

On the Understanding and Application of the Marital Property Division System

-- Centered on Article 1066 of the *Civil Code of the People's Republic of China*

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Abstract: Article 1066 of the *Civil Code of the People's Republic of China* reflects the legislative attitude towards the marital property division system: it provides more room for the application of the system under the premise of maintaining the stability of marital and family relations. Accordingly, the application of Article 1066 can be interpreted as follows: the prerequisite for division, i.e., the second paragraph of the legal grounds, should be expanded to include the case of "one of the spouses himself or herself" suffering from a serious illness; the object of division, i.e., the scope of the property to be divided, should be selected according to the plaintiff's claim, and a specific part of joint property or all joint property; after the division, during the marriage, the spouses should be allowed to choose to use the separate property system or continue to use the joint property system.

Keywords: Marital property division, Legal cause, Matrimonial property regime.

1. Research Questions

In the field of marriage and family law in China, the system of marital property division refers to the system that, under the premise of maintaining the marital relationship, the joint property of the spouses can be divided by negotiation for specific reasons; if the negotiation fails, one party can sue the court for the division of the joint property of the spouses with the other spouse as the defendant (Jiang, 2021).

The act of dividing joint property by agreement between husband and wife fully implements the spirit that both spouses have the right to freely distribute and dispose of joint property, which has always been recognized by China's laws and is not controversial; and for the act of applying to the court to divide joint property, because of judicial intervention in the field of family affairs, and the strength of legislative intervention and the scope of protection, the application of the relevant system norms and practice basis should be more in the debate and deliberation. In the debate and discussion of the relevant system should be constantly improved. The intra-marital property division system discussed in this article refers only to the situation where a husband and wife apply to the court to divide the joint property.

Article 1066 of the *Civil Code of the People's Republic of China* (hereinafter referred to as the *Civil Code*) provides that "During the marriage, one of the spouses may apply to the people's court for partition of their community property in one of the following situations: (i) the other spouse has concealed, transferred, sold, destructed or damaged, or squandered the community property, created a false community debt, or committed other acts that seriously infringe upon the interests of the community property; or (ii) a person, whom one of the spouses has a statutory obligation to support, is suffering from a serious disease and needs medical treatment, but the other spouse does not agree to pay the relevant medical expenses." This article is a new article of the *Civil Code*, which makes up for the legislative deficiency of the 2001 Marriage Law that only provides for the system of the property division upon divorce and absorbs the content of Article 4 of the *Judicial Interpretation of the Marriage Law*

(III) promulgated in 2011, and makes appropriate adjustments to meet the needs of judicial practice. Accordingly, the husband and wife in the marriage to the court to apply for the division of the joint property of the couple's system has attracted much discussion in the academic community. There are many controversial points about its understanding and application: for example, how to understand and refine the interpretation of the legal grounds that meet the conditions for the division within marriage? Is limiting the prerequisites for allowing the division to only two of the provisions of the law sufficient to meet the real needs? The scope of the court to divide the joint property of the spouses is all the joint property of the spouses during the marriage, or only for the specific part of the property requested by the parties? And what property regime should apply to the property acquired by the spouses during the marriage after the division?

In order to solve the above-mentioned problems, this article will focus on the text content of Article 1066 of the *Civil Code*, look at the legislative process of the marital property division system, and take the development trend of its legislative spirit as the purpose of interpretation, from the understanding of the premise of marital property division—the legal cause, the object of division—the scope of "joint property," and the consequences of division—the application of the property system, in order to build a reasonable understanding and application path for the marital property division system.

2. The Legislative History and Legislative Spirit of The Marital Property Division System

In order to discuss the understanding and application conditions of the marital property division system stipulated in Article 1066 of the *Civil Code*, it is worthwhile to analyze the theoretical basis and legislative history of the marital property division system, and to explore the adjustment trend of the legislative attitude embodied in the system and the legislative spirit it contains, so as to provide directional support for understanding and interpreting the views expressed in the article later on.

