

Construction of the Rule of the Right to Return Betrothal Gifts

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Abstract: According to Article 1042 of the Civil Code of the People's Republic of China, it is not allowed by law to demand property through marriage. However, in reality, high-priced betrothal gifts are common in some areas and even getting worse. Therefore, based on the discussion of the theories of simple gift, quasi-contract, similar deposit, gift with a condition for termination, and custom regarding betrothal gifts, I construct the theoretical basis for the right to request the return of betrothal gifts. Moreover, based on the "Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Disputes Involving Betrothal Gifts" (hereinafter referred to as the "New Regulations of the Supreme People's Court") and the Civil Code of the People's Republic of China, I put forward my understanding of the determination of the parties involved in betrothal gifts, the nature of the engagement, the validity of the parties' agreements on betrothal gifts, the understanding of "causing the giver to have a difficult life", and the circumstances under which betrothal gifts will not be returned, and thereby constructs the rules for the return of betrothal gifts.

1. Problems existed

As a traditional marriage custom in China, "betrothal gifts" is a common in our daily life. With the social development and regional differences, the current situation of high betrothal gifts is common and even worse in some areas in China. Although the custom of the betrothal gifts has not been included in the Marriage Law and the Civil Code in China, the disputes caused by the betrothal gifts is common and we always have difficulty in the trial practice also. Article 10 of the Interpretation of the Marriage Law (II) formally intervenes in the custom of betrothal gifts from the level of national law, and the standard content is fully inherited by Article 5 of the Interpretation of the Supreme People's Court on the Application of the Interpretation of the Civil Code of the People's Republic of China (I) (hereinafter referred to as the Interpretation of Marriage and Family (I)). However, in recent years, the betrothal gifts disputes focus on the two types of cases: the couple who have been registered but have a short time together or the couple who have lived together but have not handled marriage registration, neither of which can apply the above provisions, leading to the inconsistent application of law in practice and causing a lot of disputes. In early 2024, the Supreme People's Court promulgated the Provisions on Several Issues concerning the Application of the Law to the Trial of Betrothal gifts Disputes (hereinafter referred to as the New Regulations of the Supreme People's Law),

trying to close loopholes in national law, but its application in practice is still quite controversial, based on this, this article focuses on the new provisions of the Supreme Law and the relevant provisions of the Civil Code, discussing many theories about the construction of the right of return and try to construct the theoretical basis of the claim. In combination with the trial guidelines and judgment opinions of local courts, I want to reconstruct the rules of the relevant provisions of the New Regulations of the Supreme Law and try to clarify the decisive cause of the return request and the boundaries of the discretionary cause. At the same time, in this article, I will also try to explore the scope and degree of the right of defense when the return of the betrothal gifts.

2. The argument of the right to return the betrothal gifts

In recent years, "high price betrothal gifts" is becoming increasingly common in some parts of our country, for example, in southern Shanxi, people are used to pay high price for the marriage, always including cars and houses [1]; and some counties in Jiangxi such as Leping City, Dexing City, Yugan County and other places even need about 600000 yuan to give the bride or her family. In response to this kind of situation, from 2021 to 2024, the central government continuously proposed the a series of documents to "carry out special treatment of prominent problems such as high price betrothal gifts and luxury marriage banquet". In August 2022, the Ministry of Agriculture and Rural Affairs, the Central Civilization Office and the Ministry of Civil Affairs also jointly issued the special Work Plan to address prominent problems as mentioned above, hoping to effectively curb the rising trend of bad habits such as "high price betrothal gifts" in some regions. In terms of legal effect, the agreement of "high betrothal gifts" agreement is invalid because it violates public order and good morals. The question lies in whether the return after the invalidation of the agreement applies to article 5 of the "Marriage and Family Interpretation (I)" and Article 5 and Article 6 of the New Regulations of the Supreme Law, that is to say whether the "high betrothal gifts" should be returned in full or in part for different reasons? Article 5, paragraph 2 of the new regulation stipulates: " If the people's court determines whether the amount of betrothal price is too high, it should consider the per capita disposable income of the residents where the bride is paid, the economic situation of the payer's family and local customs. To sum up, from the perspective of legal effect, it is not necessary to distinguish between high price and normal betrothal gifts. The high-price betrothal gifts do not certainly mean that all money must be returned, but should be treated as those normal-price betrothal gifts.

