

Empirical Research on Article 1088 of the Civil Code: The Divorce Domestic Labor Compensation System

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Abstract: With the development of society and the increasing average educational level of women, the division of labor within families and society should be redefined. However, due to the influence of traditional Chinese culture and long-standing customs, the majority of people still adhere to the idea of men being breadwinners and women being responsible for domestic duties. This contradiction in societal perceptions results in various social issues, such as a rise in women's reluctance to marry, an increase in divorce rates, and a decline in birth rates. Among these issues, domestic labor plays a significant role in family dynamics. In response to this, Article 1088 of the Chinese Civil Code has been updated to elevate the importance of domestic labor in society, particularly in the context of divorce and the compensation system associated with it. However, through an analysis of 228 legal judgments, the author believes that there are certain problems with the formulation of Article 1088, which prevent it from achieving its legislative intent, i.e., providing protection and benefits for those burdened with significant domestic labor responsibilities. The author suggests that the domestic labor compensation system and its related regulations still require further improvement. Drawing comparisons with similar systems in other countries, the author puts forward recommendations for the enhancement of Article 1088.

Keywords: economic compensation, divorce disputes, payment standards, divorce domestic labor compensation system

1. Introduction

The Civil Code of the People's Republic of China was voted and approved during the Third Session of the Thirteenth National People's Congress on May 28, 2020, and officially came into effect on January 1, 2021. The "Marriage and Family" section of the Civil Code serves as the fundamental law regulating marital and family life, and it requires amendments and updates to align with the developments in society. The Civil Code addresses several issues of public concern, sparking widespread discussions, particularly regarding Article 1088.

Article 1088 of the "Marriage and Family" section in the Civil Code is derived from Article 40 of the 2001 "Marriage Law." This article deals with the issue of compensation for domestic labor in cases of divorce. Originally, it stipulated that "if one party has borne greater obligations in child-rearing, caring for elderly relatives, and assisting the other party's work during the marriage, that party has the right to request compensation from the other party upon divorce, and the other party shall provide such compensation." The revised version in the Civil Code now reads as follows: "If

one party has borne greater obligations in child-rearing, caring for elderly relatives, and assisting the other party's work during the marriage, that party has the right to request compensation from the other party upon divorce, and the other party shall provide such compensation. Specific methods shall be agreed upon by both parties; if no agreement is reached, the court shall make the judgment."

The amendment to Article 1088 in the Civil Code aligns with the legislative concept of safeguarding vulnerable groups and responds to the demands of the times and society. It provides a legal basis for claims of economic compensation on behalf of the party burdened with greater obligations. However, due to the vagueness and abstract nature of the provisions in Article 1088 and the lack of specific detailed regulations, the application of this article in actual cases becomes challenging, and the criteria for determination remain relatively unclear.

This paper employs empirical research, literature analysis, and comparative analysis to examine the judicial practices regarding divorce economic compensation. Through this analysis, it derives conclusions concerning the calculation standards for compensating missing domestic labor and identifies cases where the compensation is insufficient. Building upon research into previous literature and works related to divorce economic compensation and the corresponding legal provisions in other countries' marriage laws, the paper presents recommendations to enhance the divorce domestic labor compensation system.

2. Evolution and Judicial Practice of China's Divorce Domestic Labor Compensation System

2.1. Evolution of the Divorce Domestic Labor Compensation System

Domestic labor is an essential contribution within the family, though it is difficult to directly quantify its social value. However, in the general consensus of social values, domestic labor is recognized as a significant contribution made by one spouse to family life, and the party providing such labor should be compensated upon divorce. As a response to this recognition, the "Marriage Law" established the system of divorce economic compensation in 2001. Building upon this foundation, the 2020 "Civil Code" further refined and improved the compensation system with the modification to Article 1088.

Compared to the provisions in 2001, the modification to Article 1088 in the "Civil Code" includes the following changes: Firstly, it removes the restrictive condition of "the property acquired by each spouse during the marriage shall be owned separately based on a written agreement." Secondly, it introduces the application rule that "specific methods shall be agreed upon by both parties; if no agreement is reached, the court shall make the judgment." These modifications expand the scope of application for divorce domestic labor compensation, providing clarity on how to resolve disputes related to such compensation. These changes play a positive role in respecting family ethics and promoting the principles of gender equality.

