Research on Legal Issues of Women’s Rights and Interests Protection in Non-marital Cohabitation

Rongfang Deng1,*, Yijia Shi2, Ruilin Zhang3, Tianshu Feng4

1Yunnan Minzu University, Yunnan, 650031, China.
2Johns Hopkins Bloomberg School of Public Health, Baltimore, Maryland, 21205, USA.
3Henan University of Science and Technology, Henan, 471000, China.
4Kunming University of Science and Technology, Yunnan, 650000, China.

Abstract

With the renewal of social attitudes and the pursuit of individual freedom by young men and women, the influence and restraint of traditional moral concepts on people is gradually diminishing, and the attitude of the outside world towards cohabitation relationships has changed from more criticism and discrimination to tolerance and acceptance in the past. In such a social background, the phenomenon of non-marital cohabitation has emerged. As a vulnerable group in society, women's personal and property rights and interests are infringed to varying degrees in cohabitation, and in practice, judges often apply the relevant principles of tort law to solve such problems, making it difficult for women's rights and interests in cohabitation to receive timely relief. This paper analyzes the current situation of protecting the rights and interests of women in non-marital cohabitation in China, in order to find out the problems in protecting the rights and interests of women in cohabitation in China, and to conceptualize the system of protecting the rights and interests of women in cohabitation in China by combining the current situation of legislative protection in foreign countries.

Keywords

Non-marital cohabitation, women's rights, gender equality, women's rights protection

1. Introduction

In such a social background, the phenomenon of non-marital cohabitation has emerged. This lifestyle, which is not predicated on marriage, is different from marriage, but currently there are few legal regulations on non-marital cohabitation in China, so it may be worthwhile to discuss the protection of women's rights and interests from the perspective of non-marital cohabitation. The theory of feminist jurisprudence can provide a new perspective on the protection of women's rights and interests in non-marital cohabitation, and the construction of a reasonable system can provide a focus for the protection of women's rights and interests, and put the study of women's rights and interests protection into concrete issues.

2. Definition and Elements

According to the research status of non-marital cohabitation by domestic and foreign scholars, it is difficult to define non-marital cohabitation directly, so we should first cut non-marital cohabitation into "non-marital" and "cohabitation", explore their meanings separately, and then find out their real connotations (Jens M. Scherpe,
The term "non-marital" refers to the absence of marriage. Therefore, before explaining the meaning of "non-marriage", we need to clarify the elements of "marriage". The elements of "marriage" mainly include the following two points: living together, including spiritual life together, sexual life together and economic life together, and the social publicity of the couple's identity. In China, the marriage registration system is the only legal method of public notice, and the union between a man and a woman who merely goes through the folklore process of marriage but do not go through marriage registration is not a legal marriage, nor is there a marriage relationship. Only the union of a man and a woman who satisfy both of the above elements can be called the existence of the state of marriage, i.e. the state of being married. In a broader sense, other than married marital status, including unmarried, divorced, widowed can be categorized as non-existent marital status. Therefore, unmarried men and women living together, divorced men and women living together, and widows and orphans living in companionship with each other all belong to the category of "non-marriage" (Preetz Richard, 2022).

"Cohabitation" literally means living together in the same residence. Here, we want to make a narrower interpretation, that is, men and women who love each other do not go through the registration of marriage and live together openly in the same residence in the name of non-marriage. In summary, we can define the concept of non-marital cohabitation in this study: non-marital cohabitation is a union in which a man and a woman without a spouse form a certain period of continuous living based on their emotions and are not part of a legal marriage. The non-marital cohabitation discussed in this paper is limited to the cohabitation relationship between two parties in a spouseless state.

In the United States and the United Kingdom (John Eriksen, 2001), the attitude toward this phenomenon has changed from prohibition and restriction to recognition and regulation, while China took the attitude of prohibiting non-marital cohabitation in the early days (as illegal cohabitation), and still took the attitude of avoiding the regulation of non-marital cohabitation in recent years, the relevant legislation lags behind the development of society, and needs to improve the legislative work in this aspect.

3. The Current Situation and Problems

In reality, the most serious problem in non-marital cohabitation relationship is the violation of women's health rights, which is reflected in the injury caused by domestic violence by male partners and the physical and psychological injury caused by abortion after unplanned pregnancy. Therefore, the protection of women's right to health in cohabitation is the top priority for the protection of their personality rights, and it is also the first task to establish the legal regulation of non-marital cohabitation relationships. Due to the interdependence of the non-marital cohabitation parties to form a living community, women often choose to tolerate the damage behavior of their male partners, and it is also difficult to apply tort liability law to seek remedies. Therefore, the establishment of a damage compensation system is of practical significance for the protection of women's rights and interests in non-marital cohabitation relationships.