Whether the payment is under custom pressure is also not a normative element to distinguish between betrothal gifts and ordinary gifts. Although the context of modern contract law highlights the compensation of gift contract, the foundation is based on the pure altruism of the donor's generous practice of "charity, righteousness and sparse wealth". But the fact that the recipient does not pay the consideration does not mean that the donor has no return. Some studies believe that gift is also influenced by customs, ethics and social communication etiquette. In the Confucian tradition of etiquette, gift is the material carrier of human emotion and moral implication, and "reciprocity" maintains and consolidates the interpersonal relationship and social order of equality, reciprocity and mutual assistance [2]. The traditional etiquette and ethics of "giving" and "answering", on the one hand, make the donor feel the custom and social pressure, and expect the same return of the recipient; on the other hand, the pressure will be transmitted to the recipient, who has the "obligation" to bear the ethical responsibility of the same return. It is based on the exchange of both sides, constitute to the hope of the other side to return corresponding gifts under the local customs.

2.1 The discussion about the theory

Many scholars have different perspectives in their understanding of the right to return betrothal gifts, and I will analyze these theories and point out its advantages and shortcomings.

2.1.1 Simple gift theory

The simple gift said that the betrothal gifts immediately completes the transfer of ownership after the gift, which does not contain any purpose, so the betrothal gifts should not be returned upon request after the payment. However, I hold the view that this does not match the original purpose of the betrothal gifts. The betrothal gifts gift has a direct causal relationship with the marriage, and should not be regarded as a simple property gift.

2.1.2 Similar to the mode of the ancillary contract

Some scholars hold the view that the relationship between betrothal gifts and marriage can be regarded as the ancillary contract and the main contract contains the purpose of contracting a marriage. However, I hold the view that betrothal gift should be considered as the ancillary contract because if there is no marriage (which means that the main contract is not exist), there is definitely obvious that the ancillary contract is not exist, so there is a paradox when talking about the theory of considering betrothal gift as an ancillary contract.

2.1.3 Similar to the mode of deposit

The theory that betrothal gift is similar to the deposit means that the betrothal gifts can be regarded as a certificate to prove the establishment of the marriage. According to the deposit penalty system in China, if the betrothal gifts needs to be returned, it will be doubled, so I believe that the gift return with punishment damages the freedom of marriage[3].

2.1.4 Gift with a resolatory condition

This theory means that if the conditions of the gift are not fulfilled, the gift will be discharged, and the betrothal gifts after the termination shall be regarded as unjust enrichment and may be returned. "Conditions" are generally regarded as marriage or a period of time. The gift with the termination conditions regards the betrothal gifts to be returned as the unjust enrichment after the loss of the gift basis. However, if the betrothal gifts after the request is the unjust enrichment, and the effect of the betrothal gifts before the request is the causal gift, then the two are actually contradictory, and it is difficult to unify the standard of proportional betrothal gifts return in practice.

2.1.5 The theory of customs and traditions

It is customary that the betrothal gifts belongs to the folk customs, and the rules of payment and return should obey the local customs. Payment according to custom should also be returned in accordance with custom. This theory is more in line with the concept of civil return in China. However, the customs are different in different areas, if we use this theory to address the disputes, it is difficult to establish a standardized rules.

Therefore, I believes that there are many deficiencies in the above theories in logic or practice, so I try to construct the rules of betrothal gifts return on the premise of exploring the theoretical basis of the claim below.

2.2 Instances of 'demanding property under the guise of marriage' should be incorporated into betrothal gifts return system, based on the theory of gift for the purpose of achieving a specific goal

In recent years, there have been frequent cases of women using betrothal gifts to defraud money in some areas. Women target older single men or divorced and widowed men, seize the mentality that

