

林立：5年4次起诉离婚不成，离个婚为何这么难？

Divorce Application Turned Down 4 Times in 5 Years, Why is Divorce so Difficult in China?

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Image: China sees divorce rising...
Source: chinadaily.com.cn

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The ICS is an interdisciplinary research institution, which has a leadership role in the promotion of Chinese and East Asian Studies in India. ICS Translations aims to introduce views of the P R China scholars, analysts, and commentators coming from across disciