

Research and Establishment of the Marital Tort Liability System in Marriage Law

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Abstract: With the development of society and the innovation of people's ideas, in our country, marital infringement has become a common problem, and people's ideas about marriage are gradually changing. In traditional Chinese marriage customs, the idea that men are superior to women is a common problem for couples. The equal status that should be enjoyed by both parties cannot be effectively guaranteed. Due to imperfect legislation, this problem cannot be effectively solved in judicial practice. The formulation of modern marriage laws has effectively eliminated this traditional marriage model. There are existing drawbacks. The establishment of a sound liability system in the Marriage Act will enable the marriage relationship to have protected rights and interests and to be penalized accordingly, thus enhancing the legal rights of the marriage law. It will enable the public's rights and interests in marriage to be more effectively and robustly protected by law, in order to fulfil the need for improved marriage and family legislation and stable marriage and family harmony.

1. Introduction

As one of the most important social relationships in human society, marriage carries people's love, responsibilities, obligations and rights. It is also an inevitable stage in maintaining human survival and development. However, in the marriage relationship, there have been some intra-marital infringements that have occurred from time to time, seriously damaging the legitimate rights and interests of both parties in the marriage relationship. Marital torts include but are not limited to domestic violence, extramarital affairs, financial control, abuse and abandonment of family members, etc. These acts not only cause serious damage to the person, property and freedom of the offended party, but also affect the stability and harmony of the marital relationship itself. In our country's marriage law, for a long time, it has been difficult for the infringed parties in many marriage relationships to receive due protection and compensation. In order to solve this problem, our country has gradually improved the liability system for tort compensation within marriage to protect the legitimate rights and interests in the marriage relationship.

2. The Concept and Form of Marital Tort

Marital tort refers to the behavior of one or both parties in the marriage relationship that violates the

legitimate rights and interests of the other party, causing the other party to suffer harm or loss ^[1]. There are many forms of marital infringement, including but not limited to the following:

2.1 Domestic Violence and Insult

Domestic violence is a serious violation that often results in physical and psychological harm to the victim. In domestic violence relationships, perpetrators often use violence such as intimidation, beatings, threats, and insults to gain control and dominance over the victim. In addition, domestic violence can also include forms of sexual assault, abuse, and financial oppression. Victims may find it difficult to escape a violent relationship due to fear of calling the police or lack of financial support. The crime of insult refers to the use of violence or other methods to openly demean the personality of others and destroy the reputation of others, and the circumstances are serious. As a result, family victims lack independent personality and self-esteem in daily life. Domestic violence and insults not only harm individuals, but also destroy the harmony and stability of family and society, and cause mental and physical trauma.

2.2 Cheating

Extramarital affairs refer to one or both parties in a marriage establishing a non-marital relationship with others outside the marriage and maintaining an intimate relationship with a third party, which leads to emotional breakdown in the marriage, a decrease in trust between husband and wife, etc. The existence of an extramarital affair may damage trust and communication between a couple, leading to the breakdown of the marriage. At the same time, the occurrence of an extramarital affair may also have a negative impact on the other spouse and children, such as psychological harm and financial burden. The impact of the breakdown of the relationship between husband and wife on the children is subtle. Although the marital relationship is based on love and commitment, the existence of extramarital affairs may threaten these values and beliefs, so that modern young people have a fear of love.

2.3 Economic Control

Financial control is a vicious form of control and deprivation, usually by one or both parties in a marriage or partnership using financial means to control the other in real time. This control may include not allowing the other party to obtain independent financial support, controlling the other party's spending, forcing the other party to give up work, education or social activities, etc. Financial control may result in the other party being completely financially dependent on the controller, and thus unable to make independent decisions or escape the toxic relationship. This violation can have long-term negative consequences on the victim's economic and social status. For example, low self-esteem and fear caused by lack of financial control often appear in life.

2.4 Abuse and Abandonment of Family Members

Abuse and abandonment of family members is a behavior that seriously damages the physical and mental health of the family, and is also a decisive factor in the destruction of family relationships. The abused and abandoned are often members of the family who lack the ability to defend themselves and live independently. In fact, they are mostly women, children and the elderly. As a result, the rights of abuse and abandonment have been seriously infringed.

