

The Advantages and Disadvantages of Divorce Cooling-off Period System and the Way to Improve It

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ABSTRACT

China has added the divorce cooling-off period system in the Civil Code of Marriage and Family. The legislators created this system in the original intention of easing the phenomenon of hasty divorce and strengthening the protection of minors in family relations. There is no denying that the starting point of this system is good, but the system has also exposed some drawbacks in the practice process. Whether the cooling-off period system of divorce in the Civil Code is necessary, how to establish a corresponding supporting system of the cooling-off period system of divorce in the Civil Code, and effectively regulate the social problems derived from the system are the issues we need to think about.

KEYWORDS

Civil Code; Cooling-off period for divorce; Necessity; Supporting system

1. THE CONCEPT AND SETTING BACKGROUND OF DIVORCE COOLING-OFF PERIOD SYSTEM

The divorce cooling-off period system refers to the cooling-off period during which either party can withdraw the divorce application and end the divorce registration procedure within a certain period of time after the marriage registration authority receives the application when both parties apply for a voluntary divorce under the principle of freedom of divorce. The cooling-off period system is based on the fact that China is a country with a large population, but it is also a country with a rising divorce rate. According to statistics, the divorce rate in China has reached 43.53 percent in 2020, which means that more than four out of every 10 couples have chosen to divorce. The rising [1] divorce rate has not only brought instability to society, but also brought great pain to families and individuals. In view of the above factors, China has added a new divorce cooling-off period system in the Civil Code of Marriage and Family, which encourages the parties who voluntarily apply for divorce registration to think calmly. The current registered divorce is basically "immediately apply for divorce". To reduce the current situation that couples get divorced on impulse and recklessly.

2. THE SETTING SIGNIFICANCE OF DIVORCE COOLING-OFF PERIOD SYSTEM

2.1. Improved Our Country's Divorce System

Protecting citizens' freedom of divorce should also be opposed to hasty divorce, which is the principle that China's marriage and family law has always adhered to, and is also an important feature of China's divorce system. According to statistics, by 2016, the number of divorces in China had increased for 14 consecutive years, from 1.177 million in 2002 to 4.158 million in 2016. It is thought that the

main[2] reasons for this trend may be: First, the phenomenon of contemporary young people's flash marriage is very common, marriage and divorce are very casual, the second is the marriage registration regulations in 2003 simplified the marriage registration procedures, the husband and wife are willing to divorce, only need to issue my hukou, ID card, marriage certificate and divorce agreement and other materials, after the marriage registration authority review, the same day can handle the divorce registration. In contemporary society, the phenomenon of hasty divorce is more and more serious, which has become a common problem faced by the society. The provision of divorce cooling-off period system can effectively improve the divorce system, prevent hasty divorce, and meet the needs of maintaining the stability of marriage and family relations.

2.2. Reduce the Adverse Consequences Caused by Impulsive Divorce

To a certain extent, the establishment of the divorce cooling-off period system can effectively alleviate the contradictions caused by the husband and wife due to impulse, emotion and other reasons and end the marriage relationship. At the same time, through this system, it can also well avoid the harm received by their children and other family members, and maintain the harmony of family relations by ensuring the stability of marriage relations. The establishment of the divorce cooling-off period system objectively reduces the irresponsible and imprudent attitude of the husband and wife to terminate the marriage relationship as the preferred option in order to escape the contradictions in the marriage, stimulates the sense of responsibility of the two parties to the marriage and family, forms a good concept of marriage and family, and maintains the marriage order.

2.3. Coordinate the Interests Between the Parties and Minor Children

Divorce is a legal act to dissolve the relationship between husband and wife, which will inevitably involve the property of both parties and the interests of their children during the duration of the marriage. The setting of divorce cooling-off period allows the husband and wife to leave each other a reasonable cooling-off period to think about whether the marriage is really irreparable, how to properly deal with the property and how to deal with the issue of raising minor children. The setting of this period objectively strengthens the protection of vulnerable groups and contributes to the realization of substantive justice in the marriage relationship.

