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The Financial Consequences for Both Partners: A Comparative Study

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Abstract

Of the many issues that arise when a marriage breaks down, none is more complex and important than the financial consequences of divorce, as these issues are also related to the rights of the child. This paper focuses on analyzing the economic consequences of divorce for both partners, focusing on the financial outcomes for men and women following marital dissolution. By examining key factors such as asset division and income disparities, the study provides a comprehensive view of how divorce impacts the long-term financial stability of both parties. The methodology of this study is purely comparative, serving as the foundation for the analysis. Utilizing a comparative approach, the paper specifically examines the divorce laws and their financial implications in Germany, Austria, England, Georgia, and France. This approach highlights variations in asset division, spousal support, and financial recovery across these countries, offering insights into how different legal systems address financial disparities between partners post-divorce. Across different legal systems and cultural contexts, the paper underscores disparities in financial recovery post-divorce and identifies systemic factors that influence these outcomes. The findings suggest that while both partners experience financial challenges, the degree and nature of these consequences vary significantly based on gender, legal frameworks, and individual financial circumstances. This analysis offers important insights into the economic dimensions of divorce and contributes to ongoing discussions on legal reforms and policy adjustments aimed at addressing these disparities.

Keywords: The financial results, A financial agreement, Judicial discretion

Introduction

The main effect of divorce is to terminate the relationship that has hitherto bound the spouses. Indeed, after several decades of discussion on the availability of divorce and the grounds for divorce, the financial consequences attached by law to divorce have become the critical issue at stake. For many, these financial consequences even provide the answer to the question of the actual value of marriage as a legal institution (Ribot, 2011). In dealing with the economic consequences of divorce, legal systems pursue different and sometimes inconsistent goals, the first being that the family situation should remain substantially equal after divorce. Needs addressed during marriage should continue to be met post-divorce, ensuring that each spouse and their children maintain the same standard of living they enjoyed during the marriage. No legal system has thus far abandoned the idea that marriage, as a lifelong commitment influencing the personal and financial decisions of both parties, implies some degree of sharing of financial proceeds, including earnings, the fruits of common and private assets, and other non-personal assets. On the other hand, punishing the spouse responsible for the divorce is no longer the primary goal of financial regulations in most European legal systems. However, in some instances, fault remains relevant in reducing or even terminating financial relief upon divorce (Ribot, 2011). Equitable distribution is not applied to all property in every jurisdiction. Twenty-three common-law property states have adopted divorce statutes that establish a dual-property system (Osborn, 1990). In these jurisdictions, courts not only identify but also classify spousal property as either separate or marital. In other jurisdictions, statutes require that all property of the spouses be subject to court distribution. The state maintains a vested interest in the parties not only during marriage but also after marital dissolution (Osborn, 1990). However, even in these "all-property" jurisdictions, courts may classify and exclude certain assets from distribution. For instance, a court may award inherited property to the titled spouse, even if this results in that spouse receiving a disproportionate share of the total assets (Osborn, 1990).

It is evident that divorced women are particularly vulnerable, both due to economic hardship and the fact that they typically receive custody of children (Chiriboga, Catron, and Associates, 1991). While divorced individuals with and without children face financial losses, most studies indicate that the presence of children places additional financial burdens on both ex-partners, and particularly on the mother, who usually continues to live with the children (Kreyenfeld & Trappe, 2020). Alimony has fallen into

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disrepute, and collecting child support remains difficult. Property distribution has become a means for lawyers and courts to provide financial support for needy spouses or primary caregivers. A central finding in research on this topic is that the proceeds of separate property should be treated as divisible in divorce. However, legal systems have yet to develop better mechanisms to balance economic inequities in society. A family member must function as an independent, productive member of society (Hobbs, 1988).

