

A Study on the Conflict between Customary Practices and Statutory Law: Focusing on Disputes Concerning the Return of Betrothal Gifts

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Abstract: Customary practices, as informal sources of law, play a significant role in influencing the development of statutory law. This paper examines the issue of the return of betrothal gifts in China, using this as a research perspective to analyze the conflicts and harmonization between customary practices and statutory law. By integrating relevant judicial practices, the study seeks to provide a comprehensive understanding of the interaction between these two sources of law. The findings aim to offer practical recommendations for improving the legal mechanisms for resolving disputes related to betrothal gifts, contributing to the enhancement of China's legal framework in this area.

1. The Relationship and Conflict between Customs and Statutory Law

1.1. The Relationship between Customs and Statutory Law

Customary practices are the traditional ways of life formed through long-term habitual behaviors in various regions, while law refers to the norms formulated or recognized by the state to regulate social behavior, centered on rights and obligations. Consequently, through continuous practice by the local populace, customary practices can evolve into customary law. Within China's legal system, customary law is recognized as a formal source of law, as evidenced by the acknowledgment in the Constitution, departmental regulations, local laws, as well as laws and regulations pertaining to ethnic regional autonomy, and governmental departmental regulations, thereby conferring legal status. For instance, Article 4 of the Constitution of the Peoples Republic of China grants the right to preserve the customs and habits of ethnic minorities, allowing such customs to be transformed into customary law to a certain extent, thereby aligning the law with ethnic traditions.

Customary practices and statutory law are closely interconnected. First, there has always been a link between civil law and custom, and they can, to some extent, be mutually transformative. Some scholars argue that customary practices represent the embodiment of "customary legal rights" and have an inherent influence on the creation and evolution of the civil law system, meaning that customary practices are a primary consideration in civil legislation. Custom reflects the commercial practices and living habits of the people, which cannot be arbitrarily ignored, replaced, or abandoned. On the other hand, custom, as a carrier of both sentiment and legal principles,

encapsulates the universally accepted norms of society, thereby gaining broad acceptance among the populace. Moreover, as Marx pointed out, the economic base determines the superstructure, and customary practices evolve continuously with economic development. Given the laws inherent lag, the "vacuum" that exists before new laws are introduced is often filled by customary practices.^[1]

There are four primary models through which existing Chinese law recognizes customary practices. The first model involves granting legal legitimacy to customary practices through the enactment of specific authorizing provisions, mainly used to reconcile conflicts between ethnic minority customs and existing laws. For instance, Article 90 of the 1997 Criminal Law of China stipulates that where the provisions of this law cannot be fully applied in ethnic autonomous areas, the peoples congresses of autonomous regions or provinces may, in accordance with the political, economic, and cultural characteristics of local ethnic groups and the basic principles of this law, submit relevant regulations for approval by the Standing Committee of the National Peoples Congress. The second model provides generalized legal protection to customary practices by articulating legal principles. For example, Article 7 of the 1986 General Principles of Civil Law of China states that civil activities must respect social morality, not harm public interests, disrupt state economic plans, or disturb social and economic order. The third model recognizes the legal validity of existing political and legal traditions in specific regions through general provisions. For instance, Article 8 of the Basic Law of the Hong Kong Special Administrative Region provides that the laws previously in force in Hong Kong, including the common law, equity, ordinances, subordinate legislation, and customary law, shall be maintained except for any that contravene this law or are amended by the legislature of the Hong Kong Special Administrative Region. The fourth model involves the legislative stipulation of corresponding customary practices and traditional activities, which is primarily used to reconcile conflicts between civil customs and statutory law. For example, Article 14 of the 1993 Law on the Protection of Consumer Rights and Interests stipulates that consumers have the right to have their human dignity, as well as their ethnic customs and practices, respected when purchasing and using goods and receiving services.^[2]

1.2. The Conflict between Customs and Statutory Law

As mentioned earlier, customary practices also evolve with economic development. Due to the inherent lag in the law, the "vacuum" between the emergence of new laws is often filled by customary practices. Consequently, conflicts between customary practices and statutory law are inevitable. In practice, these conflicts manifest in the following ways. First, while statutory law centers on rights and obligations, customary practices are often conventional, normative concepts, some of which are not suitable for public display. This creates certain difficulties in the process of transforming customary practices into statutory law. Second, although statutory law, in principle, gains validity as long as it complies with the Constitution and does not violate higher-level laws, the inherent lag in statutory law makes it challenging to fully align with the changes in customary practices.

1.2.1. Value Conflict between Customs and Statutory Law

The fundamental values of law primarily encompass the values of order, freedom, efficiency, and justice. These core values are reflected in the laws role in maintaining order, affirming and safeguarding freedom, promoting efficiency, and realizing justice.

