

Thoughts Triggered By China's First "Divorce Cooling-Off Period" Notice

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Abstract—The Court of Anyue County, Ziyang City, Sichuan Province, China issued China's first *Divorce Cooling-off Period Notice*. The parties concerned did not get divorced at last and the notice has achieved good social results. After defining the term "divorce cooling-off period", this paper analyzes and affirms the cultural, social and legal legitimacy of the practice, and believes it is a useful attempt for the divorce system of China. Moreover, the paper emphasizes that in the "divorce cooling-off period", the court must actively resort to various social forces to rectify the marriage and resolve the marital conflicts, so as to finally reduce divorce rate and promote social harmony.

Index Terms— divorce cooling-off period, divorce system, mediation system

I. INTRODUCTION

According to the statistics of the Ministry of Civil Affairs of China, the number of divorces in 2003 was 1.331 million, and in 2016 it increased to 4.85 million. The number of divorces has been growing for 14 consecutive years. Faced with such a surge in the number of divorces, the judiciary authorities bear a lot of pressure, and have carried out some explorations and attempts. On March 8th, 2017, the Court of Anyue County, Ziyang City, Sichuan Province, China issued China's first *Divorce Cooling-off Period Notice* in which the court used long paragraphs to mollify the couple sincerely, and it especially referred to the young child(ren) of the parties, hoping it would save their marriage. The notice has made a big splash. On the one hand, it received applause from the Women's Federation, CPPCC, etc., while on the other hand, its legitimacy was questioned by many parties. Hereafter, the Court of Jiaozhou, Qingdao City, Shandong Province, the Court of Danfeng County, Shangluo City, Shaanxi Province and the Court of Yong'an City, Fujian Province also issued *Divorce Cooling-off Period Notice* one after another, resulting that both academic field and practical field began to pay great attention to the issue of "divorce cooling-off period". This article is the thoughts of the author on the issue.

II. DEFINITION OF "DIVORCE COOLING-OFF PERIOD"

"Divorce cooling-off period" as a term first appeared in a proposal titled *Establishing Divorce Cooling-off Period*

and *Cultivating Marriage Counselors*, which was put forward during the "two sessions" (the National People's Congress and the Chinese People's Political Consultative Conference) period in 2010. So far, the academic field has not yet formed a recognized concept over this term. For the writing of this article, the author first gives a definition of the term "divorce cooling-off period".

"Divorce cooling-off period" is a period determined based on factors including the length of the marriage and whether there are minor children or not, etc. by the people's court for the two parties to the divorce to further think through deliberately and rationally whether they really want to get divorced. The legal consequences of the "divorce cooling-off period" is: If the two parties make it up, they may apply for withdrawal of the divorce case; if they still decide to get divorced, the case may be tried as normal. Other countries also have similar terms, such as the "reflection and consideration period" in the *Family Law Act of the United Kingdom*, and the "deliberation period" in the *Korean Civil Code*. It must be emphasized that the court has never mandatorily applied it to every divorce case no matter at the beginning of the creation of the "divorce cooling-off period", or in the existing social practice of China.

By taking the existing judicial practice into consideration, the author determines the terms and conditions under which the "divorce cooling-off period" may be applied are as follows: (1) the divorce case has been accepted according to law; (2) the majority of the members of the collegial panel find the marriage not completely broken down according to the doctrine of discretionary evaluation of evidence. If there are minor children to be raised, the collegial panel judges would be more likely to make the decision of issuing the "divorce cooling-off period" notice. Although it is difficult for outsiders to accurately judge the feelings of the parties, more often it is "those closely involved cannot see as clearly as those outside". Therefore, considering that the breakdown of marriage and the disintegration of family is not just a personal matter, but more of a social matter, it is indeed quite necessary to judge the situation of a marriage based on the "onlookers see clearly" principle.

III. LEGITIMACY FOUNDATION OF THE "DIVORCE COOLING-OFF PERIOD"

A. It is in conformity with the inherent pursuit of the "harmony" culture of China since ancient times

The display of "harmony" on the Beijing 2008 Olympics Opening Ceremony shows the pursuit of "harmony" of Chinese culture. The concept of "better to destroy ten temples than to break a marriage" is not only a consideration of the pros and cons for the parties to the divorce, but also a wisdom of caring for children and the society. People with a certain life experience would probably strongly agree on it. However, what needs to be stressed is that the "harmony" here must not be a compromise of a party. Rather, it is to come out from the zero-sum mentality and to pursue a multi-win result.

B. Marriage and family have gone beyond personal private areas and come into social public areas, so appropriate restrictions must be placed on divorce freedom.

Some think that the "divorce cooling-off period" notice is the restriction and obstacle over personal divorce freedom, and it is a deviation from the basic principle of marriage freedom established by the marriage law of China. So, is divorce indeed a thing of an individual or a thing of the whole society? The author believes the proportional relationship between the rise in divorce rates and the rise in juvenile delinquency rates has proved that the disintegration of a marriage (especially the marriage with minors) is more complicated than just an end of the personal and property relationship between a man and a woman. When the impact of divorce on society is so extensive and far-reaching, if we do not place necessary restrictions on this freedom, then, everyone in our society may ultimately become the victim of such freedom. In any society ruled by law, freedom is relative rather than absolute.

