

Research on the Legal Liability of the Third Party for Infringement of Spouse Rights

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Abstract: In today's society, with the increasing economic level and the continuous expansion of people's openness, people's sexual consciousness is more pursuit of self-satisfaction, but the concept of chastity gradually collapsed. In recent years, the divorce rate in our country is getting higher and higher, one of the most important reasons is the intrusion of the third party. At present, China lacks the relevant legislation of spousal rights and the accountability mechanism for the third party's infringement of spousal rights. Therefore, it is increasingly urgent to perfect the relevant laws to regulate the increasingly rampant extramarital sex. First of all, through the comprehensive analysis of the theories of the third party in different academic circles, this paper defines the concept of the third party and the related contents of the spousal rights. At the same time, this paper makes a concrete analysis of the behavior and characteristics of the third party's infringement of spouse rights. Secondly, this paper analyzes the legal problems and practical dilemmas in our country in the third party's infringement of spouse's right. Finally, this paper puts forward specific suggestions for the problems mentioned above in China. In a word, only by filling and perfecting the relevant legal gaps of third party's infringement of spouse's rights can we better protect the legitimate rights and interests of no-fault spouses, and maintain judicial justice and social fairness.

Keywords: The Third Party; Spousal Rights; Tort Liability.

1. Introduction

In today's society, third party interference leading to divorce cases are common, according to the Ministry of Civil Affairs released the "2022 civil affairs development Statistical Communique" data show that in 2022, the legal registration of marriage decreased by 10.6% compared with the previous year, and the marriage rate decreased by 0.6 thousand points compared with the previous year. In 2022, the number of divorces handled according to law increased by 1.4% over the previous year, and 779,000 divorces were adjudicated and mediated by courts. [1] According to a 2017 big data survey, 50.16 percent of divorces in China were due to interference by a third party. [2] Domestic violence and extramarital affairs are important reasons for divorce, according to a White paper on Professional Adjudication of Family Disputes issued by the No. 1 Intermediate People's Court in Beijing, which ranks first among the top 10 cities in the National Civil Affairs Bureau's divorce rate. [3]

2. Theories on the Infringement of Spousal Rights by Third Parties

(1) The concept of "third party"

Before analyzing the liability of the third party, we should first clarify the legal concept of "third party". Although the concept of "third party" has not been clearly defined by law in our country, there are many viewpoints on the concept of "third party" in the legal circle, mainly focusing on the "theory of ambiguous relationship", "theory of adultery", "theory of rupture" and "theory of purpose". The definition of "third party" in these four theories ranges from broad to strict, but there are limitations to a certain extent.

This article holds that the third party refers to the person outside the legal marriage relationship who knows or should know that another person has a legal spouse and still

maintains a stable extramarital sexual relationship with him for a long time, infringes on the rights of the innocent spouse and leads to or may lead to the breakdown of the legal marriage relationship.

(2) An overview of "spousal rights"

The term "spousal rights" originated in common law countries, but the civil law countries have no clear concept, and only specify the rights and obligations enjoyed by husband and wife in the law. The concept of spousal right is not clear in the legislation of our country at the present stage, which is the focus of controversy in academic circles. As early as the fourth amendment of the Marriage Law in 2001, there have been more than one heated debate in the academic community, but the issue of spouse rights has not been written into the law. [4] Among the several definitions with a positive attitude, this article mainly shows the following views:

"Companion theory", the spousal right refers to the right between spouses to ask each other to accompany, love and help. [5]

"Interest theory", that the right of spouse refers to the basic status rights of spouses between husband and wife, indicating that the status interests of spouses between husband and wife are exclusively controlled by the right holder, and any other person has the obligation not to infringe. [6]

Based on the above theories, this paper holds that spousal rights refer to the basic status rights of spouses who are equally enjoyed by both spouses based on the legal marriage relationship. This paper holds that spousal rights have the following characteristics:

First, the right of spouse belongs to the absolute right, but has a certain relativity. Upon the conclusion of a legal marriage relationship, any person other than the legal spouse has the obligation not to infringe upon the right of spouse. At the same time, spousal rights are not only bound by anyone other than the legal spouse, but also by the parties in the legal marriage relationship. Spousal right is the status right enjoyed

by husband and wife, and the realization of one party's right depends on the cooperation of the other party.