men want to get married as soon as possible, and defraud property by asking for betrothal gifts, which seriously affects social stability. The typical situation means that the recipient has no intention to get married, absconds with the betrothal gifts after receiving the money, or collects the high betrothal gifts on the grounds of marriage for many times in a short period of time, and then regrets the marriage without justifiable reasons. Of course, in practice, there are also situations in which the woman has the real intention to get married and takes the opportunity to obtain property, so the woman's subjective can not be taken as the distinguishing criterion. Some courts try to define "demanding property under the guise of marriage" in terms of the purpose, amount and actual use of the property, but these standards return to the screening of "high-price betrothal gifts", betrothal gifts and ordinary gifts. The Supreme People's Court also admitted that it is difficult to have a clear boundary between whether the property paid to the woman is "demanding property under the guise of marriage" in practice, and it is also very difficult for the parties to provide evidence. Demanding property through marriage focuses more on the subjective state. When the ultimate goal of paying bride gifts is to maintain a marriage for a long time of life together is not achieved, it may in turn affect their inner thoughts. The Supreme People's Court in "Several Specific Opinions on the Division of Property in Divorce Cases Handled by the People's Courts" article 19 provisions: "If property is demanded under the guise of marriage, and in the event of divorce, if the duration of the marriage is short, or if the demand for property has caused financial hardship to the other party, the property may be returned at the court's discretion. If it is difficult to determine whether the property was obtained through demand or as a gift, it may be treated as a gift." It can be found that there is no substantial difference between the return rules of "demanding property from marriage" and the return rules of betrothal gifts. Some people believe that when no distinction is made between the two, the betrothal gifts return rules can be uniformly included, and the return of [4] should be determined based on the amount of payment, the common living time, and the fault of both parties. Article 2 of the new regulation of the Supreme Law stipulates: "It is prohibited to demand property under the guise of marriage. If one party demands property under the pretext of betrothal gifts, and the other party requests its return, the People's Court should support such a claim." The first sentence of this article should be regarded as the expression of the ethical value and ideology of "promoting healthy, thrifty and civilized marriage style and promoting the construction of civilized village customs", and has no substantial effect in promoting the application of law to distinguish between "demanding property through marriage" and betrothal gifts. The second sentence of this article involves the return rule of "demanding property through marriage". I hold the perspective that in the effect of the return law, we should distinguish the specific situation to apply this specification. If there is evidence to prove that the recipient has no intention to marry, belong to "demanding property through marriage" and then divorce in a short period (so what is long-term effective marriage is a key point) or without justifiable reason (no birth, live in different places), should support the request of all return; if the existence of the above facts, presumed to have real marriage intention, can take the woman subjective motive "demanding property through marriage" as the basis of the amount and proportion of return.

I believe that betrothal gifts is essentially a gift for the purpose of long-term effective marriage, so how to define long-term effective marriage is the top priority. Effectiveness requirement wants to go to civil affairs bureau to register above all, do not exist marriage invalid circumstance. Secondly, for long-term, I believes that eight years can be used as a long-term boundary, according to the folk said the seven-year itch and Article 6 of the 'Several Opinions on the Division of Property in Divorce Cases Handled by the People's Courts' issued by the Supreme People's Court in 1993 (which has been abolished), when both husband and wife has spent eight years, can determine the mutual life together completely long-term. Although the transformation rules have been criticized by scholars for violating the theory of civil law and marriage law, and the marriage law (revised in 2001), they are still of reference value. In the eight years, we can determine the return ratio of the betrothal gifts.

3. The systematization of the betrothal gifts return rules

As mentioned above, Article 5 of the Interpretation of Marriage and Family (1) and Article 5 and Article 6 of the New Regulations of the Supreme Law list a series of reasons that affect the return of the betrothal gifts, such as living difficulties, marriage registration, cohabitation time, the amount of the betrothal gifts, actual use of betrothal gifts, breeding situation, and the fault of both parties. Do these reasons have the same impact on the return of betrothal gifts? Therefore, the decisive reasons and the discretionary reasons for the return of the betrothal gifts will be distinguished below. The former includes two situations, causing the absolute difficulties of the payer and having children, which has the role of completely affirming or denying the right to claim the return of the betrothal gifts. In addition, other reasons are only the discretionary reasons affecting the specific amount and proportion of the return of betrothal gifts. The following is an analysis of each cause.

3.1 How to determine the parties involved in the marriage contract property case and whether the betrothal gifts can be handled together in the divorce case

In a case of marriage property, the man and the woman who concluded the marriage and the person who actually paid or receives the betrothal gifts are the parties. The man and the woman shall be considered as the parties concerned. Although the man's parents and the woman's parents are not the parties to the engagement, they are the people who actually pay or receive the betrothal gifts, so from my perspective they should also be the parties to the case. The aforementioned "actual payment and collection" does not include the actual payment and collection. If the parties in the return case and the parties in the divorce case agree, the return of betrothal gifts can be handled together in the divorce case, and the betrothal gifts can be dealt with the dissolution of the marriage. Although the subject of the rights and obligations of the return of the betrothal gifts is inconsistent with the parties in the divorce case, if the parties in the divorce case have obtained the authorization of the relevant right obligor, they can also deal with the betrothal gifts at the same time as dissolving the marriage.

