

The Revocability of Collusive and False Marriages

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Abstract: Since there is no clear regulation on the validity of collusion in false marriage in our country, there are many disputes in the academic circles, and four main viewpoints are formed: the revocable theory, the relatively invalid theory, the invalid theory and the effective theory. On the basis of analyzing the existing theories, this paper points out that it is not suitable to apply Article 146 of the General Provisions of the Civil Code, but should give the parties the possibility to protect their rights through the revocation mechanism. At the same time, in order to take into account the social public interests and the trust protection of a bona fide third party, the legal effect of marriage revocation should be differentiated between personal relationship and property relationship, and it is suggested to allow the validity of false marriage to be corrected to maintain the stability of the marriage system.

Keywords: Collusive and False Marriages; Revocable Marriages; Reliance Interests

1. Introduction

In Article 1051 of the Marriage and Family Section of the Civil Code, three types of invalid marriages are listed, namely bigamy, the existence of a close relative relationship that prohibits marriage, and marriage before reaching the legal age of marriage. In Articles 1052 and 1053, two types of revocable marriages are respectively stipulated, that is, marriage under coercion and marriage with the concealment of a serious illness. Among the existing regulations on invalid marriages and revocable marriages, there is neither the concept of collusive and pretended marriage nor the validity norms for collusive and pretended marriage. Some scholars believe that collusive and pretended marriage can be applied in accordance with Article 146 of the General Provisions Section, while some scholars think that it can be analogously applied to Article 1052. The controversy over the validity of collusive and pretended marriage has not stopped in the field of marriage law to this day.

In judicial judgments, the courts have all avoided making judgments on the validity of sham marriages, and have only ruled that the relevant agreements concluded due to sham marriages are invalid. For example, in the "Property Dispute Case after Divorce between Huang and Gao", the Beijing court only ruled that the housing transfer agreement signed by the parties was invalid; in the "Divorce Dispute Case between Zhang and Huang, the second instance court ruled that the parties' sham marriage should continue their marital life, and the retrial court only ruled that the parties' sham marriage agreement could not serve as the basis for divorce; in the "House Sale Contract Dispute between Li Quan and Others and Xie Donggui, the court only ruled on the house sale dispute that the evidence of the sham marriage was insufficient to affect the validity of the involved house sale contract. In the above cases, although in some cases of sham marriage, the judgment requires the parties to maintain their marital life, there is not a single case that clearly states the validity of the sham marriage.

With the development of society, the concept of freedom of marriage has become increasingly popular, but the phenomenon of its abuse has also increased day by day. Collusive and pretended marriage is an act of abusing the freedom of marriage to achieve purposes other than the conclusion of marriage. Regarding the issue of the validity of collusive and pretended marriage, although the academic community has not yet formed a unified view, four main viewpoints have already been formed in the discussions among scholars. By analyzing the existing several theories on the issue of the validity of collusive and pretended marriage, and refining and summarizing the points of divergence behind the disputes, this paper provides a theoretical basis for demonstrating the revocability of collusive and pretended marriage.

2. The Current Situation of Validity Norms and Main Controversies of Collusive and Pretended Marriages

2.1 Analysis of the Current Situation of Collusive Fraudulent Marriages in China

In the Marriage and Family Section of China's Civil Code, only Articles 1052 and 1053 stipulate two types of marriages with defective expressions of intent that can be revoked, namely marriages under coercion and marriages with concealment of major diseases. There is a lack of explicit legislative provisions regarding the validity of collusive and pretended marriages, and so far, there is no legal basis for determining the validity of collusive and pretended marriages. Although Article 146 of the General Provisions Section of the Civil Code stipulates that collusive and pretended acts are invalid, scholars have been engaged in a heated debate on whether marriage acts can apply the provisions on juristic acts in the General Provisions Section, and there is still no judicial interpretation to reach a final conclusion on this issue.

