Palliation or Protection: How Should the Right to Equality Inform the Government’s Response to Covid-19?

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Abstract: This article examines what role equality law can play in addressing the inequalities created and exacerbated by the British government’s response to the Covid-19 pandemic. We argue that while there is great potential in existing legislation, there is a need for both policy-makers and courts to apply a more searching and nuanced understanding of the right to equality if this potential is to be realised. We begin by examining how the burdens of confronting this pandemic as a society fall more heavily on those already at the bottom end of the scale of inequality. We then ask whether and to what extent the current legal structures protecting the right to equality can be mobilised to redress such inequalities, paying particular attention to the Public Sector Equality Duty under the Equality Act 2010 and on the Human Rights Act 1998. Finally, we argue that, to fulfil the requirements of both these legal duties, the courts should subject policies and practices to close scrutiny under the four-dimensional approach. When making and operationalising policies around Covid-19, substantive equality requires account to be taken simultaneously of the four dimensions of inequality to the greatest extent possible.

Key words: Substantive equality; Article 14 of ECHR; Public Sector Equality Duty; Covid-19; Status and economic inequality

Introduction

Covid-19 will not be the great leveller but the great revealer. It is true that this pandemic draws attention to our shared humanity by virtue of that fact that no-one is immune from the disease, including the British Prime Minister. But this virus does not generate equality simply because it is blind and unbiased. Rather, this pandemic has exposed and exacerbated the inequalities that are already obvious as well as those that are often hidden from view. While government measures have certainly been helpful in some areas, they have also maintained and even deepened some of the existing fractures in society. The question of equality must be front and centre of a social justice response to the disease. This is all the more so because if some in society cannot be looked after and treated, both medically and economically, everyone suffers.

This article examines what role equality law can play in addressing these inequalities. We argue that while there is great potential in existing legislation, there is a need for both policy-makers and courts to apply a more searching and nuanced understanding of the right to equality if this potential is to be realised. Most importantly, it should be recognised that the right to equality consists in more than treating likes alike regardless of their race, gender, disability or other similar protected characteristics. It requires an appreciation of the complex ways in which disadvantage, stereotyping, lack of voice and structural obstacles interact to
cause and sustain inequality. This means that the right to equality must be multidimensional, simultaneously redressing disadvantage; addressing stigma, stereotyping prejudice and violence; facilitating participation; and accommodating difference and addressing the need for structural change.

To redress disadvantage (the first dimension), when any policy is being formulated to deal with Covid-19, steps must be taken to ensure that the most disadvantaged are among the prime beneficiaries especially those with intersectional identities, such as Black women, disabled, poor or old women, single mothers and others. To address stigma, stereotyping, prejudice and violence (the second dimension), stigmatic characterisations, such as those of benefit claimants, and stereotypical assumptions, such as women being the primary carers, should be redressed. Most importantly, gender-based violence must be recognised as an inequality issue and addressed. The third dimension focuses on voice and participation. Those that are affected need to be included as far as possible in decisions. This is because policies work better when we know what people’s needs are, because it promotes more ownership, and because it affirms the value of every person and every voice. The fourth dimension recognises that inequality is more than many individual acts of prejudice. It is about the structures of society, and particularly the power imbalances, which create and perpetuate inequality. Substantive equality requires not only the accommodation of difference, but also its valorisation and the transformation of structures that perpetuate inequality. When making and operationalising policies around Covid-19, substantive equality requires account to be taken simultaneously of all these dimensions to the greatest extent possible.

Under the spotlight of this multidimensional conception of the right to equality, it can be seen that inequalities based on status, such as gender, race or disability, both cause and are caused by economic disadvantage, bridging the traditional divide between discrimination law and socio-economic policy. This in turn means that, when taking socio-economic policy decisions, policy-makers should be aware of the impact on inequalities, and take steps to mitigate this. Similarly, courts should scrutinise government policies closely to prevent them from breaching the right to equality understood in this multidimensional way.

The article will examine the challenges presented by Covid-19 for equality law and consider how the law should respond. In Part I, we examine how the burdens of confronting this pandemic as a society fall more heavily on those already at the bottom end of the scale of inequality, with a particular focus on women, children, and ethnic minorities. We show how stigma, stereotyping, prejudice and violence both cause and are perpetuated by socio-economic disadvantage, and how this is intensified by the lack of voice and structural obstacles. In Part II, we ask whether and to what extent the current legal structures protecting the right to equality can be mobilised to redress such inequalities, focusing on gender inequalities. There are two main legal vehicles to address these challenges. The first is the duty imposed by the Equality Act 2010 on public bodies to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity in carrying out their functions (the Public Sector Equality Duty or PSED). The second falls under the Human Rights Act 1998, which incorporates the European Convention on Human Rights (ECHR). Under Article 14 ECHR, the State has a duty to secure the enjoyment of Convention rights without discrimination. Examining a select number of cases on gender and social benefit reforms from the UK Supreme Court, we show that current judicial application of these sets of duties is unduly deferent to public authorities. In Part III, we argue that, to fulfil the requirements of both these legal duties, the courts should subject policies and
practices to close scrutiny under the four-dimensional approach.

Part I: How the Pandemic has Exacerbated Inequality

The spread of Covid-19 has led governments around the world to implement social and economic restrictions in order to slow the spread of the pandemic. In the UK, as in many other countries, these decisions were made very quickly and there were few opportunities to fully assess their consequences. However, some of these choices very clearly had the potential to exacerbate existing inequalities and to create new ones. Below we focus on early evidence regarding how these social and economic restrictions have affected inequalities within three intersecting key areas: incomes and non-standard work; violence; and poverty. Throughout, we pay particular attention to how gender inequalities are affected by the changes in these areas. Together, this evidence clearly reveals the interactions between the four dimensions of substantive equality: disadvantage; stigma, stereotyping and violence; lack of voice; and structural barriers.

Incomes and Non-standard Work: A Female Recession?

The shock to incomes as a result of the economic shutdown has been profound. While the government has put in place robust measures to protect incomes over the short-term, it is also clear that some groups are facing greater economic uncertainty than others, and it seems women have faced a substantial portion of these shocks. The burden placed on women exacerbates their already existing disadvantage.

Early evidence suggests that the impact of the economic shock has fallen most severely on those in non-standard working conditions, including temporary, non-salaried and part-time workers, many of whom are women. Even by early April, over 30% of people in temporary work had lost their jobs because of Covid-19 compared with about 14% of permanent workers. Similarly, the proportion of non-salaried workers who lost work was double (20%) that of salaried workers (10%). Among part-timers, who are predominantly women, the disparities in impact have been equally striking. Data collected by YouGov suggests that around 11% of part-time workers have lost their jobs compared to 6% among those in full-time work. Moreover, approximately 22% of part-time workers have seen their hours or income reduced compared with only 10% among full-time workers. Younger women compared to older women have been particularly likely to experience reduced hours and earnings. These job losses have also been concentrated in particular parts of the economy, with facilities management, personal care work (hairdressers), food preparation and service, and construction being particularly hard hit. Unsurprisingly, these are all sectors where non-standard work is common. While the self-employed have not been more likely to lose their jobs, they have been particularly hard hit by reductions in income. By early April, 12% of the self-employed were reporting that they were already facing significant financial difficulties.

