



Research on the Housework Compensation System under the Regime of Marital Community Property

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Author's contribution

The sole author designed, analyzed, interpreted and prepared the manuscript.

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ABSTRACT

Article 1088 of the Civil Code of the People's Republic of China breaks through the preconditions stipulated in Article 40 of the Marriage Law, expanding the application scope of housework compensation to the marital community property system. This is not a repeated calculation of the value of housework but a compensation measure for the party who undertakes more housework and sacrifices future development opportunities for the family. In modern dual-income families, the housework compensation system under the marital community property system can better achieve substantive equality between spouses. This system of the Civil Code needs to be constructed in detail from a legislative perspective, clarifying its constituent elements. The change in the legislative text is a practical response to the difficulties in the judicial practice of the Marriage Law, correcting the lack of widespread application of the system in judicial practice. When applying the housework compensation system, it should be distinguished from the other two divorce relief systems, with the "principle of fairness" as the main applicable principle; courts should consider both the sacrifices made by the disadvantaged party due to marriage and the benefits obtained from the marriage; at

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the same time, special circumstances should avoid repeated calculations. This paper uses empirical analysis and other research methods to analyze the implementation effects of the legal system in practice and explores the legal improvement of related legal systems.

Keywords: Housework compensation; marital community property system; divorce relief; legal improvement.

1. INTRODUCTION

In 2001, Article 40 of the Marriage Law added a housework compensation system under the regime of separate property, elevating the recognition of the value of housework to a new stage. However, the overly stringent application conditions made it difficult for this provision to be widely applied in practice. Entering the era of the Civil Code, the application conditions for the housework compensation system have expanded to the marital community property system, which better fits the reality of most families in our country [1,2]. The newly revised Law on the Protection of Women's Rights and Interests introduced the "housework compensation system" from Article 1088 of the Civil Code's marriage and family chapter, explicitly stipulating in Article 68 that: "If the wife undertakes more obligations such as raising children, caring for the elderly, and assisting the husband in work, she has the right to request compensation from the husband at the time of divorce." This means that women who undertake more housework in daily life can request compensation from their spouse during a divorce. In 2020, the Fangshan District Court of Beijing handled the first case of divorce housework compensation after the promulgation of the Civil Code, ruling that the joint property should be equally divided between the parties and ordering the husband to pay the wife (a full-time housewife) housework compensation of 50,000 yuan (RMB). This ruling has made the issue of housework compensation standards during divorce a hot topic of public discussion [3,4].

2. LEGISLATIVE BASIS FOR THE HOUSEWORK COMPENSATION SYSTEM

Article 1088 of the Civil Code expands the legal application conditions for housework compensation within the divorce economic compensation system. An analysis of its constituent elements includes the following.

2.1 Applicable Regardless of the Type of Marital Property Ownership System

Whether the couple adopts the legal community property system or the agreed separate property system during the marriage, if one party bears more obligations to the family compared to the other, they have the right to request compensation during a divorce. Unlike the Marriage Law and the Law on the Protection of Women's Rights and Interests, its scope is not limited to the agreed property system.

2.2 Economic Compensation Requests Based on Bearing More Family Obligations

Article 1088 of the Civil Code lists raising children, caring for the elderly, and assisting the other party in work as situations where the party bearing more obligations can request economic compensation. Of course, the application of divorce economic compensation is not limited to these three aspects. Obligations undertaken for family interests should all be included, mainly manifested in housework. Housework refers to unpaid household labor such as preparing food, cleaning the living environment, organizing clothes, shopping for oneself and family members, as well as providing unpaid care and assistance activities for family members and non-family members. The connotation and extension of housework will continue to change with the development of socio-economic, social, and cultural factors. These family affairs are ubiquitous in life but cannot be directly measured by market value. According to the principle of consistency of rights and obligations, the party bearing more obligations should receive appropriate compensation.

2.3 Economic Compensation Requests Must Be Initiated by One Party, and Courts Cannot Proactively Apply Them

The people's court cannot proactively make a judgment on economic compensation if the party does not request it. However, the court can

explain the right to request economic compensation to the party, and it is up to the party to decide whether to exercise this right. In other words, in the matter of housework compensation, the court cannot substitute the party to propose a claim.

2.4 Economic Compensation Requests Must Be Made at the Time of Divorce

The purpose is to compensate one party for the loss of self-development opportunities due to their contributions to the family during the marriage. Such losses are often reflected after the divorce, when the party leaves the family to which they have devoted much, and they become disadvantaged. Proposing compensation during the marriage has little significance. Housework compensation during the marriage is more of an agreement between the spouses on property issues, lacking judicial significance.

3. EMPIRICAL ANALYSIS OF HOUSEWORK COMPENSATION CASES

Before the promulgation of the Civil Code of the People's Republic of China, although the legislation provided for a housework compensation system, it was not widely used in judicial practice over the past ten years. On the contrary, statistics show that the application rate of Article 40 of the Marriage Law was significantly low, and some cases that were applied were only done so after purposive expansive interpretations by the court. After the promulgation of the Civil Code, disputes over housework compensation have become more frequent. The scope of application is broadening in terms of case types and geographical areas. However, there are still issues in judicial practice, such as unclear compensation standards and difficulties in producing evidence by the parties, which urgently need legal improvement.

4. IMPROVEMENT OF THE APPLICATION OF THE HOUSEWORK COMPENSATION SYSTEM UNDER THE MARITAL COMMUNITY PROPERTY SYSTEM

Expanding the application scope of the housework compensation system to the marital community property system is an inevitable result of legislative development. However, the current judicial application of the system has the following difficulties: "confusion in the application

of divorce relief systems," "unclear compensation standards," and "repeated evaluation." The author will propose improvement suggestions on these issues based on scholars' views.

