

Research on the Perfection of Supporting Mediation System in the Cooling-off Period of Divorce

-- Drawing on the Experience of Folk Mediation in the Qing Dynasty

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Abstract: At present, the cooling-off period of registered divorce lacks a supporting mediation system. Perfecting the supporting mediation system of divorce cooling-off period is helpful to realize the substantive justice of marriage and family, and it is also the practical need to improve the divorce cooling-off period system in *the Civil Code*. The existing normative exploration and practical exploration of setting mediation measures in the cooling-off period of divorce provide legislative experience and practical support for perfecting the supporting mediation system in the cooling-off period of divorce. Looking for the excellent experience of perfecting the supporting mediation system in the cooling-off period of divorce from the folk mediation in the Qing Dynasty, this paper holds that the folk mediation in the Qing Dynasty has the advantages of diverse subjects, strong professionalism and diversified basis for mediation. According to these advantages and the practical needs of perfecting the supporting mediation system in the cooling-off period of divorce, this paper puts forward three suggestions for improvement: establishing a diversified mediation system in the cooling-off period of divorce, deploying professional mediators for the cooling-off period of divorce, and setting flexible and diverse mediation basis for the mediation of divorce.

Keywords: Registered Divorce System; Cooling-off Period; Mediation System; The Qing Dynasty; Civil Mediation.

1. Question Proposing

Since the reform and opening up, with the sustained economic and social development and the continuous progress of the rule of law, people's awareness of freedom and rights has been significantly enhanced, and more attention has been paid to maintaining the independence and autonomy of their freedom of marriage. *The Marriage Registration Ordinance*, promulgated in 2003, abolished the one-month review period for registered divorce, greatly simplified the procedures for registered divorce, and showed that the country fully recognized and guaranteed people's right to divorce freedom. However, while affirming the achievements made in ensuring freedom of marriage, we can't ignore the serious problem that comes with marriage and family, that is, the high divorce rate. According to the statistics of the Ministry of Civil Affairs, in 2014, there were 3.637 million divorced couples in China[1], and in 2019, there were 4.701 million divorced couples.[2] The number of divorced couples increased by 29.25% from 2014 to 2019. Among divorced couples from 2014 to 2019, the number of registered divorced couples increased rapidly. In 2014, the number of registered divorced couples was 2.957 million, while in 2019 it increased to 4.047 million, with an increase of 1.09 million couples in just five years, with a growth rate of 36.86%. Such a high registered divorce rate is staggering. On the other hand, compared with the registered divorce, the number of litigation divorce has been in a stable state. From 2014 to 2019, the average number of litigation divorce handled by the court remained at 666,000 pairs. Thus, on the one hand, simplifying the registered divorce procedure fully guarantees the freedom of divorce, but on the other hand, it also creates institutional causes for the rising divorce rate. Especially, in practice, there are a large number of impulsive divorces and rash divorces, and the simple registration divorce procedure has opened the door for impulsive and rash divorces, which has become a bad

incentive to increase the registered divorce rate.

The number of registered divorces is growing rapidly and remains high, especially the large number of impulsive and rash divorces, which have seriously endangered the stability and harmony of marriage, family and society in China. Family is the basic unit of society, bearing the basic social functions such as bearing children and supporting the elderly. Divorce often means the breakdown of family and the loss of family social functions. When the divorce phenomenon is too serious, it will inevitably have an adverse impact on social stability and harmony. Facing the rising registered divorce rate in China, in order to eliminate impulsiveness and rashness in registered divorce to the greatest extent and maintain the stability of marriage, family and society, *the Civil Code* adopted on May 28th, 2020 formally established the cooling-off period system for divorce. The cooling-off period for divorce stipulated in Article 1077 of *the Civil Code*[3] means that the marriage registration authority will give the parties a period of time (up to 60 days) to calm down and seriously think about whether they really need a divorce after receiving their divorce applications. During this period, either party can cancel the divorce application. Within another 30 days after the expiration of the first 30-day period, both parties need to apply to the original marriage registration authority in person for a divorce certificate, otherwise it will be regarded as withdrawal of the divorce application.

The cooling-off period of divorce is an appropriate procedural restriction imposed by the country on the current high degree of freedom divorce, and it is an institutional response to the high registered divorce rate and the general impulsive and rash divorce. Since the cooling-off period system of divorce came into effect, it has indeed achieved good results in reducing the registered divorce rate and reducing impulsive and rash divorce. According to the data released by the Ministry of Civil Affairs, in the first quarter of 2021, that is, the first quarter after the official implementation

of the *Civil Code*, 296,000 divorced couples were registered nationwide,[4] while in the fourth quarter of 2020, 1.063 million divorced couples were registered in a single quarter. In contrast, the registered divorce rate in the first quarter of 2021 decreased by 72.15%. Compared with the first quarter of 2019, there were 1.048 million divorced couples registered in the first quarter of 2019, compared with 71.76% in the first quarter of 2021.[5] According to the data, the cooling-off period of divorce has played a positive role in reducing the registered divorce rate, eliminating impulsive and rash divorce and returning marriage to rationality.