Women have also been hard hit because, while recessions typically affect work that is dominated by men, this crisis is different. Social distancing is disproportionately affecting sectors of the economy that are dominated by women. This is compounded by the closure of schools and nurseries, which increased childcare needs, particularly for working mothers. Initially, it even seemed women had been more likely than men to lose their jobs over the first weeks of lockdown (around 2–4% points higher for women compared with men). More
recent data suggests the risk of job loss and income losses have been similar for both women and men. But, even this is atypical. Recessions usually affect men more than women and so the absence of any difference still represents an unusually large shock to female employment.

These patterns reflect the interaction between the continued stereotyping of women as the primary carers (the second dimension of substantive equality) and the disadvantages women face in the labour market that mean they are more likely to be employed in precarious, low-status and low-paid jobs (the first and third dimension). The fact that caring work is still largely regarded as ‘women’s work’, whether paid or unpaid, means that women continue to have primary responsibility for childcare and domestic work and devalues caring work when undertaken in the labour market. During lockdown, mothers were spending less time on paid work and more time on household responsibilities while their time doing paid work, according to the Institute for Fiscal Studies, was more likely to be interrupted with household responsibilities. Even mothers who are higher earners than their partners, performed more childcare.

This affects not just women’s access to non-precarious work, but also devalues ‘women’s work’ in the paid workforce. Continuing job segregation, with women congregating in lower paid work, has exacerbated the effect of the lockdown. Mothers, for example, have been more likely to have had their careers disrupted by lockdown and they are bearing most of the extra childcare. Moreover, the Government’s measures to off-set the economic impacts of lockdown repeat patterns of inequality as the salary retention scheme is based on pre-pandemic earnings. Furthermore, women on zero-hour, other casual contracts, or part-time workers are, according to the Women’s Budget Group, more likely to not be offered shifts or their hours are reduced rather than to be furloughed and eligible for the salary retention scheme.

These multiple forms of inequalities are particularly pronounced in the social care sector, where the longstanding undervaluation of caring work has been further exacerbated by the pandemic. The Institute for Public Policy Research showed that in 2018, half of all care workers were paid below the real living wage. There are approximately 900,000 workers whose main job is in frontline care work, with at least 100,000 more doing this work as their second job. As many as 83% of frontline care workers are women, with a disproportionate representation of Black and ethnic minority workers (BAME). Many of these have their own caring responsibilities: one third are parents and as many as 13% are single parents. Particularly worrying are the high numbers working in precarious conditions. At least 10% work on zero-hours contracts (compared to 2% of all workers), and some estimates show that this figure is as high as 24% in England. For care workers in domiciliary care services (home care) in England, an astounding 58% work on zero-hours contracts. These workers are highly vulnerable to workplace exploitation, such as below minimum wage pay for sleeping-in time, unpaid travel time and insecure contracts. The structural dimension of substantive equality (the fourth dimension) should also be kept in mind in understanding these patterns. The poor working conditions in the care sector are not an unfortunate accident. They are a result of over 10 years of austerity measures, where funding for the sector was consistently cut year on year.

Such precarity means that frontline care workers have had to make difficult decisions as to how to protect their health and that of their families at the same time as protecting their livelihoods. Eligibility for Statutory Sick Pay (SSP) is confined to those under a contract of employment (including agency workers), who have
earned at least £120 per week and is only payable if the worker has been ill, self-isolating or shielding for at least 4 days in a row. SSP is not payable for the first 3 days. For workers on the margins, this constitutes a serious dent to their income, and this is already starting to have troubling implications for well-being. Women seem to have been more likely than men to have used savings or to have borrowed money (either from the bank or from family/friends) to have mitigated income loss over this period.

Isolation and Violence: Women are Less Safe Now than They Used To Be

The second dimension of substantive inequality – stigma, stereotyping, and violence – has also been impacted by the lockdown measures, leading to a spike in domestic violence against both women and children. One of the immediate effects of the social distancing measures was to put women at greater risk of violence within the home and it also potentially limits their ability to seek outside help, often trapping them at home with the abuser. While detailed data on this is hard to come by at this point, there are some early indications that are troubling. One charity that supports victims of domestic violence has been receiving 400 calls per day since the lockdown began on 23 March, a 49 per cent rise, while traffic to its website has gone up by over 400 per cent. On average, around 100 people have been arrested on charges of domestic violence by the London Metropolitan Police alone since the lockdown began. Dame Vera Baird has said that this is only the tip of the iceberg because we know the number of abuse cases is ‘far higher than what is being reported’. Domestic abuse killings appear to have even doubled during the early part of the lockdown.

The warning signs were already there. Male job loss – one predictor of domestic violence – has been rising and there is some evidence that increased alcohol consumption among some groups may have increased conflict within the home. Around 20% of people are drinking more during the lockdown but what is particularly concerning is that around 18% of those who were already daily drinkers are now drinking more. Indeed, 7% of respondents said their own or someone else’s alcohol consumption in the household had led to increased tensions, and this is even higher in households with children. There are reasons to expect that these economic measures may put some women at greater risk of harm, exacerbating this second dimension of inequality.

Poverty: How Women and Children are Inadequately Protected

One of the worries is that these economic shocks will stop people from being able to make ends meet. There are clear indications that people are experiencing severe food insecurity, that is, people who are going without food for economic reasons. The number of adults who are food insecure in Britain is estimated to have quadrupled under the Covid-19 lockdown. Among unpaid carers specifically, a practice largely dominated by women, almost a quarter of a million unpaid carers have had someone in their household go hungry during lockdown while more than 100,000 performing unpaid caring for older or disabled relatives have been using foodbanks to make ends meet. Again, female unpaid carers seem to be harder hit. Female carers were nearly twice as likely as male carers to report being hungry and to report using a foodbank.

This is especially concerning because many of these families losing work or seeing reduced earnings have children in their homes, and this is not just households with caring responsibilities. Around 42% of
households with children are finding it harder to make ends meet. Adults with children eligible for free school meals are at heightened risk of food insecurity arising from a lack of money. Moreover, 30% of households eligible for free school meals have not received a replacement and this is particularly concentrated among the poorest households. While the government’s economic response has been expansive in many ways, there has been a surprising blind spot in relation to families with children, revealing the kind of structural barriers that exacerbate inequality. Financial support has been made available for the self-employed, for businesses and for furloughed workers. At same time, some cash benefits have been increased. But there has been very little aimed at children specifically.

Consider the benefit cap, which sets a limit on the total amount of money claimants can receive in benefits. The benefit cap itself is a reflection of the interaction between stigma and disadvantage, being based on the notion that unless there are financial penalties to benefit claimants, there will be no incentive for them to seek employment. The background assumption that benefit claimants are work-shy and even ‘scroungers’ has consistently informed benefit rules such as the benefit cap, discussed in detail in Part II. Government has gone further and defended the cap and other benefit related sanctions on the basis that it is not in children’s best interests to grow up in households in which no-one is in paid employment. The fact that children might suffer from food insecurity and other severe material deprivations has not weighed against this conclusion.

