

Application of the Cooling-off Period for Divorce and Property Relations

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ABSTRACT

The setting of the divorce cooling-off period integrates the ideological prerequisite of increasing the autonomy of marriage, the social background of the rising divorce rate, the legislative purpose of preventing reckless divorce, and the provision of institutional support for the judicial practice. The divorce cooling-off period is currently applicable to registered divorce, and adopts a mandatory principle, that is, all parties applying for divorce through registration should apply this system. At the moment, we should explore the flexible application of the divorce cooling-off period system and the issue of changes in the property relation between husband and wife during the cooling-off period.

Keywords: *divorce cooling-off period; applicable; property relations.*

1. INTRODUCTION

Since the enactment and implementation of the Civil Code, the topic of the cooling-off period for divorce has been controversial. From an academic point of view, scholars hold three different attitudes of support, denial, or compromise of the divorce cooling-off period system. At the same time, the system has also suffered from public opposition. The main reason for this negative sentiment is that the public questions the divorce cooling-off period system, which is an excessive intervention by the state in the field of private life, an unreasonable restriction on the freedom of divorce, and an obstacle to the realization of the concept of freedom of marriage.

Is the cooling-off period system for divorce necessary? Is there a legal basis behind its existence? In addition, is the effect of the cooling-off period in line with the expected assumptions of the original legislation? Such questions are public doubts about the system, and the answer to these questions is the key to reflecting its legitimacy. In the following, the author will analyze the practical needs, value orientation, and institutional functions of the divorce cooling-off period, in order to clarify the legitimate sources of the implementation of the system.

2. LEGITIMACY OF THE COOLING-OFF PERIOD FOR DIVORCE

2.1. Reality requirements

2.1.1. Increased autonomy in marriage

Locke said, "Freedom means freedom from the bondage and rape of others, and where there is no law, there can be no such freedom." [1] In ancient societies dominated by patriarchy, women's freedom was restricted. Embodied in marriage, after a woman got married, her independent subject personality would essentially be subject to the ethical and moral concepts of her husband and society to a certain extent, and women had no freedom to divorce for a long time. Women's rights and marital status were largely controlled and dominated by men. Since modern times, influenced by the Western concept of rights, women's self-awareness has gradually awakened [2], and social views of divorce have become more and more open. Freedom of marriage is also written directly into law and protected by law, either women or men can enjoy equal rights to choose to marry or divorce, and no one has the right to interfere. Based on the protection of the law and the transformation of social marriage values, individual autonomy can be fully released and has no longer shackled to the traditional concept of marriage. Therefore, more and more people dare to choose divorce for relief when the marriage relationship breaks down. However, its

negative effect is that more and more people regard marriage as a child's play or even a tool to cope with policy changes. This not only undermines the seriousness and sanctity of marriage, but is also detrimental to the stable development of society.

2.1.2. Reduction of marital stability

According to the data released by the Ministry of Civil Affairs in 2020, the marriage rate in China was 6.6 ‰ in 2019, down 0.7 thousand points from 2018. At the same time, China's divorce rate was 3.4 ‰ in 2019, an increase of 0.2 thousand points over 2018. In fact, in the past 20 years, the divorce rate in China has been on the rise, and the factors that cause the high divorce rate in society are diverse [3]. First of all, since the reform and opening-up, China's economy has developed rapidly and the degree of urbanization has increased significantly. The fast-paced urban life not only provides people with a wider social space and allows the range of potential spouse replacements to expand, but also makes both men and women pay more attention to material conditions rather than emotional accumulation in the face of marriage [4].

