

Reform of Divorce Laws in China: Problems and Future

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Abstract—Because of the rising divorce rate, the government has introduced policies to curb the rise in divorce rate. Therefore, this paper analyzes the reform of the divorce system, puts forward the problems of reform, and tries to provide solutions. In the introduction of the Civil Code, the divorce cooling-off period system was added, and the two major procedures of registered divorce and litigation divorce were reorganized. After the introduction of the system, many scholars have carried out research and put forward some suggestions on the revision of the divorce system such as the divorce cooling-off period. Through the analysis of this paper, it is found that there are three problems in the reform of the divorce system. To this end, this paper puts forward corresponding suggestions.

Keywords—Chinese divorce regulations, divorce cooling-off period, divorce registration

I. INTRODUCTION

Highlight According to statistics from the Civil Affairs Department [1], a total of 2.879 million couples went through divorce procedures by the law in 2022, an increase of 1.4 percent over last year. According to these data, it seems that the reform of the divorce provisions in the Civil Code has not been successful, and controversy has arisen over the provisions of the Civil Code and the judgments imposed on it [2].

After the reformation, some issues have happened based how the divorce law in China. In Wuhan, Hubei Province, the husband has been abusing his wife for a long time, and he still abused her during her pregnancy. After giving birth to a child, the husband's behavior was not restrained, and the wife was tired of it and filed for divorce. However, on the day of preparing the divorce agreement, the wife was run over by her husband in a car [3]. In this case, it can be found that the woman wanted to negotiate a divorce because of the man's domestic violence, but was brutally killed. In addition, this is not the only case. Generally speaking, most of the divorce cases in China caused by domestic violence normally end with death or unpleasant judgment [4].

This essay will mainly focus on the reformation of the civil code, and how can it be improved by showing the treat equality of real practice. Therefore, we will only discuss the period after the reform of the marriage law, that is, the period when the marriage law belongs to the civil code. secondly, using specific divorce regulations to discuss the reformation of that, and reflect on the reform of marriage law to gender equality, especially on female status.

According to the points, it will clearly describe the Divorce system and domestic violence, and it will discuss the systems of Legislative and judicial adjudication. Because, this is not only the discussion and reflection on the legislative level, but also the discussion on the judicial trial. If there is no judicial dimension, then legislation is useless, and there is no

legislative dimension without judication. Because the two of them are complementary, independent of each other but interdependent. You can't just talk about one, you have to think about both. Then it will discuss how to construct a law, and how to Implement it. It is very essential, that it works well and may increase the birth rate that the Chinese government is now worried about. Secondly, it may raise the sense of well-being.

This dissertation will be divided into two main parts. The first part will be a literature review. This part will include three sections. Section II provides a brief picture of the current law of divorce in China. Section III focuses on the reforms and the improvements of the divorce law in the civic code. Section IV discusses several important criticisms of the current law in existing literature. After the review of the existing literature, the second part of the dissertation will be a discussion on several issues of the current law of divorce in China, including cooling periods, divorce by registration, and domestic violence. Then, this paper mentions the solutions, the improvement of cooling-off periods; the improvement of divorce by registration, and how the prevent domestic violence. Last, with a simple conclusion.

II. DIVORCE LAW IN CHINA

In China, divorce refers to the civil legal act in which the husband and wife dissolve the marriage relationship through agreement or litigation and terminate the relationship of rights and obligations between husband and wife. There are two legal forms of divorce, namely divorce by agreement and divorce by litigation. In the case of divorce by agreement, a married couple agrees to get divorced through the divorce registration procedure [5]. In the case of divorce by litigation, the married couple file a request for divorce with the court and the court mediates or makes a judgment to dissolve their marriage [6]. It usually happens when there is a disagreement between the couples on the decision to divorce or the specific issues of divorce such as child support, property distribution, and debt disposal [7].