Despite the increases in other forms of social security, the benefit cap remains in place. In November 2019 alone, around 76,000 households were subject to the cap, the vast majority of whom are single parents (often women) with dependent children. These households, on average, lose around £2600 per year. Even if we accept that the benefit cap is an effective way to help people back into work (although the evidence for this claim is not incredibly strong), finding new employment has become almost impossible under the economic lockdown. Capped households are, in effect, being punished for their failure to find work, despite there being no work for them to take. Being set up to fail is inherent in the structure of the benefit cap. Lady Hale observes in DA and DS, that requiring single mothers to find the number of hours of work to escape the cap does not take account of the difficulty in finding part-time work and securing, paying and organising the logistics of adequate childcare.

Why then has the cap persisted? Neil Couling, the Change Director General for the Department of Works and Pensions, in a recent webinar with the Resolution Foundation pointed to the ongoing role of stigmatic assumptions about benefit claimants. He suggested that the cap continues in part because the government wanted to distinguish between Covid-19 affected claimants and existing claimants – the deserving and the undeserving. But doing this would have been technically very difficult and slow to introduce. The benefit cap already allowed a grace period of 9 months for those who have had a stable work history and therefore this allowed the government to informally (and imperfectly) distinguish between those who might be capped because of Covid-19 (those with more complete work histories) and those unrelated to Covid-19. Irrespective of the motivation, the perpetuation of the cap’s conditionality during lockdown is a new manifestation of the structural inequalities embedded in the system. That the cap endures even while wider forms of welfare conditionality are (albeit temporarily) suspended is a stark structural inequality (the third dimension) that will disproportionately harm larger and single parent families, fuelling existing inequalities yet further.

On top of this, the number of capped households is likely to have risen because of the lockdown. Parents
who lose their job as a result may find their benefits suddenly capped. This would be especially true if those households who had only recently moved into work before losing their jobs due to the lockdown. These households will not benefit from the 39-week exemption from the cap, which requires 12 months’ continuous employment prior to moving out of work. Single parent households (which are already mostly single mothers) are – again – likely to be disproportionately affected as the industries most affected by the lockdown have been female dominated industries.

The benefit cap also reduces the effectiveness of the government’s support for families affected by the shutdown. For the approximately 76,000 families already living under the benefit cap, the additional protections offered by government will have no effect at all. Most notable here is the £1000 increase in the standard allowance in Universal Credit, which has rightly been lauded as a step in the right direction. But this step will be of no help to those already subject to a benefit cap. In fact, for some households, it will actually push them into being capped, perhaps for the first time. Take a woman with children who lives outside of London, who currently receives £19,500 in social security payments over the year, including to help with the costs of housing. Because she is subject to a benefit cap of £20,000 per year, she will only receive £500 of this additional payment because the cap will remove the other £500. This increased generosity has, as the Resolution Foundation have recently shown, increased the number of people potentially affected by the cap.

The lockdown has had a profound effect on children. However, while all children are being asked to bear a huge burden during the lockdown, this burden varies greatly depending on family circumstances and resources. The lockdown has meant isolation from their friends, but some are also unable to get enough to eat because their parents cannot afford enough food and the free school meals replacement system is not working properly. The lockdown means no sports or games, but for some children it also means hunger and having no respite from the threat of violence in their households. The lockdown has meant less interaction with teachers but some children have received more help than others (in part from private tutors but also from the schools themselves). On top of this, while all children feel some uncertainty about the virus, the children in more disadvantaged areas are more likely to be personally affected by family members falling seriously ill or dying from Covid-19.

It is still too early to tell the precise scale and scope of these inequalities and which groups have been most keenly affected, particularly when we think about intersectional inequalities which are very often difficult to see in the data that is currently available. But the picture that is starting to emerge suggests women with children are particularly hard hit. The government moved quickly to shut down the economy and slow the spread of the virus but in so doing has very likely exacerbated inequalities across key protected characteristics. More than this, these policies have likely deepened inequalities between these intersectional inequalities.

**Part II: Redressing The Interaction between Status and Economic Inequalities?**

Part I used the rapidly emerging picture that comes from social scientific data to map how Covid-19 has both created and exacerbated pre-existing inequalities. What is most striking is that the government’s response has failed to fully appreciate the complex relationship between status inequalities and economic inequalities.
Through the prism of substantive equality, it is clear that this is not only about economic disadvantage. This disadvantage is intensified for those who are already subject to prejudice, stigma and stereotyping in society: women who are still regarded as primarily responsible for caring and domestic roles, older people and younger people, Black and ethnic minority people, migrants, persons with disabilities and others, many of whom are already in precarious work. These groups also have less voice in the planning and operation of policy. Similarly, structural inequalities already existing have exacerbated disadvantage, exclusion and prejudice. Given that the burdens of Covid-19 are disproportionately shouldered by individuals with characteristics that are protected in equality and anti-discrimination law, the question becomes: can law play a role in ameliorating these inequalities? This section canvasses the potential within UK legal frameworks.

The Public Sector Equality Duty (PSED)

This year the Equality Act 2010 (EA) celebrates its 10th anniversary. This landmark piece of legislation expands and consolidates the proactive duty to promote equality, which had originally been introduced in 2000, after the findings of institutional racism in the Metropolitan Police Force highlighted the insidious effects of racist culture within institutions. Under section 1 of the EA public authorities must have due regard to the need to reduce inequalities of outcome resulting from socio-economic disadvantage, the Public Sector Socio-Economic Duty. This is a requirement to give weight to the need to redress economic inequalities. In theory this could be a foothold to tackle the synergy between status and material inequalities. However, this duty was never brought into effect in England, Wales and Northern Ireland. Scotland has recently implemented this duty, but its impact has not yet been fully mapped out. More promising is the Public Sector Equality Duty. This duty is innovative in moving beyond the limitations of a complaints led model, which depends on individuals to contest specific acts of discrimination directed against them. Individual complaints are financially and socially costly and the individualised focus leaves structural and institutional inequalities unaddressed. By contrast, section 149 of the EA, commonly known as the Public Sector Equality Duty (PSED), places a proactive duty on public authorities to promote equality. Specifically, a public authority must, in the exercise of its functions, have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In s149(3), the Act provides some clarity on the meaning of ‘equality of opportunity’. This provision draws on the four-dimensional understanding of substantive equality, which was accepted by the Government Green Paper, which informed the EA. According to Section 149(3), having due regard to the need to advance equality of opportunity involves having due regard to the need to: (a) remove or minimise disadvantages connected to a protected characteristic (the first dimension); (b) meet those needs which are different to the needs of those who do not share the relevant characteristic (the fourth dimension); and (c) to encourage the participation in public life of individuals or any other activity in which participation by persons with a relevant characteristic is disproportionately low (the third dimension). Section 149(5) explains that ‘good relations’ requires the public authority to have due regard to tackling prejudice and promoting understanding (the second dimension).

