

The research on the compensation system of domestic

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Abstract. Article 1,088 of the Civil Code of China establishes the system of compensation for domestic work, which protects the legitimate economic rights and interests of the party with more obligations to the greatest extent, and is of remarkable significance. Due to the fact that the system has not yet clearly defined the specific applicable rules, the rate of its application in judicial practice is not high. Through the analysis of the concept and internal legal principle of housework compensation system, this paper focuses on the dilemma inspection in the aspects of applicable conditions, amount basis, applicable mode and burden of proof, etc. It is proposed that the corresponding application rules should be issued as soon as possible, such as expanding the applicable conditions of the system, defining the standard of the amount of labor compensation, broadening the mode of application, rational distribution of the burden of proof and other legal measures, in order to give better play to the positive role of the system in protecting relatively vulnerable parties, promoting substantive equality between men and women, and maintaining family stability.

Keywords: Domestic Work, civil compensation, institutional dilemma.

1. Introduction

As Mr. Marx pointed out, labor can create huge economic wealth, at the same time, labor behavior in a deep sense also covers the sacrifice of self-value and the increase of value to others. In the family relationship, the husband or wife can add value to the family or the other through labor behavior, due to the instability of marital relationship and the loyalty of personal marriage, the husband or wife who undertakes too much housework needs to be protected by an additional legal mechanism-housework compensation system. Article 68 of the newly revised Law on the Protection of Women's Rights and interests makes it clear that family obligations are shared by both husband and wife, not by one party, and stipulates that the woman has the right to claim compensation for housework at the time of divorce. The reactivation of the housework compensation system is intended to increase the enthusiasm of both parties to share housework while protecting the relatively weak party.[1]

On the one hand, the compensation system for housework is supported by legislation. On the other hand, the compensation system for housework has also been put into practice in judicial decisions. The compensation system for housework was added to the Marriage Law amended in 2001, which affirms the importance of housework in maintaining family relations and protects the rights and interests of the party who bears more obligations in marriage. Since then, the Civil Code has revised the housework compensation system, which has re-stimulated the internal vitality of this system.

The function of typical cases is to reveal the difficulties, key points and follow-up enlightening significance in related fields through a case. Shandong Province has issued "Ten cases of protecting the Rights and interests of Women and Children in accordance with the Law", of which case 6-Hou Mou v. Liu Mou divorce is a typical case of housework compensation system. Here is an analysis:

The plaintiff Hou Mou and the defendant Liu Mou had a daughter and a son after marriage. The plaintiff Hou Mou claimed that the defendant had an affair in his marriage, which caused him great mental pain, so he sued to the court and asked for a divorce, and the legitimate children were raised by him. And divide the common property and bear the common debt in accordance with the law. The defendant denied the plaintiff's factual claim of infidelity and stated that the reason for the breakdown of the relationship between husband and wife was that the plaintiff did not trust him, easily beat and scolded him, and carried out domestic violence. At the pre-court meeting, the undertaker and the judge's assistant seriously accused the plaintiff of domestic violence, demanding that he immediately

stop the violence and stop slandering the defendant's so-called "infidelity" in the absence of evidence. and in view of the defendant giving up his personal career and undertaking complicated family affairs after marriage, he was sensible and reasonable to the plaintiff. After criticism and persuasion, the plaintiff admitted his mistake and recognized the value of the defendant's life. The case was heard in private. According to the joint property and joint debts of husband and wife identified by the court, the plaintiff should pay the defendant more than 700000 yuan, and the plaintiff was willing to pay the defendant housework compensation separately, so the plaintiff paid the defendant a total of 930000 yuan.

