

The Improvement Path of the Miao's Abduction Marriage Customs from a Legal Perspective

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doi:10.56397/LE.2023.06.04

Abstract

Abduction marriage is a traditional custom among the Miao nationality, and its traditional forms mainly include abduction by local landlords, opposition to parental influence, and opposition to high dowry. After *the founding of new China*, with the promotion of women's status and the awakening of the rule of law, the traditional abduction marriage customs of the Miao people have evolved into a new civilized form. In practice, there are still a few Miao men who engage in illegal activities of abduction marriage under the guise of traditional customs to avoid criminal punishment. Legislative bodies can make relevant laws and regulations to regulate such traditional customs. When determining such cases, judicial authorities should refer to relevant laws and regulations, and may inquire about local Miao nationality to understand local customs, comprehensively consider the harmfulness of the perpetrator's behavior, and determine whether to hold them criminally responsible, in order to safeguard the legitimate rights of Miao women.

Keywords: Miao nationality, abduction marriage, customs, improvement path

1. Introduction

The origin of the custom of snatching marriage of the Miao nationality can be traced back to the ancient clan tribe period. It initially showed a barbaric form of forced marriage that captured women by means of war. The traditional marriage-robbing customs inherited by the Miao nationality are mainly divided into the marriage-robbing of the chieftain, the opposition to the marriage-robbing of the uncle's power, and the opposition to the high-priced bride price. After the founding of the People's Republic of China, with the improvement of women's status and the awakening of the awareness of the rule of law, the traditional marriage custom of the Miao nationality may involve criminal crimes, so it has evolved into a new marriage custom. In judicial practice, there are still Miao men who carry out illegal and criminal activities in the name of traditional Miao customs to evade criminal punishment. The judiciary has different attitudes when identifying such cases. The legislature should carry out relevant legislation, the judiciary can fully understand its customs to the local Miao authorities, combined with relevant legal provisions, comprehensive consideration of the social harm of the perpetrator, to safeguard the rights and interests of Miao women.

2. Miao Traditional Marriage Customs

The Miao nationality is an ethnic minority with a long history, a large population and a preference for boys and girls who live in Guizhou, Hunan, Yunnan, Sichuan, Guangxi, Hubei, Chongqing and other provinces and regions. The Miao villages are mostly inhabited by the mountain and isolated from the world. The Miao people have their own unique customs and habits in their long-term production and life. The custom of robbing marriage is a binding customary law of marriage recognized and generally observed by the Miao people in the long-term production and life practice.

The Miao traditional marriage-robbing customs are mainly divided into three types. One is that local chieftains

and tyrants conduct marriage-robbing against women's wishes. Secondly, in order to oppose the Miao traditional custom of 'cousin marriage', the Miao men and women who are in love with each other are forced to rob the marriage by the helpless Miao men. Third, due to the heavy and cumbersome bride price system, Miao men who can not afford the bride price and grab marriage.

Local chieftains and tyrants robbed marriages by means of violence against women's wishes. This form is the continuation of brutal forced marriage in Miao society. The Miao local chieftains and tyrants looked up to the girls of ordinary families, and violently robbed them to their homes for marriage without the consent of the Miao girls.

Miao men and women in order to oppose the uncle right and marriage. The traditional Miao society has the traditional custom of 'cousin marriage'. 'If the Miao family has a son in the uncle's family and a daughter in the aunt's family, the aunt's family must agree unconditionally as long as the two sides are of equal age. This forced interference Miao girls arranged marriage freedom, but also contributed to the prevalence of the Miao marriage customs, was robbed to the man's house overnight girl, according to the Miao customs, that is, to become the Miao men's wife.

