



A Study on the Reasonableness of Housework Compensation from a Comparative Law Perspective

Miao Chungang ^{a*}

^a Department of Political and Law, North China Electric Power University, Baoding, Hebei, China.

Author's contribution

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

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ABSTRACT

Traditional family relationships in law are characterized by patriarchy, where women's housework is a natural division of labor. In contemporary society, both China and Western countries emphasize the reasonableness of housework compensation from theoretical and institutional perspectives. From a comparative law perspective, China's housework compensation system, based on recognizing the value of housework, was officially established after several amendments to the Marriage Law. This legislative evolution is intertwined with changes in legal approaches to resolving marital disputes. The recognition of housework compensation in foreign laws varies due to differences in legal values and legislative traditions, represented by the German and American legal systems. German law, as a representative of the civil law system, adheres more to the employment theory in marital relationships, while American law views marriage more as a partnership. From a legislative perspective, the analysis of the reasonableness of housework compensation in Chinese law should be conducted in the context of the joint property system of spouses. The analysis path should consider the changes in the approach to resolving marital disputes in recent years. Divorce

*Corresponding author: E-mail: sdulmiao0753@sina.com, wyh231@163.com;

cases have shifted from the value orientation of divorce freedom to a judicial approach that appropriately returns to the family principle. This change in judicial values will in turn affect the perception of housework compensation.

Keywords: Housework compensation; joint property system; divorce relief.

1. INTRODUCTION

The value of housework began to be widely discussed by scholars in the 1960s. With the improvement of women's status, women's property rights were protected, and housework, as a "private" labor, gradually gained social recognition. Since the feudal period in China, the gender division of labor characterized by "men farming and women weaving" has been common. As a result of natural division, housework has existed as an accessory to marriage. Until 1950, Article 23, Paragraph 1 of China's first Marriage Law stipulated the principle of protecting women's rights in divorce. When a couple divorces, if no agreement is reached, the court may distribute property based on the principle of protecting the interests of women and children, excluding women's premarital property. However, during this period, traditional culture heavily influenced society, and "men as breadwinners and women as homemakers" remained mainstream thoughts. The legal provisions on marital property were vague, and housework was completely private with unquantifiable value. In 1980, Article 13 of the Marriage Law formally established the joint property system, where marital property is jointly owned by spouses. This allowed "housewives" or "househusbands" to share the income of the working spouse, acknowledging the value of housework to some extent.

With women re-entering the public labor field, they faced the "double burden" of professional and domestic labor. Considering that under a separate property agreement, housework could no longer be compensated through property division upon divorce [1]. Article 40 of the 2001 Marriage Law introduced a housework compensation system under the separate property regime, recognizing the value of housework at a new level. However, the stringent conditions for application made it difficult to widely apply in practice.

Entering the era of the Civil Code, the conditions for applying the housework compensation system expanded to the joint property system,

better aligning with the reality of most Chinese families. The newly revised Women's Rights Protection Law incorporated the "housework compensation system" from Article 1088 of the Civil Code's Marriage and Family Section, specifying in Article 68 that: "If the wife bears more obligations in raising children, caring for the elderly, and assisting the husband's work, she has the right to request compensation from the husband upon divorce." This means that women who undertake more housework in daily life can request compensation from their spouse upon divorce [2-4].

However, questions arise: What is the justification for the housework compensation system? Is it reasonable to apply housework compensation under the joint property system? Will changes in resolving marital disputes affect housework compensation? These issues are crucial to judicial decisions and further advancing the application and improvement of the housework compensation system.

2. ANALYSIS OF THE REASONABLENESS OF HOUSEWORK COMPENSATION IN FOREIGN LAW

2.1 Theoretical Analysis of Housework Compensation in Foreign Law

The justification for housework compensation in foreign law stems from recognizing the value of housework. The joint property system evaluates housework as part of joint property, acknowledging its value. However, in Marx's labor theory of value, housework as non-productive labor is deemed valueless. Adam Smith categorized labor into "productive and non-productive," with non-productive labor, which doesn't produce goods and generate net income, being excluded from the formation of value. This means excessive non-productive labor is a waste of social labor. Housework, as non-productive labor necessary for family sustenance, doesn't generate exchangeable goods or currency, hence deemed private labor without property division necessity [5-9].

However, with societal progress, categorizing labor based on whether it produces material goods is no longer meaningful, nor is there a need to curb the service industry. We should recognize labor producing non-material products like "pure services" as productive [10]. Housework, as a special labor form, is the foundation of family stability and contributes to social harmony. Recognizing its value protects traditional housewives and advances substantive gender equality.