2.2. Judicial Practice

By categorizing 233 civil cases cited with Article 1088 as the basis for judgment on the judicial documents website, they can be primarily divided into two types: one where there is a divorce agreement between the spouses, and the other where there is no divorce agreement between them. By analyzing judicial verdicts, a pattern emerges: for the first type of divorce dispute, where there is a divorce agreement between the spouses, the court will recognize the legality and validity of the divorce agreement. Both parties will be legally bound by the agreement, and the court will rule for the fulfillment of obligations according to the terms of the agreement.

In divorce disputes without a divorce agreement, if the plaintiff presents a claim for compensation for housework labor, the court will assess whether the plaintiff provides sufficient and credible evidence to prove that they have taken on a significant portion of the household chores before making

a judgment. However, based on the author's statistics, even in cases where the court acknowledges that the plaintiff has provided convincing and ample evidence, establishing them as the party bearing a "heavier burden of obligations" among the spouses, the court often does not fully support the plaintiff's requested amount for economic compensation. Instead, the court tends to recalculate the compensation amount, and the specific method and criteria for this recalculation are unknown. Nonetheless, the observed pattern is that the compensation awarded typically does not exceed 50,000 yuan.

3. Problems with the Chinese Divorce Housework Compensation System

3.1. Unclear Concept of Economic Compensation

The current legal system lacks a clear, unified, and authoritative concept of divorce housework compensation, which results in excessive discretion given to judges. As a consequence, compensation amounts vary significantly for similar cases, affecting the authority of the law and ultimately hindering the achievement of the intended goals of the housework compensation system in terms of protection and reasonable compensation.

In a narrow sense, household chores compensation refers to the household tasks, including taking care of children, doing laundry, and cooking, among others, that are necessary to maintain the normal functioning of family life. In typical cases, judges define household chores compensation as "compensation given to the party burdened with more household chores, namely, the one who bears more obligations in raising children and taking care of the family." However, in a broader sense, household chores compensation should not be limited to compensating for the chores themselves. This would lead to the idea that the contributions of the "party burdened with more household chores" in the family are only equal to handling household tasks, raising children, and caring for the elderly, while ignoring the personal development and job opportunities they give up in doing so [1].

The author believes that household labor compensation should be defined as follows: It should be the sum of compensation given to the party who bears a heavier burden of household labor and sacrifices personal development opportunities and the value of the burdened household labor. Household labor should be a shared responsibility between both partners, but for the maximization of family interests, one party often takes on a greater burden. This "sacrifice" made for the family should be acknowledged, and the compensation should not only be equivalent to the value of domestic services. Accordingly, the household labor economic compensation system refers to the system where, during a divorce, the "party bearing a heavier household burden" has the right to request compensation from the other party for the value of the household labor, restoring development opportunities, and other reasons.

3.2. Difficult to Prove and Low Support Rate

Using the keywords "Article 1088" and "Civil Case Causes," the author conducted a similar case search on the China Judgments Online website, resulting in a total of 228 legal documents. Out of these, the author further classified 228 documents and performed a search using the keyword "divorce agreement," which yielded 36 legal documents, accounting for 15.79% of the total. This indicates that the majority of compensations for domestic labor in divorce cases are determined by court judgments. The court needs to base its judgment on the evidence presented by the requesting party. However, due to the closed nature of domestic labor, which takes place within the confines of the family, it becomes challenging and complex to gather evidence, making it extremely difficult for the requesting party to provide sufficient proof.

For cases involving no pre-agreed economic compensation or cases without divorce agreements, they are divided into two categories: cases where the court supports the request for higher domestic

labor compensation and cases where the court does not support it. Among these cases, there were 71 cases that received support, accounting for 37% of the total cases without divorce agreements. The court cited “insufficient evidence” or did not specify the reasons for non-support in the judgment in 63% of the cases. This indicates that in practice, the support rate for Article 1088 is low when there is no pre-agreed “divorce agreement” between both parties.

