

The modern changes and legal integration of marriage customary law in Shantou area

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Abstract: *The Shantou area of Guangdong is one of the areas with relatively complete preservation of traditional Chinese culture. The traditional marriage customary law in the Central Plains of my country has disappeared. At present, the academic research on the marriage customary law is mostly concentrated in the surrounding minority areas, and the residents of the Shantou area are mostly descendants of the Han nationality in the Central Plains. The local traditional marriage customary law, There are more shadows of the traditional Chinese marriage system. Excavating this system can restore the ancient marriage system. Therefore, the study of marriage customary laws in Shantou can enrich and improve the research system of ancient Chinese marriage and family history. From the perspective of customary law, this article investigates the marriage customary laws in Shantou area and describes the content of Shantou marriage customary laws. And according to the survey results, it analyzes the modern changes and legal integration of marriage customary law in Shantou area.*

Keywords: *Shantou; marriage; customary law*

1. Introduction

The marriage customary law in Shantou area has important academic value and application value. The author's place of birth is Shantou. The traditional culture and customs of the region are relatively well preserved, especially the field of customary marriage law is well preserved and mature, which is mainly due to the large amount of relevant local folk literature preserved. For example, among the many "Overseas Chinese Approvals" in Shantou, many reflect the changes in the marriage and family system, freedom of marriage, and the idea of equality between men and women. Secondly, enrich the research on the history of marriage law in our country. "When customs, usages and prevailing practices are established in a considerable part of the country, recognized by the people and regarded as legally binding, as if founded on written legislative rules, they are of course called customary law".^[1] Inheriting the excellent traditional marriage culture. The Shantou area has one of the lowest divorce rates in the country, and customary law has played a huge role in it. Marriage has been a social relationship between two different families since ancient times. In the Shantou area, many families still follow the traditional marriage customary law to conclude marriages and maintain family harmony. Shantou people have a strong sense of family responsibility and have multiple ways to resolve family disputes and maintain marriage. Discovering and inheriting these excellent traditions is of great value and significance for promoting social harmony.

2. Overview of customary law

Customary law, in the field of law, generally refers to an established pattern of behavior that can be objectively identified in a specific social environment. Some define customary law as a recognized custom that is repeated all the time. According to the expression of some scholars, customary law should be a behavioral rule that exists among the people and has certain coercive force. The author also agrees with this view, and the customary law involved in this article also adopts this concept. Although my country's civil legislation does not directly stipulate the application of customs, according to Article 10 of the "Civil Code", it does not exclude the application of customs. Customary laws that do not violate the mandatory provisions of laws promulgated by the state can be used for legal purposes. the behavior of. Therefore, there is soil and space for the existence of customary law in the vast field of civil activities. This article will investigate the marriage customs in Shantou, Guangdong Province, where the traditional culture is relatively well preserved, and analyze the marriage customs existing in Shantou.

3. The traditional content of marriage customary law in Shantou area

3.1 Marriageable age

The “Han Shu·Hui Di Ji” of the Han Dynasty records that “a woman who is above fifteen to thirty does not marry, and counts five times”. It can be seen from this that the age of marriage for women during the Han Hui Emperor period should be above 15 years old and below 30 years old. If they are not married after 30 years old, they will be charged 5 times the tax. The customary law on the age of marriage in Shantou is roughly the same as the records on the age of marriage in historical materials. It should be noted that people in Shantou usually calculate their age through the lunar calendar and the imaginary age. After the New Year’s Eve is over, one year old is counted, which means that the calculated age is one to two years older than the actual legal age. Marriage age is only a sufficient factor to measure a person’s ability to start a family for Shantou people to establish a marriage. It is more to consider the material conditions required for the continuation of the offspring of the specific marriage and whether the offspring born of the marriage meet the needs of the family. So there is no minimum age, and some women are married as young as 14. This corresponds to the Shantou area’s unique adult etiquette “going out of the garden”. Families with 15-year-old men and women should prepare three fruit offerings for their children on the Qiqiao Festival on the seventh day of the seventh lunar month and the Zhongyuan Festival on the fifteenth day of the seventh lunar month, or on another day. Farewell to parents-in-law, it means that children will bid farewell to childhood and step into the ranks of adults.^[2]