According to Huang's summary, four conditions should be met in the case of divorce by agreement [8]. Firstly, the marriage should be legally registered. It means that homosexual couples cannot get divorced by agreement since same-sex marriage cannot be legally registered in China. Secondly, the persons in the marriage should have full capacity for civil conduct. This means that the divorce agreement is not legally valid and cannot be registered if one person is mentally dysfunctional [9]. Thirdly, the divorce agreement should be made by the true will. It means that there is no disagreements, misunderstanding, coercion, or fraud. Fourthly, there should be a written argument between the two parties in the marriage on child support, property distribution, and debt disposal [10].

The cooling period is an improvement of the Chinese divorce system. According to Huang and Jiang's view [8, 11], the cooling period can be defined as when there is a divorce by agreement, the period that the government gives to the couples for consideration on divorce, and obliges the parties to put the divorce dispute on hold, to think calmly about the divorce within the legal deadlines, to think clearly before deciding to divorce [12]. The period that the legal provisions of consideration are named with a cooling-off period [13].

Article 1077 from the Civil Code [14], mentions that Within 30 days of receipt of the application for divorce registration by the marriage registration authority, any one of the parties of marriage does not want to divorce. Within thirty days of the expiry of the period provided for in the preceding paragraph, both parties will go to the marriage registry office to request the issuance of the divorce certificate; Otherwise, the application for registration of the divorce shall be deemed to have been withdrawn [15].

According to Ma [16], she mentions the procedures of divorce by lawsuit. This shows that divorce by lawsuit can contribute to the peaceful and appropriate treatment of all aspects involved in divorce. It can encourage both sides to calm grudges, to calm hostilities, to take full account of their marital status and future lives, and to cherish their conjugal relationship with their spouse [17]. Divorce can be negotiated if both parties insist on divorce, even if conciliation would not succeed. Divorce mediation helps solve problems such as child education, property, and debt treatment. According to Article 1079 in the Civil Code [14], some conditions should be met in the case of divorce by lawsuit. Secondly, the divorce must be granted if it is certain that the relationship is broken and the mediation is void.

However, there is a restriction on divorce. According to Article 1082 of the Civil Code, when the woman is during pregnancy, within one year of delivery, or six months of termination of pregnancy, the male cannot take the request for divorce. But, if the request is made by the woman, or the case court thinks it is necessary to divorce the request made by the male [18].

III. REFORMS AND IMPROVEMENTS IN THE CIVIC CODE

A. *The Improvement of the Agreed Divorce*

In the context of the progressive complexity of social life, it should be noted that divorces are easier to produce than fortuitous divorces to escape communion and reap the benefits. The business circumvention plan, the childbirth policy, the school circumvention policy, the purchase of schoolhouses, etc., by which men can easily achieve inappropriate things, the most important point is that conventional divorce plays too important role in both parts of the marriage. So, the author gives the solution, it is not a good thing to put too much emphasis on thinking and management in collective divorces, but on the contrary, it creates many negative aspects, because it must be regulated by law as soon as possible so that the divorce is as protected as possible within the norms allowed by law [19]. Moreover, the fact that the relevant legal system is incomplete is the jurisprudential cause of the issue of divorce by agreement; Divorce by agreement incorrectly assumes the premise that the parties are "reasonable persons", which creates many problems in

court practice; On the body, the addition of restrictive provisions; Witness system for the authenticity of the divorce by agreement. For example, two adults who are familiar with both parties must be witnesses [5]. The management of divorce cases by agreement of admissibility lacks a collegial process, the monitoring mechanism lacks procedures, and the establishment of a double trial. Define a divorce agreement reflection period. Strengthen surveillance and appropriate restrictions to preserve the seriousness of the matrimonial authorities [20].