In judicial practice, the courts often avoid determining the validity of collusive and pretended marriages and only rule on the validity of related contracts. Even when there is an unavoidable issue regarding the validity of a marriage, judges also make judgments in a conservative manner, stating that the evidence is insufficient to prove that the parties had improper purposes in concluding the marriage. In past cases, the courts generally held that as long as both parties met the legal marriage conditions and went through the legal marriage registration procedures, their marital relationship was considered valid. Even if there is evidence to prove that the two parties entered into a collusive and pretended marriage for the purpose of obtaining specific benefits, it is generally only handled in accordance with the divorce procedures to maintain the stability of the marriage and family ^[1]. It should be noted that the premise for applying the divorce system is to recognize a legal marriage, with the aim of dissolving the marital relationship. Obviously, the practice of most courts handling collusive and pretended marriages in accordance with the divorce procedures implies an acknowledgment of the validity of such marriages. However, the view that the validity of collusive and pretended marriages has no flaws undoubtedly has many adverse effects.

2.2 Regulation on the Validity of Collusive and Pretended Marriages Abroad

In terms of legislation, Germany and Italy adopt the representationalist approach, emphasizing the effect meaning of the act of representation and stipulating that false marriages are revocable. For instance, German law stipulates that marriages not aimed at establishing a marital life together can be annulled, and the legal effect is different from revocable legal acts, only taking effect in the future. Article 123 of the Italian Civil Code stipulates: "In cases where the spouses agree not to fulfill marital obligations or exercise marital rights when entering into marriage, either spouse can file a lawsuit for revocation." ^[2] (p34, 46)

Russia, Japan, and France adopt the intentionist approach, advocating that the intention of the actor is the essential element that changes the legal relationship. They stipulate that false marriages are invalid. For example, Article 27 of the Russian Family Code stipulates: "In cases where a false marriage is contracted, that is, when both spouses or one spouse has no intention of establishing a family but registers for marriage, the marriage is deemed invalid." The Japanese Civil Code stipulates that if there is no true intention of marriage between the parties, the marriage is invalid. France stipulates that the invalidity of a false marriage depends on its specific purpose. If the purpose of the false marriage has nothing to do with entering into marriage, then the marriage is invalid ^[3] (p53).

2.3 The main controversy regarding the validity of sham marriages in our country

In the academic circle, regarding the validity of the sham marriage committed through collusion, four main viewpoints have emerged, namely the revocable theory, the relative invalidity theory, the invalidity theory and the validity theory.

2.3.1 Revocability Theory

The theory of revocability holds that a consensual sham marriage should be regarded as a revocable marriage. The reason is that consensual sham marriage and the coercive marriage stipulated in Article 1052 of the Civil Code are essentially the same type of marriage with defects in expression of intent, and thus consensual sham marriage can apply to Article 1052, and its effect is revocable ^{[4][5]}. Besides, the revocable effect model grants parties greater choice and flexibility, and is more in line with the principle

of freedom of marriage ^[6].

The view of revocability is questionable. Because the essence of coercive marriage stipulated in Article 1052 of the Civil Code is that the coerced party makes a representation contrary to their true intention due to coercion, which affects the formation of the intention to marry, and the intention to marry is formed passively. While consensual sham marriage is formed due to an improper motive for marriage and the spontaneous making of false representations to form the intention to marry. The processes of forming the defects in expression of intent are completely different, and there are differences in the aspects that affect legal evaluation.

2.3.2 The Argument of Relative Ineffectiveness

The theory of relative invalidity holds that consensual fictitious marriage is revocable in principle but should be valid under certain conditions. The reason is that, in order to protect the interests of third parties, consensual fictitious marriage should be revocable in principle. However, marriage is an identity relationship with factual pre-existence and possesses characteristics different from property relations. If the marital parties later do form a family relationship, the validity of consensual fictitious marriage should be recognized to maintain the stability of marriage and family ^[7].

Both the theory of relative invalidity and the theory of revocability propose that consensual fictitious marriage is revocable, but their reasons are different. The theory of relative invalidity holds that consensual fictitious marriage should be revocable in principle to protect the interests of third parties because marriage involves not only the interests of the parties involved but also the interests of third parties, especially fictitious marriages that are not for the purpose of marriage often concern the interests of third parties. The reason for the theory of revocability is that Article 146 of the General Provisions incorporates consensual fictitious marriage. Fundamentally different from the theory of revocability is that the theory of relative invalidity respects the factual pre-existence of marriage and recognizes consensual fictitious marriage as valid under certain conditions. The factual pre-existence of marriage was proposed by Japanese scholar Nakagawa Kenji and holds that marriage exists as a fact prior to law, and law merely gives subsequent recognition and adjustment to the marital relationship.

