

## *Original Paper*

# Historical Evolution and Judicial Dilemma of Bride Price in China

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### **Abstract**

*Currently under the new situation of marriage in China, the collection of bride price is an objective social phenomenon with universality. And with the rapid economic growth and people's income level, the value involved in the bride price has also increased dramatically, easy to produce the scope of the bride price determination, the bride price return ratio and other civil disputes, and some even involved in criminal cases, the harmonious development of the whole society has a more direct impact. Therefore, how to deal with the legal issues related to the bride price based on the civil code and judicial interpretations and other laws and regulations, has certain theoretical and practical significance. This paper aims to start from the source of the bride price, combined with the history of the bride price and judicial practice, talk about the nature of the bride price in China's legal system, the scope of the determination of the ambiguity of the legislation, the return ratio, in order to provide a hole in the future judicial reform.*

### **Keywords**

*Bride price, Legal, History, Marriage, Dilemma*

## **1. Introduction**

After thousands of years, the bride price is still an important part of folk wedding culture, from the “six rites” of the Western Zhou Dynasty to the monetized payment in contemporary society. With the development of China's economy, the high amount of bride price has led to frequent disputes, affecting social harmony, and a large number of legal issues about the bride price need to be resolved. At present, China's civil code and the relevant judicial interpretation of the bride price return rules made in principle, but in judicial practice, the application of these provisions to resolve disputes over the bride price there are still many dilemmas.

## **2. What is the Bride Price**

### *2.1 Sources of Bride Price*

The bride price has a long history. It can be traced back to the Western Zhou period. This is evidenced

by the Western Zhou system of "six rites", as recorded in the Book of Rites - The Meaning of Faintness. "Among the six rites, "Na Zheng" means that the man's family sends a bride price to the woman's family before the marriage is formalized (Liu N, 2021). As China is a vast country divided into many provinces and ethnic groups with large populations, the amount of bride price varies greatly from province to province and from ethnic group to ethnic group, but the definitions of bride price are similar, so the author will make a generalization here. Contemporary bride price is a "gift of thanks" received by the woman's family at the time of or after the betrothal for accepting the man's proposal to marry her and for her intention to marry into the man's family, and it is mainly expressed in the form of money or goods. Thus, it seems that the "Na Lei" procedure in the marriage and family system of the Western Zhou Dynasty is the source of the present-day practice of bride price.

### *2.2 Historical Evolution of the Content of the Bride Price*

During the Zhou Dynasty, the main role of the bride price is symbolic, so the form of expression is also based on symbolic items, mainly jade, silk, leather and currency, but the value is generally not high. "Rituals - Miscellaneous Records" is recorded: "a bunch of coins, bunch of five two, two five seek", a little easier to understand, refers to the marriage etiquette of the coins in the link to the silk as a bride price, and at that time, a bunch of silk is divided into five two, one or two silk the length of the silk is equal to the five seek, and a seek is equal to eight feet. The conversion down that the bride price of one or two silk that is forty feet of cloth. According to the gold calculation method, it was about three thousand dollars.

During the Han Dynasty the bride price began to be linked to family status, mainly in the form of gold, but also in the form of family slaves and clothing (Xiang, 2024). At that time, the higher the bride price was, the more it showed the family status. The bride price began to develop in the direction of high value because of its role in symbolizing family status. During the Wei, Jin, and North-South Dynasties, there was even a phenomenon of sky-high bride price. In addition to the increase in value, the types of bride price also increased. During the Sui and Tang dynasties, the types of dowry even developed to livestock and other objects. In the Song Dynasty, wine and silk could be given to the woman's family as a bride price before the marriage of a man and a woman. From the Ming and Qing Dynasties to the Republic of China, the trend of "generous marriage" was weakened, and the bride price began to be monetized. From the founding of New China to the present day, under the combined impetus of changes in the economic market, policy regulation and religious beliefs, the bride price has basically been monetized throughout the country.