Miao men who can not afford the betrothal gifts to rob marriage. The traditional marriage procedure of the Miao nationality is cumbersome and the burden of bride price is heavy. The marriage procedure of the Miao nationality includes three stages: marriage, engagement and marriage. During this period, the Miao men need to pay the corresponding betrothal gifts, and the unaffordable Miao men will rob the marriage. One situation is that when men and women who are in love with each other can't afford the high bride price or can't marry the beloved girl because of the cumbersome bride price system, both men and women agree to reach the purpose of marriage through the form of robbery. Another situation is that the Miao men looked at a Miao girl, but could not afford the high bride price, they violated the woman's will and forced her to the home to achieve the purpose of marrying a wife.

3. Legal Analysis of Miao Snatching Marriage Custom

China's Constitution gives women equal rights with men in the People's Republic of China. With the deepening of the popularization of the law, ethnic minority areas in China have also abandoned some traditional bad habits. The traditional marriage-robbing customs in Miao areas have evolved into new marriage-robbing customs. This new marriage-robbing system has evolved into a form of expression of Miao traditional culture. This new type of marriage is not contrary to the will of women, but under the premise of their consent, in the witness of both parents, the man used this form of robbery to rob the woman to the home, in order to achieve the purpose of marriage, this new type of marriage has become a form of marriage. This new type of snatching marriage retains the Miao's snatching marriage custom and also reflects the progress of the Miao's social concept.

3.1 Legal Analysis of Miao Traditional Marriage Customs

After the founding of the People's Republic of China, the chieftain system disappeared, and the local gentry robbed marriage should be considered a crime. The behavior of local gentry tyrants who forcefully violate the will of Miao women to bring them into their homes to forcibly have sexual relations with them by means of violent looting has serious social harm and bad criminal circumstances. The perpetrator may constitute several crimes such as the crime of illegal detention, rape, rape of young girls, affray and affray stipulated in China's criminal law.

The robbery against uncle power should not be considered a crime in principle. The Miao traditional society has the concept of patriarchal preference. In the long-term production and life, the Miao society continues the custom of 'cousin marriage'. Children should not only abide by the 'parents' order and the words of the matchmaker in marriage, but also abide by the custom of cousin marriage. If the son of the uncle's family is the daughter of the aunt's family, he will have priority in the marriage of the daughter of the aunt's family. If the daughter of the aunt's family has the intention of entering into marriage with other Miao men, but because the son of the uncle's family has the right to have priority in marriage, the Miao men and women who have the same love will face the situation of having to be separated. In this special case, in order to pursue the freedom of marriage, the Miao men will take the form of robbing marriage and occupy the beloved Miao women in fact. After the Miao women spend the night in the Miao men's home, the two sides will become a couple recognized by the Miao society. This also reflects the pursuit of freedom of marriage Miao men and women against arranged marriage. For example, in the process of marriage robbery, the Miao man encounters the obstruction of the woman's family and carries out violent robbery, which may constitute the crime of intentional injury, the crime of affray, the crime of picking quarrels and provoking troubles, but if the circumstances are significantly minor, it is not considered a crime. This kind of behavior does not have the social harmfulness of criminal law, and its purpose is to realize the freedom of marriage.

Miao men who can not afford the bride price can be divided into two types, one is to negotiate with the robbed

Miao women in advance, and the other is to violently rob marriage against the will of women. The former type of marriage is to avoid trivial procedures and high betrothal gifts. Through the form of marriage, on the basis of conforming to local customs, in order to achieve the purpose of marriage with Miao women, this form of marriage should not be considered to be socially harmful. The latter form of snatching marriage has social harmfulness. Miao men forcibly snatch women to their homes against their will, which has serious social harmfulness. It has serious social harmfulness and should be dealt with in accordance with the relevant provisions of the criminal law.