Second, spousal right is public. The spousal right is established by the conclusion of a legal marriage relationship, and the marriage conclusion is a necessary prerequisite for registration and publicity.

Third, the subject of spousal rights has duality. The parties to a legal marriage relationship are spouses of each other and enjoy spousal rights together. Anyone else may not share, which is determined by our country's monogamy system.

(3) The manner in which a third party infringes on the spousal rights

First, acts of bigamy. Bigamy is when a spouse marries another person or lives together as husband and wife. Marriage is divided into legal marriage which is registered and de facto marriage which is not registered but lives together in the name of husband and wife. Accordingly, a registered marriage between a spouse and another person during the duration of the legal marriage relationship constitutes bigamy in law. During the duration of the legal marriage relationship, if a spouse and another person have not registered for marriage but live together in the name of husband and wife, it is also considered by the masses to constitute bigamy as a matter of fact.

Second, a spouse cohabitates with another person. According to the literal meaning, a spouse cohabitates with another person, at least one of whom is a spouse, and unlawfully cohabitates with a third person other than a party to the legal marriage relationship. This article holds that the cohabitation of a spouse with another person has the characteristics of long-term, stability and subjectively does not have the desirability of living in the name of husband and wife. Cohabitation between spouses and others is a continuous cohabitation, and unlike "one night stand", "whoring" and other behaviors, the parties of illegal cohabitation have stable and definite characteristics.

Third, adultery. In this article, adultery refers to the act of consensual sexual intercourse between a married man or woman in violation of their duty of fidelity as husband and wife.

2.1. Second, The Legal Problems and Practical Difficulties of the Third Party's Infringement of the Right of Spouse in China

(1) Legal issues concerning third party's infringement of spouse's rights

First, Article 1167 of "Tort Liability Series" of the Civil Code clearly stipulates that the infringer may request the infringer to bear the tort liability if the tort endangers the personal and property safety of others. [7] Because the current law of our country has not established the right of spouse as a right, so the third party's infringement of the right of spouse lacks the right basis and premise.

Second, there is a lack of liability for the third party's infringement of spouse's right in our current law. In terms of civil liability, for example, Article 1042 of the "Marriage and Family Series" of the Civil Code clearly stipulates that a spouse is prohibited from bigamy or cohabitation with others, but the subject of obligations has no clear provisions on the third party. Article 1091 of the "Marriage and Family" of the Civil Code clearly stipulates the specific reasons for the innocent party to have the right to claim damages during the duration of the legal marriage relationship, but it does not

clearly stipulate the subject of liability for damages. [8]

Third, the current law of our country provides unitary legal relief to the no-fault spouse. Article 1091 of "Marriage and Family Series" of the Civil Code clearly stipulates the circumstances under which the innocent party has the right to claim damages, but the request is based on the premise that it leads to divorce. According to Article 87 of the Judicial Interpretation of Marriage and Family Code (I), only the faulted spouse in the legal marriage relationship can be the subject of the obligation of divorce damages. If divorce is not allowed in the divorce proceedings, the claim of the faultless spouse will not be supported, and the parties shall not file a claim for damages separately during the marriage relationship. [9] This will lead to the no-fault spouse's damage compensation on the premise of divorce, once the people's court judgment not to divorce, the no-fault spouse's rights not only can not be maintained in time, but also continue to bear the damage brought by the third party and the fault spouse.