Secondly, with the improvement of the modern education level and the popularization of the national nine-year compulsory education, the overall cultural level of society has been continuously improved. Looking at the female group, the increase in the rate and level of education has made women more competitive in the modern social market environment, more likely to achieve economic independence through their own efforts, and avoid relying entirely on marriage or dependent on their husband. In addition, the low threshold for registering divorce is also a factor that cannot be ignored in the high divorce rate. Before the cooling-off period for divorce was set, divorce was almost free of any formal conditions. Even if the substantive elements of divorce required the breakdown of a couple's relationship, people could register for divorce freely due to the lack of substantive review conditions. Divorce lacks the necessary physical and procedural restrictions compared to the registration requirements for marriage.

The high divorce rate is a manifestation of the reduced stability of marriage and family. Since the family is the constituent unit of society, and the marriage-based family is the epitome of a certain society, the reduction of marital stability is bound to have a negative impact on the stability of the overall structure of society.

2.1.3. Restrictions on the freedom of divorce

Rights and obligations are a concept of reciprocity, and any right conferred by law contains corresponding responsibilities or obligations. Citizens have the fundamental right to freedom of divorce, but this right

cannot be a ground for exonerating the corresponding responsibilities. For example, when one party in a marital relationship falls seriously ill or bears external debts to maintain life, while the other party dissolves the marriage relationship under the pretext of divorce freedom to avoid the assumption of responsibilities and obligations, which is contrary to the pursuit of fairness and justice and the constraints of family ethics. In order to protect the interests of the weaker party in the marital relationship, it is necessary to restrict the freedom of divorce. In addition, marriage does not only involve the relationship between husband and wife, but it is also related to the upbringing of minor children and the maintenance of both parents. Therefore, a divorce may lead to social issues, such as juvenile child crimes, left-behind child care, and old-age care. If the law does not restrict the freedom of divorce, it is likely to undermine the rights and interests of stakeholders in a marital relationship and increase the cost and instability of social development. Divorce will break the original optimal division of labor and the advantages of resource integration, which will lead to a decrease in the degree of specialization of the labor market and the inability of social resources to produce the optimal economic scale benefits through the combination of family individuals [5]. In order to balance the burden of freedom of marriage and social responsibility, and reflect the social characteristics of marriage, the marriage and family code of the Civil Code aims to protect the freedom of marriage and prevent rash divorce as its legislative purpose.

2.1.4. Provide a legal basis for judicial practice

Under the guidance of the Opinions on the Pilot Work on Family Trial Methods and Work Mechanisms issued by the Supreme People's Court in 2016, pilot courts in many parts of the country have begun to try to explore the "marriage cooling-off period" to resolve divorce contradictions and disputes. The Yiling District People's Court of Yichang City, Hubei Province, set a marriage cooling-off period for 60 cases and adjusted the withdrawal rate of 86% [6]. In 2017, the People's Court of Anyue County, Sichuan Province, worked hard to reduce impulsive divorce by issuing a "Notice of Cooling-off Period for Divorce" to couples who filed for divorce, with remarkable results [7].

Before the establishment of the divorce cooling-off period system, grass-roots courts in Shanghai, Henan, Shandong, Fujian, and other places made relevant exploratory practices on the search for the "cooling-off period" and achieved good results. Despite this, active judicial practice in some regions still lacks the support of a unified and effective legal system, and the attempts to "cooling-off period" in various localities are groundless in law, which can easily lead to different standards of application and undermine the authority of the judiciary and the law. The cooling-off period for divorce has been

established in the Civil Code through legislation, filling legal gaps and providing the basis and support for higher-level laws for judicial practice in various places.

2.2. Orientation of value

2.2.1. Basic principles of marriage law

The principle of freedom of marriage is the foundation of the Marriage Law and runs through the formulation and implementation of the Marriage Law. As a guiding principle, the protection of marital freedom is also the basis and premise of the sober setting of divorce. However, if the freedom of marriage is not restricted by the law at all, people can "go with the flow", which will not only bring overloaded work pressure to the marriage registration authorities, but also bring great damage to the stability of the overall structure of society. It is very likely to cause disorder in the socio-economic order and lead to social problems caused by the instability of the composition of family members. Marriage and family are an important part of society, and the adjustment of social public policies also has an important impact on marriage and family, which is also the public mission entrusted by marriage. The limited intervention of the law in divorce is the embodiment of the public nature of marriage and the pursuit of the overall welfare of society. Thus, the private and public nature of the areas regulated by the Marriage Act dictates that while insisting on guaranteeing the freedom of marriage, it must limit the rash divorce.