Generally speaking, for the joint property within marriage, the spouses belong to the common joint relationship based on the marriage relationship. According to the traditional civil law theory, each co-owner shall not, in principle, divide the joint property unless the common relationship is extinguished. And Article 99 of the *Real Right Law of the People's Republic of China* provides that "Where the co-owners of a commonly owned realty or chattel has stipulated that it is not allowed to partition the realty or chattel so as to maintain the relationship of common ownership, such stipulation shall apply; but where any co-owner has certain significant reasons for partitioning the realty or chattel, he may request the partition; in the case of no or unclear stipulation, a several co-owner may request the partition at any time, and a joint owner may request the partition where the basis for the common ownership disappears or he has certain significant reasons. In case any damage is caused by the partition causes to any other person, the corresponding compensation shall be made." Based on this article, the husband and wife for joint property, in two cases, can be requested to divide: one is the loss of common basis, that is, the dissolution of marriage, annulment, etc.; the second is a significant reason for the need to divide. The second point provides the theoretical basis for the system of division of marital property, i.e., the division of the joint property of the spouses may be requested even without dissolution of the marriage but for serious reasons.

On this basis, Article 4 of the *Judicial Interpretation of Marriage Law (III)* promulgated in 2011 enumerates the "major reasons" for the division of marital property: "During the marriage, the people's court shall not support the request of one of the spouses to divide the joint property; except for the following major reasons and not (1) one of the parties to hide, transfer, sell, destroy, squander the joint property of the couple or falsify the common debts and other serious damage to the interests of the joint property of the couple; (2) one of the legal support obligations of a person who needs medical treatment for a major disease, the other party does not agree to pay the relevant medical expenses." The provisions of this article clarify the specific circumstances under which the division of the joint property of the spouses may be sued within the marriage, providing a basis for resolving the division of the joint property during the marriage. However, in order to prevent the division of joint property within marriage from becoming normalized (Guo, 2019), the article uses a closed clause to set a protective boundary for the circumstances of the division of property within marriage.

Article 1066 of the *Civil Code* absorbed the spirit and main content of the *Judicial Interpretation of the Marriage Law (III)*, and inherited the two major grounds in the provisions of the article. Still, the principle provisions and the prerequisites for allowing the division of the text were modified to read, "During the marriage, one of the spouses may apply to the people's court for

partition of their community property in one of the following situations:" The provisions of the *Civil Code* further emphasize the protection of the legitimate rights and interests of husband and wife, mainly in two aspects: First, the deletion of "during the marriage, one of the spouses request the division of joint property, the people's court does not support." This principle provision, that is, as long as the legal situation, a husband and wife have the right to request the division of the joint property of the couple. The second is the deletion of the prerequisite of "not harming the interests of creditors," balancing the protection of the legitimate rights

and interests of the weaker spouse with the protection of creditors, weakening the protection of creditors, and paying more attention to the protection of a spouse's right to free disposal of joint property.

Behind the adjustment of the expression of the article, also contains the legislator's attitude to the marital division of the joint property system and the change in the spirit of legislation: from the original set of principle provisions for the division of marital property to show a very restrictive and conservative attitude, to gradually relaxed to meet the legal grounds for division, giving more freedom and space for the application of the marital property division system. However, it is worth noting that although the legislative attitude has been liberalized, the formulation of the provisions are still closed, with only two legal grounds for division, nor set the bottom clause, the legislative intent is still to ensure the relative stability of the joint property of the couple during the marriage by limiting the possibility of easily dividing the joint property of both spouses. The legislative intent is still to ensure the stability of marital and family relations by limiting the possibility of easy division of joint property between spouses.

To sum up, from the legislative history of the marital property division system and the adjustment changes in the expression of the law, the legislative spirit of the system can be summarized, that is, on the premise of maintaining the relative stability of the joint property of the spouses, the restrictions on the application of the marital property division system are gradually reduced, the circumstances of application are broadened, and a certain degree of freedom and support is given to the spouse who applies for the division of the joint property for significant reasons, so as to guarantee the free disposal of the spouse's rightful share in the joint property.

3. The Scope of Application of The Marital Property Division System

Through the above analysis, we can grasp the legislative purpose and spirit of the marital property division system and use it as a starting point to understand and interpret the controversial issues encountered in the application of the provisions will be more in line with the legal theory.

