

Reestablish the Concept of “Family”—On Perfection of Family Law System

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Abstract. Broad family concept is a small set of groups with very close relations including marriage and kinship in social life, and its main function is to distinguish between social life and private life of family members. Member relationships of a complete family include blood relationship, marriage relationship, legitimate kinship, legacy and foster relationship, which are all included in the concept of family. A complete family law system mainly includes two parts, namely marriage and family law and non-marriage family law. ^[1] This paper begins with broad family concept, and discusses about reestablishment of family concept and how to perfect family law system.

In law, China usually interprets the concept of family as a group where relatives live together because of marriage relationships, blood relationships and adoptive relationships. China's present legislation on “family” is based on the concept of “family”. However, the society is constantly improving, and family concept has also great changes, and thus current understanding of family concept could not reflect the form of practical family and the evolution trend of family law system correctly at current stage. Therefore, we should reestablish family concept and perfect family law system.

I. Misunderstandings of existing family concept and family law system

(I) Misunderstandings of existing family concept

When it comes to the concept of family, existing Chinese books and works on family concept discuss concepts of marriage and family independently and finally refer both collectively as “marriage family”. ^[2] It is legally provided that “marriage family” includes families formed because of blood relationships and legitimate kinship. The concept of “marriage family” overlaps with the content of “family” concept, and thus has ambiguity. Therefore, “family” and “marriage family” are confused in many occasions. However, it can be found through careful observation that the phrase “marriage family” has different meanings in different contexts. For example, it could be understood as “marriage and family” and “marital family”. Some books say that “marriage family relationship is a social relationship on the premise of the combination of males and females with the link of blood relationships”. In this sentence, “marriage family” is obviously understood as “marital family”. If “marriage family” is understood as “marriage and family”, difference between “marriage” and “family” is emphasized in terms of logical order, indicating that marriage relationship is not the only way to form family relationships and family relationships should also include blood relationships and legitimate family relationships etc. ^[3] If “marriage family” is understood as “marital family”, it can be understood that marriage relationships are the premise of family relationships and families are based on marriage relationships. Different meanings of phrase “marriage family” in different contexts make “family concept” contradictory.

At present, “family” concept commonly accepted by China's law circle is based on the concept of “relatives”, while marriage and blood relationships are important links of kinship, and thus there would be the same number of family composition ways with ways to form “kinship”.

(II) Misunderstandings of existing family law system

As China has been regarding “marriage” as the core of marriage and family law, existing “family” concept could not deal with the relationship between “marriage” and “family” well at current stage, and makes its meaning fuzzy, makes researches on family law gradually tend to

marriage, and takes content of marriage establishment, breakdown, adoption and guardianship etc as main content of family law system, so that research content of “family law” is equivalent to that of “marriage and family law”. However, with constantly changing and developing social relations due to combined influence of various social factors, China’s existing “marriage and family law” could not meet a large number of new types and patterns of families. For instance, legitimate families of homosexuals are included in the scope of normal family concept.^[4] Meanwhile, increasingly open thoughts lead to the occurrence of a large number of premarital cohabitation family patterns, which are in sharp contrast to traditional family patterns. However, people can hardly accept family patterns without the foundation of marriage, so that family law system comes to a halt in a very long period of time and falls far behind rapid development of social relations.

II. Nature and functions of family

(I) Study on the nature of family

There have been a lot of controversies about study on the nature of family, and Chinese scholars and experts of relevant fields have fierce discussion about this issue. During discussion, many scholars put forward enlightening opinions on the nature of family, and thus promote in-depth study of scholars and experts on the nature of Chinese families. However, in terms of theoretical knowledge, this issue has not been approved unanimously. During discussion, there are mainly the following views about nature of family. 1, economic relationships are the nature of family. 2, the nature of family is an economic organization established on the basis of blood relationships. 3, the nature of family is the material embodiment of human feelings based on certain emotions. 4, the nature of family is an economic organization based on marriage.^[5] The above four views explain the nature of family from different perspectives, but the author still thinks that there are deficiencies in terms of fundamental attribute of the nature of family. Firstly, economic foundation and economic relationships are the material basis of the survival of a family, but could not completely represent the nature of family, because living conditions and survival and development of a family would be affected without good economic foundation but family relationships among its members would not be affected. Secondly, the fourth view mentions that the nature of family is based on marriage, which is right to a certain degree but is not absolute, because if two members of a family have emotion break and could not maintain their marriage, it doesn’t mean that this family would break up because of emotion break of two family members and these two members would not lose their identity of family member because of this.^[6] Besides, marriage is only the compositional model of traditional families. As mentioned above, there are many premarital cohabitation family patterns in current China, and there are family relationships even without legal recognition, and thus marriage relationship cannot completely cover essential characteristics of family.

