

Original Paper

Discussion on the Introduction of Incomplete Adoption System in China Feasibility Analysis

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Abstract

This paper discusses the feasibility of introducing the incomplete adoption system in China. Firstly, it reviews the historical evolution of the adoption system, and points out that there were two modes of complete adoption and incomplete adoption in ancient Rome. Then, it introduces the incomplete adoption system in French law, including the substantive elements, procedural elements and the effectiveness of incomplete adoption. France's incomplete adoption system emphasizes the preservation of the legal relationship between the adoptee and the biological parents, while giving the adoptee a legal parent-child relationship with the adoptive parents. The article further discusses the reference significance of the French incomplete adoption system to China's adoption system. Through comprehensive analysis, this paper believes that it is feasible to introduce the incomplete adoption system in China. By drawing on the experience of France, China's adoption system can be more perfect and flexible, providing better protection and support for minors and adoptees in special circumstances. By reasonably stipulating the substantive elements, procedural elements and the effectiveness of adoption, China can promote the development of family stability and social harmony while protecting the rights and interests of children.

Keywords

full adoption, incomplete adoption, civil Code

The adoption system plays an important role in regulating kinship in society, which is also true in China. According to the provisions of the "Civil Code", adoption refers to the legal act of a qualified adult citizen to legally adopt a minor child who meets the relevant conditions to establish a parent-child relationship (China Legal Publishing House, 2020, p. 61).

The rights and obligations between adopters and adoptees are stipulated by law, and the legal relationship between minor children and biological parents is also eliminated (Yang, A. Y. & Pan, L. Q., 2017, pp. 86-91).

The adoption model adopted in China is the full adoption model, which means that the traditional family model of parents and children has been formed after adoption. This model plays an important role in cultivating and protecting children's growth, meeting the emotional needs of adopters, and maintaining social stability.

However, in practical applications, there are also some problems with the full adoption model. For example, some biological parents have to send their children because of special difficulties. Although they have deep feelings with their children, they make such decisions because they cannot be raised. In addition, adopted children may find it difficult to integrate and adapt in the new family. In addition, a single complete adoption system cannot solve all situations, especially with the diversification of social problems, the change of family patterns and the progress of traditional concepts, the connotation and function of the adoption system need to be moderately expanded. We should not only pay attention to raising minors, but also take into account the needs of raising the elderly and other special vulnerable groups.

In order to better adapt to the reality, I think we can learn from the incomplete adoption model widely used in other countries. In this model, adoptive parents and adoptees can establish a parent-child relationship while retaining the adoptee relationship with biological parents. Such a model is more flexible, can better meet the needs of different families, play the social function of the adoption system. The adoption system is an important part of China's civil family law. The global adoption system is mainly divided into complete adoption system and incomplete adoption system, which together affect parent-child relationship, family relationship and social stability. Although the full adoption system plays a key role in maintaining social harmony and stability, its shortcomings are becoming more and more obvious with the aggravation of the aging problem. Therefore, it is urgent to construct an adoption model based on full adoption and supplemented by incomplete adoption.

1. Overview of Incomplete Adoption

1.1 The Concept of Incomplete Adoption

Adoption is a civil legal act in which a natural person adopts another person's children in accordance with legal procedures to establish a similar parent-child relationship in law. From a legal point of view, the adoption behavior makes the two parties who have no blood relationship have a family parent-child relationship with legal effect, and from the perspective of social relations, the adoption creates a parent-child relationship that mimics the blood relationship. The explanations of these two perspectives are different, but both provide support for an accurate understanding of adoption.

Globally, the adoption system can be divided into two modes: "full adoption" and "incomplete adoption" (Xuan, F. M., 2019).

“Complete adoption” means that the relationship of rights and obligations between adoptive parents and adoptive children is similar to that between biological parents and biological children, and the relationship of rights and obligations between adoptive children and biological parents and relatives is cut off. In short, after the establishment of the full adoption relationship, the parent-child relationship, the dependency relationship, the support relationship and the inheritance relationship are formed between the adopted children and the adoptive parents, but the legal relationship with the biological parents is interrupted.