## **3. Basic Status of the Civil Bride Price and Dowry**

The evolving process of the bride price culture has different theories in different times and regions, such as the early bride price for marital reimbursement-intra-generational exploitation theory, the theory of marital financing-intergenerational exploitation developed by Wang Defu, the theory of marital market offer proposed by Gui Hua and Yu Lian, and the theory of family mosaic-intergenerational symbiosis,

etc. (Zhao, 2018). The customary folk definition of the bride price is the bride price or gift money given by the man to the woman, with the nature of "for the purpose of marriage", the woman accepts the bride price with the intention of entering into a marriage relationship with the man. The country's economy is developing rapidly, and per capita income is rising. This also makes the value of the bride price continues to soar. Specifically, the bride price in North China between 8-20 million; East China, the amount of the bride price varies significantly across the region, the amount of low, for example, "two marriage" custom - that is, no bride price without dowry, 10,000 zero one yuan (meaning "one in 10,000"), the amount of the middle of the bride price The bride price is usually in the range of 150,000-300,000 yuan, while the higher amount can be as high as 1.8 million yuan. In South China, the bride price in the Pearl River Delta region is usually 30,000 to 80,000 yuan, but in places like Quanzhou, Fujian, the bride price can be as high as 300,000 to 1 million yuan. In the central and western regions of the country, the bride price is usually between 30,000-200,000 yuan (Yan & Liu, 2024). However, in Liangshan Yi Autonomous Prefecture, Sichuan, the Yi people still retain the "price of the body", the bride price can be up to 3.8 million yuan, with furniture and household appliances, cattle and sheep, silver jewelry and other forms. Northeast China's rural bride price is generally 100,000 yuan, the dowry is mostly equal to the cash. In summary, the amount of the bride price varies greatly across the country, but the amount involved is relatively large, are much higher than the income level of local rural villagers. According to the rural marriage survey conducted by Prof. Shi Qinghua of Shanghai Jiaotong University, the rate of bride price has reached more than 90% in all years, and even more than 95% in some provinces or years, and the phenomenon of charging bride price in civil marriage is very common (Sun & Shi, 2009). The Supreme People's Court in 2024 promulgated the "bride price more than three times the local per capita income can be required to return" and other provisions, but the folk for the bride price dowry climbing mentality is still difficult to eradicate, because of the sky-high bride price or dowry led to the breakup of the marriage and family cases abound.

#### **4. Typical Cases**

##### *4.1 Brief Description of the Case*

Ms. Xu, a native of Shandong, was born in 1994 and is one meter seventy (centimeters tall). Mr. Yu was born in 1978 and is 6.5 meters tall. Mr. Yu took Miss Xu as a marriage object and started pursuing her, subjectively with the purpose of marriage. At first, Miss Xu in Mr. Yu appearance conditions and do not agree, but Mr. Yu did not give up. Miss Xu carried out a more enthusiastic pursuit, not only in Miss Xu's illness seriously care, and daily through WeChat to Miss Xu send red envelopes, and constantly buy Miss Xu a gift of choice. According to statistics, from June 2017, to October 2019 more than two years of relationship time, Mr. Yu through the issuance of WeChat red packets, the purchase of BMW vehicles, plus the gift of other luxury goods cumulative expenditure of 86 million yuan. After the two sides broke up, Mr. Yu claimed that the money belongs to the "bride price", asked to return, but Miss Xu thinks the money belongs to the gift of love, and emphasized their own pay "youth and chastity", refused to return.

Because the two sides did not marry, in this case how to use laws and regulations to determine the nature of the money, became a difficult problem.

#### *4.2 Refereeing Results*

Ultimately, the court relied on the principle of public order and morality and article 1042 of the Civil Code to find that the 860,000 yuan expenditure was a bride price and a "conditional gift for the purpose of marriage". The reason was that the amount of money Mr. Yu gave to Ms. Xu and the purchase of the car was huge, clearly different from a small gift in a relationship, beyond the scope of an ordinary gift, and implied an expectation of marriage. And according to the civil code and judicial interpretation of the judgment Ms. Xu return wechat red packet without note special meaning of the transfer of 409 000 thousand yuan, the purchase of the BMW vehicle, and rejected Mr. Yu claimed the return of the remaining common consumption expenditure part of the money. Ms. Xu appealed to the Yantai Intermediate People's Court, but the court upheld the original judgment and rejected Ms. Xu's appeal.