The main critique of the PSED is that it ‘lacks teeth’. This is because the duty is only to ‘have due regard’ to these needs, not to ‘take steps’ to meet them. In the last 10 years, it is clear that the obligation to have due regard is only a procedural duty; it has been interpreted and applied in an exceptionally light-touch manner;
and is too easy discharged. In judicial review proceedings, courts have stressed that it ‘is not a duty to achieve a result, i.e. eliminate unlawful racial discrimination or promote equality of opportunity. It is a duty to have due regard to the need to achieve these goals’. Similarly, in Brown, the Court stated that ‘no duty is imposed to take steps’. On the other hand, courts have attempted to give some robustness to the procedural requirements. Thus the key message has been that the duty must be exercised in ‘substance and with rigour’. It should be approached in an open-minded manner, rather than as a ‘tick-box’ process. More specifically, this means that the risk must be assessed before adopting the policy and not as a rear-guard action. All the steps taken should be recorded, and the duty should be on the Minister personally.

**Article 14 of the ECHR**

The other key legal regime is the Human Rights Act 1998 (HRA) which domesticates the ECHR. Article 14 holds

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Importantly, Article 14 is triggered when the factual matrix of the case ‘falls within the ambit’ of the rights in the Convention, even if the right itself has not been breached. Moreover, it ‘applies to those additional rights, falling with the general scope of any Convention Article, for which the State has voluntarily decided to provide’. This has made it possible to challenge a wide range of measures which may not fall within the scope of the EA. For example, it has been held that social security benefits fall within the ambit of the right to peaceful possession of property, or the right to respect for home, family and private life. This means that the UK benefits scheme and any Covid-19 economic measures must comply with Article 14. The potential of Article 14 is further evidenced by the breadth of the protected grounds, which include the possibility of addressing intersectional discrimination. Thus, it has been held that ‘single parents with young children’ can constitute a protected ground. The inclusion of ‘national or social origin’ could in theory be interpreted to redress socio-economic discrimination.

However, as with the PSED, courts in the UK have been highly deferent in their interpretation of Article 14, especially in relation to claims challenging social policy. This can be seen by a close examination of Article 14 challenges to two major austerity motivated reforms to social security – the benefit cap and the bedroom tax. Although these cases touch upon disability and age-based discrimination, the analysis focuses on the gender dimensions of the claim. The narrow analytical focus allows for a more detailed assessment. It demonstrates that courts have failed to apply the rich multidimensional concept of equality and this, in part, explains the failure of the courts to appreciate the synergies between status and economic inequalities.

There have been two major benefit cap cases in the UK Supreme Court. In the first, SG and others v. Secretary of State for Work and Pensions, the claimants argued that the social benefits cap indirectly discriminates against women because it affects more women (60 percent) than men (3 percent). A few years later, in DA and DS v. Secretary State for Work and Pensions, the claimants argued that the work conditions to escape the
benefit cap are discriminatory against single parents with young children. The majority judgments in both these cases understood the discriminatory impact of the benefit cap and conditions only in terms of material or economic inequalities: women living below the income threshold and were struggling to house, feed, clothe and warm themselves and their children. There was virtually no engagement with the other dimensions of equality beyond noting that women will mathematically suffer greater income poverty. Although the Court concluded the cap and working conditions to escape the cap are prima facie discriminatory, the majority held that this was justifiable. In neither of these cases was there an appreciation of the different dimensions of substantive equality, and especially the interaction of stigma and stereotyping with gendered disadvantage, creating structural barriers to women’s equality. In particular, the majority gave no weight to women’s disproportionate role in care work and how this can create structural barriers in accessing paid employment, nor with the prejudicial attitudes that women in poverty need negative economic incentives to find work.

Article 14 permits prima facie discriminatory treatment to be justified, making the standard of justification crucial to the outcome. This balancing, however, is skewed as the Court does not fully interrogate the discriminatory and unequal treatment. The gendered structures, prejudices and stereotypes that underpin the laws on social benefits remain in the shadows. On the other side, the Court undertakes a detailed, almost microscopic-level assessment of the government’s rationale for limiting women’s human rights. The degree of difference in unpacking both sides of the claim de-calibrates the balancing scales in the justification analysis. It permits the Court to easily accept that any reduction in income is ‘not too high a price to pay’.

The light touch balancing review is also linked to the Court’s assumption that social welfare and economic policy are not a matter of rights but of the legislative or executive welfare policy. Thus, Lord Reed stated in the first benefit cap case: ‘The question of proportionality involves controversial issues of social and economic policy, with major implications for public expenditure. The determination of those issues is pre-eminently the function of democratically elected institutions….’. Therefore, ‘unless manifestly without reasonable foundation, their assessment should be respected’. On this view, due to the separation of powers, the Court has neither the democratic mandate nor expertise in the complexity of economic and social policy. Thus, it is inappropriate for the Court to question the allocation of resources. However, judicial deference on social policy, especially in relation to social security benefits simply disguises the close enmeshment of status and economic inequalities. The benefit cap cases adopt this conventional approach and regard pure economic inequality as beyond the purview of law. In SG, the Court repeatedly explains that the benefit cap is a matter of ‘political judgment’ and holds that ‘it is not the function of the courts to determine how much public expenditure should be devoted to welfare benefits’. In DA, Lord Carnwath concludes that the impact of the cap is ‘undoubtedly harsh’, but accountability for any negative impacts on women must be in the ‘political rather than legal arena’. Without adopting and applying a sophisticated model of equality, the Court solely understands these claims as the distribution of resources and fails to identify the status-based discrimination embedded in social security laws and regulations.

The dangers of a thin model of equality are also apparent in the ‘bedroom tax’ case. Benefits are capped if social housing is under-utilised. Through negative financial incentives, the scheme aims to encourage benefit claimants to move to smaller and cheaper housing. In Carmichael et al v. Secretary of State for Works and Pensions, the UK Supreme Court recognised that the bedroom tax disproportionately affected certain types
of disabilities where there is a medical need for extra space. However, a majority of the Court concluded that women who were in specially adapted homes under the Sanctuary Scheme to protect them from gender-based violence and had their benefits capped for the additional bedrooms were not discriminated against. Unlike a disabled person who has a verifiable need for additional space, women in homes under the sanctuary scheme ‘have no objective need for three bedrooms’. Again, this is a stripped down and incomplete assessment of the prejudicial effects or discriminatory impact of the bedroom tax on women. Lady Hale in dissent and a majority of the European Court of Human Rights (ECtHR), on the other hand, held that the bedroom tax was discriminatory against women who experienced gender-based violence.