The cooling-off period of divorce has achieved remarkable results in reducing the registered divorce rate and preventing divorce caused by impulsiveness and rashness, but at the same time, the cooling-off period system of divorce itself also has many places to be improved. This paper summarizes the defects of the cooling-off period system of divorce into three points: First, there is no distinction between the applicable objects, that is, the cooling-off period of divorce does not distinguish the specific types and situations of divorce, but applies to all registered divorce situations; Second, the time limit is inflexible, that is, a cooling-off period of 30 days is uniformly set for all registered divorces, without considering the complicated divorce situation in reality; Third, there is a lack of supporting system, that is, the current legal provisions on the cooling-off period of divorce are only Article 1077 of the *Civil Code*, and the corresponding supporting system needed in the implementation of the cooling-off period of divorce is not perfect, such as the lack of supporting mediation system during the cooling-off period of divorce, which makes the effectiveness of the cooling-off period of divorce unable to give full play. A series of defects in the cooling-off period system of divorce show that there is still much room for improvement and perfection. This paper aims at the lack of supporting mediation system in the cooling-off period of divorce, and based on the historical experience of folk mediation in the legal history of the Qing Dynasty, explores the coping strategies and solutions to the problems, with a view to perfecting the cooling-off period system of divorce in the *Civil Code*.

2. The Cooling-off Period of Divorce Lacks Supporting Mediation System

Among the existing legal provisions in China, the provisions on the cooling-off period of divorce are only one article and two paragraphs in Article 1077 of the *Civil Code*, and the supporting systems or measures in the specific implementation of the cooling-off period of divorce are basically blank. On the issue of the lack of supporting systems or measures in the cooling-off period of divorce, the lack of mediation system is particularly worthy of attention. Article 1079 of the *Civil Code* stipulates that when both husband and wife file a lawsuit for divorce, the court must mediate, that is, mediation is the legal necessary procedure for divorce proceedings, but the law does not highlight the status of mediation in registered divorce, and the law is even less clear about mediation during the cooling-off period of registered divorce. Based on this, when couples applying for divorce registration enter the cooling-off period of divorce, the reality is that both husband and wife rely on their own calm reflection, and there is no help and guidance from official or social forces. No one or organization mediates the husband and wife during the cooling-off period to help them clear their emotional

obstacles and properly resolve a series of disputes and contradictions that lead to the breakdown of marriage.

In my opinion, there are only two kinds of results after the cooling-off period: First, after rational reflection, both husband and wife abandon impulsive and rash factors, thus giving up the application for continuing divorce and getting back together, which is exactly what the cooling-off period system of divorce expects; Second, the relationship between husband and wife did not improve or even worsen during the cooling-off period, and eventually they still insisted on divorce. No matter what the final result is, the process of realizing rationality between husband and wife during the cooling-off period is not simple and overnight. During the cooling-off period, both husband and wife are faced with many complicated problems. For example, it is difficult for both husband and wife to put aside the obstacles of "face", and neither of them is willing to take the initiative to bow to the other side to admit their mistakes, thus implementing the "cold war" all the time, resulting in missing the opportunity of reconciliation and divorce; If one party is subjected to mental and personal injuries such as abuse, domestic violence and insult by the other party, the existence of the cooling-off period not only does not relieve the injured party, but prolongs its pain; Another example is that couples who have made up their minds to divorce, during the cooling-off period, if their ability is not enough to make long-term and reasonable arrangements on key issues such as property division and the ownership of children's custody, divorce is very likely to cause property disputes, and it will also bring adverse effects on children's mental health and growth and development. The incident of "29-year-old stay-at-home mother committed suicide by jumping off a building with her children during the cooling-off period of divorce" in Hefei, Anhui Province in March 2021 is a typical example[6].

During the cooling-off period of divorce, it is undoubtedly too idealistic to let both husband and wife calm down on their own, and expect both husband and wife to consciously eliminate impulsive factors and resolve contradictions, so as to get back together, which is an immature performance of simplifying the complicated problems during the cooling-off period. If a professional mediator who knows law, psychology, education and social work intervenes in time to mediate between husband and wife during the cooling-off period, it will play a positive role in easing various obstacles between husband and wife, resolving contradictions and disputes between husband and wife, making husband and wife regain their rationality and get back together, and realizing the expectation of divorce cooling-off period system; Even if mediation during the cooling-off period can't successfully prevent divorce, it will still help to make scientific and reasonable arrangements on key issues such as the ownership of children's custody and the division of property after divorce, and minimize the negative impact of divorce on both husband and wife, children, the elderly and society.