Theoretically, American scholars view marriage as a partnership, where housework supports the husband's professional activities, maintained by joint labor, justifying joint property [11]. Some German scholars hold the employment theory, viewing marital relationships as employment where the husband employs the wife for housework, requiring payment upon divorce. Some Japanese scholars align with the unjust enrichment theory, arguing that the spouse bearing more housework sacrifices personal time and growth opportunities, benefiting the other spouse economically in the long term, justifying compensation upon divorce. The author agrees with the unjust enrichment principle, where housework saving family expenses benefits the other spouse, requiring corresponding benefit returns. With the development of the service industry, "domestic service" as an independent labor form has its market value [12] with the spouse's housework saving significant family wealth, necessitating the benefiting spouse's responsibility for corresponding returns. The traditional family values emphasize the rights of husbands, viewing women more as submissive figures. In the division of household responsibilities, caring for children and doing housework are considered the basic duties of the wife.

2.2 Legislative Provisions on Housework Compensation in Foreign Law

In the legislative context, the value of housework is recognized in many countries. The Swiss Civil Code stipulates reasonable compensation for contributions exceeding household maintenance. The German Civil Code allows living expenses claims for a divorced spouse unable to work due to child care or education.

3. THEORETICAL ANALYSIS OF THE REASONABLENESS OF APPLYING HOUSEWORK COMPENSATION UNDER THE JOINT PROPERTY SYSTEM IN CHINESE LAW

3.1 Legislative Analysis of the Reasonableness of Housework Compensation Under the Regime of Marital Community Property

In Chinese marital property law, the statutory property system dominates. Since the 2001 Marriage Law revision, emphasizing responsibility and fairness, the statutory property system has become more refined, with the value of housework widely recognized. The housework compensation system aimed to address inherent defects in the separate property regime, compensating through judicial attention to economically weaker spouses performing heavy housework [13]. However, the Civil Code's Article 1088 expands the housework compensation system to the joint property regime, questioning its necessity if the joint property system has its remedial mechanism.

Firstly, housework compensation isn't reassigning value to housework but compensating for the development opportunities lost by the spouse bearing more housework. Whether under separate or joint property regimes, the spouse bearing more family obligations faces reduced income and human capital accumulation, with future development opportunities lost unrecoverable by the other spouse's advancement [14]. This negative impact increases with the length of the marriage. In single-earner families, "full-time housewives" or "househusbands" lose expected retirement benefits. In dual-earner families, the spouse bearing more obligations sacrifices career development time, missing critical career development phases, necessitating housework compensation.

Secondly, the interests of the spouse bearing more obligations are often unprotected in property division. One situation is insufficient joint property to compensate for family obligations, leading to imbalance in evaluating housework. Another is higher professional income for the spouse bearing more obligations, where the other spouse gains more property under the joint property system, undermining housework's value.

Thirdly, applying housework compensation under the joint property system promotes family stability and social harmony. Housework compensation can become anticipated income, instilling trust in marital prospects, allowing more effort in housework without fearing lost benefits. Educational and care-related housework provides a good growth environment for children, while supportive housework fosters marital harmony. Expanding the system encourages men to share housework, promoting respect for housework, and advancing gender equality and social stability.

In conclusion, the legislative change in the Civil Code reaffirms the value of housework, improving China's divorce relief system. The housework compensation system effectively protects the legal rights of the weaker spouse in marriage, forming a complete relief system with divorce damage compensation and economic assistance.

3.2 Empirical Analysis of Changes in Judicial Approaches to Marital Dispute Resolution

For a long time, divorce case resolution emphasized divorce freedom, contributing to rising divorce rates and issues in children's education post-divorce. Recently, we advocate a return to family principles in resolving family disputes. The family principle in traditional Chinese law contrasts with Western law's emphasis on individual freedom. However, the current discussion of family principles involves new legal connotations, modifying the overemphasis on individual freedom. This appropriate return respects family values in judicial practice. When a spouse sacrifices self-development opportunities for family obligations, the weaker economic party facing unprotected rights contradicts fairness principles [15]. From this judicial perspective, the value of the wife's role in the division of household labor should be given sufficient attention. Respecting the value of the wife's contributions to household labor requires not only recognition of personal rights but also of property rights. In recent years, court rulings on housework compensation in marital and family disputes have conveyed this value in society [16].

4. CONCLUSION

The housework compensation system is based on re-evaluating family relationships and

housework value, recognized in both Chinese and Western legal developments. Despite theoretical differences, both recognize the value of housework in supporting family stability. Scholars abroad have also discussed the social value of housewives from economic, cultural, and social factors and have proposed legal and policy compensations [17]. However, the practical approaches to this issue vary by country due to differences in social traditions and cultures. The legislative changes in the Civil Code reaffirm housework value, promoting fairness and gender equality. The appropriate return to family-centered values means that the contributions of wives to the family receive greater legal recognition. In this model, there is a greater emphasis on the importance of the family in social governance. Judicial approaches evolving towards family principles will further enhance housework compensation system application.

DISCLAIMER (ARTIFICIAL INTELLIGENCE)

Author(s) hereby declare that NO generative AI technologies such as Large Language Models (ChatGPT, COPILOT, etc) and text-to-image generators have been used during writing or editing of manuscripts.

COMPETING INTERESTS

Author has declared that no competing interests exist.

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