B. *New Cooling-off Period for Divorce*

In pre-reform legal practice, continuation of divorce, generally after six months, would be sanctioned by a judgment authorizing divorce. The modification in the civil code includes an extension of the period from six months to one year, and an increase in the need for separation by one year. Also, in Ran's paper [21], "Marriage and Family Law in China in the Civil Code Era", they illustrate that China's Marriage and Family Law introduced a cooling-off period for divorce during the Civil code era. According to Article 1077 of the Civil Code, the couple applying for divorce cannot obtain a divorce certificate on the same day it applies for divorce registration, but they must wait one month. If within 30 days after the expiration of the above period, one party does not wish to divorce, the divorce registration application can be withdrawn, or choose not to apply for a divorce certificate. According to the views of Ran that were mentioned, they think it is an improvement because it can ensure the stability of marriage and family relationships by increasing the procedural conditions for divorce. According to Ji [22], he mentions that it is not easy to solve marriage problems through dialogue, because everyone has their positions and habits, and it is difficult for both parties to reach an agreement on issues. Even if both parties have the conditions for dialogue democracy, they need to learn how to conduct democratic dialogue and overcome emotions and impulses. The article also said that the divorce cooling-off period system can reduce impulsive divorce and reduce the divorce rate, but it is difficult to protect marriage by itself. The article believes that the fundamental solution to marriage problems is to let the husband and wife grasp the democratic ability of dialogue. In addition, in Qin's paper, she demonstrates that the protection of marriage in the Constitution includes both legal protection and social protection [23]. The protection of marriage is not only to safeguard individual freedom and rights but also to maintain family structure and social stability. The article also mentioned that the purpose of marriage protection is not only to protect women's equal rights and interests in marriage but also to protect the economic and ecological functions of marriage. In Guo's paper [24], he claims that the divorce cooling-off period system refers to the system of extending the divorce period stipulated in the Civil Code of Marriage and Family Code, aimed at preventing hasty divorce and protecting family stability [2]. However, when implementing the divorce cooling-off period system, the following value conflicts may occur: On the one hand, cooling-off period can reduce impulsive divorce and protect family stability; On the other hand, cooling-off periods may restrict personal freedoms and rights and can be inconvenient and upsetting

for those who need a divorce. In balancing these conflicts of value, it is necessary to consider the purpose and effect of the divorce cooling-off period system, as well as the protection of individual freedoms and rights. In Song and Li's paper [25], they show the data on the divorce rate in several cities in China, in Chongqing, the number of divorces dropped 44 percent year-on-year, while in Qingdao, the number dropped to a 10-year low, with just 16,000 couples divorcing, down 33 percent year-on-year [26]. In addition, divorce registrations in Anhui Province fell 56.7 percent in the first quarter of 2022 compared to the first quarter of 2019. They demonstrate that the data above shows that the implementation of the divorce cooling-off period policy has played a certain role in curbing impulsive divorce and reducing the level of divorce. However, it is important to note that the effectiveness of divorce cooling-off period policies may vary by region and time. Therefore, whether the divorce cooling-off period policy can reduce the level of divorce needs to be evaluated and observed according to the specific situation.

C. Divorce Compensation System

The Civil Code has introduced significant amendments, notably extending the timeframe for initiating divorce proceedings from six months to one year. It delineates specific guidelines for the equitable distribution of property in the event of marital dissolution, emphasizing relief and assistance for the rights and interests of innocent parties. Moreover, the Code has eased restrictions on the principle of compensating contributions to household chores. According to Jiang and Chen [27], these changes contribute to fostering a fairer and more reasonable division of property upon divorce.

The extended time frame for filing divorce proceedings addresses the need for a more deliberate decision-making process, potentially mitigating impulsive actions. By stipulating clear procedures for property division, the Civil Code seeks to ensure that both parties are treated justly, taking into consideration the rights and interests of those not directly involved in the marital discord.

The relaxation of restrictions on compensating contributions to household chores represents a progressive shift, acknowledging and valuing the often overlooked but essential domestic responsibilities. This change aims to rectify imbalances in the distribution of marital assets by recognizing the non-financial contributions of spouses to the household.

In summary, the recent amendments to the Civil Code, as highlighted by Jiang and Chen [27], strive to create a more equitable and reasonable framework for divorce proceedings. These changes reflect a nuanced understanding of the complexities involved in marital dissolution, emphasizing fairness, justice, and the protection of the rights and interests of all parties involved.

