

The Introduction of the “Cooling-Off Period Before Divorce” Policy in China: An Empirical Analysis

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Abstract: Since the introduction of the Civil Code of China, the cooling-off policy has been adopted as a compulsory requirement for couples who want to make a divorce registration in China. This paper examines the impact of the cooling-off period in China broadly, and specifically, whether couples are filing a divorce administratively or through court proceedings. To start measuring this impact, this paper gathered data from various official sources. The results demonstrate that the cooling-off period brings a significant decrease in the number of divorces by mutual consent and increases the number of couples who turn to the court to file a lawsuit.

Keywords: cooling-off period before divorce, divorce by mutual consent, divorce litigation, mediation, dispute settlement

1. Introduction

A mandated cooling-off period before divorce has been implemented in many countries in the Western context, including the UK, and Finland [1], along with several states in the United States [2]. The cooling-off period is broadly conceived as requiring couples to wait several days before filing a divorce. Recently, Eastern countries such as South Korea and China have also begun to enforce the period to reduce impulsive divorce [3].

This paper will answer the following question: what is the impact of the cooling-off period policy in China after enactment until late June 2023? To answer this question, this paper utilizes three National Official Databases in China to start unfolding the effects of the cooling-off period in divorce trends that took place before the administrative registry and lower courts in China.

This paper fills the gap in the literature on the cooling-off policy in Asian countries by questioning the efficiency of this policy. For example, whereas Lee suggests that couples rescind filings in the cooling-off period, the data in China shows a surprising extension and discrepancy [3].

2. The Context of Domestic Laws in China and the Cooling-off Period

The Chinese Constitution was approved by the National People's Congress of China in 1982 together with its amendments in 1998, 1993, 1999, and 2004. Among the provisions in the constitution of

China, Articles 48 and 49¹ stipulate the rights of women and the protection of marriage [4]. *The Marriage Law of the People's Republic of China* initially approved in 1950, is the first law stipulating matters relating to marriage and family in China [5]. Articles 31 and 32² of the law have established the three main types of divorce in China, *divorce by mutual consent*, *divorce by mediation*, and *divorce by adjudication* [6]. After several years gap without a formal and complete version of the civil code [7], the Civil Code of China was ratified on May 28, 2020, and came into effect in 2021. In the new Civil Code, Article 1076³ replaced Article 31 establishing the *divorce by mutual consent*. Subsequently, Article 1079⁴, which also replaced Article 32, laid the foundations of the law of *divorce by mediation* and *divorce by adjudication*.

Subsequently, this paper shifted the analysis to the most important article which introduced the policy of the 30-day cooling-off period into the Civil Code. Article 1077⁵ demonstrates that the cooling-off policy is only used in *divorce by mutual consent* and serves as an obstacle for couples pursuing this type of divorce. However, this article does not necessarily introduce a change for those couples going straight into filing a divorce within the courts' system.

2.1. The Practice of the Cooling-off Period in China and Beyond

The cooling-off period is not a new law institution. Western Countries have established it since the 1950s. In 1955, the Illinois legislature enacted the Sixty-Day “Cooling-Off” Period Statutes before divorce. This led Illinois to become the first state in the United States to introduce the cooling-off period [2]. Aside from the United States, the Family Law Act 1975 in Australia has also required that the divorce may occur only after at least one year after the date of the filing of the application for the divorce order [8]. Similarly, in the Divorce Act 1985 in Canada, a year's time length of being habitually resident was demanded preceding the commencement of the proceeding [9]. In Europe, the United Kingdom, for example, has placed a 20-week cooling-off period from the start of proceedings [10]. In Spain, scholars have found that when the requirement of mandatory legal separation before

¹ Article 48 Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, and family life.

Article 49 Marriage, the family, and mother and child are protected by the state. Besides, violation of the freedom of marriage is prohibited.

² Article 31 Divorce shall be allowed if both husband and wife are willing to divorce. Both parties shall apply to the marriage registration authority for divorce. The marriage registration authority issues a certificate of divorce after confirming that both parties are indeed willing to divorce and have made proper arrangements for their children and have properly disposed of their property.

Article 32 Where either the husband or wife applies to get divorced, the departments concerned may make mediations, or he or she may file a suit at the people's court for divorce.

