

Improvement and Reform of the Legal System of Marriage and Family under the Background of the Civil Code

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Abstract: In order to make the marriage and family construction of the Chinese nation reach the level of civilization, harmony, fairness and equality, and make every family deal with the disputes on the interests of children and husband and wife reasonably in the family environment, the China government issued the Civil Code of People's Republic of China (PRC) in 2021. Because the marriage and family series itself has strong theoretical characteristics, how to balance its relationship with the Civil Code and constantly improve the legal system of marriage and family through the Civil Code is an urgent problem for academic circles at present. China's civil code is a people-oriented law, which is first embodied in emphasizing respect for citizens' will in the compilation of marriage and family. This paper introduces the characteristics of the marriage legal system under the civil code system, and discusses how to improve the marriage legal system under this background, so as to improve the marriage and family legal system in China. It is hoped that through this study, we can flexibly deal with the new problems in the field of marriage and family, build a civilized family, promote the development of social civilization, and jointly build and share the new trend of socialist family civilization.

1. Introduction

The national society is composed of different small families. Family is a part of society and the original model of society. Whether it is harmonious or not determines whether the whole society can be harmonious and stable. At present, with the continuous improvement of China's marriage law, the legislation and content have been adjusted, focusing on social security for the masses[1]. Therefore, in order to facilitate management, marriage and family law has returned to the civil code system. The Civil Code, known as the “encyclopedia of social life”, is the first law named after the code in New China, which occupies a basic position in the legal system and is also the basic law of market economy[2]. From the historical evolution of China's Civil Code, it is not difficult to find that the legal system of marriage and family plays an important role in promoting the development of social civilization in China, and it can actively promote the continuous improvement of the civil legal system[3]. With the development of economy and society, new changes have taken place in the situation faced by marriage and family. On the basis of the original Marriage Law of the People's Republic of China and the original Adoption Law of People's Republic of China (PRC),

the Civil Code of China has been revised according to the principles of freedom of marriage, equality between men and women and monogamy, combined with the new development needs of social life[4]. Perfecting the legal system of marriage and family is the key factor to ensure the progress of social civilization, and then flexibly and effectively deal with various marriage problems and family disputes, promote family happiness and harmony, and form a new trend of socialist family civilization; So as to better protect the disadvantaged party in marriage and family relations and truly realize the justice and equality of the marriage legal system[5].

Marriage legal system belongs to civil law and occupies an important position under the civil code system. China's Civil Code came into force on January 1, 2021, among which the social hot issues such as the cooling-off period of divorce and joint debt of husband and wife have attracted people's attention[6]. It is related to everyone's vital interests and all aspects of social life, and marriage and family compilation, as a concentrated expression of the kinship system in China, is closely related to people's lives. Marriage and family in China's Civil Code embodies the value of maintaining the harmony of marriage and family in legislation. Harmony of marriage and family is a prerequisite for social harmony, and a harmonious society is also an important guarantee for building a harmonious family[7]. Perfecting the legal system of marriage and family is helpful to further improve the judicial system. It is not only a major national political act, but also shoulders the important mission of constantly improving China's legal system and promoting the country's prosperity. Taking effective measures to improve the specific legal rules will help to ensure the practical applicability, equality and fairness of the marriage and family legal system. Based on this, this paper discusses the improvement and reform of marriage and family legal system under the background of civil code.

2. Basic Requirements and Principles for the Realization of Marriage and Family in the Civil Code

The Civil Code came into force on January 1st, 2021, which is a systematic integration and revision of China's civil legal system. The laws and regulations in the Civil Code are specific to every step from the fetal period to the donation of the dead body, covering all the legal problems that China citizens may encounter in their lives. The Civil Code is an innovation and revision of the original Marriage Law, which has changed the shortcomings of the original Marriage Law, and revised the relevant provisions on family planning, divorce, consanguineous marriage and marriage invalidation or cancellation. The basic requirements and principles for the realization of marriage and family compilation in the Civil Code are as follows: First, the marriage legal system has ethical value, which is mainly determined by the attributes of family relations. Our cognition of marriage and family relations is the object of adjustment of the marriage legal system[8]. China's legal system itself is limited by folk customs, while the traditional family in China is a natural and social factor. In particular, the social attribute of marriage and family itself is influenced by social development and human habits. Therefore, it is necessary to follow the principle of ethical priority. Compared with other property laws, the stability of marriage and family legal system is more obviously a combination of long-term ethical relations. It is not for the sake of short-lived interests, so it is influenced by national customs, culture and moral concepts, and its spiritual connotation, humanism and ethics are also profound.

