

## *Original Paper*

# Inadequacies and Improvements in China's Divorce

## Cooling-Off Period System

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### **Abstract**

*As a new system, the divorce cooling-off period system aims to curb hasty divorce. Divorce and impulsive divorce, reduce the divorce rate in our country, maintain the divorce rate, and maintain a certain degree of stability in marital relationships. Article 1077 of the Chinese Civil Code stipulates that the divorce cooling-off period system is an indisputable fact and has been incorporated into law. By using qualitative research methods and theoretical research methods to explain its meaning and background, it briefly introduces the development process of the divorce cooling-off period in our country. On the basis of affirming its positive significance, it points out the shortcomings of the current divorce cooling-off period system in our country and analyzes The reason why my country's divorce cooling-off period system needs to be improved is to conduct a general inspection of foreign divorce cooling-off period systems through comparative research methods and put forward opinions and suggestions for improving my country's divorce cooling-off period system. And the results are drawn: China's divorce cooling-off period system is complex and requires long-term, multi-faceted efforts to resolve its flaws and improve its effectiveness.*

### **Keywords**

*Divorce cooling-off period, applicable situations, defects, overseas comparison, improvement suggestions*

## **1. Introduction**

### *1.1 Background*

The Chinese Civil Code was passed on May 8, 2020, which for the first time included the divorce cooling-off period system into the scope of marriage and family adjustment in my country from the legislative level. Our country has established a cooling-off period system for divorce registration, to a certain extent, to improve the current marital situation in our country and to guide couples to carefully

consider the adjustment of marriage and family in our country from the legislative level. Our country has established a cooling-off period system for divorce registration, to a certain extent, to improve the current marital situation in our country, to guide couples to carefully consider when dissolving their marriage, and to recognize and solve problems that arise during the divorce process. Cooling off period. Avoiding problems reduces hasty and impulsive divorces. From a social perspective, the divorce rate will also be relatively reduced, which is conducive to social stability. However, once the divorce cooling-off period system was introduced, it caused dissatisfaction and frustration in society. However, once the divorce cooling-off period system was introduced, it aroused widespread doubts. For example, whether a divorce cooling-off period system would make divorce more difficult. For example, will the divorce cooling-off period system make it more difficult for divorcing parties to get divorced and restrict their freedom of divorce? Or whether the cooling-off period can be enforced in all circumstances.

This article will focus on the problems existing in the application of the cooling-off period in divorce. By analyzing Chinese laws and learning foreign cooling-off period systems, we put forward suggestions for improvement so that the divorce cooling-off period system can exert its due value. Only during this period can the system exert its due value.

### *1.2 Problem Statement*

Article 1077 of my country's Civil Code stipulates a cooling-off period for divorce, but because this content is a new provision, problems arise in its application: 1) Special circumstances that require immediate divorce are not taken into account., may lead to insufficient protection of personal rights and interests; 2) The special circumstances of divorce may lead to insufficient protection of personal rights and interests; Failure to consider the need for immediate divorce. The special circumstances of divorce may lead to insufficient protection of personal rights and interests; 3) The 30-day cooling-off period uniformly stipulated by law may not be suitable for all situations; 4) The specific operation method is unclear, which may lead to the parties abusing the right of revocation; 5) There is a lack of protection for minor children; these problems hinder the system from effectively achieving its objectives. The specific operation method is unclear which may lead to the parties abusing the right of revocation; 6) There is a lack of protection for minor children; these problems hinder the system from effectively achieving its expected goals. This article focuses on the problems existing in the divorce cooling-off period, and makes reference to the advantages of South Korea's cooling-off period regulations in different situations. This article focuses on the problems existing in the divorce cooling-off period, and makes reference to the advantages of South Korea's cooling-off period regulations in different situations and Russia's special protection of children in the cooling-off period regulations, and puts forward constructive suggestions.

The content of the divorce cooling-off period in Article 1077 of the Civil Code: making it clear that within 30 days of the receipt of an application for divorce registration from both spouses by the marriage registration office of the civil affairs department, either party may request the marriage

registration office to revoke the application for divorce registration if either party regrets it. Upon the expiration of the 30-day period, within the next 30 days, both spouses shall appear in person at the marriage registration office to obtain a divorce certificate; failure to appear in person to apply for a divorce certificate is considered a withdrawal.

The research on improving the cooling-off period system of divorce in China identifies several key gaps in the existing literature, highlighting areas where further investigation and analysis are needed. These research gaps include:

**Limited Empirical Studies:** The existing literature lacks comprehensive empirical studies that assess the actual impact of the cooling-off period system on divorce rates, family stability, and the well-being of individuals, particularly in the Chinese context. Further empirical research is needed to provide concrete evidence of the system's effectiveness and its implications for families and society.

**Focus on Vulnerable Populations:** There is a gap in the literature regarding the specific impact of the cooling-off period system on vulnerable populations, such as victims of domestic violence and minors. Further research is needed to understand how the system affects these individuals and to identify measures for better protecting their rights and well-being within the divorce process.