3.1. Prerequisite for division: understanding of statutory cause

As for the understanding of the legal grounds for the division of marital property, the controversy focuses on the second paragraph "a person, whom one of the spouses has a statutory obligation to support, is suffering from a serious disease and needs medical treatment, but the other spouse does not agree to pay the relevant medical expenses." When interpreting "a person, whom one of the spouses has a statutory obligation to support" can the interpretation be expanded to include "the spouse himself or herself," i.e., if one of the spouses is suffering from a serious illness and needs medical treatment. If the other spouse does not agree to pay for the medical expenses, can the sick spouse request a division of the marital property?

3.1.1. Arguments and reasons against expanded interpretation

Contextually, the term "a person, whom one of the spouses has a statutory obligation to support" usually refers to a spouse's parents, children, spouse, and siblings who are

obligated to provide support and maintenance but does not include the spouse himself or herself. Therefore, one view is that the interpretation here cannot be expanded to include “the spouse himself or herself.”

Among them, the Supreme Court Civil Code Implementation Leading Group in its book *Civil Code Marriage and Family Comprehension and Application*: According to the provisions of Article 1059 of the *Civil Code*, “Both spouses have the duty to support each other,” which support obligation certainly includes support when one party is ill, so when one party is ill, the other party should pay medical expenses and other ways to ensure that the sick party is treated; the other party does not fulfill If the other party does not fulfill this obligation, the sick party has the right to demand that he or she pay medical expenses and fulfill the legal obligation of support, and if the other party does not automatically fulfill the judgment that has come into force, he or she can realize the disposal of his or her personal property and the joint property of the spouses through the enforcement procedure, and does not need to realize relief through the division of marital property as stipulated in Article 1066 (*Civil Code Marriage and Family Comprehension and Application*, 2020). Some scholars also said that one spouse does not have a legal obligation to support the parents and children of the other spouse, so the obligated party needs to achieve relief through the division of property within the marriage; however, the spouses already have a legal obligation to support each other, they can directly request each other to fulfill the legal obligation to support and pay medical expenses, and the division of joint property within the marriage is not a necessary relief path.

In summary, the reasons for opposing the expansion of the interpretation of “a person, whom one of the spouses has a statutory obligation to support” to include “the spouse himself or herself” are mainly the following two: (i) from the legal norm itself, the serious reasons listed in this clause, the significant reasons listed in this clause are closed clauses, which strictly limit the practice of dividing the joint property of husband and wife without dissolving the marriage, which is conducive to ensuring the stability of the property system of husband and wife and the seriousness of marriage; (ii) from the practical point of view, when one of the spouses suffers from a major illness, he or she can directly request the other party to fulfill the legal obligation of support, and does not need to be relieved by dividing the joint property of husband and wife.

3.1.2. Arguments and reasons in favor of expanded interpretation.

The author’s view is precisely the opposite of the above-mentioned opposition to the expansion of the interpretation that the expansion of its interpretation to include “one of the spouses themselves” is more reasonable, and should allow one of the spouses themselves to suffer from a serious illness and the other party is not allowed to pay medical expenses when the division of the joint property of the spouses. The reasons are as follows: First of all, for the first point of the above-mentioned reasons, which can be solved by requesting the other party to pay maintenance, it is not necessary to set the path of dividing the joint property to relief, obviously ignoring the legislative purpose of dividing the joint property of the spouses within a marriage. In terms of the normative purpose of Article 1066, its purpose is to realize the right of equal management, disposition, and disposal of one’s potential share in the joint property through the route of

dividing the joint property of the spouses or to curb the improper management and disposal behavior of the other party (Shi, 2017). Although relief can be obtained using the maintenance clause, it fails to substantially address a spouse’s desire to obtain his or her free rein over a corresponding share of the community property through property division. From the point of view of the reasons for requesting division, the illness of the “other person” who has the legal obligation of support still meets the criteria of “significant reason” in the legislation and is allowed to request the division of the joint property. In contrast, the serious illness of “oneself”, whose degree of criticality and degree of relief is more serious than the former in the general concept, is not allowed to request division. Moreover, the article has limited the scope of the “legal grounds” by means of closed clauses and the interpretation of various legal concepts. Even if the situation is allowed to be included in the premise of the division, the appropriate interpretation may not necessarily have serious consequences that affect or destroy the stability of the marriage and family matrimonial property system, the author believes that its inclusion in the legal grounds is more conducive to the realization of the legislative purpose of the marital property division system and the concept of fairness and justice.