3. THE IMPLEMENTATION EFFECT OF DIVORCE COOLING-OFF PERIOD SYSTEM

Since the implementation of the "Civil Code" divorce cooling-off period system, divorce statistics from the Ministry of Civil Affairs show. In May 2021, the Ministry of Civil Affairs released 296,000 divorce registrations nationwide in the first quarter, far lower than the quarterly data since 2017, down more than 70 percent from the fourth quarter of 2020, and down more than half from the first quarter of 2020 during the epidemic. In August of the same year, the Ministry of Civil Affairs released social service statistics of provinces for the first half of 2021, showing that 966,000 divorces were registered nationwide in the first half of the year. It was 39.4 percent lower than in the first half of 2020 and 52.6 percent lower than in the first half of 2019. As for the survey[3] results shown by the above objective data, it is not difficult to see that the divorce rate in China has shown a downward trend after the implementation of the divorce cooling-off period system. There are several reasons for the decline, but it is undeniable that the implementation of the system should be the main reason for the decline in the divorce rate.

However, the test of the actual implementation effect of the divorce cooling-off period can not only stay at the data level, the establishment of the mandatory divorce cooling-off period will undoubtedly make the husband and wife due to the impulse to get back together, but it will also make the "dead" marriage worse.

4. THE NEGATIVE IMPACT OF DIVORCE COOLING-OFF PERIOD

The divorce cooling-off period not only allows the husband and wife to return to rationality and calmness, but also increases too much time and energy cost for both parties. This kind of state intervention in the marriage of the parties may affect people's marriage choice, and even weaken the enthusiasm of the age-appropriate people to get married, and undermine people's willingness to get married. [4]At the same time, through the analysis of the marriage registration data released by the Ministry of Civil Affairs in the past five years, it can be seen that 2021 is the first year of the implementation of the divorce cooling-off period system, and the changes in the relevant data do reflect the decrease in the divorce rate. However, according to the data, the number of registered divorces in 2021 has decreased significantly compared with the previous year. On the contrary, the number of litigious divorces is abnormal compared with the relatively stable number of divorces in previous years, and even reached the highest level in the past five years. It can be seen that the implementation of the divorce cooling-off period system makes some couples with emotional breakdown give up the general divorce procedure and turn to litigation divorce in order to avoid the cooling-off period. This also confirms from the side that the divorce cooling-off system has certain drawbacks, we need to think about how to solve.

4.1. The Applicable Object of Divorce Cooling-Off Period is Too Absolute

The original intention of the national divorce cooling-off period is to reduce the number of hasty divorces that may cause damage to minor children. But we can't deny that not all marriages collapse because of the hasty decisions of both parties. Some people have experienced too many dark moments in their marriages. Is it too hasty to apply the cooling-off period system to this group of people, even if they compromise again and again after every unbearable moment? For some groups, maybe this marriage lasts for a second is the deepening of harm to each other, the setting of divorce cooling-off period will only let this pain continue, and even wipe out the last shred of courage and determination of their painful decisions, is that both sides have a compromise to continue this unhealthy marriage relationship. If this is the case, still continue to apply the divorce cooling-off period system, for minor children is also an invisible torture. Secondly, domestic violence against family members, abandonment or abuse of vulnerable groups, transfer of common property of the husband and wife and other illegal crimes, for such reasons of divorce, the cooling-off period is to aggravate the victim's victimization period. Although the above circumstances meet the conditions of litigation divorce, but from the collection of evidence to the lawsuit will let the victim heart exhausted and it is difficult to guarantee that this process will not be the other party's retaliation. Based on this, the author believes that it is not reasonable to apply the divorce cooling-off period system to all the people in the marriage relationship.

4.2. The Time of Divorce Cooling-Off Period is Not Reasonable

The complexity of real life is far more than we expected, and all kinds of complicated events in the family may cause the breakdown of marriage. Data survey shows that the current main group of divorce is mostly young people, if the divorce cooling-off period is too short, it may not play a "cooling-off" effect, for families with children, the setting of divorce cooling-off period may make the two sides get back together based on family ties and maintain the stability of the marriage relationship, for this group, the period of divorce cooling-off period can be appropriately extended. It is the husband and wife who treat this relationship prudently, rather than impulsively and recklessly divorce; And for the domestic violence incidents against spouses and children, the existence of abuse, abandonment of family members and one of the spouses in the cooling-off period malicious transfer of the common property of the couple, based on one party has an affair and choose divorce, one of the spouses has gambling, drug abuse and other vices and choose divorce, for the above relatively bad circumstances, The husband and wife choose to divorce is the complete disappointment of this

marriage relationship, any party in this relationship more than a second may be harmful to physical and mental health, based on this situation, the divorce cooling-off period can be appropriately reduced or even cancelled. Therefore, the author believes that the divorce cooling-off period system should not be fixed at 30 days, but should be applied according to each complex concrete and realistic case.