The ECtHR stressed the UK’s duty to protect ‘the physical and psychological integrity’ of women who experience gender-based violence and that this duty extended to the right of women to enjoy her home free of violent disturbance. Unlike the highly deferential review by a majority of the UKSC, the ECtHR applies a robust justification analysis. The need to prevent discrimination against women, including in the economic and social policy, reduces the degree of deference owed by the Court. This implicitly recognises that substantive inequalities can be embedded in social benefit regulations and to root out these inequalities the courts must meticulously interrogate the government’s rationale. Applying economic incentives, via the bedroom tax, to women who experienced violence and were living under the Sanctuary Scheme would undermine their physical and psychological integrity. The ECtHR concluded that the UK had not provided sufficiently weighty enough reasons to justify undermining women’s integrity. While this is a more contextualised assessment and the ECtHR is correct to apply a more searching justification, there is still significant room to unpack the relationship between equality, gender-based violence and housing.

Part III: The Aspirations for Equality Law in A Time of Pandemic

It is argued here that, despite the limited interpretation of UK courts, both the PSED and Article 14 require the government to promote the right to substantive equality, as set out in a four-dimensional approach to equality, which is mirrored in s149(3) EA 2010. In this Part, we set out the aspirations for the legal framework, while critically appraising the ways in which the current legal framework has obstructed such an understanding.

The most important way in which the government should have fulfilled its duties under the PSED is to conduct an equalities impact assessment and take relevant mitigating steps. In fact, the impact assessment appended to the Coronavirus Act does state that an equality impact assessment was carried out separately as part of the PSED. However, the government has refused to publish it. Under the Equality Act 2010 (Specific Duties) Regulations 2011, the government must ‘publish information to demonstrate its compliance with the’ PSED and this information must include how those with a protected characteristic are affected by the policy or practice. Refusing to publish the equality impact assessment, the primary method for complying with the PSED, runs afoul of the regulations and is antithetical to the participation dimension of substantive equality. Fulfilling the PSED through an equality impact assessment should not be a closed process but rather open to different, particularly marginalised voices. In the past, the Government’s equality impact assessment has only consulted powerful voices, MPs or sophisticated think-tanks and by-passed talking and listening to the voices of those directly affected by the law. In evidence to the Parliamentary Women and Equalities Committee, the Women and Equalities Minister Liz Truss justified the lack of publication because of the potential ‘chilling
effect on being frank in those assessments’ if those who prepared the equality impact assessment knew it would be published. This goes against a key rationale for such a duty. As Caroline Nokes, Chair of the Women and Equalities Committee put it in a letter to Liz Truss: ‘Surely, in a fair and democratic society, it is only right that we are able to have an open conversation about the equality assessment; to allow Committees such as ours, individuals and other groups to scrutinise the Government’s work and contribute to mitigating any negative consequences’. Given the lack of transparency surrounding so much of government decision-making in the context of Covid-19, not least in relation to the scientific advice so often alluded to but never revealed, this failure to fulfil the Equality Act 2010 (Specific Duties) Regulations 2011 and publish the equality impact assessment does seem to cast doubt on how thorough or rigorous it is.

A full and clear application of the equality impact assessment, in line with s149(3), should have considered all the dimensions of substantive equality and taken relevant mitigating steps. Given the rapid changes in policy, this is an ongoing duty, with the need for such an assessment at all stages in the process. A clear precedent for this is Lady Hale’s dissenting opinion in the bedroom tax case. One consequence of this limit was that a small number of women would have to move out of their homes even though the homes had been specifically fortified to protect them against a former partner or other person who had previously subjected them to sustained and violent abuse. Lady Hale, unlike her colleagues on the Court, made the crucial connection between gender-based violence and this substantive understanding of equality. Gender-based violence, she held, ‘is undoubtedly a disadvantage suffered by people, namely women, who share a relevant protected characteristic within the meaning of section 149(3)(a) and produces needs that are different from those of people who do not share it within the meaning of section 149(3)(b). This brings it within the need to enhance equality of opportunity to which due regard is to be had under section 149(1)(b)’.

The empirical evidence described in detail above demonstrates what we would expect from the government’s equality impact assessment, to fulfil its duty under the PSED. The need to redress disadvantage means that policies for social distancing should make provision for those whose housing circumstances do not permit such action. Equally, social distancing assumes access to the internet as a key vehicle for public health information, keeping in contact, applying for social security, distance working and distance learning. But digital access is lower among older people, women, poorer people and disabled people, particularly in light of closures to libraries. Policies need to be adapted for this. This is also true for the social security net, especially, as we have seen, the benefit cap.

Here the interaction with stigma and stereotyping of claimants as unwilling to work unless penalised has intensified the disadvantage. The cap should be immediately removed. Also crucial is that caring work, which is now intensified during lockdown, is properly valued. One way to properly value unpaid childcare work and support families with children would be to increase the child benefit. The child benefit is not means-tested and can reach families who are just above benefit levels and therefore not receiving means-tested benefits. It is paid directly to the person responsible for a child under 16. In August 2019, 87% of families in receipt of child benefit had a woman as the registered claimant. It can be delivered quickly through existing infrastructure. It would immediately benefit large numbers of women and other primary carers whose unpaid caring work has increased during the lockdown. Similarly, the two-child limit which prohibits the availability of child tax credit for any third child born into a household after April 2017 should immediately be removed.
Many families with three or more children will not only have lost their jobs but will need to maintain childcare and home schooling for their children during the crisis. They should not be penalised when they are facing even greater challenges than others.

Similarly, the second dimension requires particular attention to be paid to the risk of domestic violence, which, as we have seen has spiked during the pandemic. Although the government has said victims may leave home to seek help and that support services remain open, there are a range of further steps that should be taken to fulfil their due diligence requirements. In particular, government should develop mechanisms so that women can safely contact protection services during lockdown, and that adequate shelters, which are safe both from the abuse and from the virus, are made available to them and their children.

Care also needs to be taken not to cause and exacerbate stigma. During the course of the pandemic, government has introduced its new points-based system for immigration. The hostile environment already in place has ignored the central role of migrants in delivery of health and other services, as well as in agriculture etc.

It is crucial too that even in times of crisis, procedures for voice and participation are included. This makes the suppression of the equality impact assessment, which is meant to be based on involvement and consultation with those affected, even more worrying. There are many things about people’s lives that the elites do not hear and need to know. Grenfell Tower should be a wake-up call. Only if we have full buy-in from every single person, can these measures work. Particular attention needs to be given to those with the least political power, the least access to the internet and other means of communication.

All of this, however, will be merely palliative unless attention is also paid to the fourth dimension, the need for structural change. A decade of austerity has undermined the resilience of our central social institutions. This is accompanied by a punitive and consequently bureaucratic social security net, including for disabled people, and a highly stigmatising approach to migrants. There needs to be proper spending on the public health system, social care and social security, putting in place resilience for future crises. Privatisation and decentralisation have splintered the response, and the commitment to social care, social housing, access to justice and social security has been hollowed out. The devastating impact on the economy should not mean that the pretexts for austerity after the financial crisis are revived.