**Comparative analysis:** Although there are some literatures that compare the cooling-off period systems of other countries, they are mainly compared with a single country. This article will make a targeted comparison based on the specific problems existing in China's divorce cooling-off period system. Learn the best parts of other countries and combine them with Chinese practices. This provides valuable insights into best practices and potential challenges in implementing and improving the system in the Chinese context.

**Steps to divorce in Korea:**

**Confirm the spouse's desire for divorce:** First, you need to apply to the family court for confirmation of the divorce intent. In the case of divorce by agreement, as long as both spouses have the intention to divorce, the court will not make additional inquiries about the reasons for divorce.

**Listen to the court's explanation:** The court will provide explanations on divorce matters and, if necessary, recommend that the couple consult with professionals.

**Divorce cooling-off period:** After the divorce cooling-off period, if both spouses still want to divorce, the court will provide a [Divorce Willing Confirmation] for subsequent divorce filings. Due to matters such as domestic violence, the continuation of the relationship can cause great pain to one party: it can be shortened or canceled depending on the specific circumstances of the case - there can be no divorce cooling-off period.

**Make a formal divorce filing:**

Within 3 months after receiving the confirmation of divorce intention, either spouse can file for divorce at the city hall or district hall of the place of marriage registration/residence. -After the above 4 steps, the divorce can be considered official.

The “Korean Civil Code” stipulates the exception conditions for the application of the divorce consideration system. According to the law, if there are urgent reasons such as domestic violence that require a quick divorce, you can explain to the family court the reasons for shortening or exempting the divorce intention confirmation period and submit relevant documents. The legislative purpose of the certification materials is to relieve the suffering of the parties suffering from domestic violence as soon as possible, avoid further physical and mental harm, and start requesting rights relief as early as possible. Because there is a cultural environment that is similar to China, we can apply and learn from China.

#### Family Code of the Russian Federation

Regulations: If a couple divorces by agreement, there is also a cooling-off period of one month. Moreover, Russia also stipulates that if the couple has a common minor child, they cannot divorce by agreement and must litigate for divorce, and there is also a three-month period for litigious divorce cooling off period.

In order to protect the rights and interests of minor children, this system increases the time cost and financial cost of divorce for couples. The intervention of the court can better make up for the fact that couples treat minor children in order to divorce impulsively.

These two areas are what China’s divorce cooling-off period system needs to make up for the most, so South Korea and Russia were chosen for system comparison to learn from the advantages of these two countries.

### *1.3 Research Objective*

#### General Objective:

The general objective of the research on the system perfection of divorce cooling-off period in China is to comprehensively analyze the existing divorce cooling-off period system, identify its deficiencies, and provide recommendations for its improvement. The general objective of the research on the system perfection of divorce cooling-off period in China is to comprehensively analyze the existing divorce cooling-off period system, identify its deficiencies, and provide recommendations for its improvement.

#### Specific Objectives:

To analyze the legal framework and policy context of the divorce cooling-off period system in China, including relevant laws, regulations, and guidelines; and to analyse the legal framework and policy context of the divorce cooling-off period system in China, including relevant laws, regulations, and guidelines.

To identify the deficiencies and challenges within the current divorce cooling-off period system.

To learn and analyze the regulations on divorce cold machines in South Korea and Russia, and get inspired.

To explore potential improvements and reforms to the divorce cooling-off period system.

#### *1.4 Research Question*

Why does China introduce a cooling-off system for divorce?

What are the problems and challenges in the establishment and implementation of my country's divorce cooling-off period system?

How do South Korea and Russia ensure efficiency and fairness?

Compared with the divorce systems in South Korea and Russia, what are the improvements in the Chinese system?

#### *1.5 Scope of Research*

**Overview of Divorce Cooling-off Period:** The research delves into the background, development, and introduction of the divorce cooling-off period the research delves into the background, development, and introduction of the divorce cooling-off period system in China, providing a comprehensive understanding of its implementation.

**Analysis of Deficiencies:** It thoroughly examines the deficiencies and limitations of the current divorce cooling-off period system in China, aiming to It thoroughly examines the deficiencies and limitations of the current divorce cooling-off period system in China.

**Comparative study:** Conduct a comparative analysis of the divorce cooling-off period systems of South Korea and Russia, focusing on the unique advantages of these two countries, and provide reference for the improvement of my country's divorce cooling-off period system.

**Improvement Suggestions:** In view of the improvement of the divorce cooling-off period system in China, through the comparative study of South Korea and Russia, specific opinions and suggestions on exceptions, flexible application, protection of minor children's rights, and supporting measures are emphatically put forward.

Overall, the scope of the study includes a detailed analysis of China's existing divorce cooling-off period system, comparative insights with other countries, and feasible recommendations for improving the system.

#### *1.6 Literature Review*

**On how to define the cooling-off period for divorce:** Xia Qin will divorce cooling-off period and divorce review period together, and that its meaning for the husband and wife filed a request for divorce within one month after the marriage registry for both parties to the divorce qualification review to avoid impulse avoid impulse. [References Xia Qin. The civil code registration of divorce cooling-off period provisions of the interpretation of the theory. *Jurist*, 2020, No.182(05).] Professor Yang Lixin believes that the divorce cooling-off period refers to the cooling-off period during which both parties to the marriage voluntarily apply for divorce under the principle of freedom of divorce.