2.3.3 Invalidity claim

The invalidity theory holds that the sham marriage through collusion should be subject to the relevant provisions of Article 146 of the General Provisions of the Civil Code regarding sham acts, and it should be regarded as an invalid marriage. The main reason is that the Civil Code adopts the legislative technique of extracting common factors, and the General Provisions of the Civil Code plays a leading role in the sub-articles. Moreover, the marriage registration authority cannot tolerate such fraudulent and deceptive behavior by the parties to obtain marriage certificates for personal gain, and should revoke their marriage certificates for punishment ^[8].

In response to the invalidity theory, scholars holding the opposite view believe that the marriage family law of the Civil Code should be interpreted in a closed manner, and the marital act should not be subject to the norms of legal acts. Moreover, if the sham marriage is regarded as invalid, it eliminates the risk for the parties to benefit from marriage, but instead adds to their confidence ^[9].

2.3.4 Effective Expression

The scholars who hold the theory of valid marriage focus on the formal requirements for the establishment of marriage, believing that a consensual fictitious marriage should be valid as long as it meets the formal requirements of legal marriage or there is actual cohabitation of the couple ^[10]. In fact, marriage registration is an administrative act that confirms the marital relationship between the couple and has the effect of declaration, allowing the marital relationship to be protected by law. The administrative confirmation function of marriage registration at the public law level is that it is for the confirmation of the marital relationship between the couple, while the rights and obligations within the marriage should be evaluated at the private law level, with the consideration of the intention as the priority factor ^[11]. Therefore, marriage registration is a public law procedure that only has the functions of publicity and credibility, and is to assist in proving the existence of the marital relationship, but cannot be used to prove the essence of the marital relationship.

The above four theories regarding the validity of consensual fictitious marriage are mostly in agreement that the validity of consensual fictitious marriage should not be valid. The controversy mainly lies in whether it can be revoked or invalid. The two parties further argue mainly whether consensual fictitious marriage can apply the relevant norms of Article 146 of the General Provisions, and how to balance the interests of autonomy of will and the interests of third parties.

3. Collusive and pretended marriages do not apply to Article 146 of the General Provisions Section

Conspiracy of false marriage is a situation where both parties conspire to commit falsehood in order to obtain other benefits through a sham marriage. The marriage is merely a formal expression of intention, not an expression of true intentions from the heart. The real purpose often lies in tax avoidance, obtaining housing purchase qualifications, receiving compensation for demolition and relocation, etc. Article 146 of the General Provisions stipulates that conspiracy of false marriage is an invalid legal act. It is specifically divided into concealment behavior and disguise behavior. Concealment behavior refers to the act where the declarant and the counterparty, under the disguise of external expressions of intention, truly aim to achieve certain purposes. Disguise behavior refers to the act where both parties, through external expressions, seemingly aim to achieve a certain effect. Moreover, both the declarant and the counterparty are aware that the external expressions are not true. Conspiracy of false marriage involves acts aimed at obtaining other benefits beyond the marriage itself, which is the concealment behavior. While the act of entering into marriage is merely the disguise behavior of conspiracy of false marriage. Therefore, conspiracy of false marriage is a kind of conspiracy of false legal act.

However, although conspiracy of false marriage belongs to conspiracy of false legal act, it cannot apply the relevant provisions of the General Provisions regarding conspiracy of false legal act. The main reasons are as follows.

3.1 Heterogeneity between Legal Acts and Marital Acts

Although marriage is a legal act, there is heterogeneity between the two. Therefore, the Family Law Code cannot apply the relevant norms of legal acts in the General Provisions Code. The property attribute of legal acts is obvious, while marriage is an identity-based legal act. In traditional civil law systems, contracts are the most important "types of legal acts", and the norms of legal acts are abstracted concepts based on contracts^[12]. Contract law is a typical property law, so the existing legal act norms system has a strong property law flavor. However, in China, marriage is not recognized as a contract. From this perspective, legal acts have property characteristics different from marriage acts.