The ethics of the object of adjustment of the marriage legal system determines that the law has the ethical characteristics of humanistic care and humanism. The people-oriented principle is the basic idea of the whole marriage and family legislation, and it is also the value goal of realizing marriage and family legislation. The people-oriented principle mainly refers to the need to recognize the value or dignity of all people in marriage and family laws, and take people as the

yardstick of law enforcement. The legal system of marriage and family in civil law is more different than other laws. At present, the marriage legal system mainly adjusts the kinship relationship between husband and wife, parents and children, brothers and sisters, grandparents and grandchildren. In China, the relationship between members in marriage and family is not only a natural relationship, but also a social relationship. For any country, the important influence of marriage and family relations on the stable development of society can not be ignored when formulating laws related to marriage and family.

3. The Perfection and Reform of Marriage and Family Law System in Civil Code

3.1 For the Perfection of Family Relations

The relationship between husband and wife, parent-child relationship, etc. in the marriage legal system reflects the needs of members in family life. Therefore, in the marriage legal system, the exercise of rights and the performance of obligations have unity, and the relationship between rights and obligations does not have consideration and balance. In the chapter of “family relations”, the Civil Code has made many important amendments and improvements to relevant legal rules. To improve the legal system of marriage and family through the Civil Code, it is necessary to adjust the marriage system appropriately, so that people's right to choose freely is wider, and the wishes of civil subjects are highlighted. The power of agency for family affairs is stipulated in Article 1060th of the Marriage and Family Part of the Civil Code, which fully emphasizes that husband and wife are in an equal position in the family and have the same right to put forward family decision-making opinions. Therefore, it is the proper meaning of marriage for husband and wife to exercise the right of agency in family affairs. However, the marriage law does not stipulate the right of husband and wife to represent their families. This compilation of the Civil Code confirms that the civil legal acts carried out by one spouse for the needs of family daily life are effective for both spouses, unless otherwise agreed between one spouse and the other. The addition of regulations in the civil code is effective for both husband and wife, and the agency right of family affairs is limited to dealing with domestic affairs, excluding the production and sales activities of both parties. The rights and obligations of citizens in marriage and family relations are shown in Figure 1.

In the Civil Code on Marriage and Family, the division of marital property is mainly elaborated by enumerating methods, which improves the operability of the law in a certain sense. The Civil Code confirms the legal rules of marital property division. In order to ensure the stability of marriage relationship and joint property relationship, it is not allowed to divide the joint property of husband and wife during the marriage relationship. At the same time, the Civil Code clarifies the distribution of debts that both parties should bear, and both husband and wife should jointly bear marital debts, and on this basis, both husband and wife should sign the debt matters for ratification. The debts incurred by one spouse in his own name and the debts incurred by family daily expenses are recognized as joint debts of husband and wife, but the debts other than family daily expenses are not joint debts of husband and wife. Clarifying the boundary of husband and wife's joint debt has effectively solved the problem that one spouse has no bottom line to bear the debt for the other in the past practice.