Some scholars have done some research on perfecting the supporting mediation system in the cooling-off period of divorce. Xiao Xinxi believes that it is necessary to improve the relevant supporting mechanisms during the cooling-off period of divorce, introduce social forces such as village committees and neighborhood committees to participate in family disputes including divorce mediation, and realize the socialization of marriage and family editing, which will help to better adjust family relations. [7]Yang Lixin pointed out that during the cooling-off period of divorce, the government

should provide mediation and consultation for disputes between husband and wife, do a good job of reconciliation, solve problems such as child support and property distribution between husband and wife, and earnestly safeguard the legitimate rights and interests of minor children.[8] Yang Yuxuan believes that when building a divorce mediation system in China, we can learn from Australia's mediation service mechanism, so that a neutral third party with professional knowledge can act as a mediator to deal with the emotional and legal problems faced by both husband and wife.[9] Guo Jianping pointed out that to improve the supporting measures for the cooling-off period of divorce, it is necessary to establish and improve the people's mediation Committee for marriage and family disputes and effectively give play to the advantages of women's federations in divorce mediation.[10] Ma Yinan pointed out that after the husband and wife enter the cooling-off period of divorce, organizations such as grassroots people's mediation committees can intervene in mediation and provide legal advice and psychological counseling for both husband and wife.[11] Guo Junwei said that China's divorce cooling-off period system can learn from foreign experience, and set up a special marriage mediation agency in the civil affairs department to provide psychological counseling, emotional counseling and legal services for couples who want to divorce, which will help to resolve conflicts between husband and wife.[12] Zhou Haiyuan suggested that civil affairs departments should mediate couples who divorce impulsively and rashly during the cooling-off period of divorce. Mediation can be carried out by relying on grassroots mass organizations such as people's mediation committees, village committees and neighborhood committees, referring to the mediation mechanism in litigation divorce, and widely absorbing the families of divorced couples and other subjects to participate in mediation.[13] Huang Minghe believes that we can refer to foreign excellent practices, set up entrusted psychological counselors to provide counseling for divorced couples, and train judges who act as mediators in psychological knowledge, so that they can be better qualified for mediation.[14] Yuan Zhili believes that in perfecting the cooling-off period system of divorce, a psychological counseling service system and a family mediator system should be established to provide psychological counseling and counseling for divorced couples and their children, so as to promote the peaceful settlement of marriage disputes between husband and wife[15].

By combing the main achievements of the existing research on perfecting the supporting mediation system or measures in the cooling-off period of divorce, we can know that the basic attitude of scholars engaged in this research is that they all advocate perfecting the mediation system or measures in the cooling-off period of divorce, which is helpful to the resolution of contradictions and disputes between husband and wife and the reasonable solution of divorce problems such as children and property. However, in terms of ideas and methods to improve the mediation system, scholars have different views. Some propose to learn from advanced experience abroad, some propose to integrate existing resources and rely on social forces to mediate, and some advocate adding mediation institutions in civil affairs departments or giving play to the mediation function of judges. On the basis of the existing research results, this paper tries to turn its attention to the folk mediation in the Qing Dynasty from the perspective of legal history, and tries to

explore the beneficial experience of perfecting the divorce cooling-off period supporting mediation system from the local legal resources in China, so as to provide reference for the improvement of the divorce cooling-off period system in the Civil Code. At the same time, this paper is also an active effort to respond to the call of "Inheriting Chinese Excellent Traditional Legal Culture", hoping to integrate China's traditional rule of law experience into the needs of contemporary rule of law construction, realize the modernization transformation of Chinese excellent traditional legal culture, and make due contributions to the rule of law construction in Socialism with Chinese characteristics.

3. The Theoretical and Practical Basis for Perfecting the Supporting Mediation System in the Cooling-off Period of Divorce

3.1. Theoretical Basis

3.1.1. Realize Substantive Justice

As a legal system, the cooling-off period system of divorce is one of its specific value pursuits to realize substantive justice in marriage. Through the political philosopher Rawls' two principles of justice, we can better understand the pursuit of substantive justice in the cooling-off period system of divorce. Rawls once said: "Justice is the primary value of social system, just as truth is the primary value of ideological system." [16] In Rawls' view, the principle of justice is a principle that must be followed when distributing people's rights and obligations, interests and burdens, and he put forward the two principles of justice. Rawls's two principles of justice contain a profound egalitarian spirit, in which the principle of difference advocates that gender differences, natural endowments, social status and other unelectable inequalities accompanied by individuals at birth need to be compensated for the least beneficiaries, which seems to be unequal in form, to achieve substantive equality, so that the interests of the disadvantaged can be fully respected and considered. Looking at the marriage and family relationship with Rawls' principle of justice, in the marriage and family relationship, husband, wife and their kid(s) are equal subjects in theory, and both husband and wife equally enjoy the freedom of divorce and other marital rights and equally undertake marital obligations. However, in fact, there are objectively differences in gender, age and economic ability between husband, wife and their kid(s), and the existence of these objective differences leads to the substantive inequality between husband, wife and their kid(s) to some extent.