3.2 The Conflict Between the Miao Traditional Marriage-Robbing Custom and the New Marriage-Robbing Custom

Because of the social harmfulness of the traditional marriage-robbing custom of the Miao nationality, it is no longer in line with the concept of the development of the times. The traditional marriage-robbing custom of the Miao nationality has developed into a new marriage-robbing custom and has been recognized by everyone. However, in practice, there are still actors who violate women's wishes and forcibly have sexual relations with them on the grounds that snatching marriage is a traditional custom of the Miao nationality. Not only the local customs of the new type of marriage, but also seriously disrupted the social order, with serious social harm, the behavior has violated the criminal law. However, due to the relevant staff to this behavior into the traditional ethnic customs, to ignore the attitude, resulting in the legitimate rights and interests of the parties have been violated. The relevant staff did not understand the custom of snatching marriage of the Miao nationality, nor did they communicate with the authorities of the Miao nationality. They adopted the attitude of one more thing is less than one thing, sacrificing the rights and interests of the victims, trampling on the dignity of the law, and making the offenders go unpunished.

Case 1: For example, a local judicial office received a local Miao girl A who was more than ten years old. Girl A sued the staff of the judicial office against the Miao man B in another Miao village and others took advantage of the girl A alone at home. The man's home, forcibly had sexual relations with him, and raped him. After that, girl A escaped from the Miao man B's home, and now requested the judicial office to preside over it. The judiciary believes that this is a criminal case and does not belong to the jurisdiction of the judiciary. Therefore, the public security department is required to investigate the criminal responsibility of the man according to the 'Criminal Law of the People's Republic of China' and relevant laws and regulations. However, the public security department determines that the man's behavior is a national custom and does not belong to a criminal act.

Through case one, we know that the behavior of the Miao man group B and others to take the minor girl A into custody at home and forcibly have sexual relations with him may be suspected of criminal crimes such as rape or rape of young girls, illegal detention, and affray. The minor girl A reported the case to the judicial office, which transferred the case to the jurisdiction of the public security department, which found that the behavior of man B was a national custom and had no factual and legal basis. We know that the traditional marriage custom of the Miao nationality has evolved into a new type of marriage custom since the founding of the People's Republic of China. This new type of marriage custom respects the wishes of women and retains the tradition of the Miao nationality in form. However, when solving the marriage robbery behavior of Miao man B from the public security department of a certain place, we determined that the behavior of the man did not constitute a crime and did not file a case with the national custom of kissing.

Crime has three characteristics: social harmfulness, criminal illegality and punish ability. In this case, Miao girl A is an underage girl, who may not be 14 years old. Miao man B and others robbed her to the home for rape, seriously endangering the personal safety of women. The plot is extremely bad and has serious social harm. China's 'Criminal Law' specifically stipulates the crime of rape and the crime of raping young girls to protect women's personal rights and interests from illegal infringement by others. Miao men's group B commits crimes together with others and constitutes a gang crime. Compared with the general rape case, it is more socially harmful and should be severely punished.

Case 2: Kaili City Sankeshu Town is a Miao woman C playing in the second grade of junior high school. She was deceived by the Miao youth D of the same village to marry forcibly at home. After the woman's father was informed, he reported the case to the local police station, but the police officers of the police station, on the basis of Miao traditional customs, indicated that the case was not a criminal case and refused to file a case. His father and his family believe that it is now a new century, and the traditional marriage custom of the Miao nationality is no longer applicable. If the public security has not been dealt with, his father and his family members will collectively go to the young D's home to discuss the statement.

Through the second case, we can know that the father and his family of Miao female C think that it is the new century now, and the traditional marriage-robbing custom of Miao nationality can no longer be applied. With the development of society and the popularization of legal consciousness, the local Miao nationality can accept the new marriage-robbing custom. There is no reason for Miao youth D not to know the evolution of its customs,

and its forced marriage with the Miao female C does not conform to the local customs of the Miao nationality. In this case, the police station considered that the case belonged to the traditional customs of the Miao nationality and did not file the case, which led to the legitimate rights and interests of the Miao female C and the legitimate relief. If his father and his family went to the youth D's home to ask for advice, it would cause greater damage to the local social order. Therefore, the judiciary should be cautious in dealing with such disputes.

