

Legal risks of robbing wedding custom Taking the example of Qapqal County

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Abstract—The marriage custom not only plays a leading role in the principles of the minorities' marriages, but also the forms, the progresses, the dissolution of marriage, etc. Even in modern society, the effects still can not be ignored. In this paper, we take Uygur and Kazak in the county of Qapqal, a small county of Ili Kazak Autonomous Prefecture, in Xinjiang Uygur Autonomous Region as an example. On the basis of knowing the current situations of robbing wedding custom of the two ethnic groups in this region, we try to analyze the legal risks of Robbing Wedding Custom and explain my own opinions on this issue.

Keywords- *Qapqal County; Kazak; Uighur; robbing wedding custom; Legal Risk*

I. INTRODUCTION

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II. SELECTION OF RESEARCH PLACE

The county of Qapqal is located in northern Wusun mountain, the west of Tianshan, the south of Ili river, Yining City, which is the capital of the Ili Kazak Autonomous Prefecture, is in the other side of the river, and the west of the country borders with Kazakhstan. The county is 4485 square kilometers, with a population of 189,000, including Xibe, Uygur, Kazak, Han, Hui, Mongolian and other 19 ethnic groups, the minorities accounted for 72%. [1] The object of this survey was the Uygur and Kazak, living in two villages of the county.

We chose Qapqal County as the research site for two main reasons:

This area has Xibe, Han, Uygur, Kazak, Mongolian and other ethnic groups. Various ethnic groups are living in a typical pattern of "Large mixed, small settlements, inhabited by staggered". Daily economic and cultural exchanges between the minorities are very frequent, which can help us study the existence and extent of the impact of a minority's customs on the other minorities better.

This area is not far from Yining City and urbanization has already influenced this place profoundly, making this area have typical transitional characteristics, from tradition to modernization. When the minorities try to maintain their

traditional culture, they will inevitably be influenced by modernization, so their traditional customs also reflect the transitional characteristics. This provides an opportunity to study the traditional customs how to be faced with influences of urbanization and modernization.

III. CONTEMPORARY ROBBING WEDDING CUSTOM OF QAPQAL COUNTY

Robbing wedding custom is a variation of the original legacy derives from marriage by capture, also known as bride kidnapping, is a practice in which the man plundered the woman of other tribes for marriage by non-peaceful means. [2] Historical materials in records of marriage by capture are really abundant in China. "Book of Changes" is the earliest literature records the robbing wedding custom that already known. Maybe the Mongolians' marriage by capture is the most representative in Chinese history. In the history of the Mongolian, marriage by capture was widespread and extensively existed. "The Secret History of Mongolia", "Yuan History" and Mongolian heroic epic "Jangar" and other historical documents and legends, which have a large number of records in this respect. [3] Such marriages by violence were not uncommon in ancient times, and even affected the normal order of society. Therefore, the "Tang Code" stipulated, "Man who get marriage by capture, sentenced to three years". Yuan, Ming and Qing Dynasties' laws also followed Tang Dynasty, and marriage by capture was strictly forbidden. However, due to marriage by capture has its own breeding and existing social basis and conditions in a feudal society, in some remote areas and economically backward areas that beyond the control and management of the government, it has been still inherited to modern times, and its forms has been changed. [4] Marriage by capture, after all, was associated with the savage and ignorance, and seriously affected the normal social order, so it gradually faded out the stage of history. Admittedly, marriage by capture once played an important role in the history of human marriage. Even today, many marriage customs of ethnic minorities also have obvious traces of marriage by capture, Kazakhs and Uighurs in Qapqal county is the case.

In Qapqal county, the so-called "robbing wedding custom" in Uygur and Kazak is not the pure sense of "Robbing" and "violence", but similar to what we now call "elopement marriage", referring to when a man and a woman fall in love with each other, the man will take the woman to the home of his relative whom he counts on the most, while neither of their parents knows about this. The relative will

inform the information to the man's parents, then the communications and consultations will be done by their parents, and usually the wedding ceremony will be hold in one or two weeks. During the investigation, we found that this phenomenon is widespread in the past two generations in local Uygur and Kazak. And the attitudes of the old and young on robbing wedding custom are not consistent with each other. Even there are also differences among the young, so does the old.