Under the background of free divorce, no-fault divorce and equal divorce, China has become one of the countries with the freest divorce in the world, which of course embodies the guarantee of free and equal divorce rights. However, in my opinion, it seems that both husband and wife are given the right to free divorce in form and realize equal rights, but it is very likely to result in substantive inequality and injustice. For example, couples are free to divorce because of rashness, impulsiveness and other factors, the original family breaks down, and their children (especially minor children) lose their complete and stable growth environment and become children of single-parent families, which will lead to a series of problems that are not conducive to the healthy growth of their children, such as lack of education and care. Moreover, if underage children cannot receive timely psychological

counseling, their parents' divorce will cause irreparable trauma and shadows in their hearts, leading to psychological problems. Personality, behavior, learning, marriage and love concepts, and interpersonal communication will become strange, [17] resulting in "problem teenagers" and even triggering juvenile delinquency. According to the statistics of juvenile delinquency published in the Supreme People's Court in 2017, the juvenile delinquency of left-behind families, divorced families, single-parent families and remarried families ranks first, second, fourth and fifth respectively.[18] Among the top five juvenile delinquency, there are three juvenile delinquency from divorce-related families, which accounts for a very large proportion and number of juvenile delinquency. The damage of divorce to the growth of minor children is very serious, and the problems such as lack of education and psychological trauma caused by divorce have become one of the behind-the-scenes sources of juvenile delinquency. The newly established family or marriage relationship after the divorce of husband and wife may not be beneficial to minor children. Cases of sexual assault, abuse and violence suffered by minor children in the new family and relationship have been frequently exposed, such as the case of a 6-year-old girl in Fushun, Liaoning Province who was abused by her biological mother and her new boyfriend by extremely cruel means after her parents divorced [19].

Both husband and wife divorce rashly and impulsively, and both sides exercise their right to free divorce equally, and they achieve formal equality in exercising their legal rights. However, the broken family brought by divorce has caused irreparable damage to the life and growth of the vulnerable family groups such as minor children, which is essentially unequal to the vulnerable family groups such as minor children. For the substantial inequality caused by the rash and impulsive divorce of husband and wife to the vulnerable families such as minor children, setting up a mediation system during the cooling-off period of divorce will help both husband and wife to abandon the rash and impulsive factors to the greatest extent, prevent the breakdown of marriage and family, or it is still difficult to avoid divorce in the end. Mediation during the cooling-off period will help to make long-term planning and reasonable arrangements on issues such as child support and property division after marriage. Minimize the damage caused by divorce to the vulnerable family groups such as minor children, and ensure that the vulnerable family groups such as minor children can get substantive equal treatment in the great event of divorce, both at present and in the long run. Therefore, perfecting the mediation system during the cooling-off period of divorce is a positive effort to pursue substantive equality and a requirement to realize substantive justice.

3.1.2. Perfecting the Cooling-off Period System of Divorce in the Civil Code

In jurisprudence, Law has the function of guidance and direction. The laws and policies promulgated by the state and the government can have a macro impact on society and influence people's ideas and behaviors. [20] Since the promulgation of *the Marriage Registration Ordinance* in 2003, the previous divorce review period system has been abolished, and the procedures for divorce by agreement (registered divorce) in China have become simpler and more convenient, which is the result of vigorously promoting the principle of autonomy of the will in the field of divorce. Simplifying the registration divorce procedure has opened the door for free divorce, and the divorce rate has risen rapidly.

In a large number of divorce cases, the phenomenon of impulsive and rash divorce has intensified, and it is common to seek illegitimate interests by means of false divorce. Even if the staff in charge of divorce registration are aware of the ulterior motives behind the false divorce of the parties, they are unable to regulate it and can only help them handle the divorce procedures. In this regard, Xia Yinlan pointed out that one of the major drawbacks of this divorce system by agreement is "full freedom and insufficient restrictions". [21] In 2003, the divorce system by agreement determined by *the Marriage Registration Ordinance* overemphasized the protection of divorce freedom, but failed to fully recognize the close relationship among marriage, family and society, and lacked appropriate restrictions on divorce freedom, so its rationality needs to be enhanced.

The Civil Code sets up a cooling-off period system for registered divorce, aiming at appropriately restricting excessive free divorce by way of legislation, restraining the persistently high divorce rate, eliminating impulsive and rash factors in divorce to the maximum extent, and putting an end to false divorce, thus maintaining the stability of marriage and family order. As a newly created system in *the Civil Code*, the cooling-off period system of divorce has only one provision with two clauses in the law at present, and the supporting system provisions including mediation measures during the cooling-off period are basically blank. Good deeds alone are not enough to govern, and laws alone are not enough to implement. [22] This paper firmly believes that perfecting the mediation system during the cooling-off period of divorce and mediating both husband and wife during the cooling-off period will be more helpful to eliminate the rash and impulsive factors of both husband and wife, so that both husband and wife can regain their rationality and strive to get back together. Or perhaps the intention of divorce between the couple has been decided during the cooling off period, mediation will also help to make scientific and reasonable arrangements on key issues such as the ownership of custody of children and the division of property after divorce, so as to eliminate marital disputes to the greatest extent. Therefore, perfecting the mediation system in the cooling-off period of divorce conforms to the legislative purpose of the cooling-off period of divorce, can promote the legislative purpose of the cooling-off period of divorce, and is the perfection of the cooling-off period of divorce and even the marriage and family legal system in *the Civil Code*.