Historical Background of Matrimonial property

The family was the foundation of Roman civilization and was protected by Roman law in much the same way as it was protected by English law prior to the mid-nineteenth century. The Roman father had patria potestas-the power of life and death-over his family. In 1857, judicial divorce became possible in England. By 1870, legislative reforms began granting married women property rights comparable to those of their unmarried counterparts. From this point onward, there was an increasing emphasis on the individual rights of family members. The wife gained the right to own separate property, and divorce became accessible when a legally recognized matrimonial offence had been committed (Medico-Legal Journal, 1966). Historically, under traditional English common-law property rules, marriage resulted in a single, unified property interest. Ownership and control of property resided in the husband, including control over his wife's earnings. Women had only three significant rights: (1) a wife was entitled to financial support from her husband during marriage, (2) the husband was responsible for any antenuptial debts or legal liabilities incurred by the wife during marriage, and, (3) if the wife survived her husband, she was entitled to dower. However, during the nineteenth century, women's rights expanded through the Married Women's Property Acts, which removed many restrictions on women's ownership and control of property (Osborn, 1990). By 1900, all common-law property jurisdictions had enacted some version of these statutes. These laws generally entitled a wife to a separate legal estate, which included all property, real or personal, that she owned before marriage, all property acquired during marriage by gift, devise or descent, any transformations of her separate estate, as well as income, profits, and earnings. The more conservative versions of these acts granted women ownership of their property but continued to place control in the hands of the husband (Osborn 1990). However, in their more progressive form, the statutes granted married women both ownership and control of their property. In the modern common-law property system, property may belong to the husband, the wife, or both spouses jointly. Joint ownership occurs only when one or both spouses elect to take title jointly or when property is gifted to both as co-owners. This emphasis on separate interests in modern common-law property systems contrasts with the unity of

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interest that characterized both traditional common-law and community property systems (Osborn, 1990). In traditional common-law property systems, unity resided entirely in the husband. By contrast, in civil law community property systems, unity existed in the form of a partnership concerning jointly owned assets, while each spouse retained individual ownership over separate property. Although the Married Women's Property Acts provided women in common-law property states with legal equality, they did little to ensure economic equality. Since women primarily worked as unpaid laborers within the home, they were far less likely to accumulate separate property during marriage. Unless a woman received a substantial inheritance, her husband jointly titled all acquired property, or he gifted property to her by titling it in her name, she remained in an economically disadvantaged position in the event of divorce or the death of her spouse. Over the past century, common-law property states have developed two mechanisms to address this economic imbalance in ownership created by the wife working in the home. Over the past century, common-law property states have developed two mechanisms to address this economic imbalance:

1. Elective Share – Derived from the historical rights of dower and curtesy, this mechanism allowed a surviving spouse to claim a portion (usually one-third) of a decedent's probate estate.
2. Equitable Distribution – This doctrine, which gained traction in the 1970s, allowed courts to distribute marital property without strict reliance on ownership by title.

During the 1970s, as legislators, legal scholars and the public increasingly viewed title-based property division as unfair, equitable distribution gained favor. If the family was seen as a partnership, where the husband worked outside the home while the wife worked within it for their mutual benefit, then the assets accumulated by the husband during the marriage should rightfully belong to both spouses (Osborn, 1990).

Consequences of Divorce in European Legal System

The financial consequences of divorce vary significantly across European jurisdictions. Even the fundamental understanding of the nature and structure of these financial consequences differs widely. While the division and allocation of property upon divorce are central concerns in common law jurisdictions, they are embedded within a fundamental different system and approach. In common law systems, financial consequences are addressed holistically, with all financial aspects considered simultaneously. By contrast, jurisdictions operating under a matrimonial property regime tend to separate the various financial consequences into distinct remedies, typically starting with the division of property. As a result, the financial consequences of

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divorce in these jurisdictions are often described as resting on several “pillars” (Dutta, 2012), whereas in common law jurisdictions, they are delivered as a unified “package” (Sherpe, 2012).