A similar argument can be made about Article 14. The UK case law on the benefit cap and the bedroom cap reveals that the policies not only are divorced from real people’s real experiences but are riddled with prejudice, stereotypes and structural obstacles. Remedying pernicious cultural attitudes and ensuring that every person has an equal opportunity is at the heart of UK equality law under the HRA. Thus, the Courts should have a strong role in interrogating and flushing out these inequalities. The fact that recognition and structural harms are within the realm of economic decision-making does not negate the discriminatory effect. Currently, the majority of the Court’s simplistic understanding of equality as being purely economic or material both ignores the complexity and interlocking dimensional nature of inequalities and obscures the role of the Court. Judges are tasked with upholding the commitment to equality and non-discrimination. They must ensure that social benefits law redress stereotypes and transform oppressive institutions as this is the
core of substantive equality. Greater attention to the nuances of equality can more accurately diagnose the discriminatory effects of the law and more accurately calibrate the scales for the justification-proportionality analysis to ensure that due weight is given to equality rights.

Conclusion

We could have weathered the pandemic better in a more equal society. We argue that the deep disturbance to the foundations of society represented by the pandemic should signal the importance of a greater commitment to reducing inequalities going forward, rather than reverting to the ideology of austerity. The intrinsic importance of the right to equality should be central to decision-making as to the allocation of resources even in the straitened form. This pandemic shows that every individual’s health is also key to the health of the community. We should not forget that.

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Analysis of Legal Issues Related to Debt Accession Determination

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Abstract: The provisions of the Civil Code of the People's Republic of China on the debt accession system are of great significance and make up for the deficiencies of the contract law. However, due to the small number of provisions and the complexity of judicial practice, it does not reduce the difficulties and confusion in the application of the law. The most important reason for the confusion and difficulties in the application of the law is the unclear recognition of the system of debt accession. Therefore, the recognition of debt accession is crucial. On the one hand, it is necessary to focus on the internal aspects, including the analysis of concepts and constituent elements, and on the other hand, it is necessary to focus on the external aspects, distinguishing between systems that are similar to it, in order to reduce confusion.

Key words: Debt Accession; Joint and Several Liability Guarantee; Third Party Substitute Performance; Manifestation

Introduction

On January 1, 2021, the Civil Code came into force, marking the successful completion of the codification of the first law named after a code in the new China. The Civil Code has introduced significant reforms and innovations in many aspects, and the inclusion of debt is an important aspect (Wang, 2021). Prior to the Civil Code, debt accession was only a doctrinal concept (Zhao, 2005), but Article 552 of the Civil Code formalized the debt accession system in the form of a new system, which made up for the deficiencies of China's contract legislation. In fact, the debt accession system has been widely used long before the Civil Code came into force, and there are many disputes involving debt accession in judicial practice. How to determine whether it is debt accession, what types of debt accession, and how to distinguish debt accession from guarantee and third-party substitution are the key points and difficulties in judicial practice. The Civil Code only determines the debt accession system in the form of law and makes a simple provision, but the problems that plague the practical circles are still not solved. Therefore, the exploration and clarification of the debt accession system is still a key point and difficulty to be further studied and overcome in practice and theoretical circles.

Overview of the Legal Regime for Debt Accession

The Concept of Debt Accession
Debt accession is also known as concurrent debt assumption. Although debt accession has been widely used in practice and studied in theoretical circles, and the Civil Code also provides for it, there is no clear and unified concept of debt accession so far, which is one of the important reasons for the confusion of its application in practice. However, there have been people in the theoretical and practical circles exploring what debt accession is and trying to define it accurately and reasonably.

In the theory, there are different opinions on the concept of debt accession, but the essence is similar. Zhang Guangxing believes that debt accession is a way of debt assumption in which the debtor does not leave the debt relationship, but a third party joins the debt relationship and shares the debt with the debtor (Zhang, 1997). According to Shi Shangkuan, debt accession is the concurrent assumption of debt, which is a contract that is based on the valid establishment of another person's debt, and the third person, for the purpose of guarantee, newly assumes a debt with the same content as the debt at the time it is assumed (Shi, 2000).

In judicial practice, since there are more and more disputes involving debt accession, some people's courts have defined debt accession based on the needs of practice. The 42nd meeting of the Judicial Committee of Jiangsu High People's Court held on September 23, 2005 pointed out that "debt accession refers to the third party reaching a tripartite agreement with the creditor and the debtor or the third party reaching a two-party agreement with the creditor or the third party unilaterally promising to the creditor that the third party will perform the debtor's debt, but at the same time not releasing the debtor from the obligation to perform the debt The way to assume". When interpreting the issue of debt joining, the Civil Second Chamber of the Supreme People's Court identified debt joining as the third party's promise or agreement with the creditor to repay the debtor's debt, forming a pattern of joint repayment of debt by the third party and the debtor. The above definitions of the debt joining system are based on past legal provisions, theoretical development and judicial practice. With the continuous progress of theory and practice and the incorporation of the debt joining system in the Civil Code, it is necessary to define the debt joining in line with the current actual situation. Combined with Article 552 of the Civil Code and the opinion of the Supreme Court, I believe that debt joining refers to: in the same lawful and valid debt relationship, in the case that the original debtor does not leave the debt relationship, the third party joins the debt relationship by way of agreement with the debtor or unilateral promise to the creditor, and after notifying the creditor, becomes the new debtor to assume joint and several liability with the original debtor Debt assumption method.

**Constituent Elements of Debt Accession**

The valid establishment of the original debt relationship. This is a prerequisite for debt accession. The original debt must be legally valid, otherwise the debt-debt relationship has no legal effect, and it cannot constitute debt accession. For example, in the civil judgment of the second trial of the dispute between Zhao Fuping and Xue Liya over the sales contract, the "sales contract relationship" formed between Xue Liya and the appellee was fraudulent and coercive, and the contract was invalid, and the People's Court held that based on the invalid legal relationship, it could not constitute a valid The People's Court held that the invalid legal relationship could not constitute a valid debt accession.

The original debt is transferable. Second, the original debt is a transferable debt and is performable by the
debt joiner. Common debts that are not transferable are: debts with exclusive nature, debts stipulated by law or agreed by the parties that can only be performed by both parties.

The accessionist has the intention of debt accession. The meaning expression is of great importance to the civil legal act, and the joiner of debt accession must have the meaning expression of accession. In the civil judgment of the second trial of the construction contract dispute between Meijian Building Systems (China) Co., Ltd. and Qinghai Mingrui Real Estate Development Co., Ltd., the People's Court then held that there must be an explicit intention of the third party to jointly assume the debt with the debtor to constitute debt accession. There are express implied expressions of intent, and according to the Civil Code, the expression of intent to join the debt is made in an express manner, either by agreement with the debtor or by expressing the willingness to join the debt to the creditor.

Not to make the consent of the creditor a constituent element. Prior to the enactment of the Civil Code, there were different views on whether the consent of the creditor was required for debt accession. Article 552, which states that "the creditor does not expressly reject it within a reasonable period of time," means that such an assumption of debt does not require the express consent of the creditor, because the status of the original debtor is not changed, but only the addition of a new debtor does not affect the interests of the creditor, so the express consent of the creditor is not required. This is more in line with the intention and interest of the parties (Xiao, 2020).