In the prioritization of legal values, freedom holds the highest position, followed by justice, order, and efficiency. The values reflected in customary practices are often characterized by strong subjective intentions, desires, or preferences. Given the diversity of customary practices across different regions, the prioritization of legal values also varies accordingly. Customary practices

emerge from rules spontaneously formed by people in social life. In daily life, individuals take certain actions or adopt certain practices when dealing with specific events or issues. From a historical perspective, these actions or practices are based on the imitation of predecessors, as their experiences in dealing with similar events help to avoid the risks or failures that might arise from new decisions or practices. When an action or practice is generalized spatially and sustained over time, it becomes a customary practice or a habitual rule. The contractual or consensual nature reflected in this widespread imitation cannot be understood through the collective deliberation of a civic assembly, nor through a bilateral agreement between two individuals. Instead, it should be understood as an agreement manifested by numerous subjects individually, at different times, in different places, and on different occasions, thereby forming a consensual contract.^[3] Therefore, the prioritization of legal values within different customary practices also varies. For example, in ancient societies, divorce was considered the greatest moral taboo, as reflected in folk sayings such as “It is better to demolish ten temples than to break up a marriage.” At this level, the customary law formed by these practices ranks the legal values in the order of order, justice, efficiency, and freedom. First, feudal society upheld the absolute authority of patriarchy, and divorce was seen as a violation of the feudal value system, where “the ruler guides the subjects, and the husband guides the wife.” As a result, divorce was a taboo behavior in successive dynasties. To maintain the existing order, customary practices prioritized the legal values at the level of legal hierarchy. Secondly, the understanding of freedom, justice, and efficiency in the customary practices of feudal China differed significantly from that in law. Women in the feudal era were clearly personally dependent on others, and the bride price paid by the groom to the bride's parents was, in essence, a financial transaction that severed the personal dependency between the bride and her parents. In this context, the wife had a strong personal dependency on her husband. This concept was reflected in the formulation and enforcement of the Great Ming Code, which stipulated that if a husband caught his wife committing adultery with another man and killed either the adulterer or his wife on the spot, he would not be held criminally responsible. At this level, the wife, as the husband's “private property,” did not possess independent personal rights and thus could not enjoy the same justice and freedom as her husband.

1.2.2. Conflict between Customary Law Based on Customs and Statutory Law

Law is a norm that regulates social behavior, established or recognized by the state, and centered around rights and obligations. The core features of law include its focus on rights and the guarantee of enforcement through state power. Customary law, based on customary practices, clearly lacks this rights-obligations core. Customary practices evaluate social behavior according to religious ethics and morality. Law, with its stability, constrains the future, while religion, with its sacred concepts, challenges all existing social structures. Law and religion share four common elements: ritual, tradition, authority, and universality. In any society, these four elements signify the human effort to seek truth beyond oneself. At the same time, these elements endow legal values with a sacred character, thereby strengthening the public's legal sentiment. This sentiment encompasses the concepts of rights and obligations, the demand for fair trials, aversion to contradictory legal applications, the desire for equal treatment, a strong adherence to the law, and related notions such as hatred of illegal acts. To a certain extent, these sentiments lead to conflicts between customary law, based on customary practices, and formal law.^[4] In other words, another aspect of the relationship between law and customary law is reflected in the conflict between religious concepts embodied in customary practices and the existing legal principles. For example, under the marriage law of the Islamic legal system, a woman is not allowed to initiate a divorce, while a man can complete the divorce procedure simply by shouting “I divorce you” three times. A woman is permitted to marry only one man, but a man can have up to four wives simultaneously.

1.2.3. Conflict in Application

Customary practices have a deep historical foundation and play a role in national governance in the form of soft law during the process of social governance. Soft law refers to behavioral norms that have a regulatory nature but lack the clear mandatory force that formal law possesses. However, soft law can provide standards for those it seeks to regulate, particularly in adjusting social order through moral evaluation and guiding principles. Codified law, on the other hand, is centered on rights and obligations and regulates specific social behaviors.

In terms of application, there is a certain level of conflict between the values and moral evaluation systems advocated by customary practices and those of formal law. For example, in the case of the Azhu marriage in Yunnan, this marriage model allows a woman to have multiple male partners, and a man can also have multiple female partners. This form of polyamorous marriage conflicts with the monogamous principle of “one husband, one wife” enshrined in China’s marriage law. On the level of marriage values, the duty of loyalty within the Azhu marriage system is limited to partners within the system, prohibiting sexual relations with individuals outside the system. This moral evaluation system regarding loyalty creates difficulties in the application of the Civil Code and marriage law.

2. Legal Positioning of the Bride Price and Regulations in China

2.1. Legal Positioning of the Bride Price

The bride price is an important component of China’s marriage system. From the perspective of customary law in China, the bride price has three attributes: it represents a rule of property transfer between families, a rule of social union between families, and a rule of family identity between the grooms and the brides families.

The rule of property transfer between families means that in most cases in China, the bride price is not paid by the groom or bride alone but involves a transfer of property between families. With economic development, the costs of necessary wedding items such as housing, jewelry, and wedding expenses have risen, leading to a corresponding increase in the bride price. In some economically underdeveloped areas, housing shares are also included in the relevant property scope. The grooms family often expends all its resources to pay the bride price, which, as Professor Fei Xiaotong noted, serves as compensation from the grooms family for the loss of the brides labor force. Therefore, from the perspective of customary law, the bride price has the characteristic of being a rule of property transfer between families.