The People's Court shall make mediations in the process of hearing a divorce suit; divorce shall be granted if mediation fails because mutual affection no longer exists.

Divorce shall be granted if any of the following circumstances occurs and mediation fails: ...

³ Article 1076 Where the husband and the wife both agree to divorce, they shall enter into a divorce agreement in writing and file divorce registration in person with the marriage registration authority. The divorce agreement shall include expression of intent of both parties to voluntarily divorce and their mutual agreement on such matters as child support, property division, and allocation of debts.

⁴ Article 1079 Where the husband or the wife unilaterally petitions for divorce, a relevant organization may offer mediation, or such person may file for divorce directly with the people's court. The people's court shall, during the divorce trial, offer mediation, and grant divorce if mutual affection no longer exists between the two parties and mediation fails.

⁵ Article 1077 Where either spouse is unwilling to divorce, he or she may, within 30 days from the day on which the marriage registration authority receives the application for divorce registration, withdraw the application for divorce registration from the marriage registration authority. Within 30 days after the expiration of the period, as prescribed in the preceding paragraph, both parties shall apply for divorce certificates in person at the marriage registration authority. If no application is filed, the divorce registration application shall be deemed to have been withdrawn.

divorce was eliminated, the number of divorces grew by 170% in the first year after the reform [11]. Apart from the generally considered impact on the divorce rate, Ho-Po Crystal Wong has made contributions to the field of remarriage in the United States [12].

Preceding China, South Korea has introduced a similar policy on the cooling-off period. For example, Lee specifically analyzed the impact of the waiting period on the divorce rate by collecting data on district courts and branches from Monthly Court Statistics, as well as novel data from the Annual Report on Vital Statistics, which the National Statistical Office of Korea constructs [3]. Lee concluded that the cooling-off policy did not significantly decrease the filing rate, while the actual divorce rate dropped after the introduction of the policy [3]. He also shared the finding that the effect on divorce rate differs during winter and summer, which is an intriguing remark compared with findings from other scholars focusing on Western countries [3]. In addition, recent research on this policy presents that the cooling-off period has contributed to reducing the divorce rate, maintaining social stability, and protecting the interests of disadvantaged groups namely minor children and the elderly. Plus, “the cooling-off policy was supposed to confirm and guarantee the true expression of marriage intention” [13].

3. Data

This paper analyses the different patterns of marriage and divorce in China for the past five years (with a focus on divorce). The objective of analyzing these data is to understand if the approval of the cooling-off period along with the Civil Code in China has had any impact on the reduction of divorce. More specifically, this paper suggests an implication of the cooling-off period on *divorce by mutual consent* and *divorce filing (divorce by mediation and divorce by adjudication)*, which refer to the three ways to get divorced in China.

With the legislative backdrop described above in mind, this paper starts the research by examining data from the official websites provided by the Chinese government. First, this study obtained the number of divorces and marriages in China from *National Data*, which is issued by the National Bureau of Statistics (NBS) [14]. These data are available every year from 2013 to 2021. Since the policy took effect in 2021, this study collected data from 2016 to narrow the section to be analyzed in five years. The selection of these websites was based on previous knowledge of the administrative system in China. The second data source in this paper is *Civil Affairs Data*, which is issued by the Ministry of Civil Affairs of China. The official website provides quarterly statistics of civil affairs in the whole state along with different provinces. The data are available from the third quarter of 2007 to the second quarter of 2023, with a span of 15 years [15]. Also, the Ministry of Civil Affairs of China provides Statistical Bulletins on the Development of Civil Affairs (2018-2022) and Social Service Development (2010-2017) [16]. Both kinds of Statistical bulletins provide the numbers of couples who *divorce by mutual consent* and *divorce filing*. Lastly, this study obtained the number of *divorce mediation* and *divorce adjudication* in local courts per year in China from *the National Judicial Statistics Bulletin of Courts*, which is released by the Supreme Court of China [17]. Although the statistics bulletins are available from 2002 to 2022, the statistics bulletins only included divorce data since 2017. For this reason, data were collected from 2017 to 2022.

