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MARRIAGE AND DIVORCE OF PERSONS WITH PSYCHOSOCIAL AND INTELLECTUAL DISABILITIES IN CHINA

DISCUSSION BASED ON LAW AND PROMOTED JUDICIAL PRACTICE

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East Asia Disability Forum 2022

Outline

- Introduction
- Normative framework and Promoted Cases
- Themes and Discussion
- Q&A

Introduction

- The choice of topic on sexuality, reproductive rights, and community living in China
 - Limited access to lived experience of persons with disabilities in relation to sexuality in the community, particularly during the Pandemic
 - Limitation of my professional background
- => what is my contribution to the panel?

Introduction

- The choice of topic on sexuality, reproductive rights, and community living in China
 - Turing to ‘official’ understanding reflected on the promoted cases in the judicial system
 - Written law system but increasing importance of cases
 - **Cases with binding forces, particular persuasive forces,** and regular persuasive forces

Normative framework and Promoted Cases

- Civil Code entered into force in 2021
 - Before 2021, separate General Provisions of Civil Law (regulating legal capacity), Marriage Law (marriage and divorce)
 - Marriage Law (amended in 2001) art 7 Marriage shall be prohibited in any of the following circumstances: (2) if either the man or the woman is suffering from **any disease that is regarded by medical science as rendering a person unfit for marriage. (?)**

Normative framework and Promoted Cases

- Law of the People's Republic of China on Maternal and Infant Health Care (amended in 2017), Previously translated as eugenic law
 - Art 10 After pre-marital medical examination, physicians shall, in respect of the male or female who has been diagnosed with certain genetic disease of a serious nature which is considered to be inappropriate for child-bearing from a medical point of view, explain the situations and give medical advice to both the male and the female; **those who, with the consent of both the male and the female, after taking long-term contraceptive measures or performance of ligation operations, are unable to bear children may get married.**
 - Art 19 abortion of a person no legal capacity shall be decided by the guardian.

Normative framework and Promoted Cases

- Reproductive rights in provincial regulations
 - Provisions of the Standing Committee of the Gansu Provincial People's Congress on the Prohibition of Childbirth by Demented and Dumb People (invalidated) and many other similar provisions
 - Art 3 childbirth of the people are prohibited, and marriage is only allowed when Sterilisation surgery is applied.

Themes and Discussion

Cutting out the legal details ...

■ Marriage:

- No case found that people argued for marriage but rejected
- Persons with **severe** intellectual and psychosocial disabilities (in some cases aggressive behaviour is required) are categorised as people unfit for marriage
- Their spouse could apply for marriage annulment or divorce on this basis

Themes and Discussion

- Productive rights

- Applying the search keywords, most cases concern ‘wrongful birth’ that parents argued the birth of children with disabilities could have been avoided given the law and related procedure are followed

- Divorce

- Capacity for litigation becomes another barrier in accessing justice

Themes and Discussion

■ Discussion

- Marriage/family is generally considered as one of the few safety net a person with intellectual or psychosocial disabilities could get in China: easy to get in but difficult to get out.
- It may make sense to certain degree but in many other cases it could be very dangerous for example domestic violence.

Themes and Discussion

■ Discussion

- No evidence could be found that there is any institutional support that could facilitate persons with intellectual and psychosocial disabilities enjoying family life and productive rights in the community.
- Eugenics ideology is still prominent that there is a strong emphasis on preventing persons with disabilities to be born.
 - History and experience of other east Asian societies in law/social reform are appreciated!

Q&A

Any comment or question?

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