4. Improve the Path

4.1 The Legislature Legislates on Relevant Customs

China's legislature has formulated the "Law of the People's Republic of China on Regional National Autonomy" according to the Constitution. Article 19 of the Law stipulates that the people's congresses of national autonomous areas have the right to formulate autonomous regulations and separate regulations in accordance with the political, economic and cultural characteristics of the local ethnic groups. This clause indicates that the people's congresses in ethnic autonomous areas have the right to formulate relevant regulations in accordance with the law and in light of their local political, economic and cultural characteristics.

This paper takes Xiangxi Tujia and Miao Autonomous Prefecture (hereinafter referred to as Xiangxi Prefecture) as an example. In practice, in July 1986, the Seventh People's Congress of Xiangxi Tujia and Miao Autonomous Prefecture formulated the 'Xiangxi Tujia and Miao Autonomous Prefecture Autonomy Regulations' according to the laws and regulations, combined with the political, economic and cultural characteristics of Xiangxi Tujia and Miao Autonomous Prefecture. In October 2022, the Standing Committee of the Fifteenth People's Congress of Xiangxi Tujia and Miao Autonomous Prefecture in order to cultivate and practice the socialist core values, improve the awareness of civil civilization and reduce the uncivilized behavior of citizens. The "Regulations on the Promotion of Civilization Behavior in Xiangxi Tujia and Miao Autonomous Prefecture" (hereinafter referred to as the Civilization Regulations) was formulated. Article 9 of the Regulations stipulates the civilized behavior that advocates citizens to practice, including civilized and frugal weddings and funerals, and appropriate betrothal gifts. Article 36 and Article 37 of the Regulations stipulate that the administrative department needs to adhere to the principle of combining education and punishment when correcting uncivilized behaviors. State organs and their staff will bear corresponding responsibilities for dereliction of duty and abuse of power in their work.

In order to regulate the civilized behavior of citizens, Xiangxi Autonomous Prefecture has formulated civilized regulations to guide citizens to practice the socialist core values in the form of weddings and appropriate bride price on the premise of respecting national traditions. The Miao nationality's marriage robbery custom in the region has been clearly legislated, and the state organs and their staff have been punished for dereliction of duty and abuse of power by stipulating the form of responsibility. Therefore, in the case of similar case one and case two in Xiangxi Prefecture, the uncivilized behavior in the traditional marriage custom of the Miao nationality will violate the civilized regulations. When the public security department does not file a case, the robbed Miao women can be reflected to their competent authorities according to the civilized regulations.

4.2 Judicial Organs Shall Abide by the Law

The legislature provides a legal basis for the judiciary through relevant legislative activities. The judiciary should follow the law, maintain social order, and protect the legal rights of Miao women. In the first case and the second case, the Miao women went to the public security department to file a case after being robbed of marriage, but the public security department staff did not file a case on the grounds that it involved the Miao robbing marriage customs, so that the legitimate rights and interests of the victims could not be relieved, so that the perpetrators were at large, the victims could not get public relief, and extreme private relief might be taken. The legitimate rights and interests of the victims were not protected, which not only undermined the local civilization and customs, was not conducive to safeguarding the authority of the national law, and was not conducive to maintaining social stability.

4.3 The Judiciary May Seek Advice from Local Authorities

The judiciary can consult local authorities on relevant customs. When the legislature does not legislate on local traditional customs, state organs and their staff can seek advice from local authorities, because local authorities have a better understanding of their local customs and habits, and know more about how such cases should be resolved in order to better protect the rights and interests of robbed women. In the case provided in this article, the local public security department is not aware of the changes in the customs of the Miao society. It has always refused the victim to file a case on the grounds that the marriage is a traditional custom of the Miao people, resulting in the lack of relief of their legitimate rights and interests. If their staff first consult with local authorities, they can deal with such disputes legally and reasonably.