However, the “incomplete adoption” model is different. In this case, after the adoption relationship is established, the parent-child relationship between the biological parents and the adoptee is not cancelled, but the adoptive parents are added, that is, the adoptee has the rights and obligations of the parents and children between the biological parents and the adoptive parents. Zhang Yixing pointed out that the deficiency of the “incomplete adoption” system is that it cannot promote the healthy growth of young people, and it is difficult to meet the needs of the elderly for adopting adults. I believe that the establishment of an incomplete adoption relationship not only solves the problem of support for adoptive parents, but also takes care of the situation of biological parents, similar to the responsibility of a child to inherit two families at the same time, such as adoption or naming. The objects of adoption may include minors and adults.

In view of the reality, China’s single full adoption model is no longer applicable to the basic national conditions of contemporary society. The introduction of the “incomplete adoption” model helps to improve the adoption system and can also achieve the goal of “childcare and old-age care”. This model takes into account the interests of adoptive parents, biological parents and adoptees, and is a more comprehensive and diversified choice.

1.2 The Historical Evolution of Incomplete Adoption

The origin of the adoption system can be traced back to the slave society, but its comprehensive development dates back to the Roman period. The adoption practice of “other rights holders” in Roman law laid the foundation for the modern adoption system. In ancient times, heirs had limited rights and interests in property, but through adoption, they were able to deprive the natural father’s family of the right to inherit, in turn obtaining the right to inherit the adopter’s family. In order to protect the rights and interests of the adoptees, in 530 A.D., Emperor Youdi I further reformed and established that the adoptees still retained the right to inherit the biological father’s family during the adoption process. This laid the foundation for the adoption system to be divided into two modes of complete adoption and incomplete adoption, and the incomplete adoption system was formally established.

In ancient Rome, adoption was the way to obtain parental rights. Through this system, adoptees gained family membership and became potential heirs. However, incomplete adoption, as a special form, does not give all parental rights to adopters. In the absence of a succession restriction will or the liberation of the adoptee, the adopter has a dual status of inheritance in incomplete adoption. In this historical system, the focus is on the property status of the adoptee and the establishment of the right of

inheritance after incomplete adoption, aiming to protect its property interests.

Compared with the incomplete adoption system in modern times, the system in ancient Rome highlighted the level of property inheritance. The modern incomplete adoption system pays more attention to the comprehensive family relationship, covering the maintenance of emotion, upbringing, support and other aspects. However, the incomplete adoption system in ancient Rome still provides historical background and reference for the development of modern legal system.

1.3 The Characteristics of Incomplete Adoption System

Incomplete adoption, as a new adoption model, has unique concepts and characteristics. Compared with traditional full adoption, it pays more attention to fully respecting the rights of biological families. Incomplete adoption does not mean the complete deprivation of biological parents' rights, but through the establishment of a flexible family model, the adoptive family and the biological family are connected to each other to meet the different needs of the adopted children. In addition, incomplete adoption is also concerned with providing a stable and conditional family environment, so that adopted children can maintain a certain degree of contact with the biological family while protecting their rights and interests.

Internationally, the incomplete adoption system has achieved positive development in some countries. As one of the pioneers of the incomplete adoption system, the United States has provided a clear legal basis and support system for incomplete adoption by establishing a detailed legal and policy framework. The UK emphasizes the flexibility and adaptability of the family and provides more support and psychological counseling for adoptive families and adopted children. In China, although the incomplete adoption system is still in its infancy, it has begun to attract the attention of relevant departments and society. In recent years, some local pilots have been promoting the practice of incomplete adoption, which has laid a foundation for China to explore a more flexible and adaptable adoption model.