**Significance of the Divorce Cooling-Off System:** Virgil H. Langtry, in *Juvenile Crime-An Approach to Solving Some Fundamental Problems through Changes in Divorce Laws*, points out that couples face marital problems faced by couples in marriage are common, but too much freedom in divorce can cause couples to avoid these problems rather than to seek a new marriage. Couples to avoid these

problems rather than actively address them, so a cooling-off period is necessary. [Virgil H. Langtry, Juvenile Crime-An Approach to Solving Some Fundamental Problems Virgil H. Langtry, Juvenile Crime-An Approach to Solving Some Fundamental Problems through Changes in Divorce Laws, 36 OR. L. REV. 97 (2017).]

Most scholars have affirmed the positive significance of the system, but due to the incompleteness of the system, there is still a need to improve the provisions on avoiding family risks and protecting women and children. Most scholars have affirmed the positive significance of the system, but due to the incompleteness of the system, there is still a need to improve the provisions on avoiding family risks and protecting women and children.

On the setting of the duration of the divorce cooling-off period: Luo and Xu believe that the divorce cooling-off period should be extended for agreed divorces involving minor children with adverse effects, and the duration of other general cases should be maintained. On the setting of the duration of the divorce cooling-off period: Luo and Xu believe that the divorce cooling-off period should be extended for agreed divorces involving minor children with adverse effects, and the duration of other general cases should be maintained. (Luo Hongyang, Xu Xiaoyi. On the differentiation of the legal value of the divorce cooling-off period. Jianghai Journal, 2022(03)).

Although scholars have laid the foundation for understanding the divorce cooling-off period system, there are still major disputes over its conceptual definition, application period, and setting principles, which deserve further in-depth study.

### *1.7 Significance of Research*

**Theoretical significance:** Make up for the theoretical flaws in the marriage and family section of the Civil Code. The introduction of the divorce cooling-off period is in line with the values and concepts of civil law legislation and takes into account the public interest. The introduction of the divorce cooling-off period is in line with the values and concepts of civil law legislation, takes into account public interests while safeguarding freedom, and balances the status of both parties in civil society. At the same time, research on the divorce cooling-off period should learn from the institutional characteristics of other countries to supplement our country's weak links. In addition, through exploration and theoretical research on the relevant legislative systems of South Korea and Russia, a scientific model in line with my country's national conditions will be constructed to promote the improvement and maturity of my country's divorce system, thereby promoting the in-depth development of civil code marriage and family.

**Practical significance:** The divorce cooling-off period system has played a role worthy of recognition, but because it is an emerging system, there are also areas that need to be improved. Studying the divorce cooling-off period system can help us understand why our country established this system and how the system operates in practice. From the usage, we can see what is happening. The study of the divorce cooling-off period system can help us understand why our country has established this system and how the system operates in practice. From the usage, we can see which aspects need to be

improved and discussed in various ways. Conduct multi-faceted analysis of existing problems and propose solutions. It can make the divorce cooling-off period system play a positive role in the practice of our country. It can make the divorce cooling-off period system of our country truly play its role and reduce the divorce rate, the design of maintaining this system should play a positive role and provide corresponding help for the practice of this system in our country. Let our country's divorce cooling-off period system truly play its role, reduce the divorce rate and maintain the stability of marriages.

## **2. Methodology**

The purpose of this article is to make suggestions for China's divorce cooling-off system by comparing the cooling-off system in South Korea and Russia. Therefore, to answer the given research questions, a qualitative method is most appropriate. This article obtains information by referring to articles, research papers, literature, government work reports, and legal regulations. This article obtains information by referring to articles, research papers, literature, government work reports, and legal regulations. This article uses comparative research and theoretical research methods to analyze the problem. This article uses comparative research and theoretical research methods to analyze the problem. The purpose of the research is to make suggestions, so it is a normative research.

## **3. Overview of the System of Cooling-Off Periods in Divorce**

On the afternoon of 28 May 2020, the Third Session of the Thirteenth National People's Congress voted and passed the Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code") with a high vote, which will come into force from 1 January 2021 onwards. This much-anticipated code marks China's entry into a brand-new generation of civil codes. Article 1077 of the Civil Code provides for a cooling-off period for divorce, making it clear that within 30 days of the receipt of an application for divorce registration from both spouses by the marriage registration office of the civil affairs department, either party may request the marriage registration office to revoke the application for divorce registration if either party regrets it. Upon the expiration of the 30-day period, within the next 30 days, both spouses shall appear in person at the marriage registration office to obtain a divorce certificate; failure to appear in person to apply for a divorce certificate is considered a withdrawal.

In the divorce process to increase the cooling-off period system, caused widespread concern in society, some people believe that this move is conducive to prevent impulsive divorce, to provide couples with the opportunity to repair their feelings, some people believe that this move restricts the freedom of divorce, will lead to the phenomenon of difficult to divorce, there are also worried about the cooling-off period of divorce sheltered from domestic violence, and to the transfer of property to leave space time. So, how to correctly treat the cooling-off period of divorce?