4. Analysis

To identify the impact of the cooling-off period in China, this section elaborated the following hypotheses. First, some narrow assumptions were made about *divorce by mutual consent* (Article 1076) as follows. Considering that the cooling-off period is a new policy that aims at reducing the divorce rates in China, one would expect a decline in the number of *divorces by mutual consent*.

The first hypothesis in the paper is “the number of *divorces by mutual consent*⁶ will decrease with the imposition of the cooling-off period”. The second hypothesis in this paper is that “the number of *divorces by mutual consent* will increase with the imposition of the cooling-off period.” First, when comparing the average number of the 12 quartiles (2 years and a quarter, 2nd quartile of 2017 to the 1st quartile of 2020) in the pre-enactment period (before the 2nd quartile of 2020) and its counterpart in the post-enactment period (after the 2nd quartile of 2020), there is no general increase or decrease. However, comparing the average number of the 9 quartiles (4th quartile of 2018 to the 4th quartile of 2020) in the pre-implementation period and its counterpart in the post-implementation period (after the 1st quartile of 2021), a clear decline is shown, and the numbers afterward are all far below the numbers in the pre-implementation period. This shows that since the cooling-off law was enacted in May 2020, and entered into effect in 2021, one would expect the number of *divorces by mutual consent* to decline not soon after the enactment, but soon after the introduction. Hence, the effect would happen a couple of quarters later.

The cooling-off period is a contested policy in Asia. For example, Lee first examined data about its impact on the divorce rate and found a decline after the implementation [3]. Afterward, his results lead to his assumption that couples rescinded their filings during the cooling-off period [3]⁷.

The third hypothesis in this paper is “the number of *divorce filing* before local courts will increase with the imposition of the cooling-off period”. The fourth hypothesis in this paper is “the number of *divorce filing* before local courts will show no significant changes with the imposition of the cooling-off period”. To begin with, the evidence provides a comparison between the number of marriages and divorces in China. Figure 3 and 4 presents the annual data on marriages and divorces. Figure 3 depicts the data on marriages, which shows a slight decrease since 2016. Just like the former years, the number of marriages decreased from 2020 to 2022, which demonstrates that the introduction of the policy has not had any significant influence on the general tendency of marriage rate. Below and in the sub-section introduce two different graphs, and these evidences show that the introduction of the cooling-off period leads to the number of *divorce filings* to increase.

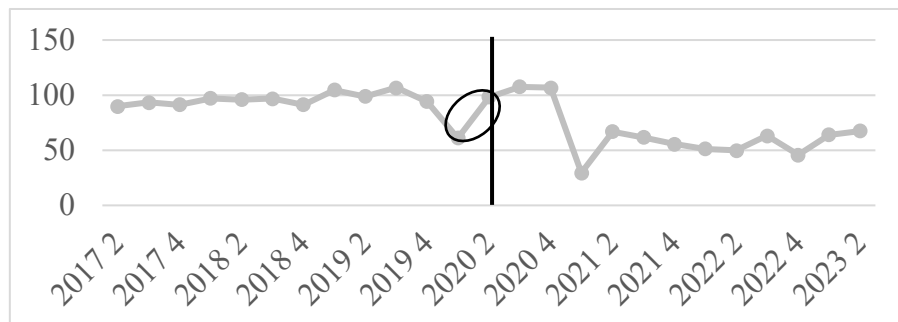


Figure 1: The number of *divorces by mutual consent* in China (per quartile⁸, before and after the enactment in 2020)

⁶ Rate of divorce by mutual consent before the Administrative Register. The Marriage Registration Office of the Ministry of Civil Affairs, is the public office in China responsible for registering divorce.

⁷ This paper imports the methodological tools that Lee used in his paper to demonstrate the divorce rates in China. Data from the Basic People’s Court are used evidence.

⁸ This study include quarterly data because it is more specific compared with yearly data and it is available on the websites described in the data session. For this paper, working with quartiles enhances the understanding of the impact of the cooling-off period.