People with higher level of education tend not to accept the robbing wedding custom. For example, among the interviewees of the survey, there are Wu Harper, an officer of ECA, Bristol and Marr Dan who have the experience of university, they considered robbing wedding custom as a kind of negative phenomenon, and should not be worth promoting. They believed that today's young Kazak received a lot of exotic novelties and gradually abandoned some outstanding traditional culture of Kazak. The emergence of Robbing Wedding among young man is noting but the reflections of their attitudes, "life as a game", and many families that established through robbing wedding, eventually are not so happy as they imagined. Also, this kind of marriage not only lacks favors from relatives, especially their parent, but also lacks favorable domestic environment for the children's education. They suggested that the young Kazak should attend to their proper works and duties, on the premise of inheriting and carrying forward the excellent traditions and culture of Kazakh, develop the culture that is beneficial to the development of Kazak.

Some people with successful robbing wedding experience are not opposed to this form of marriage. They think that it is positive and meaningful, and it is a symbol of national vitality. In a survey of a Kazakh family, three of four children have their families in the form of robbing wedding. In the family, parents do not oppose to their children's choices. They said that their daughters were still their own children, even they were "stolen away". They were willing to prepare the dowries for their daughters, and married off them generously and decently. Just like many other families, many families established through robbing wedding don't have to be faced with unfair treatment and discrimination from their neighbors. At the same time, the majority of respondents admitted that robbing wedding was closely related to the level of education. The higher the educational attainment is, the more opposed to robbing wedding, and the results of the survey also proved strong evidence to this conclusion.

Through the field work study, we found that the local robbing wedding phenomenon is mainly resulted from the following three reasons:

Firstly, both parents seem to be willing to interfere with their children's marriages. Arranged marriage was prevalent in Uygur and Kazak traditional marriage. Parents often played a leading role in the marriages of their children and children's decisions to their marriages were often deprived. Though this situation had improved at present, the influences of traditions still can not be ignored and the younger generation is still under the pressure from their elders more or less. In the interview, one Uighur college guy told us that

he inner thoughts were really open-minded in the choice of his spouse, and he can even accept the marriage with a girl who is Han, but he will respect the opinions of parents completely, because they were scarcely possible to have a happy family without the supports from parents and relatives.

Secondly, in marriage customs of the local Uygur and Kazak, the burden of the bride price is relatively heavy. Bride Price, as a particular social phenomenon, is deeply rooted in traditional Uygur and Kazak culture and long exists in the two minorities, because of some cultural and social reasons. Generally speaking, the number of bride price not only can reflect the degree of respect to the bride's parents, but also a kind of compensation for the bride's parents to his wife's upbringing. In modern times, many of bride's parents deliberately require a quantity of bride price, which still plagues many young men in Qapqal County. If the man is limited by his ability of the economy, robbing wedding naturally becomes an option in order to get rid of the burden of bride price.

Finally, the local young Uygur and Kazak are open-minded and there are more opportunities for them to communicate with the opposite sex. Robbing wedding is an irrational behavior, when the young choose to "follow the fashion". In the interviews, many respondents held this view. They said it is the increasing chances to contact with the opposite sex that led to the young easily to be attracted. Therefore, the incidence rate of robbing wedding has been greatly increased.

Once the woman is taken to the home of the man's relative, their parents are often forced to compromise and help children to complete the marriage. The woman's parents are often out of frustration, it is because that if the girl was sent home, she is more likely to become a victim of social discrimination and subject to many limitations when she fall in love or get marriage with others again. The decision of the man's parents to accept the women as their daughter-in-law is always based on ethical considerations, responsibilities for the women's future and their child's choice. Because of the objective effect, to a certain extent, stimulates the young people to have their families in the form of "snatching" to get rid of the bondage of marriage.