In reality, the violation of women's rights and interests in non-marital cohabitation relationship is mainly manifested in the following aspects.

(1) Domestic violence

In recent years, domestic violence has been one of the most concerned issues in marriage and family. Domestic violence not only violates the physical health of the victim, brings psychological shadow to the victim, and causes social instability (Han Xiao & Wei Dong, 2021).

It also creates a destabilizing factor in society. Due to the innate differences in physical strength and strength between men and women, women are in most cases the victims of domestic violence.

In most cases, women are the victims of domestic violence due to the innate differences in physical strength between men and women.

(2) No compensation for domestic labor

In our traditional basic family form, women are responsible for the main domestic work. In non-marital cohabitation, which is similar to marriage and family, women are still not free from the role of housewife. In the case of "companionship" between elderly people, women not only have to take care of the elderly men, but they also have to take care of each other's offspring. The woman's contribution cannot be measured in monetary terms, and she cannot be compensated for her contribution after the cohabitation relationship ends.
(3) The damage of unmarried pregnancy

In a non-marital state, an unwanted pregnancy is an unexpected event that is not planned for the majority of men and women living together out of wedlock, and abortion is usually the choice. Statistics show that women living together out of wedlock account for a large percentage of abortions in China.

The damage of abortion to a woman's body is enormous. Not only does the abortion procedure harm a woman's body, but it can also lead to infertility and complete loss of fertility (Christensen Anna, 2020). These damages are irreparable for women and can result in a significant loss of value for women in the future marriage market. In addition to physical damage, women who have undergone abortion can also suffer great psychological trauma, which can bring women a sense of guilt and guilt, thus increasing their mental burden and in serious cases even causing mental illness. The establishment of a non-marital cohabitation damage compensation system is of profound significance to the protection of women's rights and interests and to the harmony and stability of society.

4. Refinement proposals

(1) Establish a system of non-marital cohabitation

China should change the indifferent attitude towards non-marital cohabitation in the past, and regard non-marital cohabitation as a form of "marriage". The phenomenon of non-marital cohabitation is becoming more and more prevalent in today's society and has become a real problem that cannot be avoided, and avoiding it will undoubtedly help people with evil intentions to exploit the loopholes of the law to escape their responsibilities. Only by legally recognizing the system of non-marital cohabitation and improving the relevant contents of non-marital cohabitation can we help to solve social conflicts, develop the law and protect the rights and interests of women in cohabitation.

(2) Refer to the legislative model of foreign non-marital cohabitation system.

The awareness of non-marital cohabitation in China lags behind that of European and American countries, such as the United States, the United Kingdom, France, Germany and other countries have been facing the social phenomenon of non-marital cohabitation as early as the end of the 20th century and the beginning of the 21st century, and gradually regulated by law. France protects cohabitation relationship in two ways, one is the agreement model and the other is PACS, both of which take into account the free and loose nature of non-marital cohabitation and respect the autonomy of intention, so as to protect the social welfare of non-marital cohabitants; Germany protects the rights and interests of non-marital cohabitants in judicial practice by recognizing them as de facto marriages and invoking the relevant provisions of marriage law; the United States protects the rights and interests of non-marital cohabitants by applying the relevant provisions of marriage law (Jens M. Scherpe, 2016). In the United States, non-marital cohabitation is also called contractual cohabitation, and some states have adopted the practice of registering domestic partners, after which they can enjoy the rights and fulfill the obligations given to spouses by marriage, which makes non-marital cohabitation legally recognized.

(3) Establishing a contractual system for non-marital cohabitation

The "contract system" is a very effective solution to the personal and property conflicts in non-marital cohabitation, because the value of the contract lies in respecting the personal will of the parties and regulating their rights and obligations through the form of contract clauses. Therefore, the timely establishment of a contractual system for non-marital cohabitation can, to a certain extent, solve the urgent problem of non-marital cohabitation conflicts in China.

5. Conclusion

Specifically, the parties to a non-marital cohabitation can agree on the ownership and division of property, compensation for the party at fault, and child support during the duration of the non-marital cohabitation or after the relationship ends, and sign a contract according to the principle of autonomy. As long as the terms in the contract do not violate the mandatory provisions of the law and social order and morality, the validity of the contract should be recognized.

Only a well-designed legal system can adapt to the development trend of society and be accepted and supported by everyone. The legislation on non-marital cohabitation in China should fully consider the damage suffered by women in it and provide them with necessary protection measures. Only a law that fully protects the reasonable interests of the parties involved is a law that is embraced by society at large. Legislation on non-marital cohabitation can help promote the formation of a pluralistic approach to gender relations and family unions in China and make the family atmosphere in China more tolerant and open, which plays an important role in the development of
References