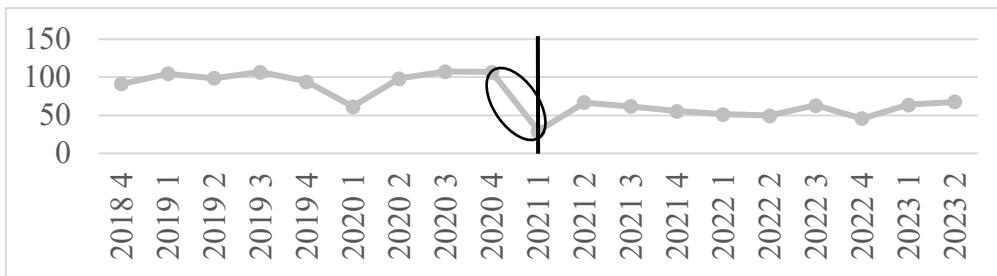


Figure 2: the number of *divorces by mutual consent* in China (per quartile⁹, before and after the implementation in 2021)

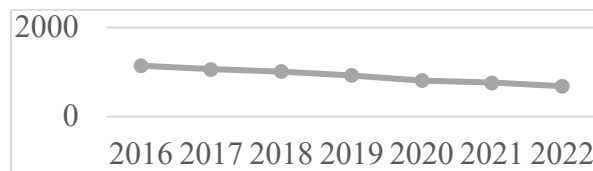


Figure 3: the number of marriages in China (per year)

Figure 5 presents the data of *divorce filing*. As depicted below, a downward trend has been obvious since the year 2016, however, 2021 witnessed a rise in the number of couples who filed a lawsuit and obtained a divorce by *divorce mediation* or *divorce adjudication*. This may suggest an impact on couples to turn to *divorce filing* to get divorced as they have to wait until the period elapses if they make a *divorce by mutual consent*. While Lee found that the cooling-off policy did not change the *divorce filing* number before lower courts [3], this study found that the number of *divorce filing* increased since the introduction of the cooling-off period in China. This suggests that couples who find an obstacle in *divorce by mutual consent* increasingly decide to go to court to get divorced.

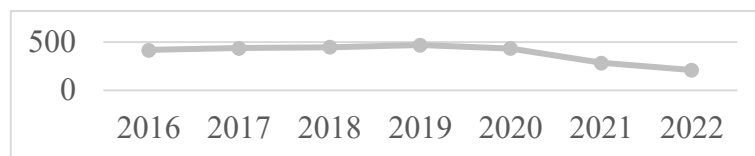


Figure 4: the number of *total divorces* in China (per year – or crude divorce rate)

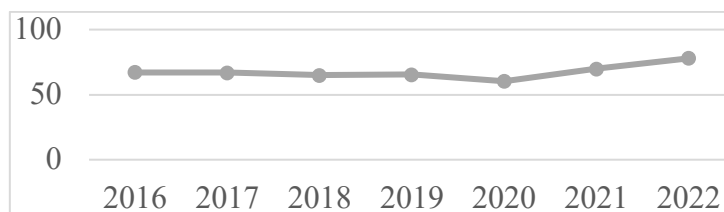


Figure 5: The number of divorce filing Before Local Courts

5. Conclusion

This paper contributed to the literature on the cooling-off period in China. After the cooling-off period before divorce was first introduced in the West countries, scholars presented several findings and critical discussions on this policy. Whereas Lee shows the changes that the policy brings to Korean

⁹ This study include quarterly data because it is more specific compared with yearly data and it is available on the websites described in the data session. For this paper, working with quartiles enhances the understanding of the impact of the cooling-off period.

society [3], this policy also shows great potential to bring changes to divorce in China. This paper examines the effect of the mandatory cooling-off period on *divorce by mutual consent* and *divorce filing*, which are the two types for Chinese couples to get divorced. The declining number of *divorces by mutual consent* suggests that the cooling-off period has successfully become an obstacle to divorce for couples, forcing them to turn to lawsuits instead of waiting until the period elapses. When examining the impact of the period on *divorce filing*, the results show the cooling-off period has an ambivalent impact in China. This conclusion arises from two different trends in the analysis: (i) the number of divorce has generally decreased (ii) the number of *divorce filing* before courts has increased noticeably. The research conducted in this paper is in line with the studies examining the impact of divorce policies in China. Future research on the topic of family and divorce in China can examine the effects of this policy long-term, or in subsequent decades. In addition, scholars may also study how to improve the multiple dispute resolution measures such as mediation and adjudication considering the possible causalities with the newly introduced policy.

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