

THE PROTECTION OF THE RIGHTS OF THE INNOCENT PARTY IN THE REVOCABLE MARRIAGE OF CONCEALING SERIOUS ILLNESS

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Abstract: The 'Civil Code' deletes the medical prohibition of marriage in the ' Marriage Law ' instead of the major disease notification clause of the prospective spouse. The modification of this clause can better protect the parties ' marital autonomy. The parties can decide whether to marry the prospective spouse who has a serious illness according to their true intention. However, Article 1053 and Article 1054 of the Civil Code stipulate that the prospective spouse who has a serious illness before marriage registration has the obligation to inform truthfully. The scope of the serious illness and the obligation to inform the spouse of the sick party are controversial in practice. The right to know of the innocent party takes precedence over the privacy of the spouse of the sick party, and marriage involves the personal rights and property rights of citizens. Concealing the property and personality damage caused by major diseases to the innocent party, the innocent party has the right to claim damages. Marriage needs honesty. It advocates that the new people who are ready to enter the marriage respect each other and treat each other honestly. At the same time, it advocates the compulsory notification obligation of premarital examination.

Keywords: Concealing disease; Marriage revocation; The right of no-fault party; Premarital examination

1 OVERVIEW OF CONCEALING SERIOUS ILLNESS MARRIAGE REVOCABLE MARRIAGE

1.1 From Prohibition of Marriage to Voluntary Revocation

Article 7, paragraph 2, of the Marriage Law of the People 's Republic of China (hereinafter referred to as the " Marriage Law ") of the 2001 edition prohibits marriage : " Those who suffer from diseases that are medically considered not to be marriageable shall not marry. Starting from the legislative intent of the " prohibition of marriage " clause, first of all, it actively responds to the country 's eugenics policy, avoids the inheritance of diseases, improves the quality of the population, and protects social interests ; secondly, from the point of view of the independent consciousness of the marriage relationship, the mentally ill patients who do not have the ability of civil conduct do not have the independent consciousness and cannot meet the requirements of the ' completely voluntary ' in the legal marriage relationship. The marriage of patients with severe infectious diseases will also affect the right to physical health of the other party. Controlling disease marriage is conducive to protecting the interests of the other party. In a word, controlling disease marriage has its enthusiasm, but objectively this also limits the freedom of marriage of the parties to a certain extent. With the development of society and the emergence of new marriage and childbearing concepts, childbearing is no longer a necessary choice for marriage.China 's Constitution clearly stipulates : ' It is prohibited to destroy the freedom of marriage '. If the parties have a complete sense of autonomy and know that the prospective spouse has a major disease, they are still willing to enter into marriage. The law should also protect it and promote good faith marriage. Article 1053 of the " Civil Code of the People 's Republic of China " (hereinafter referred to as the " Civil Code ") states : " If one party suffers from a serious disease, he shall truthfully inform the other party before the marriage registration ; if not truthfully informed, the other party may request the people 's court to revoke the marriage. This clause clearly stipulates that the spouse who has a serious illness has the obligation to inform the spouse truthfully before marriage registration. If the parties know and agree, they can enter into a marriage relationship, which replaces the medical prohibition of marriage in the marriage law. The disease clause replaces the major disease notification clause of the spouse, which can better protect the marriage autonomy of the parties, and the spouse who has a serious illness can enter the marriage and family to be taken care of, which is also conducive to reducing the social burden[1].And with the progress of medicine, the range of diseases that should not be married in medicine should be constantly changing, while the law itself is stable. Since the abolition of the compulsory pre-marital examination system, the prohibition clause has in fact been emptied. The change of the clause not only guarantees the party 's marital autonomy, but also encourages the principle of good faith marriage. If a party has a major disease and does not truthfully inform the no-fault party, the no-fault party can know or should know the reason for withdrawal within 1 year from the date of withdrawal. The marriage relationship is invalid from the beginning. It strengthens the obligation to inform before marriage and ensures the right of the innocent party to know the health status of the spouse before marriage, so as to make a more rational and independent marriage decision.