2.2.2. The order of freedom and justice demands

Based on jurisprudence, from the point of view of justice, the right to liberty should not be regarded as an absolute right, since any unrestricted freedom is easily abused by individuals and groups, and freedom must be restricted for the sake of the overall welfare of society [8]. Unfettered freedom is an assault on justice. Rawls argued about the value of justice that, justice should conform to the principles of equal liberty and differentiation; social values, including freedom, should be evenly distributed, but if the uneven distribution is a fact, it should at least be guaranteed to benefit the most disadvantaged [9]. Unlike divorce through litigation to seek judicial remedies, registering a divorce has always lacked protection for the interests of vulnerable groups, and lacked listening to and paying attention to the needs of minor children and the non-faulty party in the marriage relationship. The cooling-off period for divorce is set to provide a certain buffer space for the expression of opinions and conditions of vulnerable groups, which is in line with the balance and pursuit of values for freedom and justice.

2.2.3. Weighing interests in the application of the law

Changes in marital relations are bound to have an impact on the personal and property relations of marriage and family, especially on the protection of the interests of minor children and the content of property rights and obligations between husband and wife. For minor children, parental divorce may cause psychological imbalances, such as the repression and gap between the growth process and the surrounding environmental factors, resulting in children of single-parent families often feeling inferior or insecure. As far as property relations are concerned, the divorce of husband and wife has to involve the distribution of property and the assumption of debts, which may involve the property interests of third parties. Therefore, in order to pursue the value realization of marriage justice, while protecting the freedom of divorce, the marriage law also needs to consider external interests to prevent the imbalance of interests brought about by rash divorce. In the specific application process of the divorce cooling-off period, it is crucial to grasp the balance of interests. For parties with clear statements on minor children, clear maintenance relationships, and appropriate handling of property issues, the degree of restrictions imposed on them by the cooling-off period for divorce should be reduced. For the chaotic handling of the interests of relevant stakeholders, resulting in a serious imbalance of interests, it is necessary for the cooling-off period of divorce to play its restrictive role.

3. ISSUES CONCERNING THE APPLICATION OF THE COOLING-OFF PERIOD FOR DIVORCE

3.1. Applicable Principles

Peremptory norms are closely related to the public interest and overall well-being of society [10], based on the law itself, and the cooling-off period system for divorce can only achieve its universal significance of preventing rash divorce within the scope of mandatory norms. In addition, it can be seen from the applicable practice that China adopts the principle of mandatory for the application of the cooling-off period for divorce, that is, the cooling-off period for divorce is mandatory to all parties applying for divorce registration, and does not presuppose the autonomy of the parties' intentions. If the principle of voluntariness is adopted during the cooling-off period of divorce, there is no support for practical logic. First of all, couples who apply for divorce registration after careful consideration, no longer need to apply to the civil affairs department for the voluntary application of the cooling-off period for divorce, which will increase the applicable burden of the procedure for themselves. Secondly, for the parties who are emotionally agitated and impulsive in divorce, the

cooling-off period of divorce is more like a barrier to prevent them from pursuing happiness. In order to give full play to the role of the cooling-off period for divorce and fully realize the purpose of its establishment, the adoption of the principle of the compulsory application is the best choice for the divorce cooling-off period system.

3.2. Scope of application

At present, the legislation only clearly stipulates that the cooling-off period for divorce applies to registered divorce, so should litigation divorce also be mandatory to apply the cooling-off period for divorce? The registration of divorce is based on the voluntary divorce of the parties by mutual consent, while the litigation divorce is often accompanied by irreconcilable contradictions, and either party can sue the other, and there is an essential difference in the choice of applicable procedures between the two. The author believes that the scope of application of the cooling-off period for divorce should be limited to the registration of divorce.