Comparison of Debt Accession and Related Legal Systems

The debt accession system is independent and cannot be replaced by the related legal system (). However, in the principles of civil law as well as in judicial practice, the debt accession system has certain similarities with many systems, which can lead to confusion in application, especially with the joint and several liability guarantee system. Therefore, it is necessary to clarify the difference between the debt accession system and these systems.

Accession of Debt and Several Liability Guarantee

Theoretical distinction between debt accession and joint and several liability warranties. Guarantees are divided into general guarantees and joint and several liability guarantees. The most central difference between general warranty and joint and several liability warranty is whether the guarantor has the right of first defense. In the Second Civil Judgment on Business Trust Dispute between China Urban Construction Holding Group Limited and Anxin Trust Company Limited, the Supreme People's Court held that "guarantee, especially joint and several guarantee liability, is the same as debt accession in the sense that it aims to guarantee the original debtor's debt. It is more difficult to distinguish between the two in the case where the creditor and the assignee have reached an agreement to establish the accession of debt. However, in practice there is still a need and a criterion for the distinction."

In fact, theoretically speaking, the two are not difficult to distinguish. First of all, the nature is different, the debt accession has independence while the joint and several liability guarantee has subordination (Huang,
2002). Secondly, the identity of the third party is different. The result of debt accession is to perform the debt of the original debtor as its own debt, while the result of joint and several liability guarantee is to provide guarantee for the debt, and the joint and several liability guarantor is not the debtor. Once again, the period of liability performance is different. The joint and several liability guarantee applies the provisions of the guarantee period, and if the creditor does not request the guarantor to assume the guarantee liability during the guarantee period, the guarantor will no longer assume the guarantee liability. In contrast, there is no period of accession of debt, and the debtor assumes the liability of the debtor as an independent debtor from the beginning of accession. Finally, there is also a difference in the formal elements, as the guarantee must be in writing but there are no formal requirements for the accession of the debt.

The distinction between debt accession and joint and several liability guarantee in practice - the meaning is clear and the meaning prevails. Ltd. v. Pizhou Hanhua Trade Co. Ltd. and Xuzhou Antaisun Real Estate Development Co. Ltd. in a dispute over construction contract, the Supreme People's Court, in discussing the issue of whether Antaisun should be jointly liable for the payment of construction money and interest owed by Pizhou Hanhua, stated that: the letter of guarantee issued by Antaisun to China Construction Seventh Bureau II The Letter of Guarantee issued by Antai Shun to CCBC II stated that Antai Shun was willing to assume joint and several liability for all the responsibilities and obligations of Pizhou Hanhua as agreed in the construction contract, but the letter did not indicate that Antai Shun had the intention to join the debt. However, the letter did not state that the company had the intention to join the debt. The second company of CCB7 claimed that the act of issuing the Letter of Guarantee by Antaisun was an act of debt joining, which lacked factual and legal basis. It can be seen that the Supreme People's Court believes that the accession of debt must be expressed, and if there is no accession of debt, it cannot be recognized as accession of debt.

In practice, when the meaning is unclear and indistinguishable - interpretation of meaning takes precedence. Although theoretically it is easy to see the difference between the two, in judicial practice the distinction between the two is difficult because not every party can understand the difference between the two in daily life, and not every written document involving the two can clearly distinguish the nature of the two. In the event of a dispute, especially when the written document does not clearly indicate which is which, it is a major problem in judicial practice to deal with if one party claims to be a debt accession and the other party claims to be a joint and several liability guarantee. However, the Civil Code does not deal with these.

The civil legal act is the act of civil subject to establish, change or terminate the civil legal relationship through the intention, the intention has an extremely important role for the civil legal act. When the meaning is unclear, the interpretation of the meaning should be carried out first, which is also the embodiment of the principle of private law autonomy. The interpretation of the expression of meaning with a relator shall be determined in accordance with the words used, taking into account the relevant provisions, the nature and purpose of the act, custom and the principle of good faith. The intention of the parties is the key to distinguish the accession of a debt from a guarantee. According to German scholar Dirk Rochilds, the distinction between guarantee and accession of debt should first be based on the intention of the parties, and in case of doubt, it should be determined by interpretation (Wang, 2021).

In judicial practice, the people's courts also focus on the interpretation of the parties’ meanings. In the civil
judgment of the first instance of the loan contract dispute between Zhang Fan and Huinuo Commercial Management (Wuhan) Co. Hao Jianpei and Zhou Xie provided guarantees for the other two loans, Zhang Fan also claimed that the three of them were liable for the guarantees, the five related loans occurred in the same year and the commitment letter was made for the five loans as a whole, etc., the court held that the parties' intention when signing the repayment commitment letter should be a guarantee rather than a debt accession.

The actual economic interest relationship in the interpretation of the meaning. In the interpretation of the parties' expressions of intent, it should be based on the interpretation of the meaning of the text and the comprehensive use of the system interpretation, purpose interpretation, customary interpretation and the principle of good faith and credit, etc., to explore whether the third party has the intention of jointly assuming the debt with the debtor, in order to determine the real contracting purpose of the third party (Liu, 2021). In interpreting the meaning of the third party, various aspects should be taken into consideration, such as whether the third party has the intention to pay the debt for the debtor, whether the performance of the debt has an actual economic benefit relationship to the third party, whether there is joint actual performance between the parties, whether there is an order of performance of the obligations of the third party and the debtor, etc. But according to the more typical adjudication documents in China in recent years, the economic interest relationship is an extremely important reference factor for the interpretation of the meaning.

In the civil judgment of the second trial of the dispute between Qujing Taian Construction Engineering Co., Ltd, Chuxiong Zhaoshun Real Estate Development Co., Ltd and Yunnan Stacking Xin Trade Co., Ltd, the court's decision is that if the nature of the parties' meaning and behavior is unknown, the legal relationship should be determined according to the contractual agreement and the interest relationship between the parties, as the general theory and jurisprudence of German civil law holds that the accession of debt The accession should be based on the fact that the acceding party has its own, direct economic interest. In other words, the accession of debt can be recognized only when the third party participates in the actual economic interest of itself.

In the civil judgment of the second trial of the business trust dispute between China Urban Construction Holding Group Co., Ltd. and Anxin Trust Co., Ltd., the Supreme People's Court held that: when the intention of the parties is unclear, a comprehensive judgment should be made in the light of the specific circumstances, such as the act of undertaking mainly for the benefit of the original debtor, it can be recognized as a guarantee, and when the bearer has a direct and actual interest, it can be recognized as debt accession.

When the explanation of thinking is not applicable - presumption rule. Although theoretically it is easy to see the difference between the two, in judicial practice the distinction between the two is difficult because not every party can understand the difference between the two in daily life, and not every written document involving the two can clearly distinguish the nature of the two. In the event of a dispute, especially when the written document does not clearly indicate which is which, it is a major problem in judicial practice to deal with if one party claims to be a debt accession and the other party claims to be a joint and several liability guarantee. However, the Civil Code does not deal with these.
Debt Accession and Third-Party Substitute Performance

Third-party substitution refers to the legal act of having a third party perform the payment obligation to the creditor on behalf of the debtor in the course of contract performance.