4.3. The Supporting Measures Related to the Divorce Cooling-Off Period System are Not Strong Enough

China's current social security measures in the field of marriage and family are not strong enough, the breakdown of the marital relationship between the husband and wife may indeed be caused by some small estrangement and friction, such groups in the divorce cooling-off period through their own calm thinking and effective communication may be able to restore the marital relationship, but for some long-standing grievances, more complex and difficult internal contradictions in the family, Only 30 days of divorce cooling-off period to ease the conflict between the two sides, reduce the divorce rate may be far from enough, and children growing up in this family environment may also be affected by unhealthy and even tense parent-child relationship. At present, China does not have social security measures related to the divorce cooling-off period system. For some contradictions that cannot be reconciled by members of the family, these security institutions can reasonably guide and resolve them. At the same time, as a socialist country with humanistic feelings, we should see that not only the husband and wife are hurt in the broken marriage relationship, There may also be minors in the family, so there is a need for psychological counseling institutions matching the divorce cooling-off period system to help enlighten the mood of the child, listen to the voice of the child, and care for both parties in the marriage relationship.

5. THE PERFECT MEASURES OF DIVORCE COOLING-OFF PERIOD SYSTEM

5.1. Different Application of Divorce Cooling-Off Period System

At present, China does not distinguish the scope of application of divorce cooling-off period, and all registered divorce situations adopt the divorce cooling-off period system. However, not all marital relationships end due to the impulse of both parties or peaceful divorce. If one of the spouses has domestic violence, marital infidelity, abandonment, transfer of the couple's common property and other behaviors, based on the comprehensive consideration of human nature and legal ethics, the divorce cooling-off period system should not be applied. [6]The application of this system without discrimination will undoubtedly cause lasting psychological and even physical damage to such groups, and the 30-day divorce cooling-off period will only make the parties continue to live in the shadow of this "dead" marriage. Therefore, the application of the divorce cooling-off period should be selectively applied according to the specific circumstances of real life, and it should not be applied across the board.

5.2. Targeted Adjustment of the Divorce Cooling-Off Period

The current divorce cooling-off period set in China is one month, which seems not short, but for the young people who apply the system, one month may not be able to really cool down. Contemporary young people have a strong sense of self and are more willing to invest their time and energy into their careers, and they are not tolerant enough to deal with family and marriage relationships, because some minor problems on the phenomenon of divorce is more common. [7]In view of this phenomenon, the time set for one month may be relatively short, which is difficult for this part of young people to think calmly and rationally about marriage relationship after releasing the pressure of work. And for the groups that apply this system because of the bad situation of one party during the marriage period, the continuation of the marriage relationship is a torture for both parties and minor children. In this

case, the cooling-off period of one month for divorce is too long. Therefore, in the practice of divorce registration, the applicable time of divorce cooling-off period should be adjusted according to each specific situation.

5.3. Improve the Supporting Measures Related to the Divorce Cooling-Off Period

The setting of the divorce cooling-off period is intended to enable both parties to truly reflect rationally and prudently on their marriage during this period, rather than both parties passively waiting for the passing of the divorce cooling-off period. But we should also be aware of the situation that "those in the picture are confused, the onlookers are clear", perhaps both parties deeply involved in complex grievances can not see the marriage relationship, may lose confidence in marriage. At this time, they need an objective and rational third party to help them get rid of the dilemma and rational thinking about this marriage relationship, at the same time, the intervention of the third party can also help timely psychological counseling with minors, pay attention to their physical and mental health, and guide minors to treat their parents' emotional problems correctly.

6. SUMMARY

Based on the above analysis, it is not difficult to see that the establishment of the divorce cooling-off period system effectively reduces the divorce phenomenon caused by impulsion among young groups, protects the legitimate rights and interests of family members to a certain extent, and maintains the harmony and stability of family relations. But at the same time, we should also rationally look at the drawbacks of this system, so as to scientifically and reasonably use institutional means, gather social consensus, form an efficient and perfect applicable mechanism, gradually play the design value of the divorce cooling-off period system, and really promote the construction of a stable and reasonable marriage institutional structure in our country.

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