Although the bride price has a long history in China and is a cultural element unique to the Confucian cultural sphere, nearly every dynasty in China’s over two thousand years of feudal society had laws regulating the bride price. After the establishment of the Republic of China, the introduction of Western laws led to the view that the bride price was a remnant of the old era, and it was thus not legally recognized. Consequently, during the Republic of China, disputes over the bride price were resolved based solely on village agreements and traditional customary law. After the founding of the Peoples Republic of China, neither the 1950 Marriage Law, the 1980 Marriage Law, nor the 2021 Marriage Law provided a legal definition of the bride price.

Regarding the definition of the bride price, current Chinese law only refers to it as a payment “according to custom,” with no further elaboration. Based on social practice, the bride price refers to the monetary or valuable items given by the groom to the bride, following the establishment of a romantic relationship, with the intention of entering into marriage, in accordance with local customs as a token of sincerity. The “Reply by the Shanghai High Peoples Court on Several Issues Concerning the Application of the Supreme Peoples Courts Judicial Interpretation (II) of the

Marriage Law” points out that the bride price has strict targeting, must be based on local customs, and is given to ultimately conclude a marriage, with an obvious customary nature. Article 10 of the “Interpretation (II) on Several Issues Concerning the Application of the Marriage Law of the Peoples Republic of China” (hereinafter referred to as “Interpretation II”) , issued by the Supreme Peoples Court on December 26, 2023, states that if a party requests the return of the bride price paid according to custom, the Peoples Court should support it if any of the following circumstances are confirmed: (1) The parties did not register the marriage; (2) The parties registered the marriage but did not live together; (3) The payment was made before marriage, causing financial hardship to the payer. The application of the second and third clauses of the preceding paragraph indicates that “Interpretation II” establishes the conditions for the payment of the bride price, which can be summarized into three categories: first, where both the formal and substantive elements of marriage are met, i.e., the parties have registered their marriage and lived together; second, where both the formal and substantive elements are met but the parties have not registered their marriage yet live together; and third, where the substantive condition is met but the formal element is not, i.e., the parties have registered their marriage but have not lived together. In other words, the provisions on bride price disputes in “Interpretation II” are based on customary practices and customary law. According to Article 50 of the “Notice of the National Civil Trial Work Conference Summary,” in marriage dispute cases, if a party requests the return of the bride price paid as a condition of marriage, and the unmarried couple has indeed lived together, the amount of the bride price should be determined for return or non-return by considering the local rural customs and other relevant factors.

Based on the aforementioned legal documents, we can summarize the legal basis of the bride price. Although current Chinese law does not explicitly define the nature of the bride price, relevant judicial interpretations have provided a characterization of it based on its purpose. As an integral part of traditional Chinese marriage customs, the legal basis of the bride price lies in customary practices. From the perspective of legal sociology, the formation of social institutions is the result of the combined influence of rules, norms, and concepts. The formation of the bride price follows similar principles. In terms of rules, the system of the bride price first appeared in the Zhou Li (Rites of Zhou), and it was gradually inherited by successive dynasties in ancient China, eventually evolving from a folk custom into a recognized formal institution. Emperors of the Tang, Song, Ming, and Qing dynasties all required the giving of a bride price as an essential component of acknowledging the empresss status and legitimacy. Regarding rules, the bride price has become an important requirement to demonstrate a legitimate marriage, thereby fulfilling the “legitimacy” of the rule level. On the normative level, China’s Civil Code, Interpretation II, and relevant local court provisions regarding the application of Interpretation II provide normative grounds for the bride price. Law, being a norm recognized or established by the state that regulates social behavior with rights and obligations at its core, provides a legal basis for the payment of the bride price as recognized by the state through the above-mentioned legal documents, thus conferring “legal legitimacy” at the normative level. On the conceptual level, the bride price, as a procedural requirement for marriage, essentially represents the elders of the grooms family recognizing the bride. According to existing research, the legal nature of the bride price is mainly categorized into several theories.

2.2. Theories on the Legal Nature of the Bride Price

2.2.1. The Theory of Gift and Obligation Coexistence

This theory is based on Article 661 of the Civil Code, asserting that the payment of the bride price by the groom after the engagement can be regarded as a gift to the bride, stemming from

customary practices and respect for the bride. Professor Wang Zejian is a primary proponent of the gift and obligation theory, arguing that the effectiveness of the bride price as a gift should be determined by the genuine intent of both parties, and that the act of giving the bride price should not simply be viewed as a legal payment obligation.^[5]

2.2.2. The Ordinary Gift Theory

This theory argues that the giving of the bride price is no different from any ordinary gift. It asserts that the bride price is a voluntary transfer of the groom's property to the bride without any compensation, and once delivered, the gift acquires the same legal effect as an ordinary gift based on the true intent of both parties.^[6]

2.2.3. The Conditional Gift Theory

This theory holds that the bride price is a conditional gift. The payment of the bride price by the groom to the bride can be considered a gift, but whether this gift takes effect depends on whether the marriage is subsequently concluded and the couple lives together. Once the marriage is registered and the couple lives together, the conditional gift becomes effective. Conversely, if the bride price is given but the marriage is not registered or the couple does not live together after registration, the conditional gift is considered invalid.