3.2 How to grasp the nature of the engagement and the effectiveness of the agreement of the parties on the betrothal gifts

Based on the purpose of the gift, marriage is a prior agreement between unmarried men and women in accordance with local customs for the purpose of future marriage. Marriage and engagement are not the legal procedures for marriage, and promises to marry only bear moral responsibility and have no compulsory legal effect. However, the people's court shall handle the property relations such as the betrothal gifts returned by the engagement. The agreement between the two parties on the refusal of one party or the full return shall be invalid. After the dispute, If the man verbally expresses or indicates in phone calls, WeChat messages, or other chat records that he does not want the other party to return betrothal gifts, it generally should not be considered as a waiver of his right to request the return of betrothal gifts. Only when the two sides voluntarily signed a written agreement, no violence, coercion, major misunderstanding, unfair irrevocable, invalid, shall confirm the effectiveness of the agreement, because the written give up often higher effectiveness, the purpose of the will more clear.

3.3 How to understand "lead to the living difficulties of the payer"

'Causing the giver to experience living difficulties' as stated in Article 5 of the 'Interpretation (I) of the Supreme People's Court on the Application of the Marriage and Family Section of the Civil Code of the People's Republic of China', refers to betrothal gifts payment due to pay betrothal gifts is difficult to maintain the local basic living standard of payment, or because of betrothal gifts, or

liabilities, or payment amount to pay the total proportion of property, and so on and so forth. In practice, the absolute difficulties of the payer due to the payment of betrothal gifts are common in two kinds of situations: first, the payer raises the betrothal gifts, and then falls into poverty due to the inability to repay the debt; second, the parents are unable to support the betrothal gifts without a fixed economic source. If the relative difficulties in life due to the payment of the betrothal gifts are not without relief. If the return of the betrothal gifts is met, the payer has the right to request the return, but he cannot simply request the return based on the relative difficulties in life.

However, the practical challenge is how to prove the causal relationship between the payment of betrothal gifts and absolute living difficulties. In one case, the plaintiff claimed to have borrowed a total of 100,000 yuan from a third party due to the payment of betrothal gifts and submitted loan agreements and bank transaction details. The court's opinion held that the evidence provided by the plaintiff could not confirm that the loan was related to the marriage, nor could it prove that it caused the plaintiff's living difficulties.[5] This problem involves the relationship between "the difficult life" and "cohabitation time", because in principle, a request for the return of betrothal gifts due to living difficulties should also meet the requirement of a relatively short period of cohabitation. The rationale is that the shorter the period of cohabitation, the fewer the reasons for living difficulties other than the payment of betrothal gifts, thus strengthening the causal relationship between the payment of betrothal gifts and the living difficulties. On the contrary, the longer the life together means that the weaker the impact of the betrothal gifts payment on the current living standard, and the causal relationship is difficult to prove. Therefore, I believe that the eight years mentioned above can be regarded as the long-term end point of the long-term effective marriage purpose, and the causal relationship gradually weakens from the first year to the eighth year, and the specific situation needs to be decided according to the different factors in the case.

3.4 Betrothal gifts should not be returned if the intended purpose has been achieved

3.4.1 Have a child/children

Procreation is an important function of the marriage system, and the birth of children constitutes the main purpose of the marriage of both parties or one party. At the same time, the woman will also bear more objective physical risks, psychological pressure and physical and mental efforts due to pregnancy, childbirth and upbringing of the children. Therefore, the return of the betrothal gifts should take into account the situation of the woman's pregnancy. Article 5 and Article 6 of the new regulations of the Supreme Law change the previous stipulated "pregnancy of children" to "pregnancy", which can distinguish between "already born children" and "no children but pregnant and abortion".

In the case of having children, the trial guidelines of a few courts only admit that the proportion of the betrothal gifts can be appropriately reduced, while the results of the Supreme People's Court and the majority of the courts show that the betrothal gifts should not be returned in principle. I believe that the reason is that after the birth, most of the betrothal gifts has actually been used for both parties living together and child rearing. Therefore, no matter how much the betrothal gifts is used or useless, it should not be returned.