2. Dilemma Faced by China's Adoption System

2.1 The Number of Adoptions Is Small

Data in recent years show that the number of adoption registrations in China has shown a downward trend. By the end of 2020, a total of 11,000 adoption registrations had been processed nationwide, a decrease of 2,000 compared with the previous year. Specifically, the number of adoption registrations in Hong Kong, Macao, Taiwan and overseas Chinese is 31, which is 59 less than last year. The number of adoption registrations of foreigners was 63, which was 907 less than that of last year (Jiang, X. M., 1999, p. 13).

2.2 Aging Population Is Serious

From the perspective of population age structure, China has entered a moderately aging society. By the end of 2022, China's working-age population of 16-59 years old will be 875.56 million, accounting for 62.0% of the national population; the population aged 60 and above is 280.04 million, accounting for 19.8% of the national population, of which the population aged 65 and above is 209.78 million,

accounting for 14.9% of the national population.

That is to say, China's population over the age of 60 accounts for nearly 20% of the national population! According to experts, China has entered a moderately aging society from a mild one. The acceleration of the aging process has brought about rapid changes in the labor structure, and has also caused rapid growth in public expenditures such as medical insurance and pensions, which has brought severe challenges to economic and social development.

In the long run, the degree of population aging in China is deepening. In 2022, China's new population is less than ten million, which is 9.56 million, while the new elderly population over 60 years old is 12.68 million. The elderly population is growing, exceeding the new population of 3.12 million, and there is a further increasing trend. In 2022, the elderly population over 65 years old is 209.78 million, an increase of 9.22 million.

That is to say, from the beginning of 2022, China's population has not only entered a period of negative growth, but also entered a period of rapid growth of the elderly population. According to relevant statistics, from 1962 to 1975, China's new population was 367 million, and these people will grow old in the next ten years.

According to estimates, it is expected that during the "14th Five-Year Plan" period, the total number of elderly people aged 60 and over will exceed 300 million, accounting for more than 20% of the expected proportion, marking that China will enter the stage of moderate aging. In about 2035, it is expected that the elderly population aged 60 and over will exceed 400 million, accounting for more than 30% of the total population, marking that China will enter the stage of severe aging. The change of this demographic trend shows the aggravation of the aging problem in China, which puts forward more urgent challenges to social pension and medical care, and also emphasizes the importance of introducing incomplete adoption system to cope with the support needs of the elderly.

2.3 Adoption System Is Not Perfect

The dilemma faced by China's adoption system is that the problem of aging is becoming more and more serious. The existing "full adoption" model is limited to the adoption of minors, which cannot meet the growing demand for adult support, especially in the case of low birth rate or childless elderly, children working far away or even abroad, and the old age support of middle-aged bereaved elderly. The problem will be difficult to solve quickly.

Secondly, this model may damage the rights and obligations between the adoptee and the family of origin. According to the second paragraph of Article 111 of the Civil Code, the rights and obligations between adopted children and biological parents and other relatives are cancelled due to adoption. However, China's "Adoption Law" stipulates that the object of adoption is limited to minors. For minors under the age of 14, even if the parents have passed away and there is no inheritance, they can continue to enjoy the right of inheritance. However, after they are fully adopted, they will not be able to inherit the inheritance due to the establishment of the adoption relationship, which may deprive them of their inheritance rights. For minors over the age of 14, if they cannot continue to be raised due to

financial difficulties or physical reasons of their parents, the choice of full adoption may affect the old-age care of their parents, and make these minors in trouble and difficult to make appropriate choices.

In addition, the current system ignores the actual situation in China. In the early stage of our country, there were a large number of informal adoptions. Due to the lack of information, many lost children or children who could not be raised due to economic difficulties were actually adopted informally. However, due to the imperfect law, these children after actual adoption may face disputes and troubles in inheritance, adoption and other issues.

3. The Practical Significance of Applying Incomplete Adoption in China

With the social change and the diversification of family structure, it is of great practical significance to apply the incomplete adoption system in China. The following are several points of view:

3.1 Meet the Needs of an Aging Society

The incomplete adoption system can better meet the support needs of an aging society. Under the current complete adoption system, only minors can be adopted, and incomplete adoption can cover the adoption of adults, especially those who face no care in their later years. This will help to solve the problems of elderly life and care in their later years, and provide them with a more stable living environment in their later years.