Moreover, consensual fraudulent marriage is an identity-based legal act because marriage is an act where both parties establish a marital relationship through certain expressions of intent, which contains elements of expressions of intent. The core of legal acts is expressions of intent, and the "expressiveness" and "right creation" of identity acts^[13], mean that the subject can create or change or extinguish identity relations according to their own will. Therefore, marriage acts are legal acts. Some scholars believe that because marriage acts have factual pre-existence, they are not legal acts. However, recognizing the factual pre-existence of marriage merely reflects the law's respect for the ethics and morality inherent in marital relations. The existence of marriage acts is regulated by law and is thus a legal act. The distinctive feature of marriage acts as an identity-based legal act that distinguishes it from property-based legal acts is its rationality. In the Family Law Code, legislation is centered on the family group and emphasizes the spirit of dedication and altruism^[14]; while in the property relations domain, legislation focuses on the content of exchange relations between equal subjects and is mainly based on utilitarianism, emphasizing individual-centered egoism. Therefore, contracts are merely one of the tools for achieving personal goals^[15], and marriage cannot be reduced to a tool for seeking benefits. Otherwise, it would deviate from the legal value of the Family Law Code. In contrast, property legal relations are more rational, and the identity-based legal relations have a stronger sense of emotional rationality.

Based on the property-based legal acts and identity-based legal acts of legal acts and marriage acts respectively, even though marriage acts are legal acts, it is not appropriate to blindly apply the relevant norms of legal acts in the General Provisions Code to marriage acts.

3.2 There is no justifiability for applying Article 146 to collusive and pretended marriages

Although the conspiracy of fictitious marriage is a kind of conspiracy of fictitious legal act, it lacks the legitimacy for application of Article 146 of the General Provisions. Firstly, the conspiracy of fictitious marriage itself does not have the genuine intention of entering into marriage. The act of conducting marriage registration by both parties is merely in form in accordance with the principle of freedom of marriage, but in essence violates the principle of good faith in the marriage system. The true intention of the parties is to obtain illegal other benefits by falsely claiming a legally valid marital relationship. Their concerns are precisely the inability to eliminate after the marriage relationship is utilized. If the legal effect of the conspiracy of fictitious marriage is declared invalid, it is equivalent to eliminating the

concerns of the parties, which actually helps the evil-doers^[16]. Secondly, the invalid legal effect is the most severe negative evaluation of legal act at the private law level. The examination of whether a legal act is invalid should focus on the inspection of the principle of public order and good customs^[17]. According to this standard, the conspiracy of fictitious marriage makes marriage a tool for profit-making and disrupts the order of marriage registration and marital publicity's credibility, which violates public order and good customs. It seems that the conspiracy of fictitious marriage should be regarded as an invalid marriage. However, we must recognize that public order and good customs are only bottom-line standards. That is, in civil law, the principle of private law autonomy should be considered and implemented first. Private law autonomy and public order and good customs are not equivalent and equal in weight. Public order and good customs principles are the exception clauses of civil law^[18]. Only when the principle of private law autonomy is fully implemented can public order and good customs principles be used as the bottom line to restrict the validity of civil legal acts. Although the conspiracy of fictitious marriage has no genuine intention of entering into marriage from the beginning, it does not mean that there has been no possibility of rectification of the mixed nature during the existence of the conspiracy of fictitious marriage. If the conspiracy of fictitious marriage is directly declared invalid, then if the children conceived after the registration of marriage are born, the non-marital children will be forcibly given a negative evaluation of marital validity without considering the will of the parties. The negative impact will be even greater. Although the conspiracy of fictitious marriage is a conspiracy of fictitious act, the marital act reflects more of the emotional factors of the actors. The state should not interfere excessively. The special nature of identity acts should be fully respected, and the will autonomy of the parties should be fully respected.

Furthermore, if the conspiracy of fictitious marriage is declared invalid by applying Article 146, it indicates that the defect of intention in the marriage is not an invalidation of the application of the relevant provisions of the legal act on the defect of intention in the General Provisions of the General Provisions. However, according to the provisions of our country's law, when the General Provisions stipulates that legal acts of fraud and coercion are revocable, the Marriage and Family Law Chapter 1052 and 1053 still stipulate that marriages with fraud and coercion as defects of intention are revocable. Under the assumption that the conspiracy of fictitious marriage can apply Article 146 of the General Provisions, the provisions on revocable marriages in the Marriage and Family Law Chapter are redundant. This indicates that the legislators believed that the Marriage and Family Law Chapter cannot apply the legal rules of legal acts in the General Provisions. Otherwise, the provisions of 1052 and 1053 in the Marriage and Family Law Chapter would have no meaning.