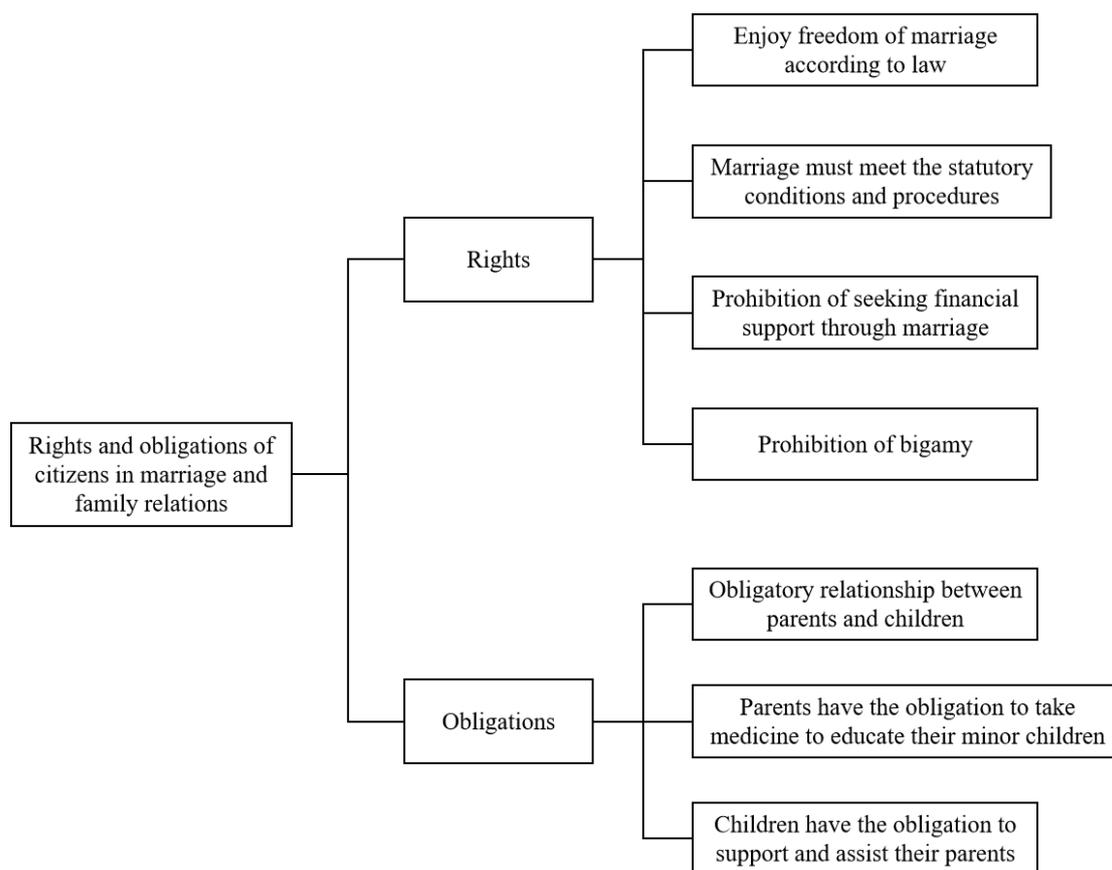


Fig.1 Rights and Obligations of Citizens in Marriage and Family Relations

3.2 For the Perfection of Marriage and Divorce System

Marriage and family laws and regulations have been governed by the General Part of the Civil Code since they were incorporated into the Civil Code of China. However, the marriage and family part needs some special restrictions in the practical application. The adjustment of the marriage system in the Civil Code mainly includes the following points: (1) Expanding the application of freedom of marriage. Freedom of marriage is the basic principle of China's marriage system, and marriage should be entirely voluntary. It is no longer forbidden for people with serious diseases to get married voluntarily, but if they have serious diseases, they should inform the other party in advance. If they don't, the other party has the right to cancel their marriage relationship. (2) After the marriage registration is completed, the legal marriage relationship can be established. Although there is little difference in time between certification and registration, their legal meanings are quite different. Certification is an act of state public power, registration is a voluntary act of the parties, and whether the state issues certificates is based on whether the marriage registration is completed or not. (3) The method of revoking coerced marriage has been adjusted, and the subject of revoking management has been transferred from the marriage registry to the people's court. As the injured party, it can only be revoked, not necessarily revoked. Whether to exercise the right of revocation can only be decided by myself. I can choose to revoke the marriage and demand that the marriage be declared invalid. You can also choose to insist on marriage instead of treating it as invalid marriage across the board. This amendment is not only more reasonable, but also protects the legitimate rights and interests of the coerced party. (4) Increased relief and help for the rights of the innocent party in the marriage relationship. When the marriage relationship is revoked or invalid, the innocent party in the relationship between husband and wife has the right to apply for

compensation for losses from the other party. This ensures that the marriage problem of the victim of marriage is effectively dealt with and solved by law. In addition, the formulation of the civil code system also needs to add the content of not registering marriage.