Germany

The German default matrimonial property regime, the community of accrued gains (Zugewinngemeinschaft), is somewhat misleading in name. Contrary to what the term suggests, no community of property is established during the marriage. Instead, the statutory property regime allows each spouse to claim a share of the gains accrued during the marriage (Zugewinn). In principle, this system is mathematically precise and provides clear rules for determining who receives what-or, more accurately, who is entitled to claim what-upon divorce. However, challenges may arise in valuing certain assets. To implement this system, German law assesses each spouse’s assets and debts at two specific points: the date of marriage (initial assets) and the date when one spouse receives the other’s divorce petition (Sherpe, 2016). Gifts and inheritances received during the marriage are included as initial assets, while debts are also factored in. Consequently, reducing debts during the marriage is considered a financial gain. Since it is in each spouse’s interest to classify their assets as initial assets, the burden of proof lies with the spouse claiming them as such. To ensure transparency, both spouses have mutual disclosure obligations. The accrued gain is calculated by subtracting the total initial assets from the final assets. The guiding principle of the German matrimonial property regime is equal participation in gains accrued during the marriage. If one spouse accumulates more wealth than the other, they must make an equalization payment. For example, if X’s accrued gain is €70,000 and Y’s is €50,000, then X must pay Y €10,000 to ensure both leave the marriage with equal accrued gains (Sherpe, 2012).

Austria

Austria’s default matrimonial property regime is also based on separate ownership of property during marriage**,** leading to its frequent-though incorrect-classification alongside other Germanic legal systems. However, Austrian law is conceptually distinct, as the division of assets upon divorce does not follow strict statutory rules but is largely discretionary. Some scholars have compared Austria’s system to a deferred community of property, a comparison that holds merit given that Nordic legal systems also grant courts discretion in dividing matrimonial assets unequally when necessary. However, Austria’s regime shares more similarities with the default rules in common law jurisdictions, such as Singapore, New Zealand, select U.S. states, and Scotland’s mixed jurisdiction system (Sherpe, 2016). In Austria, spousal maintenance is, in principle, paid for life and is determined independently of

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asset division. Fault still plays a significant role in determining maintenance: a spouse found to be at fault for the divorce generally cannot expect to receive support– unless they were the primary caregiver of a child or a dependent relative during the marriage. If maintenance is awarded, the marital standard of living serves as a benchmark. Case law has established additional guidelines, with courts generally considering one-third of the other spouse's income as an appropriate amount. When both spouses share fault, the economically weaker spouse may claim equitable maintenance**,** provided they cannot support themselves. Courts may impose time limits on such payments. If neither spouse is at fault, maintenance can still be granted under certain equitable circumstances (Sherpe, 2016).

England

In England, spouses have freedom of contract and can arrange their property rights as they see fit. Nonetheless, courts retain discretionary power to vary or even nullify marital contracts. In exercising this discretion, courts consider the same factors that apply when issuing general orders for periodical or lump sum property payments. Another principle guiding judicial intervention is that upholding the contract must not be unconscionable to either party (Dillon, 1986).

Georgia

In Georgia, spouses share ownership of marital property equally, but specific shares are not predetermined. The division of property occurs at the time of divorce, leading to the termination of property rights and obligations. Assets acquired during cohabitation are typically divided, except for property used for professional purposes, which remains with the spouse using it. Although property division usually occurs at divorce, it is possible for spouses to divide property during marriage if one of them so requests, often due to personal debts (Commentary on the Civil Code of Georgia, 2021). During divorce proceedings, courts must first exclude individually owned items before determining jointly owned property (Shengelia, 2011). Historically, property division was at the discretion of the family head (Khoperia, 2015). Traditional Georgian sources indicate that divorce was historically forbidden, and if it occurred, men had greater rights than women in initiating the process (Chikashvili, 1988).

France, Switzerland, and West Germany

In France, since 1804, spouses have been able to customize their matrimonial property agreements to suit their needs. However, courts retain discretion to impose compensatory payments upon divorce. In Switzerland

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and West Germany, legislative restrictions limit the extent of contractual freedom in matrimonial property arrangements (Dillon, 1986).