1.2 The Definition of No-Fault Party

Article 1054 of the Civil Code stipulates that if the marriage is invalid or revoked, the innocent party has the right to request damages. The word 'no-fault party' is first proposed in the 'Civil Code', and it is necessary to clarify the specific meaning of the word in the context of this article. According to the system explanation, the scene where the marriage is revoked is that the party who coerces into marriage and has a major illness does not truthfully inform the other party before the marriage registration. The no-fault party mentioned in this article refers specifically to the spouse who has a major illness, does not inform the other party before the marriage registration, and the concealed party is the no-fault party. The concealment of a major disease by one party may lead the innocent party to fall into a wrong understanding. Based on the wrong understanding, the choice of entering into a marriage relationship with the concealing party is not a true expression of intention, but a 'fraud' in civil law [2]. We should advocate honest marriage and earnestly fulfill the obligation of truthfully informing.

2 PLIGHT OF APPLICATION OF CONCEALING SERIOUS ILLNESS REVOCABLE MARRIAGE

2.1 Identification of 'Truthful Disclosure'

Article 1053 of the Civil Code stipulates that if it is not truthfully informed, the other party may request the people's court to revoke the marriage. The identification of 'not truthfully inform' can be divided into two categories: first, 'intentionally not inform', completely not informing the other party of illness before marriage registration. The second 'not truthfully inform' informs A disease before marriage registration, which is actually B disease, or informs a mild disease, which is actually a serious disease, that is, the situation of informing is inconsistent with the actual situation of illness [3]. Fuzzy notification does not constitute a legal 'truthful notification', which will lead the other party to fall into a wrong understanding and choose to enter into a marriage relationship based on the wrong understanding. In judicial practice, the plaintiff sued the defendant to revoke the marriage. He believed that although the plaintiff and his family had informed the fact of illness before marriage (they had delivered drugs and disability certificates to the plaintiff before marriage registration), they concealed the development trend and possible aggravation of the disease, which led to the onset of mental illness after marriage and even threatened the personal safety of others. The court of first instance found that the defendant's behavior belonged to 'failure to truthfully fulfill the pre-marital notification obligation', and the plaintiff had the right to revoke the marriage. Although the court of second instance revoked the original judgment, it also recognized the fact determined by the court of first instance. The reason for its revocation is that the plaintiff filed a lawsuit with the people's court to revoke the marriage relationship on the grounds that the defendant concealed his serious mental illness before marriage. The time has exceeded the exclusion period stipulated by law [4].

It is necessary to consider the parties' cognition of the disease behind the determination of "truthfully inform," which is affected by the parties' cognition of their current physical condition, the expectation of future physical condition, and the level of medical technology. For example, there is a major disease before marriage. Although it has been treated well, there is still the possibility of recurrence, or there is no disease before marriage, but the family has a genetic history and may appear in the future. If major illness is only a possibility, it involves the privacy right of the sick party and the right to know of the other party. Although the privacy right of the sick party takes precedence over the right to know of the other party in the revocable clause of concealing major illness, when the major illness is in an 'undetermined' state, the court should consider the overall situation of the case.

2.2 Identification of 'Major Disease'

The current 'Civil Code' does not clearly stipulate the specific scope of major diseases, and there is a large room for discretion in judicial practice. In practice, the "Maternal and Child Health Law of the People's Republic of China" (hereinafter referred to as the "Maternal and Child Law") is generally applied. Article 8, Article 9 and Article 38 (3) of the "Maternal and Child Law" stipulate that AIDS, gonorrhea, syphilis, leprosy, and other infectious diseases that are medically considered to affect marriage and fertility are suspended during the period of infection or during the period of onset of mental illness. These provisions are defined for the diseases that should not be married in the previously implemented 'Marriage Law', and are not equal to the scope of major diseases that both men and women should truthfully inform before marriage in the current 'Civil Code'. The disease of 'reprieve marriage' belongs to the identification of doctors according to their professional skills, and the description of 'major diseases' belongs to the identification of legal value. With the development of medical technology, the general public's cognition of 'major diseases' is also different. The separation of marriage and fertility functions, as well as the emergence of 'DINK' groups, 'major diseases' are not necessarily 'significant', nor do they necessarily affect 'marriage'.