In addition, the Civil Code responded to the divorce issue with its legal rules. The Civil Code has the following points to improve the divorce legal system: (1) A “cooling-off period for divorce” has been added to further maintain this marriage relationship, so as to avoid the situation of divorce due to the impulse of husband and wife. In addition, it takes longer for both husband and wife to file a divorce appeal again. When the court where they are located decides that they cannot divorce, if the husband and wife do not have any new situation and reasons within half a year, they will not be able to accept their second divorce appeal. It systematically reduces evasive policies and impulsive hasty divorce, avoids negative social impact, and better protects the interests of family members and society such as marriage parties and minor children. (2) Extend the time for filing divorce proceedings from half a year to one year. (3) When the husband and wife divorce, if the two sides can't reach a unified agreement, they should divide the property according to the principle of taking care of the children, the rights and interests of the woman and the rights and interests of the innocent party. (4) The principle of compensation for housework contribution has been appropriately relaxed. The principle of compensation for housework contribution means that one party in a marriage relationship has the right to ask for compensation from the other party when it divorces because it bears more obligations such as raising children, caring for the elderly and helping the other party to work. The Civil Code has lifted the restriction of “property system agreed by husband and wife” in which one spouse claims compensation from the other spouse when he or she is divorced because he or she is responsible for housework, raising children and caring for the elderly. The perfection of these legal systems makes the division of divorce property more fair and reasonable.

3.3 For the Perfection of the Adoption System

Family is the basic cell of society, and marriage is the most important way to construct and derive family. In the civil law system, although the content of the legal system of marriage and family is not huge, its position is very important. Family harmony is the premise and foundation of social harmony, and a harmonious and happy marriage and family provides strong spiritual support for modern people to engage in social activities, so that tired body and mind can be adjusted. The Civil Code supplements the adoption system as follows: (1) It improves the qualifications of adopters, and the adopters need to have no record of illegal crimes, thus safeguarding the legitimate rights and interests of adoptees. (2) Relax the limit on the number of children adopted by adopters. The adopter can adopt one child if he has children, and can adopt at most two children if he has no children. Moreover, if orphans, disabled minors or minors raised by children's welfare institutions can't find their biological parents, they can not be restricted by the above amendments. (3) The relevant provisions on adoption of the opposite sex by spouses are added, and the adoption of minors over the age of eight should be modified with my consent, and the new civil affairs departments at or above the county level should conduct adoption assessment. (4) The age gap between the adopter without spouse and the adoptee is emphasized, and the age difference between the two parties should be more than 40 years old before the adoption procedure can be carried out. These are all necessary amendments to keep pace with the times. In addition, the Civil Code also emphasizes that the establishment of a harmonious and beautiful family atmosphere is an important part of the construction of family civilization and an important step to promote the development of Chinese family virtues. Marriage and family system is the basic criterion to regulate the relationship between husband and wife and family, which is related to the personal and property interests of

every household. Perfecting the legal system of marriage and family based on the civil code is more conducive to maintaining the stability and harmony of the family, safeguarding the legitimate rights and interests of the weak in marriage and family relations, and thus ensuring the equality of family status of both husband and wife.

4. Conclusions

The Civil Code plays an important fundamental role in the whole legal system, and it is an important indicator of the level of rule of law construction in socialist countries in China. While promoting the exercise of state power according to law, it further improves, confirms and guarantees the realization of citizens' legitimate rights and interests. With the improvement of China's marriage law, the new marriage law has been adjusted in legislation and content, focusing on social security for the masses. In order to facilitate management, the marriage and family law returned to the civil code system. Marriage in China can be not only protected by law, but also sanctioned by law, which is a system that cannot be easily violated. The reform of the Civil Code not only perfects the marriage law system in China, but also pays attention to the interests of the vulnerable groups in marriage and family, so that the vulnerable groups can feel equal status in society, which will undoubtedly promote the all-round development of China society. The emergence of China's Civil Code was determined by the historical development of China. To perfect China's marriage and family-related legal system through the Civil Code, it is necessary to fully base itself on China's national conditions and integrate China's ancient and modern civilizations, so as to make it full of China characteristics. This paper introduces the present situation of the marriage legal system, analyzes its characteristics, and explores how to improve the marriage legal system under the civil code system, strengthen the legal role of the marriage law, and promote the construction of a harmonious socialist society.

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