2.2.4. The Gift with Condition Subsequent Theory

Represented by Professor Shi Shangkuan, this theory posits that the bride price is a gift given to achieve the purpose of marriage, with the engagement property indicating the existence of the engagement. This type of gift is conditional upon the marriage of the couple, thereby making them legally recognized relatives. If the parties do not enter into a marriage or if the engagement is terminated, the bride must return the bride price in full.^[7]

2.2.5. The Accessory Contract of Marriage Theory

This theory, from a contractual perspective, views the conclusion of marriage as a contract that recognizes the identity condition, and the bride price as a prerequisite procedure for marriage, constituting an accessory contract to the marriage contract. If the marriage contract cannot be fulfilled by the parties, the legitimacy of the bride price also ceases, and therefore, the bride should return the bride price.^[8]

2.2.6. The Earnest Money Theory

This theory, based on the principles of civil law, regards the bride price as a form of earnest money. Once the bride accepts the bride price from the groom, it is considered as receiving corresponding earnest money, and the bride is prohibited from participating in matchmaking activities during the wedding or marriage registration period. If the engagement cannot be fulfilled or the marriage is prevented by force majeure such as illness, the bride is obliged to return the bride price.

2.2.7. The Earnest Money Theory

This theory asserts that once the bride price is given by the groom to the bride, the bride acquires ownership of the property. According to Article 224 of the Civil Code, the bride's ownership of the bride price is not contingent upon the establishment of the marriage, so even if the marriage does

not take place, the bride is not obligated to return the bride price.

2.3. Critique of the Above Theories

2.3.1. Gift Theory

Both the "Coexistence of Gift and Obligation Theory" and the "Gift Theory" fundamentally rely on the gift theory within civil law as their core argument. Although widely accepted, this perspective treats the bride price as a purely moral payment rather than a legal obligation. In essence, the gift theory contradicts the spirit of fairness and justice embodied in the current Civil Code. Men and women should be considered equals in civil legal actions; imposing a moral obligation on men to provide a bride price before marriage clearly contradicts the principle of gender equality.

2.3.2. Marriage as a Contract Theory

With societal development, the independent value of the bride price has become increasingly apparent, especially since the turn of the millennium, when China's reform and opening up introduced various ideas. Under the influence of new cultural thoughts, the bride price is no longer considered essential for marriage. Some marriages lack the legal requirements for registration yet still involve the bride price, while others are legally registered without the bride price. The "Marriage as a Contract Theory," which ties the bride price to the establishment of marriage, is clearly out of step with modern social views. Additionally, regional customs vary in China, with some areas not requiring a bride price but instead providing a substantial dowry to the groom, such as in parts of Guangdong where the bride's family may give a dowry worth several hundred thousand yuan, even if the bride price is minimal. Therefore, the "Marriage as a Contract Theory" has gradually faded away as it fails to align with modern societal developments.

2.3.3. Earnest Money Theory

The "Earnest Money Theory" posits that the bride price functions as a security deposit. While this theory acknowledges the bride price's guarantee function, it risks reducing women to tradable "property," raising concerns of objectifying women, which contradicts the principle of gender equality in the Civil Code. Furthermore, if the bride price is treated as earnest money, it raises questions about how to apply the rule that earnest money should not exceed 20% of the total debt, and that in cases of default, the party receiving the earnest money must return double the amount.

2.3.4. Unjust Enrichment Theory

The "Unjust Enrichment Theory" views the bride price purely as unjust enrichment, adopting a completely negative stance towards it. This perspective is the opposite extreme of the gift theory, entirely disregarding the role of customs and making it difficult to reconcile legislation with customs.

2.3.5. Conditional Gift Theory

The "Conditional Gift Theory" breaks away from the status contract theory, which views the bride price as a basis for the woman's dependence on the man. However, the status contract theory fails to align with the nature of an engagement. First, there is no legally recognized status relationship between an engaged couple. A status contract refers to an agreement that affects status law, based on a status act. According to the Civil Code, recognized kinship is limited to marital,

blood, and in-law relationships formed through marriage registration. Second, an engagement does not meet the formal requirements of a status contract, which involves not only the interests of the parties but also those of third parties and public interest, thus requiring formal requirements. An engagement clearly does not belong to this category. ^[9]The "Conditional Gift Theory" overcomes the conflict between status contracts and engagements, separating the bride price from the engagement into two independent parts, each with its own dispute resolution mechanism. Therefore, this article supports the "Conditional Gift Theory."

3. The Conflict between Customs and Statutory Law in Bride Price Disputes

3.1. Conflict between Customs and Statutory Law in Judicial Practice of Bride Price Disputes

3.1.1. Legislative Level

The bride price, as an important component of China's marriage system, is closely related to the application of marriage laws and regulations in the country. At the legislative level, issues mainly revolve around the adaptation and unification of marriage customs legislation, the relationship between statutory marriage age and marriage customs, and the interplay between the marriage registration system and customary practices.