3.3. Lack of Calculation Standards and Insufficient Economic Compensation Difficult to Prove

3.3.1. Lack of Calculation Standards

By comparing two cases from the China Judgments Online website, both plaintiffs presented clear evidence requesting domestic labor compensation (Table 1). Considering the different factual circumstances of the marriages involved, judges should have the discretion to make independent judgments. However, they both awarded the same compensation of 50,000 yuan. Specifically, there were significant disparities in the factual circumstances of the two marriages. One marriage lasted for 5 years, while the other lasted for 32 years. Regarding the behavior of the husbands within the marriages, one was only focused on work and showed no care or involvement in family affairs, while in the other case, the husband not only did not work but was also involved in extramarital affairs. For both cases to result in the same domestic labor economic compensation of 50,000 yuan, the author considers it highly unjust and indicative of the current lack of standardized criteria for domestic labor economic compensation, with inconsistent standards across different regions.

Table 1: Case comparison.

	Marital Duration	Child-Rearing Situation	Additional Circumstances	Domestic Labor Compensation
Case 1	5 years	Single son	After marriage, the wife took care of the child and handled all household chores, while the husband showed little to no interest or involvement in any family matters besides his job	50,000 yuan
Case 2	32 years	Single son	For over thirty years, the husband did not work or have any financial income, and all household expenses were solely borne by Ms. Qi. Additionally, the husband had an extramarital affair.	50,000 yuan

3.3.2. Insufficient Compensation Amount

Although the Civil Code, through Article 1088, acknowledges the value of domestic labor at the legal level, the legislative intent behind Article 1088 is to prevent women from lacking economic capacity due to engaging in more family obligations [2], ensuring their legitimate rights are protected during divorce, and achieving substantive equality. However, examining the typical cases published by various people’s courts, it can be seen that this spirit is not reflected in the judgments.

Regarding the compensation amount, in divorce disputes where there is no pre-agreed divorce agreement and economic compensation is granted, the court judgments vary significantly, ranging from 5,000 yuan to 200,000 yuan. The average compensation amount is 33,500 yuan, with a median of 25,000 yuan. The highest compensation awarded is 200,000 yuan, and the lowest is 5,000 yuan,

indicating a significant disparity in compensation amounts and the lack of a unified basic compensation standard (Table 2).

Table 2: The value of the amount of judgment in cases without divorce agreement (Unit: thousand).

average	median	max	min	Max-min
33.5	25	200	5	195

In divorce disputes with a pre-agreed divorce agreement, the average compensation amount is 264,500 yuan, with a median of 100,000 yuan. The highest compensation awarded is 1,000,000 yuan, and the lowest is 3,000 yuan. Comparing the situations with and without a pre-agreed divorce agreement, there is a significant difference in the average domestic labor compensation amount, with a huge gap of 211,000 yuan between the compensation amounts (Table 3).

Table 3: with a divorce settlement of the case judgment amount related to the value.

average	median	max	min	Max-min
264.5	100	1000	3	997

(Unit: thousand)

For divorce disputes without a pre-agreed divorce agreement and where the compensation is supported, 87% of the parties receive compensation amounts of fifty thousand yuan or below (figure 1). On the other hand, in cases with a pre-agreed divorce agreement and supported compensation, the distribution of compensation amounts is relatively even (figure 2). Compared to situations without a pre-agreed agreement, there were no instances of parties receiving compensation exceeding 200,000 yuan (with only one case receiving 200,000 yuan as compensation). However, among the parties with a pre-agreed divorce agreement, 17% received compensation ranging from 200,000 to 1,000,000 yuan (Figure 2).

By comparing the data, it is evident that there is a significant disparity between the domestic labor compensation amounts awarded by the courts and those agreed upon by both parties in divorce agreements. The compensation amount in a divorce agreement represents the genuine intention and acknowledgment of the value of domestic labor, as both parties agree and recognize the worth of the agreed-upon compensation. Therefore, it can be inferred that the domestic labor compensation amounts awarded by the courts may not align with the realities of life and do not correspond to the public’s perception of the value of domestic labor (Figure 2).

