to bind the parties. Therefore, the settlement of the dispute over the return of the betrothal gift should, of

course, be based on the local customs of marriage and the principle of fairness in dealing with the party who does not comply with the agreement, and the party who sticks to the agreement should be given legal protection, this is more in line with the social concept of fairness and justice [4].

5. Settlement of disputes over bride price

5.1 A party to a suit for the return of a betrothal gift

In Chinese traditional marriage customs, marriage is considered to be a life-long event. In life, children's marriage is generally managed by the parents, then the bride price is mostly sent by the parents, and mostly belongs to the family's common property. Thus, the giver and receiver of the bride price may not only be a man and a woman, but may also include their respective parents or relatives, who may become parties to the proceedings for the return of the bride price. In judicial practice, the plaintiffs are usually sued by the parties themselves or their parents, and the plaintiffs usually list the other party's parents as co-defendants and claim joint and several liability. This action not only conforms to the reality of life, but also can protect the property rights of citizens to the maximum extent.

5.2 Special circumstances

Because the bride price has a broad mass base, although it has not been recognized by the law, but the disputes caused by it is the current judicial practice have to face the problem. From the social situation in recent years, the sky-high price of betrothal gifts frequently, but the betrothal amount of the increase in the binding force on marriage is falling instead. Especially for rural women, women do not worry about marriage after divorce, but rural men pay high bride price, after divorce, unable to afford the bride price of remarriage, resulting in social problems. To this end, the People's Court should return the customary dowry upon the request of the parties to divorce. The man who paid the bride price determines whether to return the bride price and the amount of the gift. It should not only be considered in the light of the actual circumstances of the case, we should also proceed from the perspective of carrying forward the socialist moral fashion, taking full account of such factors as the length of time a man and a woman spend together, the length of their pre-marital interactions, the amount of the bride price, the level of family income and whether or not they have children, who raises them, whether or not they have entered into a formal marriage, the reasons for divorce and the extent of their fault. The judge and mediator must pay special attention to whether to return the bride price and the specific amount of the return gift based on local customs, in order to achieve the purpose of properly resolving conflicts between the two parties and balancing the interests of both parties.

5.3 Effectively resolve the betrothal dispute

The government needs to optimize the mediation methods for bride price disputes. The betrothal gift dispute always concerns the people's vital interests and feelings, and cannot be simply "Adjudicated". For the betrothal disputes arising in real life, the People's Court should actively apply the mechanism of litigation, mediation and docking, and form a joint force with the mediation organization to find the optimal solution to the disputes. To really close a case, both sides of the conflict have to open up to each other. Only in this way can the contradictions be effectively resolved and the unity of legal effect and social effect be realized.

We will improve the mediation mechanism for disputes over betrothal gifts. After receiving the case, the People's Court will first assign the case to the relevant mediation office for mediation. Through the patient communication of the mediator, the interpretation of the law, the two sides

reached a mediation agreement. Local People's Court have taken "Governance of sources of litigation" as their main task, building mediation studios and continuously exploring and improving the mediation mechanism of betrothal gift disputes, so as to enhance the efficiency of diversified dispute resolution.

The country needs to strengthen the education of people on the legal knowledge of bride price. It is suggested that rural grass-roots organizations should give guidance to men and women of marriageable age and their relatives on the education of bride price. The purpose is to let the general public have a basically correct understanding of pre-wedding betrothal gifts. Not only can effectively avoid the emergence of sky-high bride price, but also can reduce the incidence of bride price disputes.

6. Conclusions

Everyone should be in awe of marriage, adhering to a rational and cautious attitude towards marriage, marriage is not a child's play, both men and women should establish a correct view of marriage and values. The conclusion of a marriage relationship should be based on the feelings, and make the decision of marriage on the premise of fully understanding each other, contrary to the original intention of being together in the first place. When a man and a woman have entered into marriage, especially after giving birth to children, they should respect and love each other, tolerate and understand each other, both sides should bear the "Filial piety parents, children." The responsibility and conscience of the husband and wife support each other and move forward, facing the difficulties of life together. As a traditional Chinese ethical custom, bride price should be the icing on the cake rather than the conflict of interest between men and women. Marriage is not easy.

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