The formulation of marriage law in China must take into account traditional ethnic marriage customs. After the Civil Code came into effect, the governments of various ethnic autonomous regions in China continued to formulate specific provisions for marriage adaptations in accordance with the Legislation Law and the Law on Regional Ethnic Autonomy. The "general-to-specific" structure of China's current Civil Code ensures that the General Principles have a leading role over specific provisions. Consequently, no special application principles for ethnic autonomous regions have been added to the General Principles. Although the Civil Code aims for systematic, consistent, and logical civil legislation, some regions and groups deeply influenced by customs still require adaptations of substantive law in marriage activities. First, the influence of traditional customs in China persists, with early marriage still occurring, particularly in remote ethnic minority areas where cases of women getting married and having children below the statutory marriage age are common. This "non-marital cohabitation" phenomenon is not protected under Chinese law. As mentioned earlier, mainstream theories today generally assert that "if the legal marriage is not established, the bride must return the corresponding bride price," which raises issues of legal justification for bride price disputes. Second, in some regions of China, the bride price is intrinsically linked to the marriage contract. In cases where a marriage, though not violating customary practices, does not meet the statutory registration requirements, the applicability of marriage customs legislation becomes difficult. China adopts a unified system where marriage only becomes effective upon registration; without completing marriage registration, the marital relationship cannot be established. However, in some ethnic minority regions, the marriage is considered established once the wedding banquet is held. Additionally, in regions like Gansu, where there are significant Muslim populations, religious marriages are also regarded as "legitimate" marriages recognized by customary practices, which complicates the issues surrounding bride price disputes. Third, there is the issue of customary marriages. Although Chinese law does not recognize the legal status of customary marriages, judicial practice tends to take a lenient approach to cohabitation relationships formed according to customary practices without registration. For instance, the Supreme Peoples Court issued the "Opinions on the Peoples Courts Handling of Cases of Cohabitation in the Name of Marriage Without Registration," stating that as long as the legal requirements for marriage are met and the public perceives the couple as married, they can be considered a married couple. Although customary marriages are no longer legally recognized after

the promulgation of the Marriage Registration Administration Ordinance by the Ministry of Civil Affairs in 1994, if marriage registration is completed later, the validity of the marriage can be traced back to its inception. Article 5 of the Interpretation (I) of the Marriage and Family Section of the Civil Code asserts that if the parties have not completed marriage registration procedures, the bride price paid before marriage must be returned. This also creates legislative challenges in determining whether the marital relationship truly exists in bride price disputes.^[10]

3.1.2. Judicial Level

In the judicial practice of bride price disputes, several issues arise, including unclear identification of the litigating parties, ambiguous scope of the bride price, and unclear refund proportions. First, there is the issue of confusion regarding the litigating parties in bride price disputes. According to the Reply of the Supreme Peoples Court on Whether the Parents of the Other Party Can Be Listed as Joint Defendants in Bride Price Dispute Cases, the court tends to support listing the parents of the party receiving the bride price as joint defendants. The rationale is that “according to common customs, it is usually the brides parents, acting as guardians, who accept the bride price, and therefore it is appropriate to list the parents as joint defendants.” However, this reply reflects only the Supreme Peoples Courts practical stance and independent opinion and does not have mandatory binding force on lower courts. This stance also conflicts with the provisions of the Civil Code, which does not explicitly stipulate which parties, other than the bride and groom, can be considered litigants in such disputes. Second, there is ambiguity in defining “cohabitation” in determining whether the bride price should be returned. Cohabitation is a concept commonly understood in daily life, but in reality, it includes various situations: living together as boyfriend and girlfriend without being recognized as a married couple, living with ones parents after marriage while fulfilling support obligations without cohabiting with the spouse, or living together without engaging in sexual relations after marriage. These situations are diverse and lack a uniform standard. Third, the distinction of “financial difficulty” is unclear. According to Chinas current civil law, the groom may request a return of the bride price if paying it causes financial hardship. However, it is common sense that paying a bride price inevitably leads to some decline in the individuals or familys financial situation. The extent to which this reduction affects their standard of living depends on their existing economic conditions, and the gap between rich and poor makes it difficult for legislators and judicial authorities to define “financial difficulty.” Finally, the regulations regarding the proportion of the bride price to be returned are unclear. The current bride price refund system allows for multiple situations, but the specific proportions for returning the bride price in different scenarios are not specified. This leads to difficulties in harmonizing customary practices with statutory law at the judicial level.^[11]

3.1.3. Law Enforcement Level

At the law enforcement level in bride price disputes, there are primarily issues of overly simplistic criteria for application, insufficient compatibility with customary rules, and a one-sided approach to traditional bride price refund customs.

First, the criteria for distinguishing applicable situations are overly simplistic. According to current Chinese laws and judicial interpretations, only marriages registered by law are applicable. There is no mention of the application of “customary marriages” or “de facto marriages.” For example, Article 5, Paragraphs 2-3 of the Interpretation (I) of the Marriage and Family Section of the Civil Code explicitly states that it only applies to situations where both parties have completed marriage registration and seek to terminate the marriage registration. This results in a legal vacuum at the law enforcement level.

Second, there is insufficient compatibility with customary rules. When adjudicating bride price disputes where the woman is ordered to return the bride price, there is often a lack of proportional execution in cases where the woman faces difficulties in returning the property. In judicial practice, courts handle existing judgments in several ways:

The first type is the judgment of “no basis, no support.” This includes cases where there is a lack of evidence or a lack of legal basis. China’s legal provisions on bride price refunds are broad and lack specific implementation details, leading each court to follow local regulations. Additionally, China lacks clear regulations on engagements, but courts, adhering to the principle of non-refusal to adjudicate, do not avoid related lawsuits filed by parties. As a result, there is no specific legal provision to protect engagement, which is a common, significant social behavior that seriously affects personal and property relationships.