3. The Necessity of Establishing a Compensation System for Marital Torts

3.1 Establishing a Civil Compensation System for Marital Torts can Effectively Protect the Rights and Interests of Couples

In family life, marital torts not only have a serious negative impact on the relationship between husband and wife, but also cause irreversible losses to the lives of both spouses. However, although my country's current civil compensation law regulates torts such as personal injury and property loss, torts in marital relationships are only sanctioned by laws such as the Marriage Law, and there are no special compensation provisions ^[2]. Therefore, establishing a marital infringement compensation system can better protect the legitimate rights and interests of couples and provide better protection for the infringed party. At the same time, torts within marriage will also affect the relationship and trust between husband and wife, and the establishment of a compensation system can increase the cost of torts, thereby reducing disputes and conflicts between husband and wife.

3.2 Establishing a Civil Compensation System for Marital Infringement Damage is an Effective Means to Maintain Family Stability

The marital relationship is the foundation of the family, and infringements within marriage can easily lead to conflicts and conflicts between husband and wife, thereby affecting the stability of the family. The establishment of a marital tort compensation system can better resolve disputes in the relationship between husband and wife, maintain family stability, and promote family harmony. In addition, establishing a compensation system for marital torts can also prevent and deter marital infringements and reduce the occurrence of family disputes from the root cause. During the specific implementation process, issues such as the amount of compensation, identification of infringement, and determination of liability should be fully taken into consideration to ensure that the compensation system is fair, reasonable, and effective. At the same time, legal publicity and education should also be strengthened to raise public awareness of marital infringements and promote the development of family harmony and stability.

3.3 The Establishment of a Compensation System for Marital Damages is a Need to Maintain the Authority of the law

In the operation of the law, it is necessary to ensure the unity and completeness of the law and avoid legal gaps or overlaps so that the law can operate normally in society. However, the current civil compensation law in our country only covers compensation provisions for general infringements. There are no compensation provisions specifically for marital infringements, which cannot form a strong legal protection and safeguard the legitimate rights and interests of persons who have been infringed during marriage. Therefore, the establishment of a compensation system for marital infringement can fill the legal gap, improve our country's legal system, make the application of the law more uniform, and better protect the rights of those who have been infringed during marriage. This not only helps safeguard the legitimate rights and interests of couples, but also helps maintain social stability and justice and achieve the fair and unified operation of the law.

3.4 Preventing the Occurrence of Torts within Marriage

The marital infringement compensation system can clarify the nature and consequences of the infringement and provide effective punishment and warning for the infringement. When infringers face certain legal and financial compensation penalties, they will be more cautious about the rights and

interests in the relationship between husband and wife. When intentional violations occur, they can view and think more rationally about what is at stake, thus avoiding or minimizing violations. On the other hand, establishing a marital infringement compensation system can also promote harmony and understanding in the relationship between husband and wife, enhance mutual trust and respect between husband and wife, and better maintain the equal relationship between husband and wife. The establishment of a compensation system will encourage both parties to handle conflicts in the marital relationship more rationally and resolve disputes through consultation and negotiation, thereby enhancing mutual understanding and communication and reducing unnecessary conflicts and disputes. At the same time, the injured party has received reasonable compensation and can better safeguard his own rights and interests, thereby avoiding the vicious circle of the relationship between husband and wife and reducing or avoiding adverse social impacts.

4. The Establishment Process and Current Situation of the Marital Tort Liability System

The establishment of the liability system for marital torts is one of the important stages in the development of my country's marriage law. In the early days of the founding of New China, due to the establishment of the socialist system and the promotion of universal education, marriage relationships in our country were gradually standardized and protected. However, due to the influence of traditional concepts and the imperfection of the legal system, especially in backward areas or remote rural areas, infringements within marriage are more serious. The establishment of a liability system for liability for torts within marriage still faces many problems. In the "Marriage Law of the People's Republic of China" revised in 1991, the liability for compensation for torts within marriage was clearly stipulated for the first time. According to the provisions of this law, if one or both parties infringe upon the other party's personal, property, honorary rights and interests during a marriage, they shall be liable for compensation^[3]. This provision has enhanced the legal effect of marital tort liability to a certain extent, but there are still many problems in practice. On the one hand, there is some uncertainty in the legal application of the marital tort liability system. For example, how to determine the specific acts of infringement within marriage, how to calculate the amount of compensation, how to determine the division of responsibilities between husband and wife, etc. These require further research and discussion by the legal and judicial circles. On the other hand, there are also certain difficulties in enforcing liability for tort compensation within marriage. Some infringements occur within the family and are difficult to prove. As the saying goes, it is difficult for an upright official to resolve household affairs, which is an eternal problem. Moreover, it is affected by the family relationship between family members. For the injured party, there is also a certain amount of psychological pressure and difficulty in applying for compensation, so the authority affecting the tort damage liability system.