IV. THE ISSUES OF THE REFORM OF DIVORCE LAW IN CHINA

A. Cooling-off Period

Although introducing the cooling period could provide benefits to the divorce system, it still has issues that need to be solved. Some experts and members of the public see cooling-off periods as an impediment to free divorce, especially for women. Because during the cooling-off period,

the husband may abuse his power, seize common property, engage in other misdeeds that may only be revealed later, and may also continue to commit domestic violence against the spouse.

Also, in Huang's paper [8], she mentions that the cooling period could pose a risk to personal safety, according to the provisions of the Civil Code, the divorce cooling-off period applies to the registration of a divorce, even if it is suffered in the family 30-day cooling-off period is required to register a divorce for serious domestic violence. Divorce cooling-off period rules. If the victim cannot get rid of the injury quickly, the risk factor of the weak party will increase. Some people decide to go to the civil affairs department to divorce because of domestic violence, and physical and mental injuries must immediately divorce, do not divorce. They will continue to suffer both physical and mental torture, affecting their physical and mental health. Even if someone in the marriage has suffered If you have to divorce because of domestic violence or other acts that seriously endanger your safety, go to the civil affairs department to register for divorce.

In other countries, such as Europe, the United States, Japan, and South Korea, the application of the divorce cooling-off period varies with different circumstances. For example, the divorce reflection period regime should not apply if there are dangerous situations such as domestic violence; If it is necessary to determine the dependent spouse of the minor child, the period of reflection for divorce should be appropriately extended, and reconciliation between the two parties facilitated as much as possible. A single deadline of 30 days is not reasonable and could cause even more harm to the persons concerned. Therefore, we should also judge on a case-by-case basis whether the system of the cooling-off period in the event of divorce is applicable.

In my opinion, the existence of a cooling-off period for divorce is necessary, but there are problems with the system, which lacks special provisions for special cases. For example, in cases of serious domestic violence, the existence of a cooling-off period for divorce may bring about greater injury; if one of the parties to the marriage has a certain degree of financial difficulties, the cooling-off period will bring about greater financial difficulties. However, there is still a need for a cooling-off period within the system of divorce by mutual consent, as it allows both parties to the marriage who want to get divorced to think clearly about why they want to get divorced.

B. Divorce Registration

According to He and Ning [28], they mention the issues of divorce registration. First, the specific administrative act of registration of divorce is not justifiable. Registration is a specific measure that governs a certain type of relationship, which proves its existence. Registration of marriage or divorce to prove the existence or not of the matrimonial relationship of the registered person. Although registration is legal, registration of marriage and divorce is related to personal relationships, especially when divorce is special. Once the divorce is registered by the registry authority, there is no matrimonial relationship between the parties and there is no longer any compulsion. Either partner can remarry. If one of the spouses remarries, the court, after taking the matter, will be in a dilemma: the divorce certificate is annulled, the

initial marriage is valid, and the registration of the remarriage is also valid, due to the procedure that created the bigamy of the remarried. Registration of divorce is therefore not justifiable.

Second, Registration of divorce is prohibited in the courts. The marriage regime in our marriage act is freedom of marriage, monogamy, and equality between men and women. The so-called freedom of marriage includes the freedom to marry and voluntary divorce. The marriage registry verified that both parties were indeed voluntary and handled child and property issues properly and issued a new divorce certificate. In this case, the parties to reach an agreement on the issue of property of children and women and men and that their statutory seat, voluntarily, divorce after registration of marriage to divorce, which falls into the category of men at European level marriage, matrimonial rights, and obligations must undergo the rigors of law, people's courts and respect for authority. Although the marriage registry office and its staff take administrative action under section 8 of the registration act to register a marriage to a party that does not meet the requirements, the act does not provide for any remedy for an act that has led to mistaken registration through deception. If the author considers that any error should be corrected, it must be annulled by the registrar itself and not by the court.