The second type is “no unified acceptance of similar cases.” Since Chinese courts do not clearly distinguish between engagements and bride prices, as mentioned earlier, Chinese law only addresses disputes over the return of the bride price, excluding non-bride price refunds and compensation for damages from broken engagements. Engagements are complex and cumbersome processes, with the bride price being the largest financial interest involved, but this does not mean that other interests do not need to be resolved. Therefore, this handling method does not treat all engagement-related disputes as a whole, leading to a lack of legal protection for some non-property interests.

The third type is when courts handle cases according to “fault-based liability sharing” or “constituting infringement with joint liability.” The rationale for this approach is that when one party’s fault leads to the termination of the engagement, the non-fault party suffering damage can claim tort liability compensation from the party at fault. This type of handling mainly relies on the Tort Liability Law and the Interpretation of the Supreme Peoples Court on Several Issues Concerning the Application of Law in the Trial of Cases Involving Personal Injury Compensation. For instance, if an engagement is made between blood relatives within three generations, which violates the law and leads to an inability to register the marriage, the groom may request a refund of the bride price, but the bride may also suffer significant mental damage as a result.^[12] Similarly, if an engagement is made with a minor who has not reached the legal age, and the groom later regrets the engagement due to his young age and requests a refund of the bride price while the bride is already pregnant, the groom may be found at fault.^[13] In such cases, the court may recognize the groom’s fault and allow the bride to reduce the amount of the bride price that must be returned.

4. Institutional Suggestions for Reconciling the Conflict between Customs and Statutory Law in China—Using the Bride Price System as an Example

4.1. Establishing a Framework for Recognizing Soft Law

The concept of soft law originated from international jurisprudence and generally refers to non-binding norms that emerge in the context of regional governance within the European Union. Hard law, on the other hand, refers to behavior norms established or recognized by the state, with rights and obligations at its core, and state enforcement as its guarantee. Unlike hard law, the subjects of soft law are not necessarily government institutions, reflecting a new public understanding of the law. Soft law is characterized by legislative pluralism, voluntary negotiation, and resolution through mediation or arbitration by non-governmental organizations.

Legislative pluralism in the context of soft law refers to the fact that the legislative subjects are not limited to the state but also include international organizations, civil society groups, universities, and professional associations. Voluntary negotiation is primarily determined by the nature of soft

law, which can be divided into five categories: the first category includes non-mandatory norms such as guiding, exhortative, incentivizing, and declaratory provisions in national legislation; the second category encompasses non-mandatory norms such as implementation details in normative documents issued by government departments; the third category involves self-regulatory norms established by party and government agencies or organizations; the fourth category pertains to autonomous norms developed by self-governing organizations; and the fifth category consists of non-mandatory norms established by international or supranational organizations. The evolution of soft law also follows the trends of legal and socialization processes and societal values. In soft law theory, legal theory is multi-layered and can achieve social governance from multiple dimensions and levels. Law is merely an expression of state will, serving as a primary tool for social control and ideological regulation.^[14] Therefore, as an informal auxiliary source of law, soft law plays a crucial role in social governance.

In summary, with the development of society, soft law has gradually become a norm of social governance beyond statutory law. Customs and traditions are more flexible compared to statutory law, which has a certain degree of lag due to the difficulty and length of the legislative process, leading to significant conflicts between customs and statutory law. However, the creation and effectiveness of soft law are based on the formation and dissemination of ideas. According to rule-generation theory, the creation of rules involves three stages: proposal, dissemination, and internalization. The formation of soft law follows the same basic model. Compared to statutory law, soft law is generally proposed by authoritative figures within a particular field or region. For instance, grassroots initiatives, industry rules, and local minority norms can all serve as sources of soft law. Dissemination can be achieved through methods such as proposals by the Peoples Congress or public consultation opinions issued by the government. Finally, internalization requires the joint efforts of local governments and schools to gain official recognition and promote soft law.

Taking the bride price system as an example, civil affairs departments across China could establish anonymous survey forms at marriage registration offices to analyze the bride price amounts among newly registered couples and compile specific data to report to civil affairs authorities. Relevant departments could use this data to develop specialized "Guiding Opinions" and other forms of soft law to build soft law frameworks regarding the amount, payment, and return of bride prices in the area. In this way, the construction of soft law can effectively avoid conflicts between customs and statutory law due to the lag in legislation.

4.2. Effective Use of Non-Governmental Organizations

Non-governmental organizations (NGOs) are non-profit legal entities established for the purpose of serving the public interest. Their autonomy and independence endow them with the basic nature of being "of the people." Based on social practice, NGOs are primarily active in fields such as finance, health, and legal services. According to the scope of their activities, NGOs can be divided into domestic NGOs and international NGOs. Domestic NGOs refer to those established or headquartered within a country and primarily include local and national NGOs. Unlike international NGOs, domestic NGOs are not initiated by the government, nor do they typically receive government funding. Instead, they are established or voluntarily joined by natural persons or legal entities within the country based on domestic law, making them unofficial and grassroots in nature.