3 CLARIFICATION OF THE RIGHT TO KNOW SERIOUS ILLNESS OF THE INNOCENT PARTY IN THE REVOCABLE MARRIAGE OF CONCEALING SERIOUS ILLNESS

3.1 The Derogation of the Personality Right of the Innocent Party

Based on the legal status of equal subjects, both natural persons enjoy an independent personality and are ready to enter into a marriage relationship. Then, before registering for marriage, the principle of good faith should be respected, and the concealment and deception of the parties should be prohibited. The voluntary principle of the other party should be

respected, and equal consultation should be entered into the marriage relationship. The autonomy of marriage is included in Article 110 of the Civil Code, which belongs to the scope of specific personality rights. In line with the purpose of family civilization and harmony, based on the duty of loyalty of husband and wife, the no-fault party has the right to know whether the prospective spouse has a major disease before marriage registration. If the prospective spouse has a major disease and does not inform the no-fault party, the no-fault party falls into a wrong understanding and chooses to enter into a marriage relationship with it. It is 'deception', which is to bury thunder in the marriage relationship and affect the trust between husband and wife. It is a respect for the independent personality of the non-fault party to truthfully inform the other party of their illness before marriage, otherwise it will harm the personality right of the non-fault party.

3.2 No-Fault Party Suffered Mental Damage

We should respect the natural person's marriage autonomy, based on the equal legal status of both sides, before marriage to understand each other's physical health is in line with human nature. If the prospective spouse knows that the other party has a major disease, if he or she is still willing to enter into a marriage relationship, this is also supported by the Marriage and Family Code of the Civil Code. This kind of marriage has legal effect, which is also advocated and recognized by the contemporary mainstream moral concept, and belongs to the scope of the marriage autonomy of the parties. However, if it is malicious to conceal their own health status to 'deceive' the innocent party into the marriage relationship, it will affect the marriage autonomy of the innocent party. According to the mainstream values of society, when choosing a spouse, they often consider the other party's family, appearance, economy, health and so on. There is no doubt that the health status is an important consideration for choosing the marriage object. The innocent party makes a choice without knowing it, which naturally damages its marriage autonomy and is not a true expression of intention. At the same time, according to the general concept of society, the best time to enter into marriage is limited. Concealing major diseases before marriage and entering into an unsuitable marriage and then divorce will affect the possibility of the innocent party to find another suitable remarriage spouse. It is called "second marriage" At a disadvantage in the marriage market.

3.3 The Right to Health of the Innocent Party is in Danger of Being Damaged

The right to health is a very important right for natural persons, and having health is the basis for enjoying other rights. If the major disease of the prospective spouse in the marriage is contagious, it is a danger to the right to health of the non-fault party. The non-fault party naturally has the right to know, and protects his right to health by exercising his right to know. The rank of the right to health is higher than the privacy of the spouse of the sick party. The author believes that suffering from major infectious diseases (such as AIDS, syphilis, etc.) and maliciously concealing, and then entering the marriage relationship with the innocent party, can even be considered as intentional injury.

3.4 No-Fault Party's Property is in Danger of Loss

Husband and wife have the obligation to support each other and share risks and responsibilities. Article 1059 of the Civil Code stipulates that husband and wife have the obligation to support each other. The party in need of maintenance has the right to ask the other party to pay maintenance when the other party fails to perform the maintenance obligation. If one of the spouses suffers from a serious illness resulting in incapacity to work or basic self-care ability, this means that the spouse will bear the obligation to pay maintenance, medical expenses and take care of the other's daily life. Therefore, if the prospective spouse is already suffering from a major disease before marriage, it should be informed of the other party before the marriage registration, if maliciously concealing the fact of illness will lead to the no-fault party unilaterally assuming the maintenance obligation, rather than the couple helping each other. Similarly, if the major disease is hereditary and affects the physical health of future generations, based on the obligation of parents to raise minor children, the responsibility of the non-fault party will be aggravated compared to ordinary people, and there is also the risk of property loss.

4 CONCEALING THE SPECIFIC RIGHTS AND INTERESTS OF THE INNOCENT PARTY IN A SERIOUS ILLNESS REVOCABLE MARRIAGE

One of the prospective spouses has the legal obligation to truthfully inform the major disease but refuses to perform it. The non-fault party has the right to request the fault party to compensate for the damage while enjoying the right to revoke the marriage claim. This is a new right created by the 'Civil Code'. The claim is based on the infringement of the fault party, which infringes the personal dignity, health right and freedom of marriage of the non-fault party. The fault party should bear the tort liability, 'all acts of damage to others due to fault should bear the liability for compensation'. The divorce damage compensation system includes the failure of the expectation of marriage without fault [5]. From the perspective of the overall purpose and function of the law, in addition to the revocation of marriage, the scope of damages should also include material damage and mental damage.