### *3.1 Meaning of the Cooling-Off Period in Divorce*

The cooling-off period for divorce refers to the period of calm reflection during which either spouse may withdraw the application for divorce within a certain period of time after its receipt by the marriage registration authority, in order to end the registered divorce procedure, in order to avoid frivolous divorces by the spouses, in accordance with the legislation upholding the principle of the freedom to divorce.

China's registered divorce system has two main features: first, the parties have reached agreement on the divorce and on the issue of children and property; second, the procedure is quick and convenient, and the privacy of the parties is safeguarded to the greatest extent possible. Its establishment is in line with the development trend of the times and is conducive to safeguarding the freedom of divorce. But the freedom of divorce can not be unlimited freedom, personal freedom in and family harmony, social stability, to be subject to certain restrictions. In practice, due to China's divorce registration procedures are relatively simple, there is no additional restrictions on the divorced parties, resulting in the breeding of bad divorce behaviour, the phenomenon of frivolous divorce increased, is not conducive to family stability and even produce a lot of disputes, such as child support, property re-division after the divorce and so on. Divorce rates soaring year by year, flash marriages and other problems need to be resolved urgently the introduction of a cooling-off period system, thereby maintaining social stability, and safeguarding the legitimate rights and interests of minors and the elderly.

According to this article, during the 30-day cooling-off period for divorce, either party may withdraw the application for divorce from the registration authority. If, within 30 days of the expiry of this period, both parties fail to apply to the divorce registration authority for the issuance of a divorce certificate, the application for divorce shall be deemed to have been withdrawn. The reason for the 30-day cooling-off period for divorce is to protect the rights and interests of the parties concerned. The 30 days stipulated in this Law is a period of no change, which is a typical cooling-off period for divorce. Judging from this provision, the cooling-off period for divorce in China is 30 days. During the cooling-off period, either the man or the woman or both parties have the right to request a withdrawal. Upon receipt of the withdrawal request, the marriage registration authority shall terminate the divorce registration procedure. If, after the 30-day cooling-off period, both parties do not change their minds about the divorce, they shall come together to the marriage registry office to apply for the issuance of a divorce certificate within the next 30 days. However, if the parties do not come to the Marriage Registry within the next 30 days, the application for divorce shall be deemed to have been automatically withdrawn.

### *3.2 Background to the Introduction of the Cooling-Off Period in Divorce*

#### *3.2.1 Divorce Rates Show a Continuing Upward Trend*

In recent years, the divorce rate in China has been on a steady upward trend, especially in 2003, when the divorce rate suddenly rose sharply, owing to the adoption in 2003 of the Regulations on Marriage Registration, which lowered the threshold for divorce. This law made it easier for civil affairs



departments to register divorces, and their staff were more lenient in their examination of divorce data, even to the extent that they did not do any mediation work with the parties who came forward to apply; basically, divorce was immediate, leading to a rapid increase in the number of divorces going to civil affairs bureaux, and a steep rise in the divorce rate, which led to the emergence of the third peak in divorce since the founding of the People's Republic of China.

According to statistics from the official website of the Ministry of Civil Affairs, in 2018, there were 10.108 million registered marriages and 3.08 million divorces nationwide; in 2019, there were 9.471 million registered marriages and 4.15 million divorces nationwide; and in 2020, there were 8.131 million registered marriages and 3.733 million divorces nationwide. As can be seen from the above figures, the marriage rate is declining, but the divorce rate is increasing. Divorce by mutual consent is handled very swiftly in China; as long as both parties agree to divorce and reach a consensus, they can apply for a divorce at the civil affairs department, which will respect the wishes of both parties and will immediately process the divorce and issue a divorce certificate to both parties. There are no restrictions on divorce by negotiation in marriage registries, and the procedures are convenient and easy to carry out, which, coupled with China's rapid economic and social development and the opening up of the minds of individual members of the public, has led, to a certain extent, to an increase in the divorce rate.

### 3.2.2 Increase in the Number of Flash Marriages and Divorces, and Changes in the Outlook on Marriage

With the increasing openness of mindsets, the phenomenon of "flash marriages" is very common. Both parties lack of understanding, or did not carry out an in-depth understanding, not to mention the role of both parties in the marriage should play a clear understanding of the responsibilities, only on the basis of the relationship between the two sides of the good feelings, on the basis of the vision of a better life after the marriage of a passionate to go to get a licence to get married. After marriage, the real character of the two parties and the gap between them before and after marriage, their inability to adapt to their roles after marriage, their inability to deal with the conflicts between the two families, and their lack of the necessary communication and tolerance for each other and a series of other problems are revealed, leading to the intensification of conflicts between the two spouses and their choice of divorce.

Obviously not. Firstly, with China's economic and social development, the concept of marriage has changed. The traditional family-oriented "family-oriented" view of marriage has gradually been replaced by an individual-oriented "individual-oriented" view of marriage, and the parties to a marriage attach greater importance to their personal feelings. For the parties to a marriage, if the individual believes that the marriage is no longer necessary, then divorce will naturally become the choice of both parties.