### **5. Analysis of the Judicial Dilemma of the Bride Price Rule**

#### *5.1 Legal Dilemmas in Determining the Nature of the Bride Price*

The source and history of the aforementioned "bride price" indicates that its function, connotation and extension have been changing, so "bride price" has not become a standardized professional legal term, but the disputes arising from the bride price have always belonged to the hot spots and difficult points in our country's trial practice (Sun & Shi, 2009). The Civil Code has never given a clear definition of bride price, and the conceptual nature of bride price is ambiguous, so the definition of bride price is fundamentally ambiguous. Some courts have relied on the "Prohibition of Soliciting Property through Marriage" to recognize the bride price as a gift conditional on the conclusion of a marriage, with the obligation to return the property if the marriage is dissolved. Other courts have relied on the Civil Code's provision that "if a beneficiary obtains an undue advantage without a legal basis, the person who suffered the loss may request the beneficiary to return the advantage obtained", so that when the purpose of the marriage has not been realized, and the conditions of the gift have not yet been fulfilled, the recipient may consider the dowry to be an "undue advantage" as stipulated in the provision and claim its return. The recipient may consider the bride price to be an "undue advantage" under this provision and claim for its return. Other scholars believe that the bride price should belong to a kind of marriage contract signed by both parties based on local customs and habits of the special contract, if the dissolution of the marriage contract is regarded as a breach of contract, should bear the responsibility of returning the bride price (Xue & Cui, 2024). The above three views, there are theoretical flaws, so there is currently no fully able to identify the nature of the bride price regulations. So the judge in the face of the reality of the case, on the one hand, the existing laws and regulations can be difficult to operate, the nature of the determination of a variety of paths, on the other hand, need to combine the local marriage customs and other factors, relying on the hands of the discretionary power to decide the case, the same case of the frequency of different judgments is also the reason for this. In this case, Mr. Yu 860,000 yuan of expenditure is

regarded as a "conditional gift", the judge will be "during the period of love for the purpose of marriage expenditure" as a bride price, and accordingly claimed that Ms. Xu in the judgment within 10 days from the effective date of return. This is also the practice of most courts.

In 2024, the Supreme People's Court promulgated the Provisions on Several Issues Concerning the Application of Law in the Trial of Cases Involving Bride Price Disputes, the first of which stipulates that "these provisions shall apply to disputes arising from the demand for the return of a bride price after it has been paid in accordance with custom and with the aim of entering into marriage". This article defines the bride price as "property paid for the purpose of entering into a marriage in accordance with folk customs and mores", which includes both purpose and mores, i.e., the bride price is paid with the direct purpose of marriage, while at the same time conforming to local traditional customs and mores. In other words, if the bride price is paid and the marriage is not established or the parties do not live together for a long period of time, the party who paid the bride price has the right to demand that the party to whom the bride price was paid return it. This provision recognizes the bride price as a conditional gift for the purpose of marriage, which clarifies the nature of the bride price to a certain extent and provides an important basis for judicial practice (Li, 2021).

### *5.2 The Dilemma of Determining the Scope of the Bride Price*

The source and history of the aforementioned bride price, the bride price in the Ming and Qing Dynasties to the Republic of China, began to move towards monetization, until the modern basic monetization, but there are still non-monetary payments of "bride price", such as real estate, cars and other physical objects (Ma, 2024). In this case, Mr. Yu gave a BMW car and luxury goods, which is a non-monetary payment, but the court only included the BMW car in the scope of the bride price, which has been disputed by many scholars over the years. The root cause is that China's law for the scope of the bride price is too vague, for the "non-monetary bride price of the determination of the standard" has not yet formed a unified rule of decision. China's law provides that "the people's court may determine the scope of the bride price according to the purpose of one party to give property, taking into account the local customs of both parties, the time and manner of payment, the value of the property, the giver and the recipient, and other facts," and lists the circumstances that are not usually recognized as the bride price, including small gifts for holidays, special commemorative gift gratuities, Daily consumption expenditures for the purpose of expressing or promoting affection, and other property of little value. However, in terms of judicial practice in applying this provision, there are many difficulties. First, the article stipulates that the scope of the bride price needs to be determined in conjunction with the "local customs", but China's vast territory, different regions of the wedding customs vary greatly, and even the same region of different ethnic groups or families wedding customs are also very different, the aforementioned bride price of the status quo also demonstrates this, the court in order to find out the facts of the need to actually investigate the local marriage customs, but the law does not explicitly provide for the identification of the local marriage customs. China's law does not expressly provide for the identification of local marriage customs standard procedures, which leads to the court to understand the local marriage customs are subject to