3.2 Safeguarding the Rights and Interests of Adoptees

The incomplete adoption system helps to protect the rights and interests of adoptees. In full adoption, the legal relationship between the adoptee and the biological parents and relatives will be cut off, which may lead to the damage of the adoptee's inheritance rights. The incomplete adoption model can provide additional support and care while retaining the legal relationship between the adoptee and the biological parents. In this way, adoptees can enjoy more family support and will not lose their original legitimate rights and interests due to adoption.

3.3 Promoting Family Harmony

The introduction of incomplete adoption system helps to maintain family harmony. In some cases, adoptive parents may face a choice between adopted children and children, resulting in contradictions and conflicts. Incomplete adoption can enable both parties to enjoy rights and reduce tensions within the family. A more balanced relationship between family members is conducive to family harmony.

3.4 Adapt to Diverse Family Needs

The incomplete adoption system can better adapt to the diverse family needs. The family structure of modern society is diverse, many people may face living alone, no children and so on. The incomplete adoption model provides these people with a reasonable choice of family support, which helps to meet their needs and also brings them more family care.

3.5 Solving the Problem of Non-Standard Adoption

The introduction of the incomplete adoption system also helps to solve the early problems of non-standard adoption. By clarifying the legal channels of incomplete adoption, illegal adoption and maintenance disputes can be reduced and the rights and interests of the adoptees can be protected. This will contribute to the stability of social order, ensure that every adoptee can legally enjoy their rights and interests, and avoid falling into legal risks.

4. The Foreign Experience of Incomplete Adoption System Is of Reference Significance to China's Adoption System

4.1 The Evolution of the Adoption System

In ancient Rome, the adoption system was originally set up to inherit the family and inherit the family business, mainly including two modes of complete adoption and incomplete adoption. Full adoption means that the legal relationship between the adoptee and the biological parents is completely eliminated, and the status of the adopter's legitimate children or grandchildren is obtained. With the change of the times, the concept of incomplete adoption appeared in the Justinian era, that is, to retain the relationship between the adoptee and the biological father's family. France first regulated adoption in the "Napoleonic Code" promulgated in 1804, which laid the foundation of modern adoption law. However, with the social change and the importance of children's rights and interests, the lack of incomplete adoption has gradually emerged, making the full adoption model universal and emphasizing the protection of children's rights and interests. For example, China, Japan, Algeria and other countries have only a single provision for full adoption. The 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption vigorously advocates full adoption and prohibits the conversion of full adoption into simple adoption (Jiang, X. M. & She, G. H., 2001).

4.2 Incomplete Adoption System in French Law

France's incomplete adoption system, also known as simple adoption, is divided into adopter conditions, procedural requirements, effectiveness and other aspects of the detailed provisions. Incomplete adoption emphasizes that the relationship between the adoptee and the biological parents is preserved, and the legal parent-child relationship between the adoptee and the adoptive parents is given. In terms of substantive requirements, France stipulates conditions such as the age of the adopter, the consent of the spouse, and the consent of the biological parents, while paying attention to the age and family situation of the adoptee. In the procedural requirements, the adoption needs to be examined and approved by the court to ensure the legal compliance of the procedure. Incompletely adopted the validity of the law clearly stipulates that the adoptee retains the inheritance rights of the original family, and at the same time bears the obligation to support the families of both parties. The adoption relationship also has the possibility of dissolution and invalidity, but the dissolution of adoption needs to consider multiple factors to ensure the protection of the legitimate rights and interests of all parties.