Economically, domestic NGOs generally raise funds from their members or receive investments from private capital, thus remaining independent from the national government. Unlike intergovernmental organizations, NGOs are more focused on setting standards within their respective industries or fields, such as trade associations or chambers of commerce in a particular sector. The public welfare nature and broad base of NGOs enable them to better understand the

customs and legal changes in relevant fields. Therefore, utilizing NGOs to formulate soft law can facilitate the alignment between customs and statutory law.

4.3. Utilizing the Fengqiao Experience to Resolve Conflicts between Customs and Statutory Law

The "Fengqiao Experience" originally stemmed from the governance work of our Party in the Yanan region. When the Party Central Committee took over liberated areas, it faced numerous conflicts arising from class struggles and internal disputes among the masses. Given that the Party Central Committee focused its main efforts on resisting foreign aggressors, it found it challenging to address the complex issues of mass conflicts. Hence, Chairman Mao proposed the "Fengqiao Experience," which advocates for "solving the masses problems by the masses themselves, resolving issues locally without escalating them." This experience emphasizes persuading parties involved in conflicts not to escalate disputes and avoiding unnecessary court litigation for civil disputes. As times have changed, the "Fengqiao Experience" has evolved, presenting different cores and operational patterns. In terms of coordinating customs and statutory law, the "Fengqiao Experience" advocates connecting with the masses and adjusting to local conditions to reconcile conflicts between statutory law and customs.

The "Fengqiao Experience" of "solving the masses problems by the masses themselves" accommodates both the needs of customs and statutory law. As the saying goes, "He who tied the knot must untie it." In bride price disputes, the parties involved are the most familiar with their specific situations. The peoples courts create a corresponding platform and provide legal guidance for the reconciliation of the parties involved in bride price disputes. For instance, in the case of the prosecutorial reconciliation of the engagement bride price dispute between Wei Mouhui and Zhang Mouru, et al., reported in the Procuratorial Work Brief by the Sichuan Provincial Peoples Procuratorate on June 28, 2021, Wei Mouhui met Zhang Mouru through a matchmaker on October 2, 2019, and they held an engagement ceremony three months later. After the engagement, as they got to know each other better, their differences and conflicts gradually emerged, leading Zhang Mouru to propose ending the engagement. After being refused by Zhang Mouru to return the bride price, Wei Mouhui sued Zhang Mouru and her parents, demanding the return of the engagement bride price and various expenses incurred during their relationship, totaling over 88,000 yuan and one mobile phone. The Peoples Court of Yanling County, in the absence of the defendant, issued a default judgment in the first instance, ordering Zhang Mouru and her parents to return 82,000 yuan in bride price and expenses to Wei Mouru. After the case entered the enforcement procedure, Zhang Mouru and her parents raised objections, claiming that Wei Mouhui intentionally provided the wrong home address in the complaint, leading to the failure of legal documents to be delivered, thereby depriving Zhang Mouru and her parents of their right to defense. They argued that the bride price received was not 80,000 yuan but 11,000 yuan, and that the evidence on which the court based its judgment had not been verified. Zhang Mouru and her parents applied to the court for retrial, but their application was rejected. On July 19, 2022, Zhang Mouru and her parents applied to the Peoples Procuratorate of Yanling County for supervision. After review, the procuratorial organ found that, according to the first item of Article 5 of the Interpretation (I) of the Marriage and Family Section of the Civil Code by the Supreme Peoples Court, if a party requests the return of the bride price given according to custom and the parties have not registered their marriage, the peoples court should support the request. In this case, the woman should return the bride price according to legal provisions, but there was a lack of direct evidence regarding the specific amount of the bride price. Zhang Mouru and her parents were willing to return the bride price but did not agree with the amount determined by the court. The dispute in the case centered on the amount of the engagement

bride price to be returned. To thoroughly resolve the conflict and achieve “settlement of the case, resolution of the matter, and harmony among people,” the Peoples Procuratorate of Yanling County organized a hearing with the consent of both parties, inviting three people, including a psychological counselor, a vocational education center principal, and a lawyer, as hearing officers. Through the public hearing, both parties, under the supervision and witness of all sides, listened carefully to the objective and neutral opinions of the hearing officers and engaged in open-hearted, face-to-face communication, fully expressing their views. This process helped to some extent in alleviating the antagonistic emotions and laid the foundation for reconciliation. After the hearing, the procuratorial organ formulated a plan to promote conflict resolution through prosecutorial reconciliation, informed the parties of the legal risks they might face in future confrontations through feedback and legal publicity, and, under the mediation of the procuratorial organ, Zhang Mouru withdrew the application for procuratorial supervision. By the end of February 2023, Zhang Mouru returned all the bride price as agreed.

In this case, due to the complexity of the relationship between Zhang Mouru and Wei Mouhui and the highly subjective nature of romantic disputes, which lack objective standards of right and wrong, the procuratorial organ, while fully respecting the parties disposal rights, actively guided them to reach a reconciliation, balancing the interests of all parties involved, achieving a proper resolution of the dispute, and thereby maintaining social harmony and stability. When the parties took their bride price dispute to court and later to the procuratorial stage, tensions and antagonism were high. The procuratorial organ first used the method of public hearings to alleviate concerns and open up communication between the parties, resolving their psychological barriers. Then, through continuous communication and coordination, the procuratorial organ legally exercised its duties to facilitate prosecutorial reconciliation, ultimately achieving the positive outcome of “settlement of the case, resolution of the matter, and harmony among people.”^[15] Therefore, making good use of the "Fengqiao Experience" is an effective means to resolve conflicts between customs and statutory law in bride price disputes.