3.2. Realistic Basis

3.2.1. Normative Exploration

There have been many normative explorations on setting up mediation systems or measures during the cooling-off period of divorce. *The Marriage Registration Ordinance* in 2003 abolished the one-month divorce review period stipulated in *the Marriage Registration Management Ordinance* in 1994, which greatly simplified the divorce procedure by agreement, which gave the parties more freedom to divorce, but also caused the adverse consequences of the rapid increase in divorce rate. In 2008, Shang Shaohua, a member of the CDL Central Committee and Chinese People's Political Consultative Conference, submitted a proposal on *the Establishment of Marriage Counseling System*. In her proposal, she advocated the establishment of a cooling-off period system for divorce and provided counseling and mediation services for both husband and wife during the cooling-off period. Her proposal received the

attention and positive response from the Ministry of Civil Affairs; During the National People's Congress in 2010, Shang Shaohua once again participated in the proposal of "Establishing a cooling-off period for divorce and training marriage counselors", advocating that marriage and family counselors should intervene in the cooling-off period for divorce to provide consultation and mediation services for both husband and wife, so as to urge both parties to make rational and prudent decisions on divorce[23].

In 2015, the Jiawang district Court in Xuzhou, Jiangsu Province issued the *Implementation Opinions on Handling Divorce Disputes by Applying Emotional Cooling-off Period*,[24] which put mediation into the cooling-off period of divorce and set a good example for forming and perfecting the cooling-off period guidance mechanism. In 2018, the Supreme People's Court issued "Opinions on Further Deepening the Reform of Family Trial Mode and Working Mechanism (Trial)",[25] proposing that a cooling-off period can be set for divorce with the consent of both parties, supplemented by psychological counseling, family mediation and investigation. In 2018, the Guangdong Higher People's Court issued the "Guidelines on the Procedures for the Trial of Divorce Cases in Guangdong Courts",[26] which established the cooling-off period of divorce in the form of a system and clarified the priority of mediation in divorce cases. After the promulgation of the *Civil Code*, in July, 2020, the *Notice on Studying, Propaganda and Implementing the Civil Code* [27] proposed by the Ministry of Civil Affairs pointed out that it is necessary to establish and improve supporting policies and measures such as mediation to promote the implementation of the divorce cooling-off period system; In August 2020, the Ministry of Civil Affairs and the All-China Women's Federation issued the *Guiding Opinions on Strengthening Marriage and Family Counseling Education in the New Era*,[28] proposing to strengthen divorce adjustment and counseling and actively explore effective measures and methods to intervene in the marriage crisis during the cooling-off period. By combing the above-mentioned norms, we can know that many norms have been explored to set mediation measures during the cooling-off period of divorce. These explorations show the trend of perfecting the mediation system during the cooling-off period of divorce from the normative level, and setting up a mediation system for the cooling-off period of divorce is in response to the needs of this normative trend, which can create a better normative environment for the implementation of the cooling-off period system of divorce, and at the same time make full use of the beneficial legislative experience accumulated by normative exploration.

3.2.2. Practical Exploration

In practice, it has a long history to use mediation to resolve the conflict crisis in the case of divorce by agreement and its cooling-off period to save the marriage. In 2004, the divorce registration administrative department in Shanghai established a divorce counseling studio, which was equipped with specialized marriage and family counselors to provide mediation and counseling services to divorced parties.[29] In 2012, the Civil Affairs Department of Cixi City, Zhejiang Province began to make an appointment for divorce. After receiving the divorce application, the civil affairs department will give the other party a cooling-off period of about one week, and provide mediation services for the divorced parties to help them calm down and make a rational decision on whether to divorce, which eventually led to a sharp decline in

the number of divorcees in the region.[30] The Civil Affairs Department of Donghai County, Jiangsu Province has created a "divorce examination paper" model for couples who want to divorce. The examination paper contains questions about marital status and reasons for divorce. The staff can grasp their emotional status through the answers of the parties to the examination paper, so as to provide targeted mediation, consultation and other services to stabilize the emotions of impulsive and rash divorce parties and promote their rational thinking[31].

In order to give full play to the mediation function to repair the damaged marriage, in 2016, Shandong Wucheng Court established a comprehensive family mediation system at the village, town and county levels, and invited retired judges, moral models, people's jurors and social celebrities to form special mediation committees, specifically for divorced parties. Conduct mediation and strive to maintain the harmony and stability of marriage and family relations. [32] In 2017, Pengzhou Court in Sichuan began to design personalized notice of divorce cooling-off period for registered divorce cases. After the divorced parties entered the cooling-off period, the judge acted as the organizer of mediation, and organized family investigators and relatives and friends of the parties to participate in the mediation of the divorced parties, so as to try their best to save the crisis marriage.[33] In March, 2018, Sichuan Anyue Court and Civil Affairs Bureau jointly set up a collaborative resolution studio for family disputes. In the studio, Anyue Court sent four post judges who are good at mediation. During the cooling-off period of divorce, together with the marriage registration staff, they provided special services such as dispute mediation and emotional counseling for the divorced parties, and worked together to maintain the stability of their marriage and family. [34] To sum up, perfecting the mediation system during the cooling-off period of divorce has a deep practical foundation, which is in line with the actual needs in practice. The practical exploration of applying mediation in registering divorce cases and during the cooling-off period has provided solid practical support for perfecting the mediation system during the cooling-off period of divorce.