First, in judicial practice, courts generally use mediation as a precursor to litigation when handling civil cases. As long as the parties are willing, the court can play a mediated mediation role and promote communication and coordination between the parties. It is precise because of the existence of mediation, which is a non-litigation dispute resolution method, that to a certain extent, it plays a similar role to the "divorce cooling-off period" in the registration of divorce. In the previous family trial reform, although the people's courts in many places have tried to apply the cooling-off period for litigation divorce [11], if a cooling-off period for divorce is to be added to a litigated divorce, it is bound to be compatible with the legislative concept and applicable principles of registered divorce. Otherwise, the role of the cooling-off period in litigation divorce is not fundamentally different from mediation.

Second, when the court formally accepts the divorce proceedings of the parties to the trial, the judge must base the judgment on the facts and evidence at his disposal. Because the litigation itself has a certain time limit, coupled with the sorting out and mediation of the case in the process of litigation, it is left to the parties with sufficient time to consider, and they can generally withdraw the lawsuit before the judgment is made. Since the litigation has the judge's middle judgment, it can effectively protect the legitimate litigation claims of the weaker party. Based on this premise, a cooling-off period for divorce is not necessary as a pre-proceeding for litigation divorce.

Third, in practice, it is undeniable that some courts in China have the unspoken rule of secondary judgment when handling divorce cases. According to the provisions of the Civil Procedure Law of the People's Republic of China on divorce cases, the case with the

court's first judgment on not allowing divorce or reconciling must go through a six-month injunction period before re-filing. Since the phenomenon of second-instance judgment divorce exists in a large number of judicial practices, the addition of the cooling-off period to divorce in litigation divorce may encounter the practical dilemma of repeated application of the cooling-off period, which will bring greater trouble to the parties. Because the litigation itself has a certain time limit, coupled with the sorting out and mediation of the case in the process of litigation, it is left to the parties with sufficient time to consider, and they can generally withdraw the lawsuit before the judgment is made. Since the litigation has the judge's middle judgment, it can effectively protect the legitimate litigation claims of the weaker party. Based on this premise, a cooling-off period for divorce is not necessary as a pre-proceeding for litigation divorce. Third, in practice, it is undeniable that some courts in China have the unspoken rule of secondary judgment when handling divorce cases. According to the provisions of the Civil Procedure Law of the People's Republic of China on divorce cases, the court's first judgment on not allowing divorce or reconciling cases must go through a six-month injunction period before re-filing. Since the phenomenon of second-instance judgment divorce exists in a large number of judicial practices, the addition of the cooling-off period to divorce in litigation divorce may encounter the practical dilemma of repeated application of the cooling-off period, which will bring greater trouble to the parties.

Some scholars believe that the application of the cooling-off period system for divorce to litigation divorce through legislation can replace the application of "unspoken rules" in judicial practice with legitimacy [12], alleviating the pressure of the court due to a large number of divorce cases and the complexity of individual cases [13]. In fact, in practice, the emergence of the phenomenon of "secondary judgment and separation" is more due to the subjective trial caused by the judge to close the case and avoid risks [14]. Strengthening the self-construction of the contingent of judges and improving the construction of China's rule of law system are the keys to solving such problems. Trying to rely on the cooling-off period of divorce to make up for the arbitrariness of judicial adjudication in divorce proceedings is significantly imposing the burden that belongs to the judge on the parties, which to a certain extent increases the litigation costs of the parties, and is a practice that treats the symptoms but not the root causes. In summary, there are currently no sufficient conditions to prove the necessity and feasibility of the application of the cooling-off period for divorce in litigation divorce, at least in the context of the current divorce cooling-off period system that has just been implemented and is not yet fully mature, the application of litigation divorce should be excluded.