Secondly, in the context of the great development of current society, the concept of equality between men and women has become generally accepted. The social status of women is improving, women are increasingly seeking independence and are no longer merely dependent on men, and women's courage

in making the decision to divorce has led to “an increase in the number of women filing for divorce”. In addition to the two points mentioned above, increasing social inclusiveness is also one of the reasons for the continuing rise in the divorce rate. With economic and social development, the concept of autonomy and equality has become more and more popular. People increasingly believe that marriage is a private family matter, other people should not be overly judgemental, society for divorce also shows a more enlightened and tolerant attitude, divorce, remarriage have become commonplace. This state of affairs has also made people who want to get divorced no longer fear the condemnation from the public opinion and dare to get divorced.

### 3.2.3 The Prevalence of Remarriage

According to the data displayed on the official website of the China Statistics Bureau, the number of couples who remarry in China continues to rise. The reasons for remarriage are summarised as follows: (1) to provide a good environment for children to become successful; (2) regret for impulsive divorce; (3) rethinking of marriage; (4) due to life pressure. In fact, the main reason for remarriage lies in the nonchalance of both parties at the time of divorce.

In order to reduce impulsive divorce, frivolous divorce, the National People’s Congress deputies, CPPCC members from all walks of life have called for the draft Civil Code to be introduced into the cooling-off period for divorce, in the consultation of the majority of people’s support, and then after a few modifications to determine the cooling-off period for divorce system.

### 3.2.4 The Significance of a Cooling-Off Period in Divorce

#### A. Contribute to the reduction of frivolous divorces

When divorce becomes easier and easier, people’s loyalty to their marriage decreases, they don’t have the patience to look for a suitable partner before marriage, and they don’t want to spend enough energy to maintain their relationship after marriage, thus increasing the casualness of divorce. The purpose of the cooling-off period for divorce is to reduce the number of frivolous divorces and to prevent “flash marriages and flash divorces” and “frivolous divorces”. Whether or not a family is happy and fulfilled, whether or not the marital relationship is harmonious is the foundation. At present, China is in a period of transition in social development, the divorce rate remains high, and marital families are facing unprecedented instability. Hasty divorces can be classified as impulsive divorces, and the introduction of a new legal system of cooling-off periods for divorce will help to reduce the divorce rate in China.

For example, in a case that took place in Beijing in 2020 when the cooling-off period for divorce was first applied, Mr He and Ms Ran decided to divorce by mutual consent, as they both felt that the marriage had come to an end and that there was no need to continue. Both Mr He and Ms Ran were at peace when they divorced, and both agreed on the distribution of property and custody of their daughter, and then went to the Civil Affairs Bureau to apply for divorce registration. However, during the cooling-off period of the divorce, Ms Ran regretted that she still had feelings for Mr He, so Ms Ran revoked it, and under the mediation of the Civil Affairs Bureau, the two people restarted their married life, and to a certain extent, also reduced the pressure of the court.

Conducive to improving China's divorce system

Freedom of marriage is honoured in our country, and in the case of marriage it is required to follow the common will of the man and the woman, not to go against the will of the individual, and not to be interfered with by anyone: similarly, in the case of divorce, the freedom to divorce is also advocated. Respect for the freedom of divorce and the rejection of hasty divorces are the main attitudes of our laws towards divorce.

The establishment of a cooling-off period for divorce will not interfere with citizens' right to enjoy the freedom of divorce in accordance with the law. Many couples are in an incompatible and hostile state when they get divorced, and in the case of an extremely frosty relationship, some couples will directly confront each other in court, or even engage in irrational behaviour such as discrediting each other for the sake of divorce. The establishment of a cooling-off period for divorce allows couples in an irrational state to return to rationality and re-examine their marital relationship, judge whether their relationship is indeed irreparable, and then make a choice that is ultimately in line with the expression of their subjective meaning.

The establishment of a cooling-off period for divorce has gradually developed into a buffer period for the relationship between husband and wife, so that both spouses through the return of reason to repair the emotional cracks, so as to restore the original marriage may be lost. At the same time, for the real-life "for property fake divorce" parties, also because of the provisions of the divorce cooling-off period system will lose the statute of limitations, so that to a certain extent to curb false divorces, to maintain the stability of the family and the authority of the law.

#### **4. Shortcomings of the Cooling-Off Period System in Divorce**

##### *4.1 Failure to Consider Exceptional Circumstances*

Without considering the applicable circumstances, a cooling-off period has been stipulated across the board for all agreed divorces. Many people find this inappropriate, especially in cases of domestic violence, drug abuse, drug trafficking, maltreatment, transfer of property, concealment of property, etc., which is inconsistent with the original intent of our country's establishment of a cooling-off period for divorce, and also runs counter to the psychological expectations of the public. From the perspective of marriage, a woman pays a lot of time, money and energy to leave a broken relationship, and the setting of a cooling-off period for divorce leads to the possibility that what she gets in the end is not in her favour, so she takes measures to remedy the situation. Article 1077 of the Civil Code stipulates that a 30-day cooling-off period is mandatory for all parties going to the marriage registry for a divorce. However, in reality, the reasons for divorce are many and varied, ranging from family matters, personality differences, domestic violence, abuse, etc. The decision to divorce is not impulsive or frivolous, but rather the survival of the marriage is likely to be life-threatening.

