

# *Law-Economics Analysis of Financial Compensation for Divorce*

Hailong Zhu<sup>1,a,\*</sup>

<sup>1</sup>Harbin University of Commerce, Xuehai Road, Harbin, China

a. 2490514680@qq.com

\*corresponding author

**Abstract:** With the continuous development of science and technology and economy, the gender ratio in the labor market has changed, and the scope of female social activities is not limited to the family. At this time, the traditional concept of marriage is no longer applicable to the new social outlook, and a new system is needed to protect the family contribution. The financial compensation system for divorce is designed to compensate one party for his or her contribution during the life of the marriage in the event of divorce, while protecting the disadvantaged groups and gender equality. Although our current understanding of divorce economic compensation is insufficient, only the protection object is limited to housework, and because of the calculation method is not uniform, the application effect in practice is not satisfactory. This paper analyzes Financial compensation system from the perspective of economics, uses the equity principle in civil law to complete the right consciousness of family contribution, broadens the object protected by divorce economic compensation, improves the calculation rules of divorce economic compensation and makes appropriate special compensation for women, so as to ensure the stability of marriage and the efficiency of society.

**Keywords:** law economics, financial compensation for divorce, exclusive household gains

## 1. Introduction

Financial compensation system of divorce is designed for compensating one party for his or her contribution during the life of the marriage, and also to protect the disadvantaged groups and gender equality. At present, most western countries have completed the reform of modern marriage law, and the divorce efficiency has been greatly improved. At this time, the research on the property distribution in divorce, especially the property distribution research such as divorce economic compensation which mainly depends on the discretion of judges, becomes more important. At present, the interest orientation and proportion of marriage relations have changed in our country. The basic guarantee of divorce has become the anchor of stable marriage relations. This paper intends to expand the applicable scope of economic compensation system of divorce in Civil Code · Marriage and Family Compilation by using the methods of law and economics, improve its calculation methods, and ensure the harmony of marriage and social efficiency and stability.

## **2. Current Situation and Deficiency of Divorce Economic Compensation System in China**

### **2.1. The Actuality of Our Divorce Economic Compensation System**

#### **2.1.1. Legislation Status of Divorce Economic Compensation in China**

China's Marriage and Family Law, which was enacted in 2001, officially stipulated financial compensation for divorce for the first time, but it only applies to couples who adopt a separate property system. However, in China, only 5% of the couples have no stable income, difficulty in living independently and adopt the separate property system. Therefore, the practical significance of this provision is not obvious.[1] The Civil Code of Marriage and Family, which was issued in 2020, removed the restriction of the separate property system, which represents progress in gender equality, justice for legal purposes, family and social efficiency. [1]

#### **2.1.2. Judicial Status Quo**

In 2020, the first year of the civil Code, there were only 9 divorce cases involving financial compensation, and 8 of them were eventually rejected. Therefore, it can be seen that the economic compensation in divorce is not optimistic in the judicial practice, and in the application of financial compensation system case, only the protection of the party's household contributions, but not the protection of contributions in other aspects. At the same time, in the actual judicial adjudication, its rules involved are not uniform, and every court, even every judge, measures the amount compensation of family contribution according to their own value judgment.

### **2.2. Inadequacy of Our Divorce Economic Compensation System**

#### **2.2.1. Difficulty in Practical Application**

In judicial practice, because there is no uniform criterion for judgment, and each case, each family's economic situation is different, and the family contribution degree of the parties is also different, as currently China's judges implement the lifelong responsibility system for cases, judges generally do not choose to easily apply a system that is still in its infancy. Moreover, in the current society, the awareness of the right to contribute to the family is weak, and even the judge sometimes ignores the appeal of the parties in this aspect. From the above data, people can see the exclusion of divorce economic compensation in practice.

#### **2.2.2. Single Object Orientation**

At present, in China, the protection object of divorce economic compensation is only limited to housework, and the protection of other specific family investment is insufficient. For example, if one spouse needs to study for a doctoral degree and the other spouse provides economic and living security for him or her, when the other spouse graduates with a doctoral degree, he or she wants to divorce, what should be the judgment standard? I think it is more than just housework during the period of study. During this period, will the family contributors give up their own chances of promotion or further study in order to better take care of the students? If investors simply return their investment capital without any additional income compensation, such high-risk and low-return investments will gradually fade out of the market.

### **2.3. Calculation Method Is Not Perfect**

At present, it is generally believed in Chinese academic circles that the calculation method of economic compensation for divorce should be: compensation for housework contribution = (annual income difference between the couple  $\div 2$ )  $\times$  marital years. This calculation only focuses on household contributions and ignores other investment forms of specific household income. Moreover, in this formula, it focuses on humanitarian assistance rather than income compensation due to investment default. [2]

## **3. Economic Value of Divorce Economic Compensation System**

In modern society, a low divorce rate does not necessarily mean a harmonious social marriage, or it may just mean that the law is insufficient to protect the rights of couples when they divorce. [3] If the economic security of women and children after divorce is perfect, then the rise in divorce rate is healthy and even efficient; if not, then it is disastrous. Imagine the consequences of a marriage that survives only because of the unfair distribution of benefits and because neither party is willing to give up their expected benefits. The most obvious is that children who grow up in such a family will be very unhappy. In such an unhappy marriage, where both partners know that the income from their labor will be shared with their partner, the incentive to work is greatly reduced, resulting in a decrease in the efficiency of society as a whole.