(2) The practical dilemma of the third party's infringement of the spouse's rights

First, the absence of spousal rights legislation can not be relied on. In the case of the infringement liability dispute of Fan v. Sun and Wang, Fan appealed to the court to order Wang, a third person outside the legal marriage relationship, to pay compensation for mental damage and make a written apology. The court of second instance of this case held that there is no provision in China's current law on whether the third party obstructs the right of spouse to obtain damages, and the effect of the right of spouse is less than that of the third party in law, so there is no legal basis for the appellant Fan to ask the appellee Wang to bear damages. [10] From the above cases, it can be seen that due to the lack of the system related to spousal rights, judicial practice can not rely on the appeal of the issue involving the non-faulted spouse claiming that the third party infringes on the spousal rights, so it will be difficult to give legal and effective protection and relief to the legitimate rights and interests of the non-faulted spouse, and will seriously damage social stability and fairness and justice.

Second, the burden of proof is unevenly distributed. According to the provisions of Article 87 of the Judicial Interpretation of Marriage and Family (I), it is necessary for a no-fault spouse to prove that there is a causal relationship between divorce and bigamy and cohabitation between the fault-spouse and the third party when claiming divorce damages in divorce proceedings. The court of second instance, in accordance with the provisions of Article 90 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, held that Fu should bear the burden of proof and bear the adverse consequences of insufficient evidence in his appeal request against Sang.[11] [12] In practice, the infringement of the third party and the faulted spouse often exists in a secret way, and the evidence that the fault-free spouse needs to obtain is often very secret, which is undoubtedly more difficult for the fault-free spouse to obtain evidence. Therefore, regarding the third party's infringement of the rights of the non-fault spouse, the principle of "who claims who provides evidence" should not be applied, otherwise it will increase the difficulty of protecting the legitimate rights and interests of the non-fault spouse.

Third, the strict criteria for the identification of the three characteristics of evidence. In the case of a dispute over the general personality right between Xiang and Yu and Qu, Xiang and Yu are the parties to the legal marriage relationship,

and Qu is the third party outside the legal marriage relationship. The plaintiff claimed that the defendant Yu and the defendant Qu had extramarital affairs several times during their legal marriage relationship with Qu, which seriously infringed their spousal rights, and requested the court to order the two defendants to compensate for their spiritual comfort money. A mou for its claim to provide the two defendants wechat records, room records evidence, but the court certification that wechat screenshot is a screenshot taken by a mou, room records are a mou in the defendant's dashcam show stay in the hotel record, so there are objections to the authenticity of the evidence, the final not to use. [13] In judicial practice, the evidence to prove the fault behavior of the faulted spouse and the third party is often very private, and it is difficult to collect proper means. Therefore, there is no lack of fault-free spouses in order to obtain relevant strong evidence to take candid photos, candid recording, tracking and other ways, but because of improper evidence is not only illegal evidence shall not be applicable, but also may violate the criminal law and other laws.

2.2. Third, The Third Party Infringes on the Spousal Rights of the Legal Regulation Specific Suggestions

(1) Improving the relevant legislation of spousal rights

First, we will add spouse rights through legislation. The concept and characteristics of the right of spouse and the content of the specific rights and obligations of the right of spouse should be specified in the legislation of our country, especially the duty of fidelity and cohabitation. In addition, the duration of spousal rights should be clearly defined. Spousal rights exist based on marital relations, and clarifying the generation and termination time of spousal rights also provides a legal basis for no-fault spouses to claim their rights.

Secondly, through the legislation to establish the third party infringement of spouse rights of the responsibility of the subject status. Through legislation, the law clearly stipulates the subject status of the third party's responsibility for infringing on the spouse's rights, and specifically stipulates the liability for damages to be borne when the third party and the wrong spouse jointly commit the infringement, and clearly stipulates the third party's intention in the subjective aspect.

(2) Improving the legal remedies for the third party's infringement of the spouse's rights

At present, China's liability system for faulted spouses, in addition to the crime of bigamy, the crime of breaking up military marriage and the administrative responsibility for adultery to civil servants stipulated in the criminal law, only the non-faulted spouse can claim damages for divorce caused by fault spouse bigamy and illegal cohabitation during the divorce proceedings. In terms of criminal liability, the related crimes of adultery are added. In terms of administrative responsibility, the third party in adultery will be held accountable. In the aspect of civil liability, the spousal right, as a personal right arising from the conclusion of legal marriage relationship, does not mean that the spousal right is a subsidiary right, but exists as an independent right.