3.3. Applicable objects

"It is better to demolish ten temples than destroy a marriage" has a deep historical foundation in China. Chinese society, deeply influenced by Confucianism, also advocates "peace" and values peace. The cooling-off period for divorce is also based on the idea of "promoting harmony" to maintain the stability of marriage and family. From the perspective of literal interpretation, article 1077 of the Civil Code stipulates that the cooling-off period is regarded as a preliminary procedure for divorce, and any couple who register for divorce needs to go through a 30-day cooling-off period for divorce. It is noteworthy that the provision does not provide for exclusions from the application of the cooling-off period regime for divorce. Because of this, the cooling-off period for divorce is often criticized by society for the "one-size-fits-all" problem. The so-called "one-size-fits-all" means that when the marriage registration agency accepts the application for registered divorce, it does not distinguish between the specific circumstances of the parties' application for divorce and applies the cooling-off period for divorce.

The starting point of the cooling-off period system for divorce indeed is to prevent rash divorce and maintain social stability. However, in some cases, blindly applying the cooling-off period between the spouses who have registered for divorce will harm the personal or property rights of the parties. For example, if one of the spouses has suffered domestic violence from the other party for a long time, and the personal safety has been in an unstable state, the application of the divorce cooling-off period will only continue this unstable state, so that the safety of one party will continue to be threatened. For another example, one of the spouses happens to use the cooling-off period of divorce to transfer the couple's common property, so that the interests of the other party are damaged during this period. In addition, for one of the spouses to have bigamy, cheating, tainted vices and repeatedly teach and not change, the essence of the couple's feelings has been broken, there is no need to maintain, the application of the divorce cooling-off period will exacerbate the damage to the interests of the no-fault party. Therefore, when exceptions such as the foregoing appear in the application for registration of divorce, the application of the cooling-off period for divorce should be excluded. However, in practice, when the marriage registration authority handles the registration of divorce, it exercises an administrative act of administrative confirmation, and the ability of the staff who carries out the administrative act to judge the specific facts of the divorce is difficult to compare with the judge who adjudicates the case. Secondly, the staff of the marriage registration authority has limited terms of reference and is unable to review the specific circumstances or make discretionary determinations on the facts of the investigation. In summary, in practice, it

is probably not feasible to distinguish between the application of the cooling-off period for divorce at this stage. Therefore, the difference between theory and reality makes the cooling-off period of divorce inevitable in the currently applicable objects, and it is very crucial to improve the connection between the administration and the judiciary in handling family affairs. If the marriage registration authority encounters a situation that requires a substantive judgment in handling the application for registered divorce and encounters domestic violence, it can also play a reasonable role in protecting the rights and interests of the parties by informing the parties to file a lawsuit with the court to seek relief or directly assisting the parties to reflect the relevant circumstances to the judicial organs.

3.4. Applicable objects

In fact, in order to fully protect the interests of vulnerable groups, many countries outside the region have considered the application of flexible periods in the setting of systems related to the cooling-off period for divorce. The Korean Civil Code provides for a three-month or one-month divorce deliberation period to be distinguished by the presence or absence of minor children. New York state, U.S., has even extended the divorce waiting period for couples with minor children to two years to fully protect the interests of minors [15].

English law provides that couples with children under the age of sixteen who apply for divorce are required to extend the period of divorce reflection for an additional six months. The author believes that although the applicable period of the divorce cooling-off period in China is not set differently, based on the position of maximizing the interests of minors, in the future, consideration should also be given to the existence of minor children as the criterion for the application of the distinction between the divorce cooling-off period. Specifically, if a husband and wife do not have minor children, a one-month divorce cooling-off period should be applied normally. For couples who need to raise minor children to fully consider the issue of the mental health of minor children and specific maintenance matters, the cooling-off period for divorce should be set as a flexible period of three months to half a year.