In addition, in the survey we also found that the cases of marriage by capture still occur occasionally. A Uighur woman told us that recently three young men robbed a woman who was a mental patient. Finally they decided that the proponent got married with the woman. And we learned from a female Kazak student at a local vocational & technical school, that some female students did not dare to go home alone in the evening for the fear of being robbed by violence.

IV. LEGAL RISKS OF ROBBING WEDDING CUSTOM

Local young people choose robbing wedding that already reached a consensus to eliminate unreasonable interferences of their parents, which protects their own legitimate rights and worths our recognitions. However, the hidden legal risks of robbing wedding deserves our attention, and all the more so when it is the real violence, without the girl's agreement in advance, which severely impairs social order.

A. *Civil legal risks*

B. *About freedom of marriage*

Chinese Marriage Law stipulates in article 2 “A marriage system based on the free choice of partners, on monogamy and on equality between man and woman shall be applied.” The law establishes the basic principles of the freedom of marriage, which means that the rights of citizen’s individual coercion or interference from any person, any organization or unit. In Qapqal county, parental unreasonable interference in their freedom of marriage is an important reason for robbing wedding, which has induced the young to have their families in this way, indicating that there is no other better way to choose.

Chinese Marriage Law stipulates in article 3, “ Marriage upon arbitrary decision by any third party, mercenary marriage and any other acts of interference in the freedom of marriage shall be prohibited. The exaction of money or gifts in connection with marriage shall be prohibited. Bigamy shall be prohibited. Maltreatment and desertion of one family member by another shall be prohibited.” In Qapqal County, the local Kazak and Uighur are deeply influenced by traditional marriage customs, leading to the bride price is really heavy. The man usually give some traditional goods (cattle and sheep, carpets, etc.) and large modern necessities (refrigerators, color TVs, washing machines, etc.) to the woman’s family as the bride price, a certain amount of cash is also necessary. Without any doubt, too heavy bride price means mercenary marriage in essence and it is an interference in the freedom of marriage. For some poor man, the bride price is a seemingly insurmountable barrier, which they are unlikely to overcome.

C. *About the legal age of marriage*

The Xinjiang Uygur Autonomous Region changes the provisions on the legal age of marriage in Chinese Marriage Law. That is, change it from “no marriage may be contracted before the man has reached 22 years of age and the woman 20 years of age” to “marriage age of the minority citizens, the man shall not be younger than twenty years of age, the woman shall not be younger than eighteen years of age”. In Qapqal County, late marriage and late childbirth have been encouraged by the government, the concept of delayed marriage and childbearing, prepotency (also basic requests of Family Planning), gradually win supports from the local citizens. The most direct manifestation is the age of marriage has been gradually postponed. But some of the young choose to have their families through robbing wedding usually without careful consideration, and marriage is just the consequences of their reckless impulses that they have to answer for. Therefore, the flexibility of the legal marriage age (the changed legal age) is also difficult to reach.

D. *About Marriage Registration*

Chinese Marriage Law stipulates in article 8 “Both the man and the woman desiring to contract a marriage shall register in person with the marriage registration office. If the proposed marriage is found to conform with the provisions

of this Law, the couple shall be allowed to register and issued marriage certificates. The husband and wife relationship shall be established as soon as they acquire the marriage certificates. In the absence of the marriage registration, the man and the woman shall go through the procedures subsequently.” Article VI, paragraph 1 of “Marriage Registration Ordinance” said, those who apply for marriage registration “do not reach the legal age of marriage”, marriage registration authority has the right to refuse. As mentioned, men and women whose families constructed through robbing wedding are unlikely to reach the legal age of marriage, so their applications for marriage registration will be rejected. Although the effectiveness of the marriage registration at present is still controversial in China, we leave it aside now, but at least there are defects in legitimacy and form integrity if the marriage haven’t been registered in accordance with the law.