subjective influence, resulting in the emergence of different judgments in the same case; Secondly, the provisions of the court in the determination of the scope of the dowry to be integrated into the purpose of the dowry, local customs, the time of payment, the value of the property and other factors to determine, but does not provide the effectiveness of the various factors of the hierarchy. When the two parties do not intend to enter into a marriage, but the financial relationship between the two parties is significant, is the "purpose of the marriage" or the "value of the property" given priority? In this case, does the purpose of entering into marriage mean that both the man and the woman have that purpose or only one of them? Thirdly, the exclusion of "daily consumption for the expression of affection or the enhancement of feelings" and "consumption expenditure for the purpose of marriage" seem to be mixed up in practice, what are the obvious criteria for distinguishing between the two? Fourthly, the exclusionary clause "other property of insignificant value" is too vague; what are the specific criteria for determining "insignificant value"?

With the rapid development of artificial intelligence, more and more new forms of property have emerged, such as virtual currencies, equity, intellectual property rights, etc., and the existing law does not yet cover whether such property is included in the scope of the bride price. The relevant provisions on the scope of the dowry need to be refined and updated in a timely manner, so as to avoid making the scope of the dowry, which is already blurred, even more difficult to determine due to the proliferation of new forms of property.

### *5.3 Practical Dilemmas of the Rules on the Return of the Bride Price*

Article 1042 of the Civil Code, "prohibit the use of marriage for the purpose of soliciting property" is the legal basis for the formulation of the rules for the return of the bride price, but China's civil law has not yet made a direct provision on the rules for the return of the bride price is very ambiguous, and the application of the relevant provisions of the dispute is prone to arise (Zhang, 2024). In the case of the dowry dispute between Mr. Yu and Ms. Xu, the final verdict was that Ms. Xu returned more than 840,000 RMB, which accounted for about 98% of the total amount. However, the percentage of return in similar cases varies greatly, with a 50%-80% return of the dowry commonly enforced in rural Shandong, and around 75% in Fujian and other places, which mainly stems from the lack of clear guidelines on the percentage of the dowry to be returned in judicial interpretations. Article 6 of the Provisions on Several Issues Concerning the Application of Law in the Trial of Cases Involving the Bride Price Dispute, promulgated by the Supreme People's Court in 2024, stipulates: "The people's court shall, based on the facts of the actual use of the bride price, the faults of both parties, and other facts, and in conjunction with the local customs, determine whether to return the bride price as well as the specific proportion of the return. This provision, although in determining the proportion of the bride price to be returned to the introduction of "fault responsibility", "common life", "the actual use of the situation" and other dynamic factors, but in practice, based on the factors in the provisions of the determination of the bride price to be returned to the people's court. However, in practice, based on the factors in the regulations to determine the proportion of the dowry, how much weight should be given to each factor? How does the actual use

of the property lead to changes in the proportion of the dowry returned? There are no specific operational regulations on these issues, which depend on the discretion of the judge.

## 6. Conclusion

The Book of Rites and the Rites of Passage says: "The Rites of Passage are for the good of the two castes, for the sake of the temple and for the sake of posterity, and are therefore valued by the ruler." Marriage is a good thing for the two castes to make friends and pass on to future generations. To pay the bride price as a link before the conclusion of marriage, should be a symbol of good, but experienced from the Western Zhou to today's evolution, the bride price has become a tool for the high and low ranking, resulting in a large number of disputes occur frequently. It is also because of the long history of the bride price, in the folk has been ingrained, "one size fits all" approach is not desirable, through the continuous refinement of the legal rules to resolve disputes about the bride price is more appropriate. Judicial practice, in order to solve the disputes arising from the bride price, the court in the application of the law will often be faced with the nature of the bride price is ambiguous, the scope of the bride price is complicated to define tricky, the bride price is difficult to balance the proportion of considerations, such as the urgent need to improve the legislation. The proper resolution of the bride price issue is related to the balance and protection of individual and social rights and interests, but also related to the inheritance and transformation of traditional culture. I hope that the future legislation can pay attention to the rules of the bride price is difficult to operate in practice, continue to improve the relevant laws and regulations, in order to alleviate the bride price caused by all kinds of disputes, prompting the bride price to return to the basics, and regain its origin as a symbol of the good meaning of marriage.

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