The economic purpose of divorce compensation is to try to make couples get a fair and reasonable distribution of benefits when they divorce, so that they can return to the family and social life with a healthy and positive attitude.

### **3.1. Protection of Specific Family Income**

Specific family income refers to the family income that can only exist in a particular form and can only be used in a single way. It is difficult to intuitively determine the ownership of rights of this kind of income, which often requires the discretion of judges in judicial practice. The investment in human capital of the other party is the typical specific family income. [4] In daily life, there are many housewives engaged in specialized housework. Housework at home not only reduces their husbands' work after returning home, but also allows them to have more time to rest for social work the next day, and also enables their husbands to concentrate more on social work. In this way, the husband's social labor capacity will increase, and this increased social labor capacity is the specific family benefit.

Unfortunately, China's Civil Code of Marriage and Family is inadequate for such protection, which, if sustained in the long run, may lead to the deterioration of marriage and family. Imagine that if every effort made by a couple in the marriage and family for the sake of others is not compensated in the breakup of the relationship, then no one will continue to make contributions in the marriage, and specific family benefits will not be generated. Obviously, in the long run, this will lead to a decline in social labor capacity and even a decrease in population. After all, children are the most specific family benefit. The economic significance of divorce compensation lies in maintaining the stability of marriage and family by protecting the specific family benefits of the couple.

### **3.2. Increase the Cost of Breach of Commitment**

Implicit in marriage is a promise that each partner will contribute to the other for the duration of the marriage, a commitment to mutual support, which is at the heart of marriage. In fact, the penalties for breaking this promise are minimal. A law that fails to protect the contributors to a marriage denies the traditional morality of marriage and encourages the financially powerful to divorce. The current

Chinese law does not protect specific family income well. The backstop role of divorce economic compensation system should be clearly defined, and all investment of specific family income should be included in the protection scope of financial compensation systems far as possible, so as to protect the healthy marital morality.

### **3.3. Ensure Efficient Forms of Social Division of Labor**

The division of labor in the family is determined by the social division of labor, which is also the inevitable result of private ownership. [5] An efficient division of labor at home will bring higher efficiency to the society and create more wealth for the family. If the family is regarded as a partnership, then the investor's investment in the partnership can be divided into tangible investment and intangible investment. Tangible investment can divide the common property upon divorce, while intangible investment can only guarantee the legitimate income of the investor in the form of divorce economic compensation. [6] But in a long-term contract of marriage, if there is no clear principle of dividing intangible investment property at the time of dissolution of the partnership, those hard-to-measure property that cannot be divided will not be counted, then who will try to run the business honestly? It is the same in family, the labor that makes family contribution is often ignored because it is hard to count or not valued. In the long run, no one will make such an investment if the former is not protected, and in marriage no one will pay for each other. For example, one person no longer does all the housework, even if the former partner is much less efficient than the other spouse in social work at the same time, the former partner no longer chooses to do the housework alone, but chooses to share the housework with the other partner. Even if it's far less efficient than getting the most effective social workers to spend more time doing what they're good at.

Divorce economic compensation for the protection of marital morality, is also to protect this efficient form of division of labor, from the Denton marriage case and Francis marriage case, American courts have begun to protect the divorce cases, the intangible contribution of the greater party's interests, our country should be used for reference.

## **4. Some Suggestions of Economic Compensation System in Divorce**

### **4.1. Be Guided by the Principle of Equity**

In China, no matter in judicial practice or social life, the general view of divorce is "to persuade a peace but not to persuade a separation". This perception of divorce as a negative behavior, so legitimate property distribution rights after divorce is difficult to be valued by all sectors of society, because divorce itself is a fault, let alone the property after divorce, which is obviously unfair. Therefore, divorce should be accepted as a normal part of social life. Secondly, clarify the legal status of specific family contribution. Such contributions are often so routine that beneficiaries assume they are the sole obligation of the contributor, which is clearly wrong and needs to be corrected by law. Finally, in the judicial field, relevant judges should be trained in relevant theories, take the fairness principle in the Civil Code as the anchor of adjudicating divorce economic compensation cases, train judges to judge from the perspective of economics (in fact, most judges in the United States are like this), and popularize the legal rights of divorce economic compensation to the people.

### **4.2. Broaden the Protection Objects of Divorce Economic Compensation**

#### **4.2.1. Housework**

The price of household production is equivalent to 70% of household after-tax money (market) income. [7] This study proves that the value of household work cannot be ignored. In addition,

housework is not limited to full-time housework. In many dual-earner families, one spouse is responsible for part of social work and all housework. In practice, this situation is often ignored, which is unfair. The value of domestic work should be reflected in the law as the income between the sexes decreases and the social capacity of each individual becomes similar.