4. PROPERTY LEGAL RELATIONSHIPS DURING THE COOLING-OFF PERIOD FOR DIVORCE

During the period of divorce cooling, the husband and wife have not yet formally dissolved the marriage relationship and are still in the stage of marriage. According to the provisions of the cooling-off period for divorce, the couple needs to go through a cooling-off period of at least 30 days from the time they apply for divorce registration to the formal dissolution of the

marriage, and the longest can reach 60 days. The setting of the cooling-off period for divorce essentially extends the time from the application for registration of divorce to the formal dissolution of the marriage relationship, in this month or even two months, the marriage relationship is actually in a relatively unstable state, the divorce registration application may be voluntarily withdrawn by the parties or because the divorce certificate is not actively applied for within the specified period of time and is regarded as withdrawn, and finally the marital relationship between the husband and wife is restored to its original state. Conversely, both spouses may insist on divorce and eventually dissolve the marriage. The cooling-off period for divorce has a relatively special status in the marital relationship, during which the personal relationship between the husband and wife is based on the existence of the marital relationship, the facts and legal status maintained by the husband and wife, and the personal attributes it has, and it is not appropriate to change it. Therefore, I will only discuss issues such as whether the content of the marital property relationship during the divorce cooling-off period needs to be changed.

4.1. Changes in marital property relations

The marital and family property relations are property relations regulated by civil law, and they have commonalities with property relations within the scope of property law, but they are different. The main difference is that the marital property relationship exists based on a specific identity, subordinate to the identity relationship between husband and wife, and is largely influenced by family ethical norms. Since the establishment of the marital relationship, the rights and obligations of both men and women have been regulated and regulated by the marriage and family law, and the property relationship in the relationship of rights and obligations of husband and wife has under normal circumstances entered a relatively stable field, unless otherwise agreed by the parties, the property of husband and wife shall be subject to the joint property system.

The content of property relations around the relationship between husband and wife mainly includes the maintenance obligations between husband and wife, the right of inheritance, and the property system [16]. The duty of conjugal support exists as a statutory obligation during the marriage relationship. The maintenance obligation is based on the relationship between husband and wife, and cannot be terminated by agreement, even during the cooling-off period of divorce, the two parties still need to be confined to the existence of the husband and wife relationship and have the obligation to support each other.

The marital inheritance rights should also remain unchanged during the cooling of divorce. First of all, the death of one of the spouses during the cooling-off period

of divorce is only an accidental event, and the probability is very low. Secondly, if a similar situation does occur in real life, and when such an event occurs, one of the spouses wants to avoid the other party's natural acquisition of inheritance rights, and theoretically can make a will before divorce to exclude the other party's first priority. However, in real life, because the husband and wife will basically handle daily affairs in the direction of a stable marriage during the existence of marriage and family, the adoption of a will in advance will not only destroy the feelings between husband and wife, but also because the time cost in actual operation is too high, making it extremely feasible. Taking into account the actual situation, emotional factors, efficiency issues and other practical considerations, the inheritance rights of husband and wife during the divorce cooling period should not be changed.

Whether the marital property system will necessarily change during the period of divorce cooling is the most controversial issue in the marital property relationship. Although the marital property system is based on the identity attributes of the husband and wife, the property attributes in it cannot be ignored. There is a very large space for private autonomy in the field of property, and the Civil Code, in defining property relations, focuses on protecting and strengthening the elements of autonomy of will. The principle of autonomy of the will is reflected in the field of marital property relations, as taking precedence over the provisions of the law in the consensual agreement between the spouses on the personal or common property. Therefore, in principle, the issue of marital property during the period of divorce calm can be divided in advance by the two spouses agreeing to reach an agreement on the division of marital property. However, the role of the marital property division agreement is limited, it is only for the division of part or all of the joint property between the husband and wife before the conclusion of the agreement, and does not involve the distribution of property content such as new property or debts after the conclusion of the agreement. In addition, in theory, the significance of the existence of marital property division agreements lies in maintaining the marital relationship [17], rather than distributing property in advance for the purpose of divorce, and it is not appropriate to stipulate the ownership of property distribution before and after the cooling-off period of divorce.