This is especially true for marriages in which the man has been a perpetrator of domestic violence, and in which there are cases of domestic violence that cause physical and mental harm to the woman. Domestic violence is a conflict between husband and wife that endangers the life and health of the couple, and if it is determined that there are serious cases of domestic violence, and the person concerned requests a divorce due to domestic violence, there is no need to grant a cooling-off period. In other words, there are such special circumstances for which the “cooling-off period system for divorce” should not be applied, and the law should consider setting up a quick remedy for them, so that they can be relieved as soon as possible, and avoid continuing to be harmed as a result of going through the cooling-off period. In cases where one of the spouses engages in vices such as gambling, drug abuse or mistreatment of family members, the application of a cooling-off period for divorce not only fails to promote family harmony and social stability, but on the contrary artificially delays the time for the injured party in a marital or family relationship to save himself or herself through divorce, which may aggravate the situation of the victim, intensify the conflicts between the spouses and their family members, and even lead to irreversible and serious consequences.

The application of the 30-day cooling-off period for divorce in cases where one of the spouses has transferred, concealed or squandered the joint property or where there is a significant risk that the property has been transferred or that the property has been lost.

#### *4.2 There Is a Problem with the Unified Setting of the Cooling-Off Period*

A uniform 30-day cooling-off period is too mechanical and unscientific, and in practice it is not conducive to the real purpose of the cooling-off period. Each party’s marriage is not the same form, the reasons for divorce are not the same. Philosophically speaking, specific problems are analysed specifically, so the duration of the cooling-off period should not be set too rigidly.

The length of the cooling-off period should be analysed on a case-by-case basis. For example, there are domestic violence, the injured party wants to leave as soon as possible, do not need a day of the cooling-off period; and for example, the parties to the divorce have a few small children, on the issue of custody of small children, children’s education and so on the complexity of the law, the general provisions of the 30 days may not be enough, in the 30 days of the divorced parties have not negotiated to deal with the issues, then it is necessary to extend the period of cool-headedness. Therefore, I believe that the period of the cooling-off period should be different according to different circumstances, rather than 30 days in all cases.

#### *4.3 The Specific Operation Method of the Cooling-Off Period System Is Not Clear*

The specific methods of operation are unclear, and there are no corresponding judicial interpretations to improve them. For example, the law provides that both parties have the right to withdraw, give a party the right to withdraw the initial intention is good, but if a party withdraws the application for divorce, but also want to agree to divorce, according to the provisions of the law but also to wait for the cooling-off period, if a party to repeatedly withdrawn, indicating that the parties to the existence of a divorce there is a difference of opinion, the civil affairs department staff will generally allow them to

sue for divorce to the court, which to a certain extent increased the pressure on the court to handle the case, but also to the parties to the divorce life added trouble. This has increased the pressure on the court to handle the case, but also added to the life of the divorced party to the trouble.

Pursuant to article 1077 of the Civil Code, in the case of divorce by mutual consent, the parties may apply to the marriage registry for the issuance of a divorce certificate only after 30 days from the date of the application for registration of the divorce, and if neither party has withdrawn the application for registration of the divorce. However, there is no provision on the manner of withdrawal, whether it is oral or written, or whether it can be entrusted to another person.

In addition, if one of the parties fails to go to the civil affairs department together to apply for a divorce certificate within 30 days after the cooling-off period due to other force majeure reasons, such as health problems or restriction of personal freedom, the application for divorce is deemed to have been withdrawn, with no remedies provided for in the law or the relevant judicial interpretations. Complicated procedures and increased costs may also force some parties to forgo the exercise of their rights.

One more thing, if one of the parties abuses the right of withdrawal and makes the divorce by consent proceedings impossible! What should be done about it?

#### *4.4 Lack of Protection of the Rights and Interests of Minor Children*

There is not the slightest reference to the protection of minor children in the cooling-off period for divorce. Although there are special laws to protect minors in China, we should all understand that the family of origin has a great impact on a child's life, influencing the formation of the child's character and their outlook on their own life, world and family. Therefore, if a man and a woman must divorce, they should try to minimize the impact of the divorce on their children, properly handle their children's lives and education, and pay attention to the psychological changes in the children of minors.

At the same time, attention should also be focused on the issue of how child custody is distributed. If the children are minors at the time of the parents' divorce, the relevant authorities should intensify their efforts to mediate, communicate with the minor children in depth and listen to their true feelings. According to the Civil Code, if the children have reached the age of 8 but are not minors, the parents should listen to their views in order to minimise the psychological harm caused by the divorce.