4.1 The No-Fault party has the Right to Request the Fault Party to Compensate for Material Damage

The material damage suffered by the innocent party is not only the loss of property, but also the loss of personal and health rights. According to Article 1054 of the Civil Code, an invalid or revoked marriage is not legally binding from the beginning, and the parties do not have the rights and obligations of the husband and wife. The property obtained during cohabitation shall be handled by agreement of the parties ; if the agreement fails, the people 's court shall make a judgment according to the principle of taking care of the innocent party. The property treatment of invalid marriage caused by bigamy shall not infringe the property rights and interests of the parties to legal marriage. The provisions of this law on parents and children shall apply to the children born by the parties. If the marriage is invalid or revoked, the innocent party has the right to request damages. First of all, when the common property of marriage is divided, the people 's court decides according to the principle of taking care of the innocent party, and the innocent party should be given more consideration and protection. Some bride price, wedding ceremony, dowry and other expenses paid by the faultless party for marriage can also request compensation from the fault party, but the amount of compensation should be negotiated friendly between the two parties first, and appropriate compensation should be paid. If the negotiation fails, the court should not support the full return. After all, the previous marriage investment has an emotional and financial payment [6].Secondly, the personal injury, you can refer to the ' Supreme People 's Court on the trial of personal injury compensation cases to explain a number of issues of applicable law ' no-fault party if the spouse infected with the disease, the no-fault party 's medical expenses, transportation costs, care costs, post-nutrition costs, lost wages and other reasonable expenses, have the right to request the infringer to assume full property liability. Finally, the economic help of divorce, for the no-fault party 's expectation of marriage, the social evaluation after divorce is reduced. If the no-fault party loses his job due to infectious diseases, the court should also give appropriate material compensation to the fault spouse in the case of sentencing, so as to avoid the no-fault party falling into the difficulty of getting sick and losing his job income.

4.2 The No-Fault Party has the Right to Request the Fault Party to Compensate for Mental Damage

The marriage relationship involves personal and property. Naturally concealing major diseases before marriage is a major injury to the feelings of the innocent party. You can refer to the ' Interpretation of Liability for Mental Damage ', but the interpretation only lists : death compensation, disability compensation, and other mental comfort payments. Most of the judicial practice involves other mental comfort money. Of course, if there is a death or major disease caused by infection, it should naturally support the claim for damages of the innocent party.The damage suffered by the innocent party : first of all, it is emotional damage, mental loss, one party 's malicious concealment of major diseases before marriage makes the innocent party choose to enter the marriage based on wrong understanding. Naturally, it brings mental pain to the no-fault party, which is detrimental to mental health. Secondly, the right of reputation has been damaged. Although the law stipulates that marriage is annulled without legal marriage facts, in the marriage market and the concept of mass society, the faultless party is " second marriage. " In particular, the discrimination against women should be recognized by the public, and it is difficult to have the marriage status of " first marriage. " Finally, it is the infringement of the marriage autonomy of the innocent party. The life is limited. The innocent party has experienced a bad marriage and has also lost the opportunity cost of finding a good marriage. It is possible for the innocent party to find a more suitable spouse, and based on the other party 's concealment of major diseases, a misjudgment has been made, which is the damage to the innocent party 's youth life and the infringement of marriage autonomy. The court should support the claim for compensation for mental damage of the innocent party based on the specific circumstances of the case.

4.3 The Innocent Party has the Right to Request the Annulment of Marriage

The innocent party has the right to choose marriage, and the protection of the innocent party 's right to revoke marriage reflects the protection of the parties ' freedom of marriage. It can be understood that the no-fault party is based on the wrong understanding and enters the marriage state with the other party and causes great damage to the person and property of the no-fault party. The law stipulates that civil acts made by the parties based on major misunderstandings can be revoked, so the right to revoke the marriage of the non-faulting party should be given, and the ' Civil Code ' should be revised to include sick marriage as a type of revocable marriage. The quasi-spouse has the right to know whether the other party has a major disease before marriage, and the quasi-spouse has a major disease notification obligation before marriage. If the obligation is violated, the marriage can apply for revocation. It is a great progress in respecting human rights. In fact, major diseases, as a situation of revocable marriage, do not lead to the invalidity of marriage. If the innocent party voluntarily maintains the marriage registration relationship, the effectiveness of marriage can also be maintained, and the law will naturally not interfere.