The above overview illustrates that most jurisdictions allow spouses to modify their default matrimonial property regime through contractual agreements. By doing so, these legal systems acknowledge that while the default regime may be suitable for the majority, it may be inappropriate for individuals with specific financial circumstances or future expectations. However, most states impose regulatory safeguards on this contractual freedom. Some jurisdictions require administrative formalities, such as registration or court approval, while others grant judicial discretion to vary or set aside contracts that are deemed unjust, inequitable, or unconscionable.

The Role of Judicial Discretion and Mediation

In a universal attempt to achieve an equitable distribution of assets upon the dissolution of a domestic partnership, many jurisdictions have introduced judicial discretion to supplement their customary matrimonial property regimes. This has typically been achieved by granting courts broad discretion to distribute assets fairly or in accordance with statutory property division rules, which are then supplemented by judicial oversight. The introduction of judicial control over the division of matrimonial assets reflects the evolving understanding of marriage as a partnership based on mutual guardianship and equality (Dillon, 1986). For any such legal changes to be effective, it is essential for both the legal profession and the courts to play an active role in the decision-making process. Courts also have the ability to educate parties on the importance of mediation and its role in resolving family disputes. It is well known that legal professionals often operate within a competitive framework, which can sometimes hinder the achievement of family law objectives following divorce (Hobbs, 1988). Mediation, by contrast, fosters constructive atmosphere for discussion and helps maintain amicable and stable relations between the parties. While mediators do not have the authority to compel settlements, they play a crucial role in influencing the negotiation process. This is particularly important when children are directly or indirectly involved in the dispute, as mediation can help minimize conflict and prioritize their well-being (Riveros, Coester-Valtjen).

The Effects of Dissolution on the Economic Resources of Men and Women

When discussing the financial consequences of divorce, it is evident that women fare worse economically after a breakup than men. This widely observed conclusion appears consistently across various studies, regardless of time period, geographic focus, or methodology. A surprising finding from this review is that most studies indicate these financial losses decline only slightly over time, whether the couples were previously married or cohabiting. Although the gender income gap is narrowing due to the rise of dual-earner households and the increased earnings among women, the overall conclusion remains unchanged: women continue to be economically disadvantaged relative to men, even after nearly five decades (Tamborini, Couch, & Reznik, 2015). Using a fixed-effects panel model, researchers retrospectively compared women who experienced marital dissolution in three divorce windows over a 25-year period (1970–1994) with continuously married women between three and ten years of separation. The study found that women who divorced generally experienced higher long-term earnings than those who never married. While income levels increased similarly for divorcees across different periods, the percentage increase was significantly smaller for women who divorced in the more recent years (1990-1994) compared to earlier years (1970-1974) (Tamborini, Couch, Reznik, 2015). The economic consequences of divorce tend to harm women more than men. Although the dual-earner family model has helped reduce this gender gap, earnings disparities persist (Kreyenfeld & Trappe, 2020). However, legal reforms allow each spouse to manage their income independently, with the only obligation being a contribution to family expenses (Kreyenfeld & Trappe, 2020).

Regardless of whether a woman owns a portion of her husband's property, she is often treated as part of a single economic unit with him. Women typically have substantial expectancies in dower and rights to financial support, such as alimony. In common law jurisdictions, final asset divisions occur upon divorce, and a wife's ability to secure her fair share depends on the legal grounds for dissolution. The economic interdependence of spouses is also recognized upon annulment, highlighting a woman's contribution to her husband's financial success. Therefore, her equitable share in marital assets should be acknowledged legally, including tax considerations. The Internal Revenue Code should ensure that women receive legal control over a share of what they helped build during the marriage, especially when separation makes such control economically necessary. Research has shown that former wives bear the financial burden of property taxation post-divorce, sometimes without even engaging in an exchange of assets (Indian law journal, 1963). The legal definition of property in divorce settlements has historically led to inadequate compensation for individuals who sacrificed opportunities to acquire and maintain marketable skills during marriage. The accumulation of human capital-such as education and professional experience-is similar to the accumulation of tangible assets. Human capital acquired before marriage is generally treated as separate property. However, when one spouse's human capital is used for the benefit of the marriage and is subsequently lost due to divorce, that spouse deserves compensation for half of the lost value at the time of dissolution. Calculating