The provisions of the civil code on the cooling-off period for divorce are too simple and do not show any protection for minor children, which is a major flaw. It should be noted that in divorce cases, it is the minor children who suffer the most. Originally, they need the material and spiritual care of their parents at this stage of their development, but when their parents get divorced, the children have already become bargaining chips, and society should therefore consider paying special attention to and protecting them.

## 5. An Examination of Extraterritorial Cooling-Off Periods in Divorce

The cooling-off period for divorce is not the first of its kind in our country. Many foreign countries have provisions for a cooling-off period for divorce, only the names are different, but the purpose is the same, to reduce the divorce rate through intervention and to give both parties a cushion of time. As our divorce cooling-off system has only been established, we need to learn from countries that have already established a mature divorce cooling-off system.

### 5.1 Korean Law on Cooling-Off Period in Divorce

Korea's concept of marriage and family is similar to ours, and in 2005, in an effort to reduce the consistently high divorce rate, the Korean authorities introduced a "deliberation period" system in the Seoul Family Court, which makes it clear that in order to obtain a divorce in the Family Court, the parties concerned must go through a one-week deliberation period, and only formally apply for a divorce after obtaining expert counselling and mediation to no avail. The system makes it clear that the parties concerned must go through a one-week deliberation period in order to obtain a divorce in the Family Court, and only after obtaining expert counselling and mediation to no avail can the divorce be formally finalised. According to relevant statistics, since the introduction of the "reflection period" in Korea, the number of couples withdrawing their divorce petitions has increased exponentially compared to the past. Therefore, only two years later, Korea has incorporated the divorce deliberation period into the Civil Code, making it clear that, firstly, couples who intend to divorce by mutual consent must go through divorce counselling given by the Family Court, and, if necessary, the Family Court may recommend that the parties concerned receive counselling from a professional counsellor. Secondly, the parties applying to the Family Court for divorce, after the first divorce counselling provided by the Family Court, confirm a number of matters through the following periods: firstly, whether there are any dependants, and if so, the period of deliberation is set at three months, which covers the woman's conceived and unborn children; secondly, in the event that there are no children in need of support, the period of deliberation is set at one month; and thirdly, in the event of emergency situations such as domestic violence in the marriage, the Family Court may, depending on the circumstances of the case, decide on the appropriate course of action to be taken. Thirdly, if there is an emergency situation such as domestic violence in the marriage, the Family Court may shorten or even waive the deliberation period depending on the seriousness of the actual situation. Since the introduction of the "reflection period" system in Korea, 23 per cent of the parties have cancelled their divorce agreements. The Korean government has demonstrated through judicial practice that this cooling-off period has reduced the divorce rate.

The Korean law can be learnt from the provisions on the cooling-off period for divorce: 1) the period of deliberation varies depending on whether there is a dependent or not, with the period of deliberation being three months with a dependent and one month without one; and 2) the period of deliberation can be shortened or exempted in the event of an emergency such as domestic violence, taking into account special circumstances.

### *5.2 Russian Law on the Cooling-Off Period in Divorce*

In accordance with the provisions of the Family Code of the Russian Federation, there are two different types of divorce in Russia: registered divorce and litigious divorce. In order for a divorce to be registered, both spouses must submit a joint application to the family registry office, and the divorce may not be formalised until one month has elapsed since the application was made. Russian family law attaches great importance to the protection of the rights and interests of minor children, and therefore makes it clear that a registered divorce may be applied only if the spouses have no children to raise together, otherwise it may be applied only in the case of a litigious divorce. During this period, the court conducts mediation between the parties to the divorce, inquiring about their true intentions, and gives them a period of reconciliation of no more than three months, so that the parties can think carefully and prudently about their marital affairs. Russian law provides for a cooling-off period of one month for registered divorces and three months for divorce proceedings in the courts, a provision that reflects the prudence with which Russians approach divorce and is conducive to the protection of the rights and interests of minor children.

The Russian law on the cooling-off period for divorce has a number of useful features: it attaches importance to the protection of the rights and interests of minor children, and makes it clear that a registered divorce may be applied only when the spouses are not required to provide for the maintenance of their children together.

## **6. Paths to Improvement of the Divorce Cooling-Off Period System**

### *6.1 Divorce Cooling-Off Period to Be Set Exceptions*

According to China's Civil Code, if there are acts of domestic violence, the cooling-off period for divorce is not applicable, which is in line with the original purpose of the establishment of the system. Domestic violence not only brings mental and physical harm to the abused party, but also causes great psychological harm to the minor children who have been under the shadow of domestic violence for a long time. For this reason, divorce should be granted immediately, and only in this way can women and minor children be effectively protected.

There is also a need to exclude from the cooling-off period cases in which one of the parties is a drug addict, a drug dealer, an abuser, a transferor of property, a concealer of property, etc., and in such cases, the continued existence of a cooling-off period in a divorce will bring more pain to the parties concerned. It will not help to save the marriage.