When hearing the divorce case, the court judge comprehensively evaluated the work and efforts made by the full-time wife for the family, fully mediated, and gave the full-time wife a certain amount of compensation for housework on the basis of dividing the property in accordance with the law. it reflects the recognition of the value of unpaid labor paid by the party who undertakes more work in the family. Article 108 of the Civil Code stipulates the relief system for the division of common property. "if a husband and wife bear more obligations in raising their children, taking care of the elderly, and assisting the other party in their work, they shall have the right to claim compensation from the other party at the time of divorce." the other party shall give compensation. " The amount of compensation should be determined through a comprehensive and comprehensive investigation of the factors such as the time of living together after marriage, the woman's contribution to housework, the husband's economic income and the local general living standard. In divorce cases, it is difficult to prove and identify cases such as derailment and domestic violence. In order to fully protect the legitimate rights and interests of the parties, the court combines the existing evidence to fully mediate and balance the interests of both parties. It has a certain guiding significance to give a certain buffer to the fierce confrontation between the parties, ease the contradictions between the two sides, and effectively reach agreement and compensation.

To sum up, The compensation system of housework has been hotly discussed in the academic and judicial circles and has made relevant literature research and practical research, with various perspectives, but also lack of relatively perfect path regulation. Through the analysis of the relevant cases in practice and the retrieval and analysis of the existing literature, combined with the new situation of housework, this paper makes an in-depth analysis of the applicable scope, amount basis, applicable mode and burden of proof of the housework compensation system. in order to properly solve the plight of the relevant system.

2. Thejurisprudential analysis on the compensation system of housework

2.1. The concept of the compensation system of housework

Different scholars have different opinions on the concept of housework. Lin Hsiu-hsiung, a Taiwanese scholar, believes that although housework is a way of labor, housework is not commodity exchange labor and belongs to private labor, so it has no economic value. Housework should not be taken into account in the division of marital property during divorce. Professor Fujiko Yono, a Japanese scholar, has a different point of view. He believes that housework is not only useful, but also valuable. Whether or not to recognize the value of housework is related to the status of women in society and the family. As long as it is recognized that the wife has an independent personality, the wife should have the right to demand considerable remuneration for her own work. Housework is an indispensable means of production for labor reproduction, which of course produces value, and this value forms part of the value of labor, that is, commodity value. housewives can demand the additional value of housework from their husband's occupational income. [2]

The views of Chinese scholars Chen Wei, Zhang Hongyan, Xia Yinlan and Professor Fuji Yono are similar. they think that housework belongs to a special form of labor and has unique value. Professor Chen Wei insists on the theory of "compensation for loss of interests". If one party uses housework to support the other party to obtain a degree or vocational qualification certificate during the marriage, he should fairly and reasonably evaluate the value of the housework of the contributor

during the marriage. Then the recipient who has obtained "human capital" will give him the corresponding compensation. Professor Zhang Hongyan believes that housework is essential to maintain family life together and indirectly increases family wealth. The other party who loses his job and development due to housework is sufficient to affect his or her future property income and should receive financial compensation at the time of divorce. Professor Xia Yinlan further proposed from the connotation of human rights that recognizing the contribution of housework to the family and its impact on the human capital and expected interests of the husband and wife is conducive to maintaining the fairness and justice of the family and society. husband and wife can be encouraged to arrange family affairs and take care of family life according to the needs of family life and their respective conditions, which is conducive to the realization of substantive equality in the relationship between husband and wife. In addition, unlike the divorce damage compensation system, there is no fault party in the housework compensation system, and it is more to make up for the loss to the party who bears more family obligations than to punish the other party for the damage caused by the illegal act. Unlike the divorce assistance system, it is not due to serious financial difficulties in one's life after divorce, but based on the partner's contribution to the family during the duration of the marriage.

The views of the above professors comprehensively clarify the value of housework, discuss the rationality and necessity of housework compensation value, and provide a theoretical basis for the improvement of housework compensation system. Through the interpretation of different scholars, we can see that the housework compensation system is based on the important value of housework to the relationship between husband and wife and family life, and it is the compensation for the lost interests of housekeepers. Compared with the other party, one party with more family obligations loses more opportunities for the development of future ability, and is in a relatively weak position in terms of economic ability and social adaptability after divorce. The compensation for housework reflects the substantive equality of the relationship between husband and wife and is conducive to the stability of the family relationship.