3.2 Marriage contract procedure

In the Shantou area, the conclusion of a marriage contract is very common. The “Laws of the Qing Dynasty and Household Laws” stipulates: “At the beginning of the engagement of men and women, or those who are disabled, old or young, concubine, intermarriage, or begging for support, the two families must clearly notify each other, and write a marriage certificate according to their wishes. Marriage according to rites. If you promise to marry a daughter, you have reported the marriage certificate and have a private contract, but if you regret it, you will be whipped fifty times.” This legal regulation follows the legal regulations on the marriage requirements of the Ming Dynasty, and through the guarantee of punishment, The validity of the marriage contract is maintained. However, the Marriage and Family Section in the current “Civil Code” of our country does not clearly stipulate the marriage contract, so the conclusion of the marriage contract is a customary law established by folk conventions. At present, most men and women in Shantou area are in free love, and a considerable number of them determine their marriage relationship through blind dates. Especially in the rural areas of Shantou, the proportion of marriages established through the introduction of neighbors, relatives and friends is higher than that in cities. When the relationship between a man and a woman develops to a certain level, they will follow certain traditional habits, introduce the love object to the family, and the parents will check and evaluate whether to propose a marriage relationship.

Door-to-door visits can also be called marriage proposals, that is, the ancient lottery. The matchmaker proposes marriage to the man, or the matchmaker goes to the man to introduce the woman’s situation first, and the man approves and then entrusts the matchmaker to the woman’s home to propose marriage. In the past, if the marriage did not have “the order of the parents and the words of the matchmaker”, it was an illegal marriage. During the period of the Republic of China, the trend of free marriage and love had affected urban and rural areas, and parents gradually considered their children’s opinions. But even those who are in love with each other, many people still ask a matchmaker to seek marriage, so as to avoid the theory of sexual intercourse and to comply with the rules and family laws of the village.^[3]After the founding of the People’s Republic of China, the government abolished feudal business and arranged marriages, and advocated freedom of marriage. After the promulgation of the “Marriage Law” in 1980, professional matchmakers in Shantou area basically disappeared, and marriage agencies were rare. This also reflects the cautious and meticulous attitude of young people in Shantou on marriage issues, and they are not willing to introduce themselves with a more open attitude. Now in Shantou area, it is extremely rare for a matchmaker to visit the woman’s home to propose marriage, but the habit of the man visiting the woman’s home first has been preserved.

The horoscope can also be called a married marriage, which is the ancient name of asking. After the marriage proposal is approved by the man and the woman, the matchmaker writes the woman’s name, birth date, birthplace, and three generations of ancestors in Gengtie and sends it to the man. The man’s family asks the astrologers to tell whether the horoscopes of both men and women’s birthdays are compatible or contradictory. Now generally, the men and women exchange names, birth dates and other

information, and their respective families ask a fortune teller to evaluate the marital status of both men and women.

Engagement is also called engagement, that is, the man prepares a gift and goes to the woman's house to make a marriage arrangement. The gift is usually a set of three gold earrings, gold rings, and gold necklaces as the "three golds" given to the woman, and there are also cases where a single piece is given to the woman, but it is relatively rare. Together with the "Three Golds", sugar, noodles, and biscuits are also presented to the woman. The bride's family will give the candies and cakes presented by the man to relatives, friends and neighbors, and announce to them that their daughter is married. After getting engaged, the man himself will ask others to smoke and tell others about his marriage.

3.3 Marriage Procedures and Ceremonies

According to the customs in Chaoshan area, within 12 days after the recruitment, the families of the man and woman will hold the wedding on a selected date.^[4] Choosing a day is also called "choosing a time and choosing a day". The choice of a day is extremely important for holding a wedding. Choosing a good day to get married means a smooth marriage and a symbol of blessings for marriage. After choosing a date, the man will go to the woman's home to greet the bride on the chosen day. In Shantou, most of them maintain the habit of greeting relatives at night, which is the embodiment of the tradition of snatching marriages in ancient times. Folk weddings in Shantou still maintain a set of traditional procedures that are difficult to change. There is a set of strict and complete procedures for welcoming the bride, going out for the bride, and holding the ceremony. Customary laws are regional and non-compulsory. Individual differences in this wedding ceremony Sex is more obvious. In the old days, due to the different social status of various social classes, the degree of observance of "rituals" was also different. Nowadays, this individual difference is mainly reflected in the degree of acceptance and obedience of individuals to the entire wedding ceremony in the area. Marriage acceptance and submission are not as high as in rural areas, which are more complex than urban areas.

4. The modern changes of the marriage customary law in Shantou area

4.1 The procedure of customary marriage law has been simplified

With the development of the times, the customary marriage law in Shantou has also been affected by the impact of modern trends. The most intuitive manifestation is the simplification of the procedure of the customary marriage law. The rural areas of Chaoshan area originally had a very traditional clan system. The preservation of the clan system has also preserved a large amount of folk customary law; however, due to the process of urbanization, the traditional clan system has also been impacted, and a large number of villages have become part of the city, so a large number of people of different clans People who originally lived in the countryside followed this trend and went out to work and live. In this way, some customs that were originally commonly observed in the local area have also been weakened by this change. Some traditional customs, such as the habit of asking names and placing Geng stickers on the altar of the ancestral hall, are almost no longer observed. Some customs in marriage may also be simplified or even cancelled, due to the fact that they are less constrained by the clan.