E. *Criminal legal risks*

As mentioned, there are cases of real robbing marriage in Qapqal County, and it has been confirmed from interviews. The local people told us that such violent Robbing Wedding is often launched by those without good moral character and sometimes at others’ instigations. Once their behaviors violated the criminal law, they are subject to criminal liabilities according to law.

1) *Crime of violence to interfere with the freedom of marriage*

Chinese Criminal Law stipulates in article 257 “Whoever uses violence to interfere with another persons freedom of marriage shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention. Whoever commits the crime mentioned in the preceding paragraph and causes death to the victim shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years.” The marriage freedom of young Uygur and Kazak sometimes subject to various constraints and interferences in Qapqal County, forcing some young men and women of free love have no choice but to take the extreme way, robbing wedding, for the sack of reaching an agreement or compromise with their parents. If both their elders or relatives take extreme ways to prevent them from getting married, for example, resorting to violence to interfere , then they commit the crime.

2) *The crime of false imprisonment*

Chinese Criminal Law stipulates in article 238 “Whoever unlawfully detains another person or unlawfully deprives the personal freedom of another person by any other means shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights. If he resorts to battery or humiliation, he shall be given a heavier punishment.” In order to force the woman to accept his offer of marriage (marriage by capture in essence), the man may intentionally use violence (for instance, illegal detention or other means, physical abuse, etc) against the wills of the woman. With unlawful deprivation of woman personal freedom, the man commits the crime.

3) *The crime of rape*

Chinese Criminal Law stipulates in article 236 “A person who rapes a woman by force, threat or any other means shall be sentenced to fixed-term imprisonment of not less than three years and not more than ten years. A person who has sexual relations with a girl under the age of fourteen years shall be deemed to have committed rape and shall be sentenced heavily.” Accordingly, in the course of Robbing Wedding, if the man use violence, coercion or other compulsory means to have sex with a woman or have sexual intercourse with a girl under 14 years (whether the woman agree or not), then he commits rape. The tradition of early marriage of Uygur and Kazak, makes the man is prone to violate relevant provisions of the criminal law. It is worth mentioning, the phenomena of early marriage still common in Uygur and Kazak at present, and it is really dangerous because if the girl was under 14 years old, the man will crime the rape.

V. RATIONAL REFLECTION

A. *The value orientations and the pursuits of life that contemporary robbing wedding custom contains are positive*

The developments of ethnic autonomous areas have strong impacts on minorities’ traditional customs, whose influences in daily life have been weakened. Direct promoters and practitioners of the impacts are often the younger generation, they are energetic, easy to accept new things, also their worldview and value orientation are quite different from the previous generations. Any difference is relative, the minorities are successors of their traditional customs, not the slaves, they are reshaping and changing the customs in the process of pursuing their own interests, and this is an important way to promote the development of their own cultures. [5]

Freedom of marriage, it is endowed by the constitution and the law, citizens’ freedom of marriage shall be fully respected and guaranteed. Generally speaking, robbing

wedding custom reflects the young generation are challenging the feudal marriage customs and protecting their own rights, also reflects the trend of the times and history, it is worthy of recognition.

B. *The legal problems in contemporary Robbing Wedding Custom shall be solved properly*

The constitution gives certain accommodation power to legislatures of ethnic autonomous areas, they can introduce some reasonable customs in the legislative process according to the specific local conditions, alleviating the conflicts between the ethnic traditions and the law to some extent. However, to effectively regulate and even eliminate the unreasonable factors in minorities’ customs, disrupting their deep-rooted influences is still a tricky problem.

There are many problems in robbing wedding custom, the real robbing wedding that sometimes happened, which conflicts with our national law directly and deserves our further attention and thinking. How to properly constrain the minorities’ customs to the framework of law and improve the citizens’ legal consciousness of ethnic areas is a long-term and arduous task, also is the key to the construction of rule of law in ethnic areas. If this work can’t be successfully completed, the unity of the legal system in China will inevitably be destroyed and the development of the minorities will be restricted.

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