The inherent legal principle of the housework compensation system can be understood as follows: first of all, in terms of the subject of power, it must be a party in the husband and wife who bears more obligations for raising children, taking care of the elderly, assisting the other party to work, before he has the right to claim compensation from the other party. Secondly, in terms of the scope of application, the housework compensation system applies to all marital property ownership, and is no longer limited to the marital separate property system. Finally, in terms of nature, the housework compensation system is a civil system with compensation and consolation. The specific method of compensation is negotiated by both parties, which can no longer be decided by the court, which embodies the principle of equality and autonomy of will in civil law. But it is different from the general civil damage compensation system, it occurs between specific civil subjects (that is, between husband and wife), based on legal reasons, only when divorce is filed, compensation can be claimed.

2.2. The value connotation of the compensation system of housework

As soon as the housework system was created, it was a great progress in the legal system of marriage in our country. [3]

First of all, it makes clear the value of housework. Housework and social work have the same foundation, and they are different forms of labor. Housework is also of great significance to social development. In the family model in which one husband and wife work and the other stay at home full-time, the full-time husband or wife gives up their own development opportunities and devotes more time and energy to the family, or when both parties have jobs, one side bears more family obligations, which is not only the support for the other party's work, but also the maintenance of family relations. In the traditional concept, housework is regarded as an obligation that women should undertake. The compensation system for housework negates this concept and advocates the substantive equality between men and women in a sense.

Secondly, it reasonably compensates the interests of the injured party. The party with more family obligations tends to be less involved in social production, its own human capital value is depleted,

and once divorced, it will be at a disadvantage in terms of employment and economic income. The compensation system for housework protects the rights and interests of the relatively vulnerable party in the marriage, which reflects the fairness and humanization of the law.

Finally, it maintains family harmony. If the husband and wife put more energy into family life, their energy in production activities will be relatively reduced, which is likely to lead to a widening economic gap between husband and wife, which will lead to family conflicts. The compensation for housework can not only promote the rational distribution of housework between husband and wife, make each have the opportunity to develop themselves and reduce family conflicts, but also affirm the husband and wife's contribution to the family, which is conducive to the creation of a good and stable family environment.

3. The compensation system for housework: an Analysis of the predicament

3.1. The applicable conditions are relatively rigid

On the one hand, the time condition of the right of claim for housework compensation is that in the case of divorce, it cannot be applied during the marriage and after divorce. During the existence of a marriage, when a husband and wife devote more energy to housework, they tend to have less economic income, and even some full-time husbands and wives derive their income entirely from their spouses and have weak economic independence. They are also groups that need compensation for housework. In addition, if the parties do not know that there is a housework compensation system at the time of divorce or do not exercise the right of claim for housework compensation for other reasons, then they will lose the right of claim after the conclusion of the legal proceedings for divorce. In real life, the party who bears more family obligations is often at a relative disadvantage in obtaining information, and they are not timely in collecting evidence and claiming rights. The financial disadvantages of many parties will be fully exposed only after a period of divorce, which makes some parties who do not decisively choose to use financial compensation at the time of divorce lose the protection of this system. It has caused great damage to its due interests.[4]

On the other hand, the essential condition for the application of the right of claim for housework compensation is that there is a legal and valid marriage between the two parties, which cannot be applied if the marriage is not valid or fails to perform the legal procedure. The effective state of marriage in China can be divided into three states: valid, invalid and revocable. Articles 1051, 1052 and 1053 of the Civil Code respectively provide for the circumstances of invalid marriage and revocable marriage. In the above cases, if the parties bear more family obligations, but their marital effectiveness is flawed, can the housework compensation system be applied at this time? Secondly, according to the data of the National Bureau of Statistics and the Civil Affairs Bureau, since 2013, the marriage rate in China has declined year by year, from 9.9% in 2013 to 5.4% in 2021. On the contrary, the proportion of unmarried cohabitation in China is on the rise. Although these groups do not have the legal appearance of marriage, they live in the name of husband and wife, the division of family gender roles is similar to legal marriage, and there is a fact of marriage. The legislative purpose of marriage in the Civil Code is to reduce the damage to the parties caused by divorce to a minimum, protect vulnerable groups, and realize the fairness and justice of the law. In the above cases, the party with more family obligations is not only unable to get a return by participating in the distribution of each other's wage income, moreover, due to the different direction of human capital investment, it leads to the decline of its own earning capacity and restricts its future development. The application of the compensation system for housework excludes these situations, which is inconsistent with the legislative purpose of marriage in the Civil Code.