Divorce by mutual consent does not cover the rules on fraudulent divorce and does not cover subsequent remedies. The fact that both parties must be physically present for the divorce to be filed indicates that the parties need to go through the normal divorce process even though they have signed a written agreement to divorce, which is no different from a normal divorce and is also problematic.

C. Meditation and Domestic Violence

According to He [29], in "China's Family Law in Action: An Introduction", she expresses her worries about meditation which is a precondition of divorce by litigation that may indulge domestic violence. She points out that in practice judgments and public security officers often treat domestic violence as a secondary issue and prioritize family integrity rather than protecting victims from further domestic violence and threats. Mediation may take a longer time for the application of protection orders and the cause of the occurrence of domestic violence. The strict evidentiary standard for filing a protective order will further weaken the protection of the victims that the new law mentions. Civil society organizations are mainly concentrated in urban areas and unable to provide effective services to victims in rural areas.

Lack of funding for women's organizations also prevents them from providing legal assistance and disseminating the values of gender equality. Nor are sanctions regimes effective deterrents. As current approaches do not respond effectively to domestic violence, this paper explores in real-life practices, domestic violence may not seem as serious as other conditions of divorce; Second, the issue of restriction of regions of organization help; Third, the strict procedures of apply protection order may further weaken the right of victims. My view is that the existing Chinese domestic violence legislation is very effective to a certain extent, for example, in the application for a protection order. However,

there are some shortcomings, for example, the procedure for applying for a protection order is very complicated and does not cover special circumstances, such as when domestic violence has seriously endangered the personal safety of the person concerned, but the person concerned is still required to strictly follow the application procedure to apply for a protection order.

Accordingly, my suggestion is that the procedure for applying for a protection order should be revised and refined, so that a protection order can be granted immediately in the event of domestic violence, or the application procedure can be made more lenient, for example, by halving the time required for application and extending the validity period of the order. The second point is that the relevant organizations need to shoulder their responsibilities. Under China's anti-domestic violence law, the relevant organizations are required to provide certain special protection to victims of domestic violence.

V. THE SUGGESTIONS FOR THE REFORM OF DIVORCE LAW IN CHINA

A. The Suggestions for Cooling-off Period

My advice is to deal with special circumstances. In the event of special circumstances such as domestic violence, which are detrimental to the rights and interests of either party to the marriage, the court needs to make a decision on divorce immediately and provide a department outside the courtroom to deal with the divorce directly, instead of requiring both parties to wait for a one-month cooling-off period to give a judgment of divorce than ignore cooling period and gives the judgment of divorce by a judge. If such a procedure is followed, during the one-month waiting period, there is a possibility that something unfavorable may happen to either party, such as the transfer of joint assets, or more serious incidents of domestic violence.

The second point is that the drain on financial resources is enormous. If one of the parties is already in a difficult financial situation, waiting for a one-month cooling-off period will add to the already precarious financial situation of the parties. If the applicant is in a situation of financial hardship and it is verified that the divorce may aggravate the situation, the applicant may apply for financial compensation from the other party and the applicant may propose to skip the cooling-off period.

The third point is that one of the parties to the marriage will have to bear a portion of the debts of the other party which are not his/her own during the one-month waiting period, resulting in financial hardship. Therefore, my suggestion is to examine the living environment and financial situation of both parties when the cooling-off period is introduced. For the solution is to ignore the cooling period and if the party that asks to divorce has already assumed part of the debt may be entitled to claim back the money, he has paid to repay the debt. If any of the above conditions are met, the court has the right and obligation to provide certain assistance to the parties. It is also important to include provisions in the Code for these special circumstances.