(3) The burden of proving that a fair third party infringes on spousal rights

China's current law does not make special provisions on the burden of proof of the third party's infringement of spouse rights, so in this issue, the principle of "who claims who provides evidence" stipulated in the civil procedure law of

China is still applicable. However, in the judicial practice, the infringement of the third party and the faulted spouse is secret, and it is difficult for the faultless spouse to obtain evidence and prove evidence, and it is easy to exist illegal evidence.

3. Conclusion

Marriage is the crystallization of love and the legal commitment between husband and wife. A long-term marriage not only needs the companionship and loyalty of both spouses, but also needs a perfect legal system to protect it. In today's society, the intrusion of a third party leads to the breakdown of marriage and family everywhere. However, the lack of accountability mechanism for the third party in the current law of our country not only cannot effectively protect the legitimate rights and interests of the innocent spouse, but also undermines the judicial justice in people's minds.

In view of the existing problems, this paper suggests that legislation should be adopted to add spouse rights, clarify the third party's responsibility subject status and the mode of infringement, so that the non-fault spouse can protect their legal rights and interests.

With the change of The Times, people's ideas are becoming more and more open, and the negative effects brought by the interference of the third party are more and more bad. It is not only the call of The Times, but also the aspiration of the people for fairness and justice to improve the relevant laws on infringements of spouse rights by third parties, maintain social harmony and stability, and protect the legitimate rights and interests of right holders.

References

- [1] Yuan Shanshan. Research on spousal rights [D]. Northeast Normal University,2012.
- [2] Yang Lixin. On Personal Rights Law [M]. Beijing: People's Publishing House,2002.766-799.
- [3] Yin Haiwen. [J]. Journal of Huaihua Teachers College,2000, No. 3.
- [4] Yang Lixin. Marriage and Family Inheritance Law [M]. Beijing: Beijing Normal University Press, 2010.
- [5] Wu Changzhen. Marriage and Inheritance Law [M]. Beijing: China University of Political Science and Law Press, 2011.
- [6] Li Yingshuo. Violations of the law of spouse rights of a third party research [D]. The northeast agricultural university, 2022. The DOI: 10.27010 /, dcnki. Gdbnu. 2021.000873.
- [7] Sun Man. The Legal liability of third party's infringement of Spousal rights [J]. Law and Society, 2015(04): 240-241.
- [8] Liu Ai. Research on Civil Liability of "Third party" for infringement of legal marital Relationship [D]. Xinjiang University,2015.
- [9] Dai Ying. The intervention of a third party in marriage tort liability research [D]. Jilin university of finance and economics, 2020, DOI: 10.26979 /, dc nki. GCCSC. 2019.000368.
- [10] Cheng Chaoran. On compensation for mental damage of third party's infringement of spousal rights [J]. Journal of Pu 'er University,2016,32(5): pp. 45-47.
- [11] Li Mengling. No-fault spouse v. third party judicial referee evaluation [D]. Hainan university, 2023. The DOI: 10.27073 /, dc nki. Ghadu. 2021.000739.
- [12] civilian career statistical bulletin, 2022, <https://www.mca.gov.cn/n156/n2679/index.html>, the last access date of 2023-10-13.

- [13] 2017 Chinese marriage, divorce, top 10 cities population data analysis and analyzing main reasons for divorce, China industry information network, <https://www.chyxx.com/industry/201709/564406.html>, last visit day 2020-12-24.
- [14] [the Beijing first intermediate people's court issued the housework management] the paper at <https://mbd.baidu.com/ma/s/m73Osrp>.
- [15] Civil Judgment of the Intermediate People's Court of Qujing City, Yunnan Province (2022) Yun 03 Min End 201.
- [16] Civil Judgment of Nanjing Intermediate People's Court, Jiangsu Province (2019) Su 01 Minend 5172.
- [17] Civil Judgment of Lucheng District People's Court of Wenzhou City (2019) No.6681 Minchu, Zhejiang 0302.