3.2. The standard of the amount is different

The lack of clear standard of economic compensation is the main reason for the ambiguity of marriage theory and the difficulty of judicial practice. Although there are provisions on housework compensation system in our country, it is seldom applied in judicature, and most of the housework

compensation claims are rejected. How to define the benchmark of the amount of housework compensation is a difficult problem in this system.

On the one hand, the compensation standard is not clear. The basis of the claim for compensation for housework is that the husband and wife undertake more obligations in raising children, taking care of the elderly, assisting each other in work and so on. There is no corresponding judicial interpretation of "equal" and "more" in the provisions, which gives the judge greater discretion. What can be classified as family obligations? How can it be regarded as taking on more obligations? There are no clear answers to these questions in judicial practice. In the case of husband and wife living apart because of emotional discord or when one party bears the family "obligation" of the other party while the other party works all the year round, the judgment of "more obligation" in judicial practice is often relatively clear, but in the case of husband and wife living together, the proof of "more obligation" is more difficult. [5]

On the other hand, the amount of compensation is not clear. The specific method of compensation is first negotiated by both parties, which cannot be decided by the court. In China's first case in which the housework compensation system was applied, Wang, a full-time wife, received 50,000 yuan in compensation. Some people think that only 50,000 yuan will be compensated for the family after five years, and the compensation amount is relatively low. However, in the judgments on the application of the housework compensation system, most of the compensation amounts are between 10,000 and 100,000 yuan. What factors should the court consider when determining the amount of compensation? How can we balance the interests between the parties so as to protect vulnerable groups? Moreover, if the party with less family obligations is at fault in the marriage, can the party with more family obligations ask for more compensation for housework?

3.3. There is a deficiency in the way of application

On the one hand, in judicial practice, the specific form of compensation for housework is relatively single, and the court will basically only award compensation. In real life, compensation may not be what the right holder needs most. Compensation is divided into monetary compensation and non-monetary compensation, the current judicial decisions focus on monetary compensation, while ignoring non-monetary compensation. The party with more obligations, especially the full-time party, the focus of life is in the family for years, after divorce can not quickly adapt to society, financial compensation can not fundamentally solve the problem. The party with more family obligations has a lower income, and the full-time husband or wife even has to return to the job search after leaving the workplace for a long time. As a result, their living conditions after divorce are often much worse than before. The changes in life after divorce often lead to a psychological gap among this vulnerable group, and their psychological state also changes accordingly. Where do they live after divorce, given that most of the marriage houses are bought by each other? The party with more family obligations has a closer relationship with the child and has easier access to custody of the child, and it is an urgent need for this group to have a stable residence.

On the other hand, the method of payment of compensation is not clear. Is it a lump sum payment or an installment payment? how long is the payment period? Is it divided from the husband and wife's common property or from the other party's personal property after divorce? Only the specific amount of compensation is indicated in the relevant judgment, and there is no clear answer to these questions. In real life, the party who should pay compensation will delay the payment of compensation on this grounds, which undoubtedly causes great difficulties to the life of the party who should be compensated.[6]

3.4. Deviation of burden of proof

The proof of housework compensation system is difficult, which is also one of the reasons why it is not generally applicable in judicial practice.