Finally, according to Article 9 of the "Judicial Interpretation (I) of the Marriage and Family Law Chapter", the circumstances for invalid marriage are closely stipulated. Among them, conspiracy of fictitious marriage is not included. Therefore, the validity of the conspiracy of fictitious marriage cannot be invalid, and it cannot be declared invalid by applying Article 146 of the General Provisions.

4. The Main Reasons for the Revocability of Collusive and Pretended Marriages

4.1 Facilitating the implementation of the principle of freedom in marriage

The principle of freedom in marriage is the primary principle in the Family Law. Freedom and equality are the rights that everyone pursues. Freedom in marriage, as a legal principle, is explicitly stipulated in the law and is an encouragement for the equality of freedom in marriage. According to the principle of freedom in marriage, the true intentions of the parties should be respected. Intention is the tool by which the actor intends to achieve a certain legal effect. Only the true intention can produce the corresponding legal effect. Therefore, some scholars have proposed that if the collusion of false acts does not truly pursue the purpose of formality and lacks the intention expression in terms of effect, then its validity will not be recognized^[19]. Some people may raise doubts that the collusion of false marriage is the false intention expression of the parties to marry voluntarily, which is their free choice regarding whether to marry or not, and does not violate the principle of freedom in marriage. This is because we have overlooked another point, that is: although the principle of freedom in marriage emphasizes the free disposition of the marital act by the parties, it does not allow the parties to pre-emptively give up such freedom based on personal will^[20]. The collusion of false marriage, as the non-real intention expression presented by the collusion of false legal acts, merely expresses a disguised behavior. Although both parties have the form of expressing the intention to enter into marriage, the parties' hearts are not truly expressing the intention to enter into marriage. From this perspective, the parties of the collusion of false marriage have to make intention expressions that violate their true intentions in order to achieve the

purpose of obtaining benefits. The agreement that both parties must marry first is exchanging their freedom of marriage for other benefits, and it is not absolute freedom in marriage. Therefore, the collusion of false marriage seems to be the mutual expression of the intention to enter into marriage by both parties, but in essence, it does not follow the principle of freedom in marriage. In terms of validity, it has flaws, and it should give the parties the opportunity to choose whether to enter into marriage again, so as to realize the principle of freedom in marriage.

4.2 Facilitating the protection of public interests of society

Conspiracy of fictitious marriage that can be revoked is beneficial for protecting the public interests of society. This is reflected in the maintenance of the value of the marriage legal system on the one hand, and in the maintenance of social order on the other. The legality of legal acts requires that legal acts in line with the will of the state are valid^[21]. Because the state endows legal acts with legal binding force, the purpose of formulating the marriage and family law code is to promote marital happiness and family harmony, and to contribute to the healthy, harmonious and stable development of society. The parties involved in conspiracy of fictitious marriage hide their purpose of seeking benefits through the pretense of entering into marriage, which is an act of dishonesty and goes against public order and good morals, and is contrary to the purpose of formulating marriage laws by the state. After conducting marriage registration, the parties involved did not fulfill the obligations of spouses, breaking the order of adjusting marital relations by law; and marriage registration has the effect of public notice and credibility, and people outside the marriage parties believe that there is a marital relationship between the parties due to the marriage registration. However, conspiracy of fictitious marriage has no intention of establishing a marital relationship, which undoubtedly challenges the credibility of the law and disregards the authority of the law. The value of legal order is the embodiment of law regulating social order. Conspiracy of fictitious marriage not only disrupts the legitimate legal order but also affects the normal social order. The parties not only deceived the benefits that did not belong to them but also received the benefits brought by policies to society. Such behavior of using marriage to deceive preferential policies actually distorts the original intention of the policy. At the same time, marriage and family take the integrity of the family as the basic value orientation and have social functions. They should take into account individualism and family groups^[22]. Marriage itself has social nature and marriage and family exist and develop in society, and will also have an impact on society. This is the social function of marriage and family. If the validity of conspiracy of fictitious marriage is recognized, it will encourage such misconduct, cause more people to imitate it, leading to an increase in divorce cases, more unstable family relationships in society, and a widespread atmosphere of dishonesty similar to this in society, which is not conducive to the healthy development of society. Through the revocable system, it can be achieved to correct the legal order and social order disturbed by conspiracy of fictitious marriage under the premise of respecting the autonomy of the parties' intentions.