Article 1065 of the Civil Code stipulates that the matrimonial property system includes three types: separate ownership, joint ownership, or limited joint ownership. However, there are also theoretical and practical obstacles in choosing a property disposal method in the matrimonial property system to solve the problem of marital property with the cooling-off period of divorce as the node in the implementation process. Theoretically, the purpose of agreeing on the marital property system is usually to maintain the marital

relationship, and before or after marriage, the acquisition and ownership of the marital property and the determination and assumption of creditor's rights and debts are expressed based on the common intention of the husband and wife, and the husband and wife can choose a certain time limit as the effective time of the agreement, which is binding on both husband and wife. Therefore, if the husband and wife want to avoid many property problems arising during the cooling-off period of divorce, they can divide the property ownership by agreeing on the marital property system before the cooling-off period to avoid the assumption of joint debts. However, even if the husband and wife agree during the marriage relationship that personal debts shall be borne by the individual, based on the trust and protection of the bona fide third party in the marital property relationship, the husband and wife may still jointly bear the debt externally, which increases the risk of the party who was not originally responsible for the debt. In practice, the premise of using the agreed property system is that the husband and wife are willing to agree, and the situation during the cooling period that urgently wants to clarify the marital property and creditor's rights and debts are often due to the needs of one party, in which case it is difficult for the husband and wife to form an agreement.

In view of the protection of personal interests, it is necessary to change the matrimonial property system during the cooling-off period. According to whether the occurrence of the marital property system is formed through the joint agreement of the husband and wife, it can be divided into the agreed property system and the statutory property system. Couples who adopt the agreed property system have generally completed through agreement on matters such as the ownership of the property of the two parties before or after marriage, the burden of daily living expenses during the marriage, the assumption of creditor's rights and debts, and the division of divorced property. Therefore, the establishment of a cooling-off period has little impact on such marital property. The issue of property during the cooling-off period will often have a greater impact on couples who have no property agreement during the existence of the marital relationship and apply the statutory property system. The author believes that, in accordance with the legislative spirit of the matrimonial and family property system and its pursuit of fair values, unless otherwise agreed by the husband and wife [18], during the period of calming, the proceeds that originally belonged to the joint property of the husband and wife listed in article 1062 of the Civil Code should be directly divided into the personal ownership of one of the spouses. Personal debts during the cooling-off period should belong to the debts of one of the spouses, not limited to whether the debts incurred exceed the needs of daily life. However, in order to protect the bona fide third party's substantive understanding and trust in the existence of the marital relationship between the parties, maintain the safety and

order of social transactions, and protect the interests of the parties themselves, couples who are in the cooling-off period of divorce and apply the changed statutory property system shall promptly publicize the property to reduce or avoid disputes with the third party.

4.2. The legitimacy of the change of marital property system during the cooling-off period

4.2.1. Compatible with the legislative purpose of the cooling-off period

Some scholars have summarized the value basis of the marital property law as three points: marriage protection, the autonomy of will and transaction security, of which the most core value orientation lies in marriage protection, and the protection of property between husband and wife can minimize the influence of self-interest motives and maintain the basic property structure of marriage and family [19]. The purpose of the cooling-off period for divorce is mainly to avoid impulsive divorce and maintain marital and family stability, not to save marriages within the family that have materially broken down. It can be seen that the legislative purpose of the cooling-off period system is to maintain the continued stability of benign marriages.

In terms of protecting the value orientation of marriage, the establishment of the marital property system and the divorce cooling-off period system are consistent. The main purpose of changing the marital property system is to balance the personal interests of the husband or wife with the marriage and family and the public interests of society. On the surface, the change of marital property system during the period of calm will weaken the ethical order of the conjugal community [20], but in essence, the two will not conflict and deviate from each other, and the former only tries to provide a certain degree of protection for the husband or wife when the marriage has no room for maneuver.

