

The Cooling-Off Period of Divorce to Save Marriage

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Abstract: The stability of marriage is the basis of family harmony. In order to ensure the stability of marriage, our Civil Code has increased the setting of marriage cooling-off period. The Civil Code was formally implemented on January 1, 2021, in which the addition of a 30-day cooling-off period in the divorce procedure aroused strong social concern. The establishment of a cooling-off period for divorce in the Civil Code is an important embodiment of the integration of legislation into socialist core values. It is of great value in preventing rash divorce, maintaining marriage and family stability and building a harmonious, civilized and equal marriage and family relationship [3]. It embodies the humanistic concern of legislation for marriage and family. Of course, divorce cooling-off period from draft to legislation is not achieved overnight, there is a certain degree of legitimacy and rationality, but the judicial practice of divorce cooling-off period still needs to be improved, and there are some practical problems. The cooling-off period for divorce is only applicable to agreed divorce, and there are no clear provisions for litigation and registration of divorce. Such as the divorce cooling-off period to set up a flexible “time setting”, which can fully protect the interests of divorce parties and teenagers

1. Introduction

According to the statistics of the Ministry of Civil Affairs, since 2003, the divorce rate in China has risen for 16 years in a row, and the phenomenon of hasty divorce such as “flash divorce” after “flash marriage” has continued to increase, and it is even difficult to obtain “divorce appointment No. 1”. In order to adapt to the development of the times and reduce reckless divorce and impulsive divorce, the “calm period of divorce” is stipulated in the Civil Code of the people's Republic of China, which was formally implemented on January 1, 2021. The “cooling-off period for divorce” specifically stipulates that within 30 days from the date on which the marriage registration office receives the application for divorce registration, if either party is unwilling to divorce, it may withdraw the application for divorce registration to the marriage registration office. Within 30 days after the expiration of the time limit prescribed in the preceding paragraph, both parties shall personally apply to the marriage registration office for the issue of a divorce certificate; if the application is made, the application for divorce registration shall be deemed to have been withdrawn. The “cooling-off period of divorce” is not to interfere with people's freedom of marriage, but to give couples a buffer period to re-examine their marriage. In fact, we can see that from the abolition of the marriage approval period in the Marriage Registration Ordinance to the re-establishment of the divorce cooling-off period. The essence of this system is to give both parties a chance to think calmly, have an emotional thinking period, and guide the public to cherish the

feelings between husband and wife.

The system of divorce cooling-off period not only embodies the warm concern of civil law for marriage and family, but also the embodiment of social collective consciousness. The system of divorce cooling-off period embodies the spirit of socialism with Chinese characteristics and is also the result of economic and social development. The changes of marriage also have strong characteristics of the times. In this era of information explosion, people can learn about global events without going out of their homes. With the development of economy, people face a sudden increase of pressure, emotions rise one after another, and less and less communication between husband and wife leads to the intensification of conflicts between husband and wife. The cooling-off period of divorce is a trial system in which the people's court tries divorce disputes in order to make both parties cherish their feelings, treat divorce cautiously, and give a certain period of calmness to save the marriage. Its purpose is to stop impulsive divorce[1].

2. Analysis of the Regulations on the Cooling-Off Period of Divorce.

2.1 The Cooling-Off Period for Divorce Set by the Law is Too Single.

The setting of divorce cooling-off period is not only a full consideration of social reality for legislators, but also an important embodiment of integrating socialist core values into marriage and family relations. Its essence is the corresponding legislative measures made by the legislative department of our country in order to stop the public from getting divorced hastily. The procedure of “appointment divorce” which has been tried out in our country for many years has been incorporated into the procedure of agreed divorce in our country. In the process of judicial practice, the problem of reckless divorce exists not only in agreed divorce, but also in litigation divorce and registration divorce. If the divorce cooling-off period applies not only to the agreed divorce, but also to the registration of divorce, it will greatly promote social stability and harmony.

2.2 There is No Clear Regulation on the Phenomenon of Malicious Transfer of Property during the Calm Period of Divorce.

The establishment of the cooling-off period for divorce prolongs the time of divorce and is easy to create opportunities for the husband and wife to transfer common property maliciously. The cooling-off period for divorce stipulated in the Civil Code is only applicable to the registration of divorce. Before going to the civil affairs department for divorce registration, the husband and wife should agree on the ownership of common property and the upbringing of their children, but during the cooling-off period of divorce, because of the suspicion and infighting between the husband and wife, in practice, there may be a situation in which the husband-and-wife transfer property maliciously for their own private interests. In the registration of divorce, although the husband and wife have made an agreement to divide the common property of both parties, the cooling-off period of divorce is a key effective element in the registration of divorce, and the marital relationship between husband and wife is still in a state of existence during the cooling-off period of divorce. The divorce agreement is not in force and is not binding on both parties. In this case, if one of the husbands and wife violates the spirit of the contract, it is also possible to transfer the common property maliciously or illegally hide or sell it. The addition of divorce cooling-off period undoubtedly lengthens the divorce time, and the malicious transfer of property of husband and wife gets a certain degree of convenience during this 30-day period, so the behavior of malicious transfer of property of husband and wife will occur frequently during the divorce cooling-off period. The Marriage Law clearly stipulates that during the existence of a marriage, even if the debt of one spouse also belongs to the joint debt of both parties, it does not rule out the forgery of the joint debt

of husband and wife.