4.4. Drawing on the Experience of Other Countries

Examining the development of legal systems in various regions, advanced legislative experiences can be observed in Germany, Switzerland, the United States, and Taiwan, China in terms of coordinating customs with statutory law concerning engagement property.

4.4.1. The German Experience

Article 1297, Paragraph 1 of the German Civil Code addresses the conflict between customs and statutory law by stipulating that parties cannot sue based on an engagement, and courts cannot issue judgments based on an engagement, meaning that engagements and associated property are not actionable or enforceable. Additionally, Article 1298 of the German Civil Code supplements Article 1297 by requiring compensation for reliance interest if one party ends the engagement without significant reason. The reliance interest provision in the German Civil Code covers not only the engaged couple but also extends to their parents, thereby offering maximum protection to all parties with reliance interests. Furthermore, the German Civil Code protects engagements involving minors, which are valid only with the consent of a legal guardian. However, even without such consent, the engagement rights of minors are still protected by law, though minors will not have the right to claim compensation if the engagement was entered into without a guardians consent. Germanys approach is primarily influenced by its status as a traditional Christian country where divorce is taboo in religious contexts, a custom deeply reflected in its legislation. Additionally, Germanys long-standing population decline has led the government to adopt a conservative stance on

engagements, striving to balance the promotion of engagements with the resolution of conflicts arising from engagement property disputes. Analyzing the German Civil Code reveals a dichotomous approach to coordinating the conflict between customs and statutory law. This approach affirms customs, avoiding social conflicts that might arise from violations of Christian customs, while legally regulating civil legal actions such as engagement property.^[16]

4.4.2. The Swiss Experience

The Swiss Civil Code integrates local customs with relevant laws concerning engagements and associated property. An engagement is established based on a promise of marriage, meaning that a new engagement must be entered into with the intention of marriage. Similar to Germany, engagements in Switzerland are non-actionable and non-enforceable. Article 91 of the Swiss Civil Code stipulates that upon termination of an engagement, gifts exchanged between the parties must be returned if the original item no longer exists, this is treated as unjust enrichment. However, if the engagement is terminated due to the death of one party, the court does not support legal claims regarding engagement property. The Swiss Civil Code, like the German Civil Code, adopts a dichotomous approach, separating customs from statutory law. However, in terms of returning engagement property, the Swiss Civil Code directly treats property from an unfulfilled engagement as unjust enrichment.^[17]

4.4.3. The American Experience

In the United States, engagement is treated as a form of contract, an identity contract not requiring a formal contract as a prerequisite. However, due to the personal nature of an engagement, it cannot be the subject of a lawsuit or be enforced by compulsion. If one party breaches the engagement without reasonable cause, they must bear liability for breach of contract. The American engagement system originally followed British contract law, but over time, as the United States is a federal system, each state has developed its specific engagement laws based on the Constitution. Generally speaking, if one party breaches the engagement without just cause, the other party can claim damages for the breach, with compensation covering not only property damage but also reputational harm, though the amount and proportion of compensation are determined by each state based on local conditions. U.S. law applies relevant contract law provisions to engagement property while adapting to specific conditions in each state to regulate the share of compensation.^[18]

4.4.4. The Experience of Taiwan, China

Taiwan, China and Fujian Province share deep cultural ties, resulting in a high degree of consistency in the legal systems governing engagement property. Taiwans Civil Code highly values the autonomy of both parties in engagements and clearly defines the parties civil capacity. For instance, males must be at least 17 years old, and females at least 15 years old, for an engagement to be valid; otherwise, the engagement is void. Additionally, Taiwans civil law bears the characteristics of the civil law system due to Japans colonial influence, reflected in Taiwans Civil Code. Engagements and associated property cannot be subject to compulsory enforcement, and if one party cannot fulfill the engagement or marriage, the other party can seek compensation for the resulting losses, but not sue based on the engagement contract.

4.4.5. The Experience of Macau, China

Macaus regulations on engagements are primarily found in the family section of its Civil Code. An engagement does not have the force of compulsory performance, and engagement property is

governed by the relevant provisions of the law of obligations. Two scenarios are considered: first, if one party cannot fulfill the engagement, the engagement property must be returned to the man; second, if the engagement fails due to the woman's death, the man loses the right to claim the return of the gifts given to the woman.

In conclusion, this article, based on the study of foreign engagement property systems, suggests that engagement property systems can be broadly categorized into two types: the first type is the Anglo-American legal system, which usually adopts a dichotomous model separating engagement from engagement property, meaning the legal effects of engagement and engagement property are not entirely bound together. If the engagement fails, engagement property is treated separately, similar to unjust enrichment in the law of obligations. This model effectively balances the conflict between customs and statutory law, coordinating the personal nature of engagement with the property nature of engagement property. The second type is the civil law system, where engagement property and engagement are closely bound, applying contract law provisions to address the return of engagement property through breach of contract remedies. Regardless of the type, both systems effectively regulate the coordination of customs and statutory law, providing valuable experiences that China can draw upon to improve the connection between customs and statutory law.

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