3.1.3. For the construction of two ways of applying remedies after the expanded interpretation

Although the law has set up a remedy for this situation, it does not mean that the possibility of setting up other remedies is cut off by the legislation. In the author’s opinion, by including “serious illness” as a prerequisite for the division, two parallel remedies can be formed with the spousal support obligation in Article 1059 for one spouse to choose. When a spouse who is seriously ill only wants the other spouse to fulfill his or her maintenance obligations and pay for his or her medical expenses, he or she may be required to pay maintenance in accordance with Article 1059; if the spouse wants to freely dispose of his or her corresponding share for medical treatment by dividing the joint property, the relief route of Article 1066 can be applied.

In addition, Article 1066 and Article 1059 also have the same situation, that is, when one of the spouses requests the division of the joint property due to a serious illness, after the division, the personal property belonging to that party is still insufficient to pay for the medical expenses, or it is difficult to maintain a normal life after the payment, he or she still has the right to request the other party to pay for the living expenses. “Since the maintenance obligation between spouses is based on the identity of the spousal relationship between the two parties, it is an essential requirement of the marital community. The matrimonial property system is merely an agreement between spouses regarding the ownership of the property after marriage. It cannot be assumed that the spouses do not bear the maintenance obligation based on the specific identity relationship just because they have agreed to implement a separate property system. The duty of support between spouses arises from the conclusion of the marriage and ends with the dissolution of the marriage. The law does not provide that spouses with separate property systems are exempt from the duty of mutual support.” From this, it can be deduced that the obligation of spouses to support each other and pay maintenance is not based on one party’s control or domination of the joint property of the spouses. Regardless of whether there is the joint property of the spouses or whether the other party controls the joint property of the spouses, the

obligation of spouses to support each other cannot be exempted during the marriage relationship. By the same token, the marital relationship still exists after dividing the spouses' joint property within the marriage. Even if a spouse who is seriously ill requests the division of all the joint property if it is still insufficient to pay for medical expenses or support their everyday life, they are entitled to apply Article 1059 again to request the other party to pay a certain amount of maintenance. The dual guarantee of two relief mechanisms is more conducive to safeguarding one spouse's legal rights and interests, especially the economically disadvantaged spouse who cannot hold or dispose of the joint property, such as the right to life and health and the property right.

3.2. The object of division: the scope of "joint property."

Concerning the object of marital property division, i.e., the scope of the joint marital property to be divided, does it include all the joint marital property during the marriage up to the time of the request for division, or is it limited to the specific property requested by the parties to be divided?

The first view is that the entire joint property of the spouses should be divided for the following reasons: when one of the spouses files a request for division, the conflict between the two parties has already become acute, and if only part of the joint property of the spouses is divided, it will not be possible to avoid future infringement of the remaining joint property by the other party; and in case such breach occurs, the aggrieved party will file another request for division of the remaining property, which may lead to a waste of judicial resources (Guo, 2019). Some scholars think that "according to this article should be intended to allow the parties to request the division of all the joint property of the parties. The critical division system is an unconventional remedy that has to be adopted, which not only does not easily determine the property subject to division but also easily leads to confusion between the property determined to be owned by one of the spouses individually after division and the property acquired during the subsequent marriage. It may also lead to repeated recourse to judicial requests for division of community property and excessive use of judicial resources (Jiang, 2021)." Put another way, the number of times a spouse is required to sue for the division of the couple's joint property during the marriage is limited to one time only.