4.3 Beneficial for protecting the interests of third parties in good faith

The effectiveness of collusive and fraudulent marriages mentioned earlier should be considered on the basis of respecting the autonomy of the parties' will and protecting social interests. Public marriages have social functions, which determines that the interests involved are not limited to both parties. The impact of unstable marital relationships may affect society and may also lead to disputes with third parties' interests. Balancing the protection of marital and family stability with transaction security is a new challenge that needs to be addressed in implementing the important discourse on emphasizing the construction of family education and family virtues, and it is also an important aspect of implementing the marriage and family section of the Civil Code^[23]. The issue of protecting the interests of third parties arising from fraudulent marriages through collusion is an important factor that should be considered in studying its effectiveness.

In a collusive and hypocritical marriage, there are subjective culpability of the parties' false expressions, as well as the reliance and protection of the third party in good faith from the perspective of appearance, which together form the basis for protecting the interests of the third party in good faith. Protecting trust interests in civil law is a legal means to improve transaction security. As long as the trusting party believes in the occurrence of a legal fact, it produces corresponding legal effects. The principle of trust protection is a principle that serves as a legal basis and reflects the universal applicability of social ethics^[24], which cannot be ignored in marriage and family. In fraudulent marriages, the third party may believe in the legal validity of the marriage due to the public credibility of the marriage registration. As the validity of fraudulent marriages is flawed, the parties may claim that the

contract they entered into with the third party does not have legal effect, resulting in the third party being unable to claim the realization of their rights. In order to protect the safety of the transaction, it is extremely necessary to protect the interests of the third party. It should be noted that the third party here must be in good faith, that is, unaware of the nature of the marriage as a collusive and false marriage. A third party with good intentions is a vulnerable party in the legal relationship of colluding in a fraudulent marriage, and needs an effective model to support them in obtaining relief when they learn that their interests have been infringed upon. The definition of the effectiveness of collusive false marriage should balance private interests and social public interests within a reasonable range of respecting the autonomy of the parties, while preventing the protection of the interests of third parties in good faith from being unable to appeal. Revocation, as a flexible mechanism, is mainly used to protect private interests and can play a role at the request of these parties.

5. Suggestions on the Revocability of Voidable Marriages through Collusion

The validity of a sham marriage entered into in collusion is subject to the requirements of revocability in accordance with civil law will, and it is also in line with the balance of interests among all parties in the legal relationship. However, due to the special nature of marital relations which differs from property relations, exceptional circumstances should be allowed; and in order to protect the interests of third parties, the legal effect of revocability should be differentiated between personal relations and property relations.

5.1 Risk Control for The Scenario of Collusive False Marriage

First, in terms of personal relationships. After both parties conspire to enter into a sham marriage, if one party fails to divorce as agreed and demands the other party to continue fulfilling marital obligations, attempting to "make the sham marriage real", this is a common risk of consensual sham marriage and also the main reason why the parties spontaneously propose to revoke the marriage. In Chinese law, the marriage relationship is established upon registration of both parties, and the corresponding rights and obligations within the marital relationship arise. If either party of the consensual sham marriage forces the other party to continue fulfilling cohabitation obligations, the other party will fall into the trap of the consensual sham marriage and find it difficult to extricate from this false marital relationship. This "making the sham marriage real" situation obviously violates the principle of freedom of marriage and the party that is forced can seek legal remedies from the public authority, actively disclose the fact of consensual sham marriage and propose to revoke the marriage. After the consensual sham marriage is revoked, according to Article 1054 of the Civil Code's Marriage and Family Chapter, the marriage is invalid from the beginning, and the benefits obtained through the consensual sham marriage disappear without legal reasons upon the extinction of the marriage, and the party should actively return the benefits obtained. Here it should be pointed out that the effectiveness in personal relationships after the revocation of marriage only means that there is no longer a right and obligation relationship between the spouses, and does not affect the identity of the children as the legitimate children and their legitimate rights and interests.