4.4 State Organs Should Increase Legal Publicity

State organs should increase legal publicity. With the acceleration of the process of rule of law, legal education is also more in-depth, and the awareness of the rule of law of ethnic minorities is awakening. The traditional customs of the Miao nationality are also more civilized, but there are also some groups who destroy the social order in the name of traditional customs, which has serious social harm. State organs should increase the publicity of law popularization, so that groups who destroy social order in the name of traditional customs do not dare to try the law. For example, through legal publicity, let the local Miao youth know the legal consequences of the traditional marriage customs, promote the new marriage customs, regulate their behavior, and maintain social harmony.

5. Conclusion

Grabbing marriage is a traditional custom inherited by the Miao nationality. Its traditional form of grabbing marriage is mainly divided into local chieftains tyrannical grabbing marriage, opposition to aristocratic grabbing marriage, and opposition to high-priced bride price grabbing marriage. After the founding of the People's Republic of China, with the improvement of women's status and the awakening of the awareness of the rule of law, the Miao traditional marriage robbery custom evolved into a civilized new marriage robbery custom. In practice, there are still a few Miao men who carry out illegal and criminal activities in the name of the custom of snatching marriage to evade criminal punishment. The legislature can improve the legislation for such traditional customs. When the judicial organs identify such cases, they can understand the local customs by asking local Miao authorities, refer to the corresponding laws and regulations, and comprehensively consider the social harm and criminal illegality of the perpetrator. It should be punitive to decide whether to pursue its criminal responsibility, so as to safeguard the legitimate rights and interests of Miao women and maintain social stability.

Chinese Library Classification: D924

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Appendix

(1) Article 19 of the Law of the People's Republic of China on Regional National Autonomy stipulates: The people's congresses of national autonomous areas shall have the power to formulate autonomous regulations and separate regulations in accordance with the political, economic and cultural characteristics of the local nationalities. The autonomous regulations and separate regulations of the autonomous region shall take effect after being approved by the Standing Committee of the National People's Congress. The autonomous regulations and separate regulations of autonomous prefectures and autonomous counties shall go into effect after being submitted to the standing committee of the people's congress of provinces, autonomous regions and municipalities directly under the Central Government for approval, and shall be reported to the standing committee of the National People's Congress and the State Council for the record. This clause shows that the people's congresses in ethnic autonomous areas have the right to formulate relevant regulations according to the law. Therefore, the local people's congress can formulate relevant regulations on such customs of the Miao nationality according to relevant laws.

(2) Article 9 of the Regulations on the Promotion of Civilized Behavior in Xiangxi Tujia and Miao Autonomous Prefecture stipulates: Advocating citizens to practice the following civilized behaviors: (13) Consciously abide by village regulations and residents' conventions, safeguard collective interests, promote collective economic development, change customs, and actively participate in rural toilets, water, and pollution activities, civilized and thrifty weddings and funerals, thick and thin funerals, moderate bride prices, civilized sacrifices, and do not engage in feudal superstitious activities. (15) Respect national traditions, national languages, and national habits, and actively participate in traditional ethnic cultural festivals such as the Sheba Festival and the Autumn Festival to protect and inherit national intangible cultural heritage. Strengthen the protection of historical and cultural towns and villages, traditional villages and rural features, ethnic villages.

(3) Article 36 of the Regulations of Xiangxi Tujia and Miao Autonomous Prefecture on the Promotion of Civilized Behavior stipulates: State organs and their staff in the promotion of civilized behavior in the work of dereliction of duty, abuse of power, favoritism and fraud, by its higher authorities, supervisory organs or units ordered to correct, and depending on the severity of the circumstances, the responsible leaders and directly responsible personnel to be punished or dealt with.

(4) Article 37 of the Regulations on the Promotion of Civilized Behavior in Xiangxi Tujia and Miao Autonomous Prefecture stipulates: When investigating and correcting uncivilized behaviors, administrative departments should adhere to the combination of punishment and education, and educate citizens, legal persons and other organizations to consciously abide by civilized behavior norms.

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