### *6.2 Distinctions to Be Made in the Setting of the Cooling-Off Period*

The 30-day cooling-off period for divorce under our Civil Code is not flexible enough. In this regard, most countries provide for a differentiation based on the presence or absence of minor children. For example, in Korea, the Civil Code provides that if there are minor children, the cooling-off period is set at two months, and vice versa. In the Russian Federation, the Family Code provides that the dissolution of a marriage between divorcing parties who have minor children in common can only be effected by

means of litigation. We can learn from this by setting a variable period of one to three months, depending on the circumstances, for longer marriages, because divorce may involve more disputes over the interests of all parties, depending on whether or not to give birth to a child, the age of the minor children, the maintenance of minors, etc.

### *6.3 Focus on the Protection of the Rights and Interests of Minor Children*

In a sense, divorce means the dissolution of the family, which Marx discussed in his Draft Law on Divorce. Divorce does not only affect the divorcing parties, but also the minor children, for example, because if the parents are divorced, the minor children will no longer be able to live in a family with a mother and a father, and this will have a great impact on them.

Minor children are vulnerable and need parental care and guidance. The parties to a marriage not only enjoy the right to freedom of divorce, but should also fulfill their responsibilities as parents. The need to ensure that the legitimate rights and interests of minors are effectively safeguarded should be reflected at the legislative level. To protect the interests of minors, in cases of divorce where there are minor children, an agreement must be reached on the upbringing of the minor children, and the State may, if necessary, provide certain assistance to the minor children, such as identifying their guardian or providing support to ensure their material needs.

In accordance with article 1043 of the Civil Code, spouses and even family members endeavour to build a harmonious family. In this regard, English law provides that the court may refuse to grant a divorce if the divorce would cause serious financial hardship to the minor children. The Korean Civil Code also provides for a cooling-off period of three months for those who apply to the Family Court for confirmation of divorce with dependent persons and one month for those who are not dependent. Therefore, I think that in our country, in setting the duration of the cooling-off period, we should also focus on whether there are minor children to make flexible provisions, such as the parties to a divorce by mutual consent do not have minor children, the cooling-off period is set at one month if there are minor children, the cooling-off period will be three months.

At the same time, in order to protect the interests of minor children, the relevant laws and judicial interpretations should clearly stipulate that, during the cooling-off period, if the couple is to be separated, both parties should deal with the issue of the maintenance of minor children and make arrangements for the lives of minor children in advance. In order to ensure that the issue of the maintenance of minor children is properly resolved. During the cooling-off period, if the child is under two years of age, the child is generally raised directly by the mother: for minor children who have already reached the age of eight, their views should be heard, so as to ensure that the interests of the minor children are effectively safeguarded.

### *6.4 Improving Supporting Measures for the Cooling-Off Period in Divorce*

To date, China has not set up a special mediation mechanism for marriages. In this regard, we can reasonably draw on the advanced experience accumulated by other countries, while at the same time taking into account our country's actual situation and making efforts in the following two areas: first,



giving full play to the mediation role of grass-roots mediation organisations and marriage registration authorities. Grass-roots mediation organisations have a relatively better understanding of the parties involved, and their participation in organising mediation is likely to achieve good results and is very beneficial in terms of saving social costs. In view of the current situation of marriage registries, which may not be adequately staffed, it is necessary to strengthen the cooperation between marriage registries and professional marriage mediation organisations, and to set up professional psychological counselling rooms in marriage registries. This is conducive to a clearer understanding of the true intentions of both parties, ensuring the legitimate rights and interests of the weaker party, and thus achieving the goal of reducing costs and enhancing social benefits. Secondly, cooperation between marriage registration departments and the courts has been strengthened, so that if the parties concerned fail to achieve results during the cooling-off period, or if there are cases of domestic violence, abuse or transfer of property, they are actively and quickly guided to file a lawsuit with the courts.

In addition, the construction of professional marriage and family counselling teams has been strengthened. Specialised marriage and family counselling can provide professional services to help divorcing parties sort out whether their relationship has broken down, and at the same time analyse the stakes of divorce from a professional point of view, so as to achieve the goal of reducing the occurrence of impulsive divorce, which has a significant role to play in maintaining family stability. For example, the Korean Civil Code clearly stipulates that couples wishing to divorce can bring their case to the court, which will provide them with marriage counselling and mediation, and can also advise them to receive professional marriage counselling services. To a certain extent, this eases the burden on the courts and reduces the pressure on court staff.

## **7. Conclusion**

This thesis through the introduction of China's divorce cooling-off period system overview, pointed out that China's divorce cooling-off period system exists in the four deficiencies, analysis of China's divorce cooling-off period system needs to improve the reasons; through the divorce cooling-off period inside and outside of the region to do a general examination, so as to give the relevant improvement of the divorce cooling-off period system of advice and recommendations. From the establishment of the law to improve the law can not be completed in one day, we must see the construction and improvement of the divorce cooling-off period system is a complex systematic project, can not hope for a short-term to get a complete solution, which requires a variety of subjects from their respective perspectives to contribute to the effort.

In the context of freedom of marriage and freedom of divorce, the exploration of the dilemma of the divorce cooling-off system and its path to perfection can not only provide a theoretical basis for the state to formulate and introduce relevant laws and judicial interpretations, but also has great practical significance for the progress of improving and perfecting the system of divorce cooling-off period.

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