4.2 Legalization of the Contents of Marriage Customary Law

Modern marriage legislation has also had a considerable impact on Chaoshan's customary marriage laws. From the "Marriage Law of the People's Republic of China", we can find many values that are commonly accepted by modern men and women in marriage and love. For example, Article 2 of the "Marriage Law" "Practice freedom of marriage, monogamy, and a marriage system of equality between men and women." Article 3 "Arranged marriages, buying and selling marriages and other acts that interfere with the freedom of marriage are prohibited. Extortion of property through marriage is prohibited.", and Article 5 "Marriage must be completely voluntary by both men and women, No one party is allowed to coerce the other party or any third party to interfere." Both reflect the freedom of love protected by modern marriage and the value system maintained by the law of equality between men and women. Modern laws have had an impact on the traditional customary laws of the Chaoshan area. For example, in the process of concluding a marriage between a man and a woman, "the order of the parents and the words of the matchmaker" are no longer a prerequisite for the conclusion of marriage between a man and a woman. This form of free love leads to a stable marriage relationship. The "polygamy system" and "arranged marriages" in the old customary law, which violate the modern legal provisions, have

disappeared.

5. The Integration of Marriage Customary Law and Modern Rule of Law in Shantou Area

5.1 Fusion feasibility

The customary marriage law in Shantou area and the modern marriage law have the consistency of goal and compatibility of content. The current Marriage Law protects the freedom and safety of marriage, and advocates the emotional and personal care of one party to the other. The core spirit of marriage customary law in Shantou area is the family standard, a person is an extension of the family, and the family is a crucial factor for a person's existence, which is important and cannot be easily destroyed. Now the marriage law also believes that the importance of the family is stipulated. A series of laws safeguard the freedom of marriage and the safety of marriage; secondly, the marriage customary law in Shantou area focuses on the care of men for women, which is consistent with the content of modern marriage law that the man undertakes the duty of raising and taking care of family members, so the relationship between the two It is possible to integrate.

5.2 Adjustment of Conflict between Marriage Customary Law and Modern Rule of Law in Shantou Area

The reasons for the emergence of customary law are not the same as those of national law, and there is bound to be a possibility of conflict between the two. The superiority of part of the customary law has been demonstrated in the previous article. In view of the objective existence of the conflict, it is necessary to adjust the contradiction between the two. One is the need for the unification of the national legal system. Even if the customary law has its superiority, it cannot override the national law. Second, when the contradiction between customary law and national law is adjusted, the specific judgment can be made reasonable and legal under the condition of unified legal system. There are many ways to adjust, specifically, the appropriate application of reasonable marriage customary law in the judiciary, affirming the legal value and social value of the customary law; flexible application of traditional customary law in the dispute mediation mechanism, reducing judicial resources; building the benign mechanism of customary law inheritance makes it a useful supplement to the modern rule of law in our country; strengthening the promotion of the rule of law enables the people to have a comprehensive and objective understanding of customary law and state law.

6. Conclusions

Shantou is an area in China that maintains traditional culture well. Therefore, when evaluating the marriage customs in Shantou, we should see its positive and negative influences. The positive influence is reflected in the continuation of traditional Chinese culture. In contemporary China, it is difficult to see such a complete maintenance of traditional Chinese customs in other places. The marriage habit has not yet shown a trend of extinction, but is in harmony with modern times. The inheritance and development of the tradition after the combination of the concept of marriage and love is also an important reason for the continuation of the marriage custom in Chaoshan area. On the negative side, we should also see that in terms of marriage customs, there may be some bad customs that conflict with modern civilization in ancient marriage customs, and these are also reflected in modern marriages in Chaoshan area, such as the dowry Requirements have increased the burden on some families with financial difficulties, which may also become the fuse for the outbreak of family conflicts; also under this custom, the overall social atmosphere tends to be conservative on marriage and love issues, which also affects the concept of male-female relationships. The marriage customary law in Shantou has developed with the development of the times, and some customary laws that do not conform to socialist values have gradually disappeared. The marriage customary law has its good and bad sides. Integration with the rule of law in our country can better serve as a supplement to the modern rule of law, and can also make the specific judgments of the courts more legal and reasonable.

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