B. The Suggestions of Divorce Registration

The existence of divorce registration is meaningful because it allows some impulsive divorcees to figure out

whether they want a divorce or not, but at the same time, there are imperfections in their procedures. Within thirty days from the date of receipt of the application for registration of divorce by the marriage registration authority, both parties shall apply in person to the marriage registration authority for the issuance of a certificate of divorce; failure to do so shall be deemed to be a withdrawal of the application for registration of divorce. However, this provision does not take into account some special circumstances, for example, the parties forget to submit the application within 30 days, which means that the registration of the divorce application is canceled, which is very unfriendly to some people who have to get divorced so that the system of divorce by mutual consent needs to be improved by adding some special features. If one of the parties was on a business trip at another place rather than the place where the parties live, and could not come back in the time of the last day of the thirty days. So, this kind of special feature needs to be considered.

The second point is that the divorce by mutual consent does not cover the divorce caused by deception and the subsequent measures to solve the problem. Therefore, it is hoped that divorce by mutual agreement can be included in the regulations of the settlement measures, as well as the relevant laws and regulations for divorce by deception. The third point is that divorce by mutual consent requires both parties to sign a written divorce agreement before submitting the normal divorce procedure, that is, filing a divorce petition. If this procedure is followed down the line, the manpower and financial resources consumed are enormous.

Therefore, my suggestion is that if both parties to a marriage have already signed a divorce decree, they only need to hand over the decree to the relevant organization and do not need to file a separate divorce application. The relevant agencies can be based on the divorce agreement provided as the conditions of judgment, give a divorce or not the divorce judgment.

C. The Suggestions for Avoiding Domestic Violence

My suggestion is that local organizations need to take some responsibility for helping victims of domestic violence, for example, by making regular visits and offering them jobs to support their initial living expenses. Also, if the victim is a mother and is pregnant, the local authorities need to take immediate action. Because some mothers feel guilty because their children have lost their fathers as a result of divorce, the relevant agencies need to provide counseling and continue to monitor the phenomenon.

If the situation worsens, the agency has the right to remove the person from the home. Secondly, although China has a relevant protection law, namely the Anti-Domestic Violence Law, its content is too broad and encompasses a wide range of issues. However, its content is too broad and includes children who are victims of domestic violence. However, the specific provisions on domestic violence after marriage are not clear and precise enough, and the way to deal with domestic violence is not effective enough, which may lead to recurrence. Thirdly, there must be a unified anti-domestic violence law, rather than a separate law for each region. Therefore, in terms of practical operation, it will give judges a certain amount of room for reference and operational suggestions.

VI. CONCLUSION

Because of the rising divorce rate, policies were introduced to curb the rise in divorce rate. Therefore, this paper analyzes the reform of the divorce system, puts forward the problems of reform, and tries to provide solutions. The introduction of the Civil Code has increased the divorce cooling-off period system and rearranged the legal norms of the two major procedures of registered divorce and litigious divorce in China. After the introduction of the system, many scholars have carried out research and put forward some suggestions on the revision of the divorce system such as the divorce cooling-off period. Through the analysis of this paper, it is found that there are three problems in the reform of the divorce system: divorce cooling-off period, divorce by agreement, and domestic violence; In this regard, this paper puts forward three suggestions. For the cooling-off period of divorce, some special treatment is needed. If there are situations such as domestic violence and damaging the interests of one party, it is necessary to skip the cooling-off period and directly give the divorce ruling. Second, if one of the parties is in economic difficulties, adopt the same method as above, otherwise there will be more serious economic losses to that party. Third, if one of the marriage parties has a debt problem, it is also necessary to take the above method to ensure that the economic loss of the other party is minimized. For negotiated divorce, it is necessary to extend the 30 days after the filing of the application to deal with some unexpected situations, and the marriage parties who have filed a divorce decree do not need to submit a separate divorce application and if the divorce is fraudulent, it needs to be included in the relevant regulations. To avoid domestic violence, local authorities need to help victims of domestic violence to a certain extent, laws and regulations on domestic violence after marriage need to be clearer and more effective, and finally, there needs to be a unified and perfect anti-domestic violence law.

CONFLICT OF INTEREST

The author has claimed that no conflict of interest exists.

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