#### **4.2.2. Investment in Human Capital**

The investment in the other partner's human capital is often the softest and most specific, and its benefits will be greatly discounted in the event of divorce. This situation still drives one party to choose to invest in the human capital of the other party, mainly for two reasons. First, the other party is indeed a "quality stock" and will have very high returns. Another reason is love. This is not just altruism, but a precious human emotional sustenance, and is indispensable in marriage. In daily life, there are not a few people who leave their hometown to live in other places because of the working place of the other half. Of course, after leaving the hometown, their resources will be reduced, and the expected income of work will be reduced compared with the original, and these are the opportunity costs of the investment of the other half's human capital, which cannot be ignored in the final decision.

### **4.3. Clarify the Calculation Method of Divorce Economic Compensation**

#### **4.3.1. Calculation of Divorce Economic Compensation Based on Investment Income**

One principle to be clear is that the nature of financial compensation for divorce is not humanitarian help, or an act of friendship between the couple, but a personal compensation for breach of contract by the investor. In Tan's divorce case against Lin, Tan supported Lin to study for a doctorate for six years, during which time he had a daughter. The court ordered Lin to pay 100,000 yuan as compensation for household work to support her study. In this case, it does not reflect the nature of Tan's investment, even the 100,000 yuan is not enough to cover the cost of money and time for the six years, which is unreasonable. For example, if Party A invests 100,000 yuan in Party B to build a factory, it is agreed that after the factory is completed, Party A will enjoy half of the property rights. However, after the factory is completed, Party B tears up the contract and denies Party A's property rights. At this time, isn't Party A's appeal only to ask Party B to return the principal of 100,000 yuan? The specific calculation method should reflect the punishment for B's breach of contract and the affirmation of the investment nature of A's behavior.

#### **4.3.2. Calculation Method of Specific Household Income**

If one investor invests in the other at the expense of his own future or at the cost of housework time, and the improvement of the human capital of the other investor has a causal relationship, he shall compensate the investor. This should consider the duration of the marriage, the investee's income, etc. In my opinion, the compensation method is  $(\text{current annual salary} - \text{annual salary at the time of marriage}) \div 2 \times (20\% \sim 80\%) \times \text{duration of marriage}$ . In this formula, the investor attribute of family contributors can be reflected, but because of the wide range of discretion, the professional requirements of judges are also higher.

#### **4.3.3. Special Care from the Female Perspective**

After divorce, women's bargaining power in the marriage market decreases each year compared with that of men at the same age, resulting in the reality that women's choices of partners after divorce are in many cases worse than their previous partners. Although this is not caused by men, society should give appropriate compensation to the group. Compensation should also be made to women who have

children while they are married. Because children are the most specific assets in a marriage, try to determine the attribution of specialized income from the investment in children (material and non-material), rather than from the perspective of economic ability in practice. Because people who invest more value more, and allocating resources to them maximizes efficiency (Posner), it is often the mother who invests more in children (whether financially or emotionally), and compensating the mother more is also a more efficient way to create a better environment for the children.

## 5. Summarize

Since the reform of the marriage law, people have been pursuing a higher divorce efficiency. When the cooling-off period of divorce was stipulated in the Civil Code of Marriage and Family, many people criticized it as violating the freedom of marriage and so on. Undeniably, marriage and family as a form of social division of labor, from the point of view of economics, is necessary to maintain. And how to make the best use of the family partnership should be the question of marriage law. The value of the perfection of the financial compensation for divorce is not only to make the code more complete and fully guaranteed, but also to maintain the stability of marriage and the efficiency and harmony of the society. It is true that there are many emotions in marriage that we cannot simply analyze with the “altruism” of economics. For example, in a marriage, the commitment to a spiritual life before marriage and the breach of that commitment after marriage, we may never find the best solution by comparing the value of behaviors and individual choices. But I think that by comparing behaviors as numerically as possible, It can at least provide material protection for those who perform the duty of marriage.

## References

- [1] Wang Geya, “Domestic Contribution Compensation: Applicable Conflict and Institutional Reflection”, *Qiushi Journal*, No.5, 2011.
- [2] Xia Yinlan: *Human Rights Connotation of Improving the Economic Compensation System for Divorce Housework in the Civil Code*, *Human Rights Research*, No.2, 2020.
- [3] Ian Smith, “European Law, Divorce Rate, Its Causation,” in *Legal Analysis of Divorce and Marriage*, Law Press, October 2005, 1st edition.
- [4] Becker: *On the Family*, The Commercial Press, 1st edition, August 2001.
- [5] Adam Smith: *The Wealth of Nations*, Huaxia Publishing House, First Edition, 2005.
- [6] Lloyd Cohen, “Legal and Economic Analysis of Marriage and Divorce”, Law Press, October 2005, 1st edition.
- [7] Grunow, Ruben, “Family Production -- A Forgotten Industry,” Posner, *Economic Analysis of Law*, Law Press, 2012, 2nd Ed.