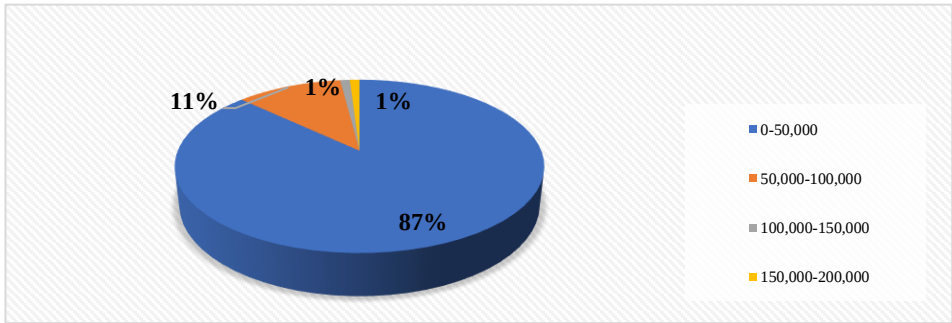


Figure 1: Proportion of financial compensation for domestic work excluding divorce settlement.

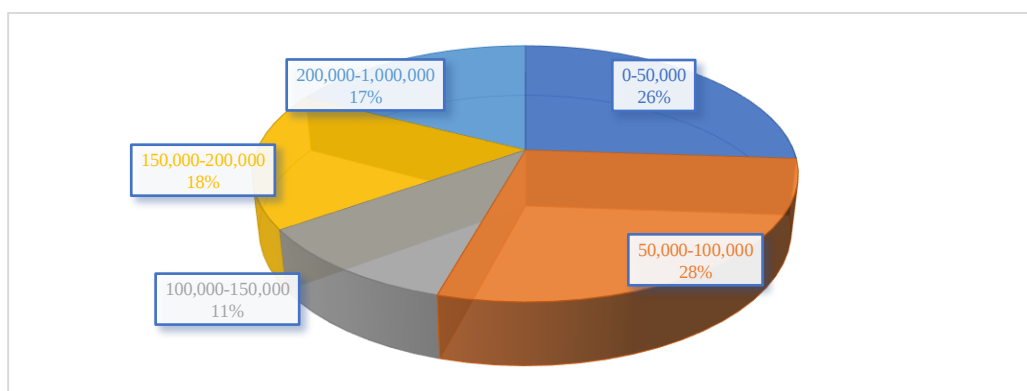


Figure 2: Proportion of financial compensation for domestic work with divorce settlement.

4. Establishment of Domestic Labor Compensation Systems in Other Countries

4.1. United States

In the United States, the majority of states follow the principle of equitable distribution, which does not inquire about the specific acquisition time or method of property, regardless of whether it was acquired before or during the marriage. When dissolving a marital or cohabitation relationship and dividing property, the following factors are primarily considered: (1) Contributions made by each party to the acquisition of family property, including the contributions of one party through domestic labor. (2) The specific value of the property being divided to one party. (3) The duration of the marriage. (4) The economic circumstances of both parties when dividing the property.

In practice, judges have considerable judicial discretion and can use specific case considerations to apply a certain degree of unequal distribution of joint property based on the economic situations of both parties.

The United States also stipulates that if the supported party's quality of life significantly declines due to divorce, and this is a result of assuming more household chores and giving up or affecting their own career development and economic income during the marriage, leading to a decrease in their financial income and making it difficult to maintain their original quality of life after divorce, then, based on the pursuit of fairness and the value of domestic labor, the alimony system is invoked to provide assistance and compensation. Although the United States is an unwritten country, some established laws regulating marital and family legal relationships have become the mainstream in practical application. In practice, the United States commonly uses "maintenance" [3], which refers to the financial support obligation after divorce, to help maintain the lower-income party's quality of life during the period of marriage. The main considerations [4] include, but are not limited to, the parties' income and property, their employment abilities, the standard of living during the marriage, each spouse's contributions to the other, faults, and prenuptial agreements.