4.2.2. Expand the space for the protection of the interests of the parties

In the case of registered divorce, there are two situations in which one or both spouses have an impulsive divorce or in which divorce is carefully chosen after rational consideration, and in these two cases, couples in the cooling-off period of divorce often have two different attitudes of radicalization and détente towards joint property or new property and creditor's rights and debts. Radical couples do not rule out that their attitude towards property relations is strong because of their emotional agitation in the short term, and they are eager to draw a clear line between the property of both parties as soon as possible. However, there are also some couples whose feelings have been broken in essence, and there is no need to repair their feelings. The latter, on the date of choosing

divorce, also hopes to get rid of various involvements with the other party as soon as possible, and the joint property of the husband and wife is one of them. Moreover, when the marital relationship of the latter is substantially broken, it is often accompanied by the faulty behavior of one of the spouses, such as domestic violence, gambling, fornication, bigamy, transfer of the couple's common property, etc.

However, the existence of the cooling-off period system for divorce has played a transitional and buffering role in the period from the date of divorce filed by the husband and wife to the formal dissolution of the marital relationship, and at the same time, it has inevitably extended the time to achieve the purpose of formal divorce, and naturally also extended the time when the marital property in some marital relations is in a state of instability. Since the core value of the marital property law lies in marital protection, the value orientation of "marital protection" has no place in such a situation when the couple's feelings are broken, there is no need to maintain it, and the parties are eager to draw a clear line with each other or if one party is seriously at fault and harms the personal interests of the other party. Therefore, it is indeed necessary to change the marital property system during the period of divorce cooling in this context.

4.2.3. Comply with the principle of fairness

As a basic principle of civil law, the principle of fairness runs through the legal system, and the change in the content of the marital property system during the period of divorce calm is essentially in line with the principle of fairness and conforms to its spiritual connotation.

First of all, one of the spouses may use the cooling-off period to transfer the joint property of the husband and wife, or during this period, one party may use the joint property of the husband and wife to repay personal debts, or may face the problem of the ownership of the new property and debts during the cooling-off period, although the occurrence of these situations can seek relief through litigation, this undoubtedly increases the cost of divorce, to a certain extent, damages the legitimate interests of the spouse who is not at fault or the party with less fault. Secondly, if the marriage and family law upholds the principle of maintaining the stability of marriage and family from beginning to end, does not distinguish between the stages of a marital relationship, and blindly strives to maintain a marriage that has broken down or has long since broken down, it is unfair to the parties involved in the marital relationship. Because of this, when it comes to the division of property and the assumption of debts, it is even more necessary to distinguish between property to protect the personal interests of husband and wife. Finally, in a marital relationship, objective equivalence is the criterion for

judging the equivalence of the principle of fairness [21]. Accordingly, in order to prevent one of the spouses from committing acts that harm the property interests of the other spouse during the period of calm, it is necessary to change the marital property system in order to achieve the effect of establishing a legal system.

5. CONCLUSION

The divorce cooling-off period system has the legitimacy of implementation, but there are also many shortcomings. In this regard, in order to make the cooling-off period of divorce more rooted in China's social environment and legal soil, it is also necessary to make a perfect and detailed interpretation of its connotation and extension. At the same time, substantive issues such as personal and property relations during the cooling-off period of divorce need to be further clarified. Improving relevant supporting measures, weighing the interests of all parties involved during the cooling-off period, and considering the administrative and judicial interface of the period are the keys to improving the divorce cooling-off period system in the future. Solving a series of problems in the process of localization of the divorce cooling-off period is not only conducive to building a bridge for people to promote communication and understanding between the people and the system, resolving misunderstandings and conflicts, but also conducive to accelerating the pace of China's national trial reform and the construction of the rule of law in the governance system.

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