(II) Study on the functions of family

It is provided in Chinese law that functions of family refer to the role of family in human survival and social development and involve many aspects that could meet various needs of human and society.

Traditional Chinese families have mainly the following functions:

1. Economic function

Economic function of family includes production, consumption, allocation and exchange of family members, and is the material foundation of other family functions. Means of production owned in common in early China make many urban and rural families lose economic function. However, with the arrival of reform and opening up, a large number of contracting households and individual businesses occur in rural areas and urban areas respectively, and thus economic function of rural and urban families is recovered in China.

2. Sexual life function

Sexual life function is biologically basic among family functions, and is closely related to remaining family functions. China regulates sexual life function of families through law and morality, so that families could meet basic unit of sexual life.^[7]

3. Fertility function

Family is a basic unit of fertility since the occurrence of the concept of family, and ensures ceaseless race through fertility function. However, at current stage, China faces large population base and intensifying aging population, which seriously restrict its social and economic development. Thus, family planning policy shall be carried out, which indicates that fertility function should be restricted by social factors as a basic function of a family.

4. Educational function

Educational function of a family involves mainly two aspects. One is the function of parents' education of children, as preschool education of the next generation of a family should be completed by parents although China has very complete and advanced educational institutions. The other is mutual education among family members, as there is difference between every two members of a family in terms of degree of education and each family member knows about different fields.

5. Foster and support functions

Each family member is brought up by other members and then supports them, which is an inevitable process of a family over years.

III. Broad family concept

The concept of family shall not be summarized only from family type and pattern, but to generalize and summarize by seeking common characteristics and functions of all different types and patterns of families. Otherwise, the summarized family concept would lose universality, and could not cover all types of family patterns.^[8] The core function of a family can be known mainly by observing when a family loses the significance of existence by taking which family function away. If family functions taken away have not too significant influence on survival and development of the family, such functions are not the core.

The structure of a family would determine all its functions, and families with different structures have different family functions. However, an indispensable core function of each family with a different structure is separation of social life from private life, which is the only core function that should not be replaced by other social organizations. So, the author believes that private life unit gathered because of virtual intimate group status is the common nature of all traditional families and premarital families, and this is broad family concept.

Families under broad concept have mainly the following characteristics:

(I) As the basic unit of private life, family plays a role of separating social life from private life. The basic unit of society is family, and thus there should be guarantee for separation of family members from social organizations in order to make families independent from other social organizations. Then, family system occurs. Under the guarantee of family system, social groups are divided into several small groups with the core of family away from economy, politics, military and other interactive activities in social organizations, and thus family and the society are really separated.

(II) Family is consisting of people. Traditional large families in ancient China were divided into several small families. Thus, it can be seen that natural persons within a certain scope form a life group based on one or several types of intimate relationships, and form a family because of common life goals. Common life relationship of a family ensures the core function that makes family members independent from social groups.

(III) The scope of members of a family is not limited to kinship

The purpose of forming a family is to separate social life from private life effectively. Thus, the scope of forming family members is not limited to kinship, and all persons with common goals could form a family. In late 20th century in China, family life had characteristics of consistency and diversity, and family concept had great changes. This indicated that form of two-parent families was not unique although the number dominated, and links that maintained close relationships of a family could be blood, marriage, law, common life goals, or all of these, and families consisting of various factors had complex and diverse forms.

IV. Perfection of family law system from broad family concept

Current situation of family law system has been studied above, namely family law and marriage and family law are not well separated currently and marriage is only one of ways to form families from the perspective of broad family concept. This indicates that it is unilateral and incomplete to say that family law system only includes marriage and family law. The author believes that family system at current stage should be a broad one, and family law system should be perfected based on broad family patterns.^[9] Only in this way, can family law system cover all family patterns and be complete and effective.

V. Summary

Family is the basic unit of society just like a cell in human body. Clear family concept and perfect family law system can help maintain stable development of socialism in China, establish and perfect premarital family system, conform to development of the times and social progress in China, meet changes of social relations and promote harmonious development of the entire society.

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