4.2. Germany

The German Civil Code clearly stipulates: "Both spouses are mutually obligated to support the family appropriately through their labor and property. When the management of the household is entrusted to one spouse, that spouse generally fulfills their duty of supporting the family through labor." This affirms the value of domestic labor in contributing to the family and increasing its wealth, recognizing that both spouses bear different obligations. Germany and the United States have similarly established systems to compensate the party burdened with more domestic labor in case of divorce. Germany, for instance, has established restorative post-divorce support. After divorce, one party needs to provide

support to the other within a certain period, to help them gradually regain the ability to support themselves in the social market. However, the application of the restorative post-divorce support system must meet specific fair and statutory conditions. Regarding the calculation of the support amount, Germany does not specify a specific formula but primarily considers the living standard at the time of divorce, sometimes also taking into account the standard of living during the marriage. The support is generally granted indefinitely, until the recipient remarries or passes away, the support entitlement is restored, or the supporting party passes away. However, if the recipient remarries, divorces again, and continues to care for the children from the previous marriage, the support entitlement will be reinstated.

5. Recommendations for Improving the System of Economic Compensation in Chinese Divorces

5.1. Introduction of Divorce Maintenance System

In countries where the divorce maintenance system is already in place, it has faced criticism. Some scholars argue that for individuals who have already divorced, this system may hinder the remarriage freedom of the party responsible for paying the alimony. In other words, burdened by the financial support of the previous marriage, it becomes difficult for them to enter a new marriage. However, the author believes that this system is based on the principles of fairness and justice in society. It serves as a compensation mechanism for the party who shoulders a greater burden of domestic duties during the marriage or sacrifices their own development opportunities for the family or the other party. Simultaneously, it protects the economic weaker party's freedom to divorce within the marriage [5].

5.2. Recognition of the Function of Indirect Evidence in Adjudication

In divorce cases where parties request economic compensation, they are required to provide evidence demonstrating their greater contribution to domestic duties within the family. From the search results on the judicial document website, many cases have been dismissed due to a lack of evidence. Based on the principles of legal fairness and justice, in such unique cases where direct evidence is difficult to obtain and provide, indirect evidence should be fully recognized. Judges should exercise their discretion based on legal principles and common sense, rendering judgments that are both legally sound and reasonable.

5.3. Clear Calculation Standards

Some scholars have proposed adopting a reference from Swiss regulations, wherein the party who undertakes more domestic duties in the marriage has the right to request the other party to provide financial support for their free use. However, the author does not agree with this proposal. Considering the cultural differences in Chinese family values, such a system may not be applicable in China and may likely result in low applicability rates. It might fail to address the root of the problem and even lead to increased conflicts within families. The author suggests that quantification of domestic duties can be achieved through judicial interpretations. In cases of divorce or other situations requiring property division, contributions made by each party to the family can be accurately assessed and calculated.

Currently, there are two main viewpoints regarding the calculation standards for economic compensation in divorce cases related to domestic duties. One group advocates for a unified calculation formula, while the other group advocates for considering specific factors. Each method has its advantages. The first approach is beneficial for improving judicial efficiency and reducing the burden on the parties involved. However, it may result in difficulties in enforcing the final judgment.

For instance, if the paying party lacks the financial capability to fulfill the obligations, solely relying on a calculation formula might render the judgment meaningless and unenforceable.

On the other hand, adopting a method that takes relevant factors into account allows for a case-by-case evaluation. This approach better achieves substantive fairness and justice, granting judges discretionary power while providing some constraints [6].

The author believes that when exercising discretion in determining the amount of economic compensation for domestic duties in divorce cases, the following factors should be taken into consideration:

(1) Duration of the marriage: This factor is also commonly considered by countries that acknowledge the social value of domestic labor when establishing reference factors. It allows for a reasonable inference of whether the marriage was of short or long duration, enabling a more objective and fact-based calculation of compensation for domestic duties.

(2) Labor time, intensity, and complexity: Each household's specific circumstances are different, so different levels of compensation should be established based on factors such as the tasks, intensity, and whether professional help is employed for domestic duties.