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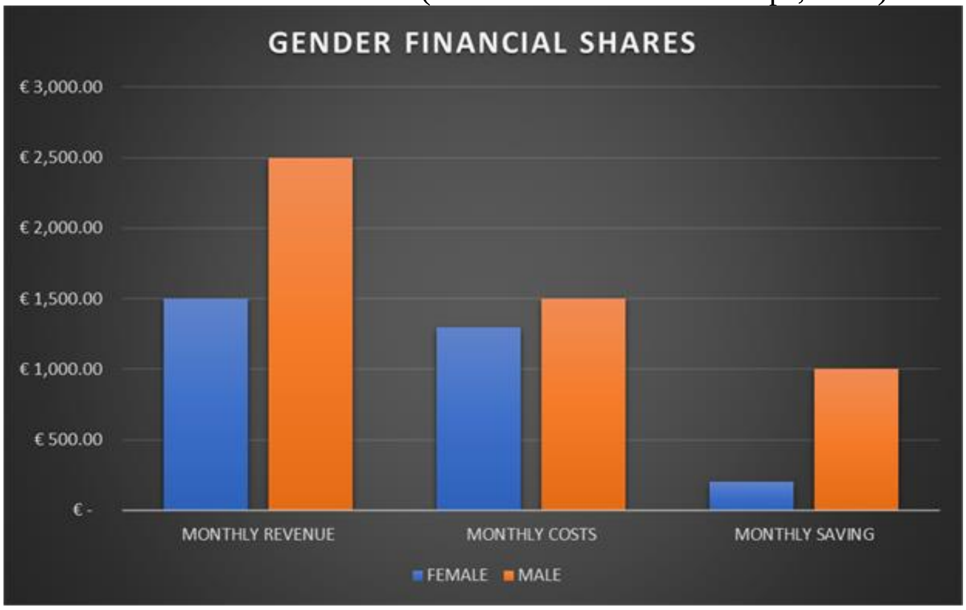
this loss requires precision but follows a similar methodology to personal injury compensation (Parkman, 1986).

The most significant economic divide following relationship dissolution remains between men and women. A considerable body of research explores the factors contributing to these gendered income disparities. At the individual level, labor market participation emerges as the primary explanatory factor. Married women often exhibit lower labor market attachment, with many either not working or working part-time. In the traditional male breadwinner model, husbands provide financially while wives handle domestics and childcare responsibilities. Consequently, upon divorce, women often possess less human capital than men, particularly if their professional skills have depreciated due to years of unpaid caregiving (Kreyenfeld, Trappe, 2020). A second key factor is the presence of children in the household. Having children not only limits a woman’s ability to participate in the labor market but also constrains her time resources, making it difficult to balance child care, housework, and paid employment. If the mother has primary custody, her household’s economic needs typically increase. The financial consequences of divorce also vary across countries and regions. Comparative studies have examined country-specific differences in economic outcomes following divorce. Notably, access to childcare services enables women to remain in the workforce, thereby increasing their earning potential. However, multivariate analyses indicate that direct income support has a greater impact on reducing post-divorce economic stress than childcare subsidies. While income support provides immediate relief, it can also create a "welfare trap," discouraging women from re-entering the labor market and negatively affecting their earnings trajectory later in life. Studies consistently show that income-related policies alleviate the financial burden of divorce more effectively than employment-related measures (Uunk, 2024).