5. Plan for Constructing a Damage Compensation System for Marital Infringement

5.1 Clarify the Constituent Elements of Marital Torts

Marital tort refers to the infringement of one party's legitimate rights and interests by the other party in the marriage relationship, causing damage to the legitimate and legitimate interests that should be enjoyed. In order to establish a damage compensation system for marital infringement and effectively protect the vital interests of the infringed party within marriage, it is necessary to clarify the constituent elements of marital infringement in order to identify and compensate for the infringement and reasonably and effectively protect the legitimate rights and interests of the infringed party. The current constitutive elements of marital torts in our country include: first, the existence of a marital relationship, that is, the tort must occur within the effective existence of the marriage relationship; second, the subject of the tort must be one party in the marriage relationship and have independent

civil rights. The two parties to the subject, namely husband or wife; third, the tort must be illegal and wrongful, that is, it infringes upon the legitimate rights and interests of the other party, and the infringing party should bear fault and responsibility for the infringement; fourth, the injured party must be at fault during the marriage. During the relationship, they suffered mental, material, and physical destruction and harm ^[4]. Of course, in specific legal and life practices, in order to better determine the attribution of liability for marital torts and more reasonably and effectively protect the legitimate rights and interests of all parties, more detailed constituent elements can also be formulated based on the actual situation, such as the type of infringement, time and place of occurrence, etc.

5.2 Appropriately Expand the Scope of Damages for Marital Infringement

Currently, my country's Marriage Law provides civil remedies for violence against spouses in a marital relationship, but does not clearly provide for other forms of marital infringements, resulting in the inability to obtain effective compensation and punishment for some infringements. Therefore, expanding the scope of damages for marital torts should include the following aspects: First, it should be clearly stipulated that all damages caused by marital torts should be compensated, including property losses, physical injuries, mental pain, etc. This will allow the injured party to receive more comprehensive and effective compensation and reduce the economic and mental burden on the injured party. Second, marital infringements should be brought into the scope of criminal justice, and serious marital infringements should be criminally investigated so as to provide stronger punishment and warning to the infringing party and provide more comprehensive relief to the injured party. Third, the compensation mechanism and procedures for marital infringements should be improved, the litigation procedures should be simplified, the compensation cycle should be shortened, the execution of compensation should be accelerated, and the rights and interests of the injured party should be protected to the greatest extent. Expanding the scope of damages for marital torts will help strengthen the prevention and punishment of marital torts, protect the legitimate rights and interests of both parties in the marriage relationship, and promote the harmony and stability of the relationship between husband and wife.

5.3 Implement an Extraordinary Property System and Open a Special Account for the Injured Party

Implementing an extraordinary property system and opening a special account for the injured party is one of the important measures to build a damage compensation system for marital infringement. The extraordinary property system means that when the party's property cannot or is insufficient to meet the compensation obligation, the party's illegal gains or donations can be traced back to the party's illegal gains or gifts for recovery. In compensation for marital torts, the^[5] implementation of the extraordinary property system can better protect the injured party's rights and interests in compensation and prevent the infringing party from evading liability for compensation by transferring property and other means. In addition, opening a special account for the injured party can better protect the injured party's rights and interests in compensation. A special account refers to a special account opened for compensation for marital infringements. The injured party's compensation will be directly transferred to the account, which will be managed and supervised by the bank or judicial authority. This can prevent the infringing party from evading compensation and also facilitate the injured party's management and use of compensation funds. It should be noted that when implementing the extraordinary property system and opening special accounts for the injured party, relevant laws and regulations need to be followed to ensure the legality and fairness of the compensation procedure to protect the rights and interests of the parties.

6. Optimization Paths and Development Trends of the Marital Tort Liability System

6.1 The Need to Protect the Rights and Interests of Women and Children

With the progress of society and the improvement of people's awareness, protecting the rights and interests of women and children has become the focus of social attention. In the optimization path and development trend of the marital tort liability system, the protection needs of women and children are very important factors. In the past, domestic violence, sexual assault and other violations were regarded as private matters in marriage and did not receive enough attention and protection. As people's ideas change, these problems begin to receive more attention and are better solved. In order to protect the rights and interests of women and children, the marital tort liability system should intensify its efforts to combat domestic violence, sexual assault and other torts, establish a sound system of laws and regulations, clarify the nature and consequences of torts, and provide effective ways of resolving torts. At the same time, we should strengthen the rescue and protection of victims, provide necessary psychological counseling and medical services, and help them rebuild their confidence and life.