4.1 Prioritize the "Principle of Fairness"

First, unlike the purpose of establishing the other two divorce relief systems, the primary purpose of the housework compensation system is to compensate for the differences in work income and human capital caused by gender-based family division of labor, achieving gender equality. Therefore, when handling cases, the logic of property distribution should focus more on the "principle of deservedness" rather than overemphasizing the protection of women's rights, avoiding confusion between the housework compensation system and the divorce economic assistance system. Second, when applying the system, fault factors in divorce should be excluded, and the request for housework compensation should not be denied due to the fault behavior of the party who has undertaken more obligations, avoiding confusion with the divorce damage compensation system.

The principle of fairness means that the contributions of both spouses to the family should be valued. In a case involving housework compensation disputes, the first and second instance courts had the following reasoning: "The evidence provided by Zhang only proves that he, as a family member, contributed to and took care of the family. It does not show that he bore more family obligations than Li. Previously, Zhang worked at home, while Li earned money from outside work for family expenses, and both parties contributed to the family. In 2019, Zhang started working in a company, and Li did not hinder his career development. Zhang did not provide evidence to prove that his contribution to the family significantly reduced his time and energy for self-development and self-actualization, nor did he prove that his provision of more intangible support to the family led to a lack or weakness in his economic ability. Therefore, the court of the first instance did not support Zhang's request for additional housework compensation from Li" [5].

From foreign laws, the principle of fairness also serves as a rule for housework compensation in divorce in other countries. Most states in the United States adopt the "equitable distribution" principle to handle the division of marital property during divorce. This means that courts will consider various factors to fairly distribute the

marital property rather than simply splitting it equally [6]. In considering "equitable distribution," courts may consider the contributions of both spouses to the marriage, including one party undertaking more housework. Although housework compensation is not explicitly mentioned, such contributions may affect the outcome of property division. The concept of alimony in American law may, to some extent, reflect compensation for housework. If one spouse primarily undertakes housework during the marriage, leading to a lower earning capacity, the court may order the other party to pay alimony.

4.2 Clarify Compensation Standards

Although the Civil Code clearly stipulates that compensation should be given to the party who undertakes more family obligations, the specific compensation standards are controversial. Generally, the court's logic is to have the spouses negotiate first, and if they fail to reach an agreement, the court will make a judgment based on various factors. To ensure that the compensation amount matches the labor input and output value, courts usually consider factors such as the duration of the marriage, the intensity of housework, and the local living standards before making a fair and reasonable judgment [7]. In judicial practice, courts usually determine compensation amounts conservatively to avoid value misguidance and regional discrimination.

Scholars have also conducted much research on this. The simplest way is to compare housework to market labor in similar or related occupations, such as domestic services, and refer to the average wage of local domestic workers multiplied by the duration of the marriage to derive the economic value of housework [8]. Another method is to take the wage income that the party who undertakes more housework could have earned in the market as a reference, considering the differences among laborers [9]. However, these two calculation methods are too rational, ignoring the emotional contributions made by the party who undertakes more housework and do not align with the original legislative intention of the Civil Code, which recognizes the loss of human capital and career development opportunities for the party who contributes more under the marital community property system. Therefore, when making judgments, courts should avoid simply calculating the value of housework based on the value of social labor.

The author believes that the existing judgment logic is more in line with the social reality of our country. However, additional factors such as the age of the spouses at the time of divorce, pre-marital economic conditions, living standards during the marriage, and the ability of the party requested to pay should be considered comprehensively. Some scholars oppose this calculation standard, arguing that housework in marital life is not a transactional behavior but a natural, intrinsic one. The labor performed by the parties in the family is inseparable from life, is unpaid, and does not involve exchanging labor for remuneration. Calculating housework contributions as labor compensation would encourage spouses to nitpick over trivial matters in daily life [10].

4.3 Avoid Repeated Calculations in "Single-Worker Families"

The potential acknowledgment of housework value in the marital community property system, especially in single-worker families where one party is fully engaged in housework while the other earns income for family expenses through social labor, is a reasonable way to compensate through the division of marital property during divorce. In such cases, applying housework compensation may lead to repeated calculations. Furthermore, statistical data shows significant public debate over compensating full-time housewives for housework. Therefore, the author believes that single-worker families generally should not apply the housework compensation system. When family income reasonably meets the economic expectations of the contributing spouse, housework compensation should not be applied. If the income of the party contributing less is extremely high, the system should be avoided to prevent repeated calculations of the housework value.

4.4 Exemption in Special Circumstances

When applying the housework compensation system in divorce cases, it is necessary to determine whether the conditions for housework compensation are met and consider personal lifestyle preferences and pre-marital income disparities. In cases where a party voluntarily plays the role of a "full-time housewife" or "stay-at-home husband" due to personal lifestyle preferences, they would not sacrifice self-development opportunities by doing more housework. Thus, there would be no exploitation by one party over the other. Similarly, if the

housework performer had low or no actual income before marriage, undertaking more housework after marriage would not generate economic expectations beyond family property but may benefit more from the marital community property system. In summary, when making judgments, it is crucial to consider both the sacrifices made by the disadvantaged party due to marriage and the benefits gained from the marriage to achieve true fairness and justice.

5. CONCLUSION

Marriage and family law is the part of the entire legal system most closely related to moral ethics. The ancient saying "even an honest and upright official finds it hard to settle family disputes" illustrates its complexity. Whether marriage legislation should pursue allowing judges to have "human touch" by giving them sufficient discretion or should it make more detailed provisions to standardize judgment behavior is a perpetual topic. The understanding and interpretation of the housework compensation system will also change with the times and concepts. However, overall, expanding the scope of application is a trend, and limiting special application situations is a necessary means to maintain its rationality.

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Author has declared that no competing interests exist.

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