In cases where the woman has not given birth but has been pregnant or had a miscarriage, the reason for affecting the return lies in the negative impact of pregnancy and miscarriage on the woman's physical health, social reputation, and the likelihood of remarriage [6], but it is not enough to completely veto the claim for return, and must be based on other reasons. Therefore, I believe that in order to compensate the woman, the amount of return should be reduced. Some court trial guidelines clearly stipulate that if the woman is pregnant or miscarriage during living together, the return ratio can be reduced by another 5% to 20% [7].

3.4.2 Both parties have completed the marriage registration procedures and betrothal gifts have been used for long-term cohabitation

In addition to the purpose of procreation, in today's society, many couples choose to be DINKs (Double Income, No Kids). In such cases, marriage is essentially about finding a partner to share life with, in this case, marriage is to find someone to partnership, so when and go to the civil affairs bureau to handle the marriage registration, show the relationship and betrothal gifts actually used for both live together for a long time, can be regarded as a purpose, do not need to return betrothal gifts.

3.4.3 The duration of cohabitation between the parties is an important factor in determining the proportion of the return

'Cohabitation' refers to the continuous and stable living together of both parties at a common residence. Even if living in separate locations, the essence of cohabitation remains unchanged, and the duration of cohabitation can be determined at the court's discretion. Living in the same residence but without shared spiritual life, mutual care in daily life, or fulfillment of marital obligations does not count as cohabitation time. Without considering other factors, betrothal gifts can generally be handled according to the following proportions:

(1) If both parties have not completed the marriage registration procedures and have not cohabited, the full amount should be returned. If both parties have not completed the marriage registration procedures but have cohabited, and the cohabitation period is less than half a year, 80%~100% should be returned; if the cohabitation period is more than half a year but less than 2 years, 60%~80% should be returned; if the cohabitation period is more than 2 years but less than 4 years, 40%~60% should be returned; if the cohabitation period is more than 4 years but less than 6 years, 20%~40% should be returned; if the cohabitation period is more than 6 years but less than 8 years, 0%~20% should be returned; if the cohabitation period is more than 8 years, no return is required.

(2) If both parties have completed the marriage registration procedures but have not cohabited, 80% should be returned. If both parties have completed the marriage registration procedures and have cohabited, and the cohabitation period is less than 1 year, 50%~70% should be returned; if the cohabitation period is more than 1 year but less than 2 years, 30%~50% should be returned; if the cohabitation period is more than 2 years but less than 3 years, 10%~30% should be returned.

3.4.4 Other factors for determining the proportion

If the value of betrothal gifts exceeds 3.5 times the per capita disposable income of urban residents in Jiangxi Province in the previous year (rounded to the nearest ten thousand yuan), the excess portion should be subject to an increased return ratio and a relaxed cohabitation time limit at the court's discretion. If one party, after marriage, gifts the other party with personal pre-marital assets to maintain the marital relationship or enhance marital affection, the aforementioned rules for the return of betrothal gifts shall be referenced, and the return shall be handled at the court's discretion after comprehensively considering factors such as the value of the assets, the source of the assets, the fault of both parties in the divorce, and the economic status of both parties. If the recipient of betrothal gifts gives back significant assets to the giver, such assets should be deducted from the total amount of betrothal gifts (the return ratio should be considered after the deduction). If cash is given back, it should be directly deducted; if betrothal gifts or items are given back, they should be deducted at a discounted value.

4. Conclusion

This paper initially focuses on the current situation of high price betrothal gifts in practice and the

solution to the marriage disputes in practice, on the basis of the relevant provisions of the Civil Code of the People's Republic of China and the new regulations of the Supreme People's Court. I try to explore the basis for the return of betrothal gifts by comparing the connotations and shortcomings of various theories regarding the right to request the return of betrothal gifts. Secondly, this paper proposes the theory of gift for the purpose of a long-term and effective marriage, and constructs the subsequent rules for the return of betrothal gifts based on this theory. It analyzes the nature of betrothal property, the parties involved, and the living difficulties caused to the giver. Furthermore, this paper proposes how betrothal gifts should be returned in cases where children have been born, where marriage registration has been completed and the gifts have been used for cohabitation, and under the influence of the duration of cohabitation. However, the specific return ratios proposed in this paper are determined in a somewhat mechanical manner, and more practical applicability would require the support of big data.

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