Another view is that the division should only be made for the specific property requested by the parties. Scholars who hold this view believe that, from the characteristics of the division of joint property within marriage, "unlike the division of joint property in divorce, the original intention of the system of dividing joint property within marriage is more focused on relief, so it does not focus on the division of the entire joint property of the husband and wife, but mainly for the specific higher-value property requested by the plaintiff (Shi, 2017)." From the property law perspective, although the traditional theory holds that the share of joint property extends to the joint property, it does not mean that the entire joint property must be divided simultaneously (Pei, 2009). The unique feature of joint tenancy is that it is a generalized relationship based on the relationship of joint tenancy. Under the premise of the community relationship, some specific joint property may be removed from the community, and new property may be added to the community (Guo, 2019). From the principle of determining the object of rights in property law, for the joint tenancy, it should be considered that the relationship of

the joint tenancy exists over every single object and not just one aggregate object (Liu, 2015), so it is natural to request the division of certain joint property separately.

The author agrees with the latter view and believes that the division of a specific part of the joint property should be allowed according to the litigation request of the parties. In addition to the above-mentioned supporting views of scholars, the author believes that this view can be justified from the following perspectives: (i) From the perspective of civil litigation request, a request for the division of joint property within the marriage is a special joint property division of the court, because of the nature of the civil litigation, the parties should be the plaintiff's litigation request to decide; if a spouse only part of the property for the division of the lawsuit, but the court must divide the entire property for the reason of dismissing the plaintiff's claim, there is a contradiction in the procedure. (ii) From the spirit of autonomy of the civil law, within the scope of the law, should also respect the distribution of joint property between husband and wife, the freedom of disposal, is the agreement to divide or compulsory division should be carried out in the spirit of connotation, for the application for compulsory division of the scope of property should also be chosen by the plaintiff, the scope of the court's decision cannot exceed the litigation request of the parties. (iii) From the perspective of maintaining the stability of the marriage and family, the intra-marital application to the court to divide the joint property is focused on relief, that the view that the entire joint property should be divided at once, often associated with the view that the division should be implemented after the separate property system. The author does not agree with such an intra-marital property division system and changes the two matrimonial property system mixed the specific reasons will also be discussed in 3.3. Intra-marital property division only provides relief and redress to resolve the dispute over specific contested property and is not serious enough to require changes to the extent of the matrimonial property system without destabilizing the matrimonial property relationship. Therefore, the author believes that, should be resolved after the cause of relief, still give the possibility of the couple to continue to share property, the object of division - to divide the scope of the joint property of husband and wife, should be based on the parties to the litigation request, to decide to divide part or all, the court does not compel the intervention required to divide all the common. The court cannot forcefully intervene to require the division of all the joint property.

3.3. Consequences of division: application of the property regime

Regarding what kind of property system should be implemented between husband and wife after the division, the controversy mainly lies in whether the separate property system should be applied directly. Pei (2008) advocates that "after the division, the separate property system can meet the needs of the claimant, and at the same time, when the claimant thinks that the separate property system is unfavorable to him/her, he/she can request the restoration of the community property system to make up for the deficiency of the separate property system." Jiang (2021) also recognizes that "After the early division is completed, the parties shall apply the separate property system, unless otherwise agreed, to comply with the original purpose of compulsory division of the joint property of the spouses within the marriage and to reduce the possibility of future property disputes between the parties. If

the economically disadvantaged party has difficulties in living as a result, he or she has the right to request the other party to pay maintenance to maintain their livelihood.” However, it is also argued that “the court's intra-marital division of community property under Article 1066 of the Civil Code is only for specific, existing property separately, and does not imply separate ownership of the spouses' property in the future.” Does the disagreement namely discuss whether the system of intra-marital property division and the matrimonial property regime must be applied implicitly?