4.3 The Reference Significance of French Incomplete Adoption System to China's Adoption System

France's incomplete adoption system has certain reference significance for China's adoption system. France has fully considered the protection of children's rights and the balance of family relations, emphasizing the legitimacy of the procedure and the participation of social institutions, thus protecting the rights and interests of both adopters. China can learn from France's practice and appropriately relax the conditions for incomplete adoption to make it more flexible and applicable to various situations. At the same time, it emphasizes the participation of family and social institutions to ensure the transparency and legitimacy of the adoption process. For incomplete adoption in special circumstances, more attention can be paid to review and procedural guarantees to achieve the principle of the best interests of children. By drawing on the experience of France, China's adoption system can be more perfect and flexible, providing better protection and support for minors and adoptees in special circumstances.

5. Analysis of the Feasibility of Incomplete Adoption System in China

At present, France and other countries have relatively perfect experience in the incomplete adoption system, which provides a useful reference for the introduction of the system in China. The following is the feasibility analysis and related suggestions for the introduction of the "incomplete adoption" system in China:

First, revise the adoption principles and regulations. By amending the second paragraph of Article 1044 of the Civil Code, China can add prohibitive provisions, such as prohibiting the sale of minors in the name of adoption, abusing the elderly, deceiving money, etc., in order to protect the legitimate rights and interests of the adopted person. This not only conforms to the principle of child protection, but also helps to improve the function of old-age care.

Secondly, the scope of adoptees should be appropriately relaxed. At present, the object of adoption in China is limited to minors, but considering the social reality, the scope can be moderately expanded to allow adults to also be adopted. In particular, for young people who are economically difficult but are motivated and eager to learn, help should be provided to promote the cultivation of high-quality youth in society and realize the diversification of old-age care methods.

Further, improve the adoption procedures and evaluation criteria. Clear adoption procedures and evaluation criteria help to guarantee the legality of "incomplete adoption". It is recommended to amend the first and fifth paragraphs of Article 1105 of the Civil Code to clarify the conditions for adoption registration and the criteria for adoption assessment. Possible improvements include the introduction of concepts such as "adoption trial period" to ensure adequate assessment and adaptation period.

Finally, learn from foreign experience, improve the legal provisions. France's incomplete adoption system is more advanced in terms of inheritance rights. After the adoptee establishes a legal parent-child relationship with the adoptive parents, it does not affect the maintenance and inheritance rights with the biological parents. China can clarify the protection of inheritance rights under the

incomplete adoption mode by amending the second paragraph of Article 111 of the Civil Code to balance the rights and interests of all parties.

In the history of our country, incomplete adoption has briefly emerged and played a certain role in judicial practice. However, after the founding of the People's Republic of China, China's adoption law has not incorporated incomplete adoption into the legal framework from the "Adoption Law" to the current "Civil Code", but has adhered to a single complete adoption model. However, with a series of social changes such as the diversification of family structure, the decline of birth rate and the aggravation of aging problem, the complete adoption model has gradually failed to meet the actual needs. Therefore, the introduction of incomplete adoption model has become an inevitable historical trend.

The introduction of incomplete adoption model is not to replace the complete adoption model, but to make a useful supplement on the basis of the complete adoption model. Incomplete adoption should be added to the "adoption" chapter of the "Civil Code", which is located after the full adoption model. In terms of content, two modes of incomplete adoption of minors and incomplete adoption of adults should be clearly defined to meet the needs of different situations.

In order to ensure the effective implementation of the incomplete adoption system, the conditions of adoption, the procedure of adoption, the legal effect of adoption and the termination of adoption should be clearly stipulated. Through clear legal provisions, we can protect the rights and interests of all parties in practice and reduce the occurrence of disputes. In short, the introduction of incomplete adoption model helps to adapt to the development and changes of the current society, better meet the needs of different families, and make the adoption system more comprehensive and flexible.

6. Conclusion

To sum up, the introduction of incomplete adoption system in China is feasible. It can effectively cope with the challenges of social change and family diversification, provide more appropriate support choices for the elderly and adults, promote the healthy development of society, and create a more harmonious social environment. The introduction of incomplete adoption system will continue to explore and improve in practice, and make positive contributions to the progress of China's family system and the prosperity of society.

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