2.3 Lack of Supporting Measures in the Cooling-Off Period of Divorce.

At present, the law stipulating the cooling-off period of divorce in our country is only stipulated in Article 1077 of the Civil Code, which only expounds the cooling-off period of divorce, but does not make detailed provisions on the application and implementation of the cooling-off period of divorce, and there are no corresponding supporting measures. Take litigation divorce as an example, the law stipulates that in several special circumstances, the court should grant divorce, but there are no detailed provisions in the cooling-off period of agreed divorce. This will lead to the parties may be hurt because of domestic violence, abuse and other special circumstances in the agreed divorce. At the same time, the divorce cooling-off period system often has practical problems in the process of implementation, and a relatively simple law will give administrators too much discretion, which will easily lead to the same problems and different results. The absence of supporting measures corresponding to the law will also lead to the divorce cooling-off period becoming a “formality”. Divorced couples can apply for divorce registration as long as they wait for a cooling-off period of 30 days, which goes against the original intention of adjusting the rising divorce rate during the divorce cooling-off period. Secondly, according to the provisions of the “trial opinion” issued by the Supreme Court, the court can conduct investigations and psychological counseling of affairs according to the specific circumstances of divorce disputes during the cooling-off period. But in practice, because the judge is only proficient in the law, not familiar with the psychological counseling profession, at the same time, there are many cases cannot carry out effective counseling. If we want to effectively adjust the rising divorce rate, there should be corresponding effective supporting measures.

3. The Enlightenment from the Cooling-Off Period of Divorce in the Process of Practice.

3.1 The Cooling-Off Period of Divorce Should Be Adapted Not Only to the Agreed Divorce, But Also to the Registration of Divorce

The regulations on Marriage Registration promulgated in 2003 canceled the period of examination and approval, which provided a convenient and rapid platform for divorce. Set a cooling-off period before registering for divorce in order to prevent impulsive divorce. The cooling-off period is an opportunity, not a barrier, for divorced parties to re-recognize the value of marriage, give each other a buffer period and awaken their hope for marriage.

3.2 A Flexible “Time Setting” Should Be Set during the Cooling-Off Period of Divorce.

In order to fully protect the interests of divorce parties and teenagers, the system of cooling-off period for divorce should be set flexibly according to whether there are children in the marriage or family. It is suggested that the cooling-off period of divorce in China should be humanized to set up a flexible “time setting” mode. The civil codes of South Korea and Britain extend the cooling-off period for divorce from one month to three months out of special concern for teenagers. The reason behind this practice is that it is hoped that both husband and wife can awaken their sense of responsibility for the family and children through long-term consideration and reflection. At the same time, the parties are given the right to apply for suspension or extension at any time during the cooling-off period of divorce. However, in order to prevent the parties from suspending or extending indefinitely, the period of reflection and extension after the suspension should be limited to no more than 3 months. The establishment of a differentiated and flexible cooling-off period for

divorce can promote couples to fully consider the development and interests of their minor children during divorce, and better reflect the concern and humanity of minors in the Civil Code. In addition, in order to protect the legitimate rights and interests of the husband and wife, it is recommended to specify that the calmness period may be exempted from application in cases where one party is subjected to serious violence, abandonment or abuse by the other party or during the period of calmness.

2.3 In view of the possible malicious transfer of property by the husband and wife during the cooling-off period, we can set up a corresponding pre-marital property registration system, which can protect the property rights and interests of the victims to a certain extent and avoid unnecessary losses

At present, there is no matrimonial property registration system in China, and couples who do property notarization before marriage are rarely due to hurt the feelings between husband and wife. However, in recent years, the divorce rate has been rising, which is enough to prove that whether or not to register premarital property is not a fundamental factor affecting the relationship between husband and wife. At the judicial level, there is no property registration system before marriage, which is likely to bring trouble to the property disputes between husband and wife. As we all know, in real life, many couples have established a loan relationship with a third party before or after marriage, without the knowledge of the other couple. However, when there is a debt dispute, the uninformed party is not willing to bear the responsibility, and the third party with the debt relationship often requires both husband and wife to share the responsibility. Because there is no marriage property registration, it often increases the difficulty of proof, leads to more disputes, and even really affects the relationship between husband and wife. Making property registration at the same time of marriage registration and putting the property of both husband and wife under the “publicity” of public power can effectively avoid such disputes and troubles and legally confront the third party[4].