Second, in terms of property relationships. The main risk in property relationships is borrowing from a third party under the guise of a marital relationship during the existence of the consensual sham marriage. After the revocation of the consensual sham marriage, the parties may refuse to fulfill the debt on the grounds that the marriage relationship is invalid from the beginning due to revocation, and the third party thus cannot realize its creditor's rights. The secondary risk is that the parties dispose of the marital joint property during the existence of the marriage, and the third party acquires it in good faith. According to the current legal provisions on revocable marriages in China, the marriage is invalid from the beginning after revocation, but it cannot be opposed to the third party, that is, the retroactive effect of revoking the marriage does not apply to the property relationship involving the third party in the past. To protect the realization of the third party's creditor's rights. After the parties revoke the consensual sham marriage, although they can extricate themselves from the false marital relationship, they cannot use this as a reason to evade debts. During the existence of the consensual sham marriage, debts should be continued to be fulfilled to the third party as joint debts to achieve the purpose of transaction security. Secondly, the marital joint property obtained by a third party in good faith during the existence of the marriage should not be required to be returned by the parties after the revocation of the marriage.

5.2 Amendment of the Suppression of Fraudulent Marriage Act to Allow Collusive False Marriage

The principle that a consensual fictitious marriage can be annulled is an exception to the revocability of marriage. The negative evaluation of revocability is relative ^[25]. This relativity is reflected in not only respecting the autonomy of the parties but also respecting the factual primacy of the marriage itself. The manifestation of respecting the factual primacy of the marriage lies in allowing the validity of the consensual fictitious marriage to be rectified. This is not only conducive to maintaining the stability of the family but also beneficial for protecting children and vulnerable groups within the family. If the validity of the consensual fictitious marriage is still denied in such circumstances, it will result in the children being born out of wedlock, which will have a negative impact on the harmony and stability of the family. Based on the factual primacy of marriage, if both parties have formed a family in fact and lived together under the fictitious marriage, the effect intention of no common living can be compensated. Moreover, although the parties have not yet conceived children after obtaining marriage registration through the fictitious marriage, both parties have the intention of "pretending to act as if" to form a family and live together. In such circumstances, this situation should be regarded as meeting the conditions for rectification.

5.3 Public authorities have the right to revoke marriage

The purpose of colluding in fraudulent marriages is usually to obtain qualifications for purchasing a house, avoid taxes, and obtain compensation for demolition, which violates public interests. The public interest should be regulated by the public authority ^[26], therefore the public authority can also be the subject of revocation of fraudulent marriages. Conspiracy and false marriage parties often collude to register for divorce after achieving their goals before marriage registration, and usually do not actively propose to revoke the marriage. At this time, public authorities need to intervene to adjust the improper marriage relationship.

The marriage registration authority and relevant public interest regulatory entities should immediately investigate and, after verification, report to the marriage registration authority to revoke the collusive and fraudulent marriage of the parties involved, and recover the benefits obtained by the parties through the marriage

6. Conclusion

As a legal act that is not based on genuine marriage intention, the legal effect of collusive false marriage is controversial in both academia and judicial practice. By analyzing different theories, it is believed that colluding in a fraudulent marriage is essentially a flawed expression of intention. Although it belongs to colluding in a fraudulent legal act, Article 146 of the General Provisions of the Civil Code cannot be applied. Instead, it should be regulated through a revocable mechanism to balance the principles of marriage freedom and social public interests.

Firstly, revocable legal mechanisms can respect the autonomy of the parties involved while avoiding the abuse of collusive and fraudulent marriages, and maintaining normal marital order. Secondly, considering that colluding in a fraudulent marriage may involve the trust interests of a third party, in terms of the legal effect of revoking the marriage, appropriate distinctions should be made between personal and property relationships to ensure that the legitimate rights and interests of bona fide third parties are not harmed. In addition, if the parties involved have genuine family relationships during the marriage, the validity of the marriage should be allowed to be corrected to maintain family stability and avoid adverse effects on the rights and interests of children. Finally, given that collusive marriages often involve public interests, public authorities should have the power to proactively revoke such marriages to prevent them from being exploited for illegal gains.

In summary, the revocability rules of collusive and fraudulent marriages not only conform to the legislative logic of China's Civil Code, but also effectively balance individual interests and social order, providing a feasible theoretical basis and practical path for the legal regulation of collusive and fraudulent marriages.

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