4. Excellent Experience of Folk Mediation in the Qing Dynasty

In view of the lack of supporting mediation system in the current cooling-off period of divorce, this paper turns its attention to the folk mediation in the Qing Dynasty, trying to tap the excellent legal experience from the folk mediation in the Qing Dynasty, combining the excellent traditional legal experience with the contemporary needs of perfecting the mediation system in the cooling-off period of divorce, realizing the modern transformation of the excellent traditional legal experience and finding the countermeasures to solve the problem.

4.1. The Subjects Involved in Mediation are Diverse

In the Qing Dynasty, civil mediation was mainly applied to minor criminal cases, such as family marriage, land, money and debt, and petty theft, [35] with the purpose of eliminating disputes among ordinary people. It was presided over by folk private individuals or organizations, and urged the disputing parties to understand each other by reconciliation and persuasion according to various social norms, so as to finally

resolve disputes and put an end to conflicts. The range of participants in folk mediation in the Qing dynasty is very wide. According to the different participants, this paper summarizes the contents of folk mediation in the Qing dynasty into three types: clan mediation, neighbor mediation and township mediation.

Clan mediation means that the patriarch mediates the contradictions and disputes between the clan or members of the family. In folk mediation, clan mediation is the most widely used, because everyone belongs to a specific family in traditional society, and people living in a specific family must act according to family rules and regulations. When disputes arise between clans, the patriarch has the right to mediate, restrain and discipline according to family rules and regulations.[36] Neighbor mediation refers to the mediation of contradictions and disputes made by relatives and neighbors living in the same area, such as "matchmakers" who play the role of matchmaking in marriage. When civil contradictions and disputes occur, these matchmakers participate in the mediation of contradictions and disputes as middlemen or neutrals.[37] Township mediation refers to the mediation made by the rural gentry on civil litigation disputes and minor criminal cases in their own villages or towns, such as a "Xianglao" or a "Lilao" in a township mediates the trivial matters among the people in his hometown.[38] From the three types of folk mediation in the Qing Dynasty, we can see that there are a wide range of subjects involved in folk mediation, including blood-related subjects such as clan elders and relatives of the parties, and other subjects such as neighbors, middlemen and squires. These wide-ranging and numerous subjects reflect the diversified characteristics of the subjects involved in folk mediation in the Qing Dynasty.

4.2. The Subjects Involved in Mediation are Highly Professional

In the Qing Dynasty, the participants in civil mediation have diversified characteristics, and these diversified subjects have strong professionalism when conducting mediation. Take the squire as an example. In the grass-roots society of the Qing Dynasty, the squire class was mainly composed of clan elders, educated small and medium-sized landlords, scholars who failed in the imperial examination, officials who retired from their jobs or lived in their hometowns.[39] Their common characteristics were that they were highly educated, literate, knowledgeable, had high prestige and social status in their local areas, and were trusted and supported by the vast majority of people in their local areas. Compared with ordinary people, squires have higher advantages in culture, economy, fame and status, and also have more social resources, which makes them more professional in mediation. As a professional subject, the squire's participation in civil mediation can effectively promote the mediation, resolve the contradictions and disputes between the parties, and achieve reconciliation between the two parties. The result of the squire's mediation is often recognized and accepted by both parties[40].

Patriarch, parents and other clan elders in clan mediation are generally respected people in their own clan, and they also have a certain degree of education. As the code of conduct of the whole clan, the family rules and regulations are formulated by them. Therefore, they are undoubtedly aware of the family rules and regulations of their own clan, and one of the functions of clan elders is to eliminate contradictions and disputes between clans and maintain unity and harmony

among clans. When conflicts and disputes arise between clans, The clan elders must participate in mediation, and they have accumulated rich experience in the process of participating in mediation over a long period of time. All these factors together make the clan elders have strong professionalism in mediation work. Relatives, neighbors, middlemen, etc. of the parties involved in mediation have a better understanding of the situation of the parties, and even directly participated in the affairs that caused the dispute. They can grasp the contradictions and mediate them more pertinently. In addition, they are familiar with each other, and they usually have human relations. Influenced by the social face of acquaintances and other factors, they have a high probability of success in mediation, and the mediation results can also convince all parties. Therefore, as the participants of civil mediation in the Qing Dynasty, the relatives, neighbors and middlemen of the parties also have strong professionalism.

4.3. The Basis for Mediation is Diversified

In the folk mediation in the Qing Dynasty, the basis for the participants to carry out mediation is diversified, and the basis for mediation is not limited to the statutory laws of the country. The reasons, etiquette, family rules and regulations, rural rules and regulations, and township original system outside the statutory laws can all be used as the basis for mediation. As the saying goes, "the court has laws and regulations, and the rural parties have prohibitions." [41] Take mediation by applying family rules and regulations as an example. Family rules and agreements are internal guidelines established within a clan to constrain the activities of its members, which play a role in maintaining internal stability of clans, and it can play a more profound and effective role in mediating disputes within clans than national laws[42].