3.3 Improve the Corresponding Measures during the Calm Period of Divorce

Set up a psychological studio for marriage and family counseling, and let marriage counselors and psychologists join in the work of psychological counseling. Marriage and family counselors can promote the correct concept of marriage and ethics, and can mediate the parties who have conflicts between husband-and-wife one-on-one to avoid hasty divorce.

There is an urgent need for professional marriage guidance institutions and professional marriage and family counseling staff at the legislative level to investigate and mediate couples in the divorce cooling-off period from a third-party neutral point of view. In this way, we can not only judge whether the relationship between husband and wife is really irreparable from a professional point of view, but also solve the conflicts and contradictions between husband and wife in essence, so as to effectively reduce the divorce rate and promote the harmonious development of society. After the divorce cooling-off period is over, it is also necessary for the relevant units of the civil affairs department to follow up and return visits in real time, so as to grasp the marriage and life conditions of the parties concerned, not only to evaluate the work effect, but also to provide experience and guidance for the subsequent handling of similar incidents[2].

3.4 The Nation Can Provide Professional Counselors in Communities and Streets and Offer Premarital Family Education Courses.

First, the government and society can set up premarital education schools. The government and education departments can play a supporting and promoting role, and government departments can provide policy support in setting up premarital education schools. In view of the rarity and neglect

of premarital education, relevant policies and measures can be introduced to attract and encourage all sectors of society to participate, so that all parties involved can get tangible benefits and achieve the effect of mutual benefit. At the same time, the national education department should also take positive measures to promote the development of premarital education, and can offer public courses on marriage and family knowledge in senior high schools and universities, so that young students in school can master marriage and family knowledge as soon as possible. lay the foundation for the future marriage life. Second, the active propaganda and guidance of the mass media. The mass media should play an active role in propaganda and guidance in the process of promoting premarital education, that is, it should play a leading role. The media should do a good job in publicity and guidance, for example, by making films about marriage and family life and educating people about the adverse consequences caused by the lack of marriage and family life education, so as to guide people to pay attention to premarital education and attach importance to premarital education. At the same time, we can also set up relevant television programs to actively attract families with family problems to participate, analyze the problems, find out the causes of the problems, guide people to pay attention to premarital education, and finally actively participate in premarital education. Third, the active participation of social organizations. The government should formulate preferential policies to encourage social organizations to participate in premarital education and play an active role in it. As a social organization itself, it should actively participate and bear the corresponding responsibility, and it can also hold relevant training courses according to its own advantages to guide people to participate.

4. Conclusion

The family is always the warmest harbor for people. With the happiness of the family, there will be social harmony and national prosperity. The changes in modern marriage have strong characteristics of the times. the development of modern economy and society has indeed made people's life impetuous, and more and more people dare to break through the "shackles" of marriage. pursue the so-called personal "freedom" or avoid conflicts between husband and wife. However, hasty divorce is not the best choice, and blindly dissolving the marriage is a failed choice for both husband and wife, their children and even the society. Therefore, it is of positive significance to set up some reasonable legal obstacles to divorce, which can help people to choose the future direction of marriage seriously. The development of society must rely on people's literacy, the improvement of people's literacy, ideological maturity not only determines their own choice, but also should be reflected in the emotional prudent treatment of marriage. The Civil Code is an important tool for helping the people and governing the country, and it also cares about every family and every individual. Through the system of "divorce cooling-off period", we can deeply realize the warm concern of the Civil Code for modern society, which can not only strengthen people's awe, treasure and gratitude for marriage and family life, but also build a more harmonious, democratic and Chinese society. I believe that under the protection of the Civil Code, we will certainly create a good social atmosphere that pays attention to family, tutoring and family style, and continue to build family civilization. it will help tens of thousands of families to become an important starting point for national development, national progress, and social harmony, and make families a harbor where people dream of setting sail.

True freedom is not freedom without restraint. The freedom of divorce is like the freedom of marriage. Marriage is always a matter for both husband and wife. For both parties who are determined to divorce, the law cannot become a rope to restrict their freedom of divorce, but for the parties to impulsive divorce, the law provides them with an opportunity to repair and think. The cooling-off period of divorce is not a restriction on the freedom of marriage, but a system that has a

positive impact on China's marriage and family life under the consideration of the current national social situation and the trend of global legislation. At the same time, the divorce calm period system is also full of advocacy for a harmonious and good family atmosphere, guiding our citizens to form a good concept of marriage and family, and ensuring the physical and mental health of family members, especially teenagers.

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