Under the principle of "who claims, who gives evidence", the party who asks for compensation for housework should bear the corresponding burden of proof. Due to the closed and difficult

quantification of housework, the requesting party has great difficulties in collecting and preserving evidence. Family life is hidden, how much housework the husband and wife each undertake, only they know in their hearts, outsiders cannot know the whole picture, and the authenticity and objectivity of witness testimony are greatly reduced. Even if the elderly of one party or the children of both parties testify in court, the credibility of the testimony is difficult to determine. Family as a social unit of emotional ties, during the existence of marriage, most people do not collect and preserve the evidence of doing housework and taking care of the elderly and children, even if they intend to collect it. The triviality of housework also makes the collection of evidence more difficult.

In judicial practice, even if the party requesting compensation for housework collects evidence, it is difficult to reach the proof standard of "high probability" required by civil litigation, unable to support his claim for compensation, and is in a relatively inferior position in the lawsuit. For example, in a case tried by the Beijing Municipal Intermediate people's Court in 2018, even though the wife had proved the use of the wage card and the details of the family's expenditure, the court still refused to apply the housework compensation system on the grounds of insufficient evidence. It can be seen that the general rules of proof will lead to restrictions on the application of the divorce financial compensation system.

4. The compensation system of housework: the perfection of the path of Rule of Law

4.1. The application of housework compensation system should be extended to "the duration of marital relationship"

The application of the compensation system for housework can be divided into two stages [7]:

During the duration of the marital relationship. Many scholars believe that because during the existence of a marriage, both parties live together and husband and wife bear the obligation to support each other, the more housework paid by one party can be reasonably evaluated by expecting the other to support it. Therefore, it is not necessary to evaluate this during the existence of the marriage relationship. I don't quite agree with this view. The reason lies in: on the one hand, according to the principle of commonality of marital obligations, the life obligations arising from the establishment and existence of marital relationship should be borne by both husband and wife. During the existence of the relationship between husband and wife, if the husband and wife fulfill roughly the same life obligations, the problem of compensation from one party to the other will not occur naturally. However, when one party pays more life obligations, that is, engaged in more housework, there will be the problem of unequal performance of husband and wife's life obligations. In other words, one party possesses the value of housework of the other party free of charge because it is exempt from the obligations of life. On the other hand, according to the paid theory of housework, since workers who specialize in housework can be paid by providing services to some families, these housework should also be paid if they are done by housewives. This is because there should be no difference in nature and function between the same work done by others and by oneself.

When the marriage terminates and the common life disintegrates, the maintenance obligations between husband and wife are terminated. Those who do more housework, especially housewives, will also fail in their expectations of support from other parties. In this case, the compensation system for housework should be applied as a matter of course. This is because, as mentioned earlier, because women undertake all or most of the housework and sacrifice their development opportunities for the benefit of the family, they have more or less lost part of their employability, coupled with many unfair factors in society, women's employment opportunities and economic income after divorce are mostly lower than men's. Therefore, the human capital impaired by women as a result of housework needs to be compensated. The Marriage and Family Law is to achieve a balance of interests of all parties by compensating for the damage suffered by the weak in the divorce parties. As mentioned above, the author believes that the compensation system of housework should be applied during the period of marriage and divorce.

4.2. The scope of application of housework compensation system should be extended to "common property system"

The housework compensation system is to solve the problem that the value of housework is evaluated and recognized by the spouse. Under the separate property system, because the property acquired by husband and wife during the marriage is owned by each other, it is obvious that one party gains improper benefits from the value of housework of the other party without compensation and causes losses to each other. However, under the common property system, the problems of free possession and unjust enrichment are often ignored because of the division of husband and wife's common property. China's Marriage Law stipulates that it is not necessary to apply economic compensation for the equal division of husband and wife's common property in principle. [8]

However, in reality, there are many such situations: under the common property system, one husband and wife is usually the woman who undertakes most or all of the housework, the other party receives education or training, and filed for divorce after graduation, degree or practice qualification. The income of the party who does less housework has not yet been converted into tangible property, but only into increased earning capacity. Especially when the party who pays the housework even uses most or all of the husband and wife's common property to subsidize the education or training of the other party, the husband and wife's common property is often very little. In this way, if the housework compensation system is not applied, even if the insignificant joint property of husband and wife is distributed to the party who pays more housework, it will be very unfair and unreasonable. Especially after divorce, women lose part of their employability due to the negative impact of housework, as well as many social factors lead to women's employment and survival difficulties. If no corresponding compensation is given to women, this will be very disadvantageous to women. Therefore, under the joint property system of husband and wife, there is still room for the application of housework compensation system. There is no inevitable relationship between the application of housework compensation system and the type of marital property system.