Theoretical distinction between debt accession and third-party substitute performance. In terms of legal status, the subject of the debt in the third person's substitution does not change, the parties to the contract are still the original creditor and debtor, and the third person is not a party to the contract, which is different from the debt accession; in terms of liability, in the third person's substitution, if the third person does not perform the debt or performs it improperly, the third person will not bear the liability for breach of contract, but in the case of debt accession, the accession will As to whether the creditor can request the third party to perform the debt, in the accession of debt, the creditor can request the acceder to perform the debt, but in the third party's substitute performance, according to the principle of relativity of debt, the creditor can only request the debtor but not the third party to perform the debt.

The practice involves disputes between the two. Although the two are easy to distinguish in theory, disputes involving them in practice are still more complicated. Taking a case of equity transfer contract as an example, different views emerged among courts at various levels as to whether Company B should bear the responsibility of repayment. The court of first instance held that the promise of Company B belonged to the promise of a third party outside the contract to assume the debtor's obligation to the creditor in the contract, and should be recognized as debt accession. The court of retrial held that the amount Company B had promised to pay to the creditor was the remaining equity transfer amount. Since there was no equity transfer relationship between Company B and the creditor, Company B had no obligation to pay the equity transfer amount. The reason for its payment is based on the agreement of the Supplementary Agreement, and Article 2 of the Supplementary Agreement has agreed that the capital increase money delivered by Company B to Company A should be given priority to repay the so-called equity investment money (i.e. equity transfer money) owed by Company A to the creditors. It can be seen that the payment of the remaining equity transfer amount to the creditors promised by Company B in the Payment Agreement is actually the performance of the payment obligation to the creditors on behalf of Company A.

In summary, when the distinction between debt accession and third party performance on behalf of the unclear, it also involves the interpretation of the meaning expression, which should likewise be based on the interpretation of the context, combined with the system interpretation, purpose interpretation, customary interpretation and the principle of good faith and other comprehensive analysis, to explore the real contracting purpose of the third party, and finally determine whether it needs to bear the relevant civil liability to the creditor for breach of contract and so on.

Debt Accession in Practice

Sign, Stamp and Seal on the Original Payment Document

In judicial practice, it is very controversial and difficult to reach a consensus on which type of dispute belongs
to debt joining. In summary, there are both written and unwritten forms of debt accession. In practice, there is no strict requirement that debt accession must be in written form, which is one of the differences between debt accession and guarantee emphasized before.

In the first instance civil judgment of Ren Yongqian and Lu Shaogang, Liang Guangyu labor contract dispute, the People's Court held that: the defendant Liang Guangyu signed and stamped on the note, should be regarded as Liang Guangyu to the defendant Lu Shaogang to transfer the debt to his act of recognition, the plaintiff in this case Ren Yongqian and the outsider Lu Jingming did not explicitly refuse, in line with the debt accession.

In the civil judgment of the first instance of civil lending dispute between Xiang Hua and Qiu Dezhi and Li Liangling, the People's Court held that: the defendant Jiaxin Agricultural Company's stamped act is the act of debt joining, and shall bear joint and several liability for settlement according to law.

**Additional Commitment Documents with Debt Accession Effect**

Ltd. and Fu Minzhi and Xun Jiangran in the first instance civil judgment of the dispute over the financial loan contract, the People's Court held that: the parties, as persons of full civil capacity, should know the legal consequences of the signature, and their signatures on the joint borrower's undertaking means that they have the intention to join the debt.

Ltd. and Liu Liang, the People's Court held that: the "Housing Lease Contract" in question was a true expression of the parties' intention, and the content of the contract did not violate the mandatory provisions of laws and administrative regulations, so it should be confirmed as legal and valid. The parties agreed to terminate the contract, the defendant Liu Liang for the plaintiff issued a note for the act should be recognized as its debt to the amount owed to join the act.

In the plaintiff building materials company and the defendant communication company, Liu Bixiang, Liu Chen sales contract, debt accession dispute civil judgment, also because the defendant Liu Bixiang and Liu Chen on the defendant communication company owed the plaintiff building materials company to the name of the debtor issued a note, was found to constitute debt accession.

**No Written Document, but there is a Voluntary Expression of Joint Liability**

Ltd. and Zhang Hao, Urumqi Zhongyishengda Industrial Development Co., Ltd. in the civil judgment of the second trial of the dispute over the housing lease contract, the People's Court held that Zhang Hao did not dispute the joint responsibility with Qixin Naiyao during the trial, and agreed to take responsibility in the first and second trial, which was a self-admitted debt accession.

In the case of Sun Baorong and Yang Huanxiang, Langfang Yujing Real Estate Development Co., Ltd.'s capital increase dispute, the parties also voluntarily assumed responsibility in the lawsuit and were considered by the People's Court as debt accession.
Further Improvements are Needed for the Debt Accession System

The addition of the debt accession system is the outstanding highlight of the Civil Code, which responds to the needs of the rich civil and commercial practice and has positive legislative and practical significance. However, as we can see from the above discussion, the debt accession system involves multiple legal relationships among multiple subjects, which is inevitably overstretched by a single legal provision and still relies on the subjective initiative of judges in practice, which inevitably leads to confusion in the application and interpretation of the law, so the debt accession system needs to be further improved. Not only the recognition of debt accession needs to be clarified, but also other aspects of debt accession need to be supplemented in order to meet the needs of the development of practice (Li, 2016).

First of all, the constitutive elements of the debt accession system should be clarified. The constitutive elements are the first reference to judge whether the legal relationship is debt accession in practice, and are also the important aspects to distinguish from the legal relationships such as guarantee and third party performance. The clarity of the constituent elements is the premise and guarantee of the debt joining system in its infancy.

Second, the debtor's rights, such as the right of defense, especially the right of objection, should be clearly stipulated. The Civil Code only provides that a third party may join a debt by unilateral promise, but does not elaborate on whether the debtor has the right to refuse in such a case.

Once again, the more controversial issues should be responded to in order to avoid the opinion on the application of the law. For example, whether a third party has the right of recovery against the original debtor after assuming the liability for satisfaction. One view is that the right of recovery is enjoyed, but the bearer has no right to recover from the original debtor if the debt is settled knowing that the debt has passed the statute of limitations or the debt relationship is extinguished due to other reasons. Another view is that the right of recovery is not enjoyed, and the third party, as an independent civil subject, should know the nature, quantity and subordination of the debt when he/she expresses his/her intention to join the debt, and should be deemed to be jointly and severally liable for all debts incurred when he/she does not explicitly exclude a certain type of debt burden (Gao & Huang, 2017).

Conclusion

Finally, the judicial interpretation should be introduced and updated with the development of practice and the exploration of the debt accession system, so as to keep pace with the times. When legislating the debt accession system, it is true that general and principled provisions should be considered first to make the legislation highly capping, but with the continuous accumulation of practical experience, it is necessary to make up for the lag of the debt accession system legislation in the form of judicial interpretation.

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