5 JUDICIAL SUGGESTIONS ON THE PROTECTION OF THE RIGHTS OF THE INNOCENT PARTY IN THE REVOCABLE MARRIAGE OF CONCEALING SERIOUS ILLNESS

5.1 The Clear Burden of Proof of " Truthfully Inform "

In judicial practice, the identification of truthful notification is more difficult, generally only oral communication before marriage. In view of the fact that " truthfully informing the disease " before marriage registration is the " Civil Code " that requires the sick spouse to fulfill the obligation of equal notification while ensuring that the sick spouse enjoys the

right to conclude marriage. The condition of illness belongs to the privacy of the parties and is generally not known to outsiders. Before the marriage registration, the performance of this obligation should be borne by the spouse of the sick party, who should take the initiative to prove that it has been truthfully informed. The no-fault party should prove that the fault party had suffered from a major disease before marriage rather than during marriage. The burden of proof in such cases should be allocated as follows : the subject of the innocent party bears the burden of proof for ' the spouse has a serious illness before marriage ', and the spouse of the sick party bears the burden of proof for 'having fulfilled the obligation of truthfully informing' [7].

5.2 Definition of the Scope of ' Major Diseases '

The determination of ' major disease ' in the revocable clause of concealing major disease should be considered from the perspective that according to the general concept of society, as long as the party knows that the other party has such a major disease before marriage, it will not choose to enter into a marriage relationship with it. The major diseases referred to in Article 1053 of the Civil Code generally need to be considered from three aspects. First, the diseases that affect sexual life, fertility and spouse 's health are diseases of sexual dysfunction, genetic diseases and infectious diseases, such as genetic diseases, syphilis, AIDS and so on. Secondly, mental illnesses that affect emotional communication, such as severe intellectual problems, schizophrenia, manic depression, etc., will affect marital status and affect the daily life of couples. Finally, the impact of family production and life, the need for huge medical expenses, the treatment of long-term diseases, such as leukemia, malignant tumors, etc., will bring a burden to the family economy. The list of the above diseases is not comprehensive. It may be due to the different concepts of marriage and childbearing, the different economic ability of the family and the different identification in the judicial practice. At the same time, we can refer to the identification of major diseases in the insurance industry : for example, the ' Specification for the use of disease definitions for major disease insurance ' promulgated by the Insurance Association.

5.3 Perfecting the Compulsory Notification Obligation of Premarital Examination

Although the compulsory premarital examination system has been abolished, premarital examination is no longer a prerequisite for the conclusion of marriage, but based on the principle of encouraging good faith marriage, the administrative legislation should establish a pre-marital health examination system suitable for the national conditions to protect the parties ' right to know [8]. Compulsory notification system of voluntary premarital health examination should be established. It is advocated to sign the informed consent of both parties to the health status of the other party before the marriage registration, so as to protect the right to know of both parties. If the subsequent request to revoke the marriage for concealing a major disease occurs, it is also conducive to the proof of the no-fault party.

6 CONCLUSION

The establishment of the revocable marriage system in the ' Civil Code ' guarantees the parties ' marital autonomy to a greater extent, promotes the principle of marital integrity, and the right to know of the non-faulting party takes precedence over the privacy of the spouse of the sick party. Marriage requires the good faith of both parties. The party with major illness conceals before marriage, which will cause the non-faulting party to fall into a wrong understanding and infringe on the non-faulting party 's personality rights, marital autonomy, physical health rights and property rights, and should bear tort liability. The innocent party can apply for the revocation of the marriage relationship and request the sick party to bear the liability for material damage and mental damage. In order to better protect the parties ' right to know, we should improve the compulsory notification obligation of premarital examination, clarify the division of burden of proof in judicial practice, and consider the scope of major diseases according to other laws and regulations.

COMPETING INTERESTS

The authors have no relevant financial or non-financial interests to disclose.

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