(3) Basic living standards of local residents and the economic income of the other party: It is essential to consider the basic living standards of the involved parties' usual place of residence and combine them with an analysis of the other party's economic income. The author does not recommend equating the contributions and sacrifices made by the party who "bears more obligations" in the household with the market value of domestic service personnel [7]. Instead, the compensation amount should also consider the economic income of the other party. This approach ensures that the compensation is reasonable and affordable, avoiding the risk of overriding the judgment by imposing an unaffordable compensation amount while ensuring a fair and reasonable compensation for the party who contributed more to the household duties [8]. This approach helps prevent the achievement of formal justice while neglecting substantive justice [9].

In summary, the author suggests designing a unified calculation formula based on the duration of the marriage, labor intensity, and local residents' basic living standards. Then, considering other circumstances, such as the economic income of the other party [10], the judge should exercise their discretionary power to legally and reasonably determine the compensation for the party who sacrificed personal development opportunities and contributed labor value due to family responsibilities. This not only provides both parties with a reasonable expectation of domestic compensation but also takes into account the realistic factors of personal development. In doing so, it not only better compensates for the value of domestic labor but also promotes reasonable negotiation or shared responsibility for household duties within the family.

6. Conclusion

The author hopes the information in this template useful in the preparation of the submission. The contributions and sacrifices made within a marriage are based on voluntary premises. However, requesting economic compensation for these contributions during divorce may seem somewhat unreasonable. Nevertheless, in order to prevent hindering the freedom of divorce for either party, protect the legitimate interests of the party who bears a greater burden of domestic duties, and maintain the post-divorce standard of living, so that neither party suffers losses or gains in the divorce, the author believes that economic compensation should be provided. Based on the analysis of judicial decisions from 2020 until the present, several practical issues have been identified regarding the application of Article 1088. These issues include the lack of clarity in the concept of economic compensation, low acceptance rates of claims under Article 1088, difficulties in obtaining and collecting evidence, and the absence of clear calculation standards resulting in insufficient compensation amounts.

To address these issues, the author conducted research by examining relevant systems in the United States and Germany and proposed improvements to Article 1088. The suggested improvements include introducing a divorce maintenance system, recognizing the function of indirect evidence in such cases, clearly defining calculation standards and formulas for compensation amounts in the judgment, and granting judges a certain degree of discretionary power within limits. The author hopes that the divorce economic compensation system can be more accurately and universally applicable in such cases, fulfilling its original intent to ensure fairness and justice within marriages.

References

- [1] Fineman, Martha. *The Myth of Autonomy: Dependency Theory* [M]. Translated by Li Xia. Beijing: China University of Political Science and Law Press, 2014: 118.
- [2] in Mei. *Understanding and Application Research on Divorce Economic Compensation* [J]. *Jiangsu Social Sciences*, 2021(04): 130-138.
- [3] Xia Yinlan: "Modern Marriage and Family System in the United States," *China University of Political Science and Law Press*, 1999 edition, page 1.
- [4] Xia Yinlan: "Modern Marriage and Family System in the United States," *China University of Political Science and Law Press*, 1999 edition, pages 188-192.
- [5] Ran Qiyu. *Research on Divorce and Custody System* [M]. Beijing: People's Publishing House, 2013: 45.
- [6] Zheng Lüfeng. *A Brief Discussion on the Divorce and Custody System* [J]. *Journal of Henan Institute of Judicial Police Officers*, 2016(3): 85-87.
- [7] Liao Yuhang. *Estimation of the Value of Household Labor* [J]. *Statistics and Decision*, 2018(8): 38-42.
- [8] Song Ping. *Reflections on the Alimony System for Divorced Couples* [J]. *Rule of Law and Society*, 2015(5): 43-44.
- [9] Fineman, Martha. *After Many Years, Equality Still Not Achieved - Debates on Civil Rights, Autonomy, and Gender Rights* [J]. Translated by Wang Xinyu. *Comparative Legal Studies*, 2014(3): 165-174.
- [10] Li Jun. *Research on the Divorce Relief System* [M]. Beijing: Law Press China, 2008: 23.