For example, when mediating the internal members of the clan to commit crimes against each other, the family rules of the Fei clan in Kunling, Jiangsu Province, stipulated in the "Regulations and Punishment Cases": if a nephew commits an uncle or uncle, he will be beaten for the first time and confined in the ancestral hall for 20 days, and the punishment for the second and third crimes will increase in turn; Uncle and grandfather will also be held accountable for bullying the children according to the specific circumstances; Brotherly love is the basic principle for people to get along with each other. It is disrespectful for a younger brother to invade his brother, and it is unfriendly for an elder brother to bully his brother. In this regard, younger brother will be beaten thirty times and elder brother will be beaten ten times. [43] When this kind of clan crime happened in Fei clan, *Zonggui Punishment Ordinance* became the basis for the elders to mediate. Another example is the mediation of disputes over the purchase and sale of "TianZhai" among clansmen. The Xing family rules in Hefei, Anhui Province stipulate that when selling "TianZhai" adjacent to ancestral property and grave hill, clansmen should first ask their own relatives and clan whether they are willing to buy it, and then sell it to outsiders if they are unwilling to buy it. If it is deliberately sold to outsiders out of selfishness or resentment, thus causing trouble to the family, then the parties concerned will be ordered to redeem the "TianZhai" that are sold at will and be punished, and the price will be reduced when the "TianZhai" is redeemed and sold to the relatives and clan again. [44] The stipulation of Hefei Xing family rules on the preemptive right of relatives in the sale of "TianZhai" is the basis for mediation in such disputes within the clan. To sum up, the civil

mediation in the Qing Dynasty, especially the most common clan mediation, is not necessarily based on the state-made law, and the family rules and regulations are often used more widely and effectively, which shows the diversified characteristics of the civil mediation in the Qing Dynasty.

5. Suggestions for Perfecting the Supporting Mediation System in the Cooling-off Period of Divorce

5.1. Establishing a Multiple Mediation System in the Cooling-off Period of Divorce

One of the outstanding experiences of folk mediation in the Qing Dynasty is the diversity of subjects involved in mediation, which is helpful to make full use of various forces to promote the settlement of disputes. According to this excellent experience, this paper holds that when perfecting the mediation system in the cooling-off period of divorce, it is necessary to establish a multi-mediation system in the cooling-off period of divorce, that is, various mediation subjects and mediation forces in society should be involved in mediation and give full play to the role of various forces in mediation in the cooling-off period of divorce.

First of all, relatives and neighbors of divorced parties can participate in mediation as mediation subjects. Relatives and neighbors of divorced parties have a close relationship with couples who want to divorce, which can be said to be the closest group of people. These people know more about the situation between couples who want to divorce than ordinary people. They participate in mediation, which will be more targeted when persuading couples and can accurately grasp the focus of contradictions for mediation. And couples who want to divorce have established a trust relationship with these close neighbors after a long period of interaction, and the close neighbors implement mediation, which makes it easier for couples who want to divorce to listen and accept, and correspondingly, the effect of mediation will be better and more effective.

Secondly, the village committees or neighborhood committees where the divorced parties are located can participate in mediation. Village committees and neighborhood committees are grass-roots autonomous organizations,[45] which are directly responsible for the daily affairs of divorced parties. On the one hand, the village committees or neighborhood committees have the detailed information of the members of the collective, and often deal with the members of the collective. Like the relatives and neighbors, there is a certain trust relationship between the village committees or neighborhood committees and the members of the collective. The village committees or neighborhood committees participate in mediation during the cooling-off period of divorce, and the mediation result may be more acceptable to the divorced parties. On the other hand, village committees and neighborhood committees are the bridges and ties connecting the grass-roots political power of villages and towns with the members of village collectives. They are also semi-official and naturally have certain official authority,[46] and most of the cadres of village committees and neighborhood committees are rural capable people,[47] even with a high level of education. The participation of rural capable people in mediation during the cooling-off period will better solve the marriage and family conflicts during divorce.

Finally, retired judges or public officials, people's jurors,

moral models and other social celebrities can also participate in mediation, organize these subjects together to form a mediation committee, and give full play to their practical experience, ability to use rules and social influence to mediate divorced parties. Under the positive guidance and infection of these subjects, divorced parties are more likely to let go of their differences, return to rationality, and make marriage and family relations get back together.

5.2. Configure Professional Mediators for the Cooling-off Period of Divorce

Combined with the characteristics of strong professionalism of the participants in civil mediation in the Qing Dynasty, in order to improve the mediation system during the cooling-off period of divorce, this paper thinks that professional mediators should be allocated for the cooling-off period of divorce. The specific implementation plan is to set up a special mediation institution for divorce cooling-off period in the civil affairs department, and equip this institution with professionals with rich mediation experience and knowledge of law, psychology and education. These professionals will form a team of professional mediators to mediate the divorced parties during the cooling-off period of registered divorce.