6.2 Strengthen Legal Application and Enforcement

In order to strengthen the effectiveness of the marital tort liability system, it is necessary to strengthen the application and enforcement of relevant laws. In terms of legal application, the legal meaning and application standards of relevant provisions should be clarified, and judicial interpretation and guidance should be strengthened to improve the accuracy and consistency of legal application. In terms of implementation, there is a need to strengthen the crackdown on violations such as domestic violence and sexual assault. These behaviors are important manifestations of marital infringement, and the infringing party should be severely punished and sanctioned. At the same time, in order to safeguard the rights and interests of the injured party, convenient relief channels should be established to encourage the injured party to apply for compensation and provide effective legal protection. Attention should also be paid to preventing and reducing the occurrence of intramarital infringements, and through education, publicity, social supervision and other means to increase the public's attention to marriage and family and their awareness of mutual respect among family members. In addition, a sound mediation mechanism for marriage and family disputes should be established to promote harmony and coordination between husband and wife in the process of resolving family disputes. By strengthening legal aid and mediation work, we can provide appropriate solutions to couples to avoid the intensification and escalation of disputes, which is conducive to the development of family harmony and stability. It can be seen from this that strengthening the application and enforcement of laws is a necessary step in establishing a liability system for marital torts. Only through a strict legal system and effective enforcement mechanisms can the legitimate rights and interests of vulnerable groups such as women and children be safeguarded and the harmonious and stable development of marriage and families be promoted.

6.3 Strengthen Social Education and Publicity

Strengthening social education and publicity is an important step in establishing a liability system for marital torts. The problem of marital infringement is not uncommon in society. However, many people are not aware enough of this problem. Therefore, publicity needs to be carried out through various channels, such as media reports, legal publicity, social activities, etc., to let the public understand the seriousness of the problem of marital torts and the importance of the liability system for marital torts. In addition, social education also needs to focus on improving citizens' legal awareness and moral standards. Through the dissemination of legal knowledge and ethical norms, the public is

made aware of what marital torts are and how they should be avoided and responded to, to the extent that the application of the marital torts regime is better understood and supported. At the same time, we must also increase the intensity of punishment for infringements, so that behaviors that infringe on the legitimate rights and interests of others are punished by law, and let the public realize that marital infringement is an immoral and illegal behavior. Through these measures, the public's recognition and support for the marital tort liability system can be improved, and the public can better use the marital tort compensation system to safeguard their legitimate rights and interests.

7. Conclusion

The establishment of a marital tort liability system is an important legal system that is of great significance and value for protecting the legitimate rights and interests of family members and maintaining social justice and stability. With the acceleration of the pace of social life, legal misunderstandings caused by the establishment of a tort liability system within marriage require healthy and progressive marriage regulations to be formed in the marriage law to establish basic civil rights and obligations in legal torts. First of all, the basic concept of establishing the liability system for marital torts in the marriage law should be clarified. During the marriage, comprehensive common property should be stipulated so that the infringed party does not rely on the compensation system, so that the infringement between husband and wife will not cause property that damages the interests of the family. According to the law, the share of the infringement will be accepted to prevent There is an unreasonable division of compensation due to infringement. When my country's Marriage Law establishes a liability system, compensation will be paid within a certain range due to infringements stipulated in the legislation. According to the provisions of my country's Marriage Law, the right to claim damages for divorce and the right to claim compensation for torts within marriage are based on different legal norms. Once one spouse files a tort lawsuit, it will easily lead to intensification of conflicts between the couple, which is not conducive to the stability of the marriage and family. Therefore, conducting research on the establishment of the marital tort liability system in the marriage law and closely integrating the marital tort liability system with the content of the marriage law is one of the important links in realizing the protection of the rights and interests of the public and social harmony and stability in our country. It is necessary to strengthen the application and enforcement of laws, strengthen social publicity and education, promote international cooperation and exchanges, adapt to the development trends and needs of the international community, and continuously improve and develop. Only in this way can the legitimate rights and interests of family members be better protected and social harmony and development achieved.

References

- [1] Han Yuting. *On the construction of my country's marital tort damage compensation system* [D]. Quanzhou: Huaqiao University, 2018.
- [2] Fan Meng. *Research on the compensation system for marital torts* [J]. *Legal System and Economics*, 2018(10): 108-109.
- [3] Chen Yu. *Analysis of marital torts and research on damage compensation system* [D]. Shanghai: Shanghai Jiao Tong University, 2018.
- [4] Zhang Ling. *The necessity of establishing a damage compensation system for marital torts in the new era* [J]. *Legal Affairs*, 2017(24):185-186.
- [5] Dong Qianou. *Research on marital infringement of couples* [D]. Shanghai: East China University of Political Science and Law, 2011.