On the other hand, if divorce freedom is not restricted, it would make people more and more impatient with marriage, and social problems arising from divorce would become more and more prominent. In his *Sex and Reason* published in 1992, Posner also pointed out: "When divorce becomes more and more easy, people's loyalty to marriage would be reduced correspondingly. People would have no patience to find the suitable partner before marriage, and not willing to spend enough time to maintain the feelings toward each other after marriage, thereby increasing the randomness of divorce." From here we can see that it is completely in line with the purpose of law and principles of law to moderately intervene in divorce freedom.

C. Legal basis

Although there are no specific provisions on "divorce cooling-off period" in the marriage law of China, the notion contained in the "divorce cooling-off period" is exactly the same as the mediation spirit of the so-called "Flower of the Orient". Currently in China, the two practices, i.e. 1) mediation throughout the trial of a divorce case, and 2) the court's not ordering a divorce decree as long as there is one party not agreeing to the divorce, indicate that both judicial authorities and administrative organs treat divorce with a conservative

attitude.

To sum up, the author believes that although there are no specific provisions on "divorce cooling-off period" in both civil substantive law and procedural law of China, it is a bit of "cutting the feet to fit the shoes" to use the legal provisions which are "doomed to be outdated" to limit the ever-changing social life practice. As long as the "divorce cooling-off period" system is in line with the basic principles of law, and the interests of the current multiple parties, such an act of innovation and exploration should and must be encouraged.

IV. SOCIAL FORCES SHOULD GET ACTIVE DURING THE "DIVORCE COOLING-OFF PERIOD"

The issuance of the divorce cooling-off period notice by judicial authorities is only the first step of the journey of a thousand miles. In order to make the "divorce cooling-off period" system actually play a positive role, the follow-up of social forces is of the essence. As the confrontational feelings of the two parties at this stage are relatively restraint, social forces should be used to affect and guide the parties to the divorce to re-examine themselves, the other party, the marriage and the family from a number of angles, find the problems, and then solve them and save the marriage; of course, if it is really inappropriate for the two parties to continue their marital life, the two parties would be able to separate in a more peaceful way after the self-reflection at this stage, thus greatly reducing the physical and psychological harm to the minor children.

A. Carrying out marriage and family education in various ways

In current China, we do not lack vocational education, for example, we need to go through a long and systematic professional learning process before we become a judge, doctor or any other professionals. However, every person who entered marriage life did not experience any special training. Hence, our understanding of marriage and family can only come from our family of origin and the cognition formed during the process of self-growth. The author believes that each man and woman who decide to marry each other should receive marriage and family education before marriage. With the establishment of social management and service system in China, it is necessary to have the lesson which is missing before marriage made up when crisis occur in marriage. In the "Internet+" era, there are various online and offline forms of marriage and family education, but what's more important is that the content of the course should be down-to-earth, profound but easy to understand, with less preaching while more influence, so as to unlock the mental block of the parties, have the parties adjust their behaviors in marriage and resolve the marriage crisis.

B. Third party mediation organizations (personnel) actively take part in mediation

In the past few years, many non-governmental voluntary marriage and family conflicts mediation activities were carried out in many places of China. These

marriage and family conflicts mediation volunteers are warm-hearted people from of all walks of life including legal professional groups, psychological counselors and people with other specialized skills and good at mediation. On July 21st, 2017, the Supreme People's Court of China held an activity for the employment and contract signing of the second batch of volunteer specialists and teams of the litigation service center, which means that the judicial system has also fully realized the importance of bringing the advantages and strong points of the third parties into play to resolve marriage and family crisis.

C. Carry out targeted psychotherapy for specific individuals

With the development of society, people pay more and more attention to mental health. It would largely resolve the marriage crisis to, in areas where conditions permit, carry out psychological evaluation over the parties whose marriage is under crisis, and carry out targeted psychotherapy for the parties who are in the need of psychological intervention. Moreover, for a person with serious psychological problems, in addition to marital relations, problems of different degrees would also occur in other social relations and behaviors, so it is of the same importance for the entire society to conduct psychological intervention for them.

V. CONCLUSION

"Divorce cooling-off period" is a good attempt for the divorce system of China. Although it cannot be applied to all divorce cases, it really can play a role like pushing the pause button for some marriages which are not completely broken down. It is beneficial and harmless to, with the help of multiple parties, 1) have the parties to the marriage adjust their attitude toward marriage and family, 2) arouse the beauty of the party in the heart of the other, and 3) have the parties consider the future growth of the children and treat their marriage with a responsible attitude. Meanwhile, if practice could prove that the "divorce cooling-off period" is effective, it should be institutionalized in a timely manner, which is more in line with the requirements of a society ruled by law.

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