Therefore, due to the limited scope of application of housework compensation system in our country, it does not meet the basic theory of housework compensation system and the actual requirements of marriage and family life in our country. The author believes that when amending the Marriage Law, the restriction on the scope of application of housework compensation should be abolished to make it applicable to all parties who occupy the value of housework of the other party free of charge.

4.3. The calculation method and factors that should be taken into account when stipulating the application of housework compensation system

In order to improve the compensation system of housework in our country, we must recognize that housework creates value and quantify the value of housework. Due to the increasing socialization of housework, how to calculate and measure its value has become an important issue. The author believes that the following two ways can be considered to measure: first, it can be calculated with reference to the value of socialized housework; second, it can be calculated with reference to the wages of family service personnel (such as nannies, hourly workers, etc.). [9]

But this is only the calculation method of housework compensation considered in theory, and in practice, the application of housework compensation is much more complicated. Because some housework is invisible, it has never entered the market and has not formed a stable price. For example, a wife's spiritual support for her husband, care for her children, support for the elderly, and so on, cannot be bought with money. This problem requires the externalization of the value of housework, through the analysis of the party who pays less housework to use the saved time and energy, in the career income to consider the amount of housework compensation. Therefore, it is also necessary for the judge to consider the relevant factual factors when deciding the specific amount of housework compensation. The author believes that these factors are mainly: the age and physical condition of husband and wife; the duration of marriage and the situation of raising and educating children; their employability and employment prospects; the property status of both parties; the contribution and

consumption status of both parties to the original marital property (including the housework undertaken by one party), and so on.

4.4. Restrictions on the Application of the compensation system for housework

In theory, there is no inevitable relationship between one party's right of claim for housework compensation and his fault of divorce. The main purpose of housework compensation is to avoid the occurrence of unjust enrichment because the value of housework is mainly occupied by one party during divorce. The basis of the existence of this right lies in the fact that one party paid more housework during the existence of the marital relationship, and these jobs were not recognized and evaluated at the time of divorce. The significance of divorce fault is to promote the stability of marital relationship by punishing the parties with fault and increasing the cost of divorce. [10] whether the claimant for housework compensation is at fault for the termination of the marriage cannot obliterate the fact that the performance of family life is not equal, that one party pays more housework and the other party pays less housework. The fault of divorce can lead to the right of claim for damages between the parties, but the right of claim for damages is not the same category.

Therefore, the right of claim for housework compensation should not be restricted by the unilateral fault of the obligee. Regardless of whether the other party is at fault or not, the party who pays more obligations can claim compensation, and its claim for compensation is not based on the fault of the other party. If the party who pays more obligations is at fault, it shall not deprive it of its right to claim compensation because of its fault. It still has the right to demand compensation for the obligations paid.

5. Conclusion

Starting with the basic theoretical research, this paper defines the unique value of housework, expounds the internal legal principle of housework compensation system, and points out the realistic predicament of housework compensation system. and combined with China's national conditions and foreign experience put forward the corresponding improvement measures. Due to the limitation of space, some issues have not been fully discussed, such as the improvement of compensation standards, we can further explore from the market price of domestic service; in terms of the burden of proof, if the burden of proof is applied, then what are the applicable conditions? It is believed that the introduction of relevant judicial interpretations and guiding cases in the future will make this system more perfect.

To sum up, the recognition of the social value of housework and the value compensation given by the family and society is an affirmation and respect for the work done by women for the family. When revising and perfecting the compensation system for housework in our country, legislators should consider how to protect women's rights and interests so as to realize the justice of legislation.

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