A major advantage of marriage lies in labor specialization. Traditionally, wives focused on household responsibilities while husbands provided financial support. Ideally, upon divorce, each party would receive their separate property as well as a fair share of marital assets. Unfortunately, the legal definition of property often fails to compensate homemakers for the career sacrifices they made during marriage. Historically, women relinquished opportunities to acquire and maintain marketable skills in favor of family obligations, while their husbands continued advancing in their careers. This arrangement was beneficial when marriages lasted a lifetime, but in cases of divorce, conventional property laws do not adequately account for the financial impact of these sacrifices (Parkmna, 1986). Given these disparities, professional legal and financial advice is invaluable during marriage to ensure both spouses are protected in the event of divorce. A well-structured financial agreement is essential, even though discussions around it may seem awkwardsimilar to estate planning. The goal is not only to prevent financial hardship but to promote financial independence and security in a fair and equitable manner, ultimately benefiting both spouses and their children. While family law does not always have the capacity to resolve highly hostile conflicts between divorcing partners, it plays a crucial role in mitigating financial obstacles associated with divorce (Kenneth & Mitchell-Phillips, 2006).



Conclusion

This study has examined the financial consequences of divorce for both partners, with a particular focus on how asset division and long-term financial stability vary across different legal systems. By comparing divorce-related financial outcomes in European countries, the research highlights significant disparities in how financial issues are handled and their subsequent impact on the economic well-being of both spouses. The findings reveal that in some jurisdictions, the legal system tends to favor one spouse over the other in terms of asset division. Additionally, the study found that long-term financial recovery post-divorce is often influenced by the legal framework in place, with some systems offering stronger protections for lower-income or financially vulnerable spouses. Overall, the study emphasizes the need for legal reforms that address financial disparities in divorce proceedings, particularly in systems where one spouse is disproportionately disadvantaged. Based on these findings, the following recommendations are proposed:

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1. Long-Term Financial Support and Education

Governments and legal professionals should prioritize long-term financial support and education for individuals going through divorce, equipping them with the knowledge to navigate financial implications and make informed decisions about their future. Legal institutions should offer better financial education and support services to help both spouses understand the financial consequences of divorce, from asset division to long-term financial planning. It is also crucial for individuals to seek legal and financial advice before or during marriage to outline the division of financial resources in case of divorce. Establishing a financial agreement in advance ensures that both parties are well-informed about their obligations and the financial impact of separation. It is also crucial for individuals to seek legal and financial advice before or during marriage to outline the division of financial resources in case of divorce. Establishing a financial agreement in advance ensures that both parties are well-informed about their obligations and the financial impact of separation. While some may only seek legal assistance after marriage dissolution, negotiating a fair division of assets at that stage can be complex, costly, and time-consuming.

2. Legal Reform and Judicial discretion

In jurisdictions where asset division disproportionately favors one spouse, particularly when there is significant economic disparity between partners, legal reforms are necessary to ensure a more equitable distribution of assets. Laws should be revised to prioritize fairness by considering both spouses' financial contributions and post-divorce needs. Additionally, judicial discretion plays a crucial role in determining fair outcomes in matrimonial property division. Courts should not only focus on legal technicalities but also on achieving equitable results for both parties. Mediation services can also be expanded to help divorcing couples reach amicable resolutions.

3. A National Childcare Program

Research consistently shows that women and children experience significant financial declines following divorce, while divorced men's relative income often remains stable or increases. To improve the economic well-being of divorced mothers and their children, it is essential to enhance women's labor market earning potential. Many divorced mothers respond to financial hardship by increasing their workforce participation. However, barriers such as high childcare costs, low wages, and the potential loss of public assistance benefits often prevent them from maintaining stable employment. A national childcare program, combined with workplace reforms such as flexible work schedules, could help alleviate these challenges and enable single parents to balance work and parenting responsibilities more effectively.

Finally, these recommendations provide a foundation for future policy and legal reforms aimed at reducing the financial burdens associated with divorce. By improving financial outcomes for both partners, legal systems can contribute to greater economic stability and fairness post-divorce. Implementing these measures would not only address economic disparities resulting from divorce but also support both partners in rebuilding their financial stability. For a clearer interpretation of the study's findings, a detailed comparison of the financial consequences for both partners is presented in the following section, accompanied by visual aids at the end of the article.

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