In the author's opinion, the marital property division system and the change of the property system of the couple are not necessarily implicated in the application. Because the scope of the division of property is affected by many factors, even if a party currently said that the division of all joint property, but also not absolutely claim that after the division should necessarily apply separate property system, such as "major illness" in the case of the need to divide all property is still sufficient to pay medical bills, but the party still has the intention of maintaining the stability of the marital relationship and property relations, if At this time, after the mandatory requirement of marital division, the husband and wife property system must be applied to separate property system, whether there is a violation of the original legislative intra-marital property division system? Therefore, the author believes that the division should be given the right to choose which property system applies to both spouses. The reasons are as follows:

i. The relief nature of intra-marital property division is driven by the purpose of maintaining the stability of property relations. The reason why one of the spouses requested the division of joint property within marriage and did not directly choose to divorce the way to divide the joint property, precisely in consideration of various factors hope to continue to maintain the marriage relationship, only in the face of the current emergency need to save the security of property, or in the other party seriously impede their domination of joint property rights for urgent legal reasons, to obtain the right to free disposal of property, using the system has the urgency and relief of The fact that the other spouse has not chosen to dissolve the marriage in order to obtain the right to dispose of property is largely due to the fact that in the future the other spouse will be able to correct his or the behavior that has seriously damaged the joint property and still wants to form a family with them. And the joint ownership of matrimonial property has an important significance for the stability of marital relations, in maintaining the stability of marital and family relations and property if the law compels the implementation of a separate property system after the division is slightly inappropriate.

ii. In practice, the possibility of repeatedly applying for division and consuming judicial resources could be higher. From the viewpoint of maintaining judicial resources, it is slightly over-preventive to provide for a separate property system to prevent spouses from repeatedly suing for the division of their joint property in the future. In the division of the premise of the “legal grounds” under such strict requirements, if one of the spouses is eligible to apply for a division of the major reasons, then the strong relationship between husband and wife or marital relationship is difficult to withstand such repeated blows. In practice, imagine the couple repeatedly due to such severe damage to the joint property, as well as the refusal to perform the corresponding support obligations and other major reasons for filing a

marital division of the lawsuit, but still, hoping to maintain the marital relationship, there is indeed a very small possibility that the husband and wife will more often than not choose to file direct divorce proceedings while completing the division of property.

iii. The application of the joint property system after the intra-marital division also has no confusing effect on the object of property division at the time of divorce. If one of the spouses proposes to divide the joint property within the marriage, it is only as a pre-procedure for the divorce lawsuit to be filed soon after. It is not inappropriate to implement the joint property system after the division, but only to exclude the part that has been divided during the divorce, and to deal with the joint property arising from the division again by judgment.

iv. Applying the joint property system after the intra-marital division also has no confusing effect on the object of property division at the time of divorce. If one of the spouses proposes to divide the joint property within the marriage, it is only as a pre-procedure for the divorce lawsuit to be filed soon after. It is not inappropriate to implement the joint property system after the division, but only to exclude the part that has been divided during the divorce, and to deal with the joint property arising from the division again by judgment.

And when the joint property to be divided is only a specific part of the property, according to the purpose of maintaining the stability of marital and family relations and property relations as much as possible, it should be presumed that the legal joint property system of husband and wife is still applicable in the future.

In summary of 3.2 and 3.3 above, for the object of partition and the application of the property regime after separation, the following paths can be introduced: i. Partition of part of the property and the joint property regime still applies after partition; ii. Partition of the entire property and the choice to continue to apply the joint property regime after partition; iii. Partition of the entire property and the choice to apply the separate property regime after partition.

4. Conclusion

The system of one spouse applying to the court for the division of joint property within marriage as stipulated in Article 1066 of the *Civil Code*, after absorbing and adjusting the provisions of *Judicial Interpretation of Marriage Law (III)*, reflects the legislative attitude towards the system of division of property within marriage. Under the premise and purpose of maintaining the stability of marriage and family and property relations, the restrictions on its application are reduced and more room for application is given to the system. Guided by the spirit of this legislation, the application of the relevant circumstances of Article 1066 can be understood as follows: before the petition for division, the interpretation of the statutory grounds, the more controversial second paragraph can be expanded to include “one of the spouses themselves” suffering from a serious illness, which should be allowed to be included in the scope of protection, which is more legalistic and general. In the division of joint property, the size of the property to be divided should be based on the plaintiff's request, allowing for the division of a specific part of the joint property or all of the joint property; in the period of the marriage after the division, whether to change the matrimonial property system cannot be forced to intervene, giving both spouses the right to choose to apply separate property system or standard property system.

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