The role of professional mediators in the cooling-off period of divorce is as follows: if the husband and wife are divorced impulsively or rashly, professional mediators can use their professional knowledge and skills to persuade the husband and wife who are divorced impulsively and rashly, state their advantages and disadvantages, convince with reason and move with emotion, and help them dispel their impulsive and rash thoughts. If both husband and wife still insist on divorce during the cooling-off period, then professional mediators need to help them deal with issues such as child support, elderly support and property division. That is, mental health education and psychological counseling should be given to children to eliminate the adverse effects of divorce and family breakdown on their growth and development to the maximum extent; Make a reasonable distribution of the responsibility of supporting the elderly, so that both husband and wife can ensure that the elderly can get support after divorce, and realize a sense of security in old age and enjoy a peaceful retirement; For the division of property after divorce, professional mediators should allocate property according to the actual situation of both husband and wife, and work out a property distribution plan acceptable to both husband and wife, so as to realize the fairness of property distribution to the greatest extent. The mediation results reached after the above mediation on child support, elderly support and property division should reach notarization in time, so as to make the mediation results have legal effect, so as to ensure the implementation of the mediation results and avoid the situation of going back on our word and refusing to accept debts.

5.3. Set Flexible and Diverse Mediation Basis for Divorce Cooling-off Period Mediation

Folk mediation in the Qing dynasty, national laws, reason, etiquette system, family rules and regulations, village regulations and folk conventions can all be used as the basis for mediation. When perfecting the supporting mediation system of divorce cooling-off period, we should also set flexible and diverse mediation basis for mediation during divorce cooling-off period. This paper holds that, in addition

to laws and regulations, reason, traditional morality, civilian agreements, village regulations and folk conventions can be used as the basis for mediation during the cooling-off period of registered divorce. According to the actual mediation situation faced by the cooling-off period of divorce, one or more of the most practical ones can be selected as the basis for mediation, so as to achieve the purpose of the mediation system in the cooling-off period of divorce, that is, to eliminate impulsive and rash factors in divorce, or to achieve proper resolution of marriage and family issues such as child custody, elderly support, and property division during divorce.

Take the mediation of village committees or neighborhood committees participating in the cooling-off period of divorce as an example. Village committees or neighborhood committees, as mediation subjects, participate in the mediation of husband and wife during the cooling-off period of divorce, and can mediate the divorced parties on the basis of reason and traditional morality. Moreover, as the most grass-roots public affairs managers, [48] the rural capable people are well aware of their handling of grass-roots affairs. At the same time, they are also the most grounded group of public affairs managers. They have common words with the vast majority of members of the village collective organizations, and they are undoubtedly very suitable candidates for mediation based on reason and morality. Reason and traditional morality, as soft laws,[49] have their legal effects buried deep in the hearts of everyone with conscience. When these people with conscience are moved by emotion and reasoned with reason, the soft laws in their hearts will be awakened, which will have certain binding force, prompting both divorced parties to think rationally about whether the divorce behavior is appropriate and reasonable, and then abandon the influence of impulsive and rash factors and make scientific plans and reasonable arrangements for various matters involved in marriage and family relations. At the same time, the village committees or neighborhood committees can also use the village regulations and agreements to mediate. As far as the nature of the village regulations and agreements is concerned, it is a reflection of the common will of the most members of the village[50] and a code of conduct that all members of the village collective should abide by. Therefore, when the village collective members divorce by agreement and enter the cooling-off period of divorce, the village committee or neighborhood committee cadres can take the crystallization of the collective will of the village—village regulations and agreements as the basis for mediation when they participate in the mediation of the cooling-off period of divorce. [51] The village regulations and agreements are persuasive and highly recognized, and the mediation results are more easily recognized and accepted by the parties.

6. Summary

The Civil Code sets up a cooling-off period system for registered divorce, which aims to eliminate impulsive divorce and rash divorce, make the parties calm down, regain their rationality, and save the marriage of the parties to the maximum extent, thus maintaining the stability of marriage and family relations and society. This is an appropriate restriction on excessive freedom of divorce and a progress of China's marriage and family system. As a newly established system in *the Civil Code*, the cooling-off period system of divorce faces a problem in the implementation process, which has caused trouble to give full play to the system's

effectiveness. The purpose of this paper is to explore the countermeasures to perfect the supporting mediation system during the cooling-off period of divorce. The author firmly believes that it will be more helpful for the divorced parties to regain their rationality, get back together, repair and save the damaged marriage by configuring the mediation system during the cooling-off period of divorce and mediating the couples who apply for divorce. Different from the previous scholars' views on perfecting the mediation measures during the cooling-off period of divorce, the innovation of this paper lies in: excavating excellent experience from the folk mediation in the Qing Dynasty, and providing reference for perfecting the current supporting mediation system of divorce cooling-off period. By combing some characteristics of civil mediation in the Qing Dynasty, the author sums up three points worth learning, namely, the participants in folk mediation in the Qing Dynasty are diverse and professional, and the basis for mediation is also multiple. Combined with the need to improve the supporting mediation system during the cooling-off period of divorce, this paper puts forward three countermeasures to solve the problem, namely, establishing a diversified mediation system for the cooling-off period of divorce, deploying professional mediators for the cooling-off period of divorce, and setting flexible mediation basis for the mediation of divorce, in order to perfect the system of the cooling-off period of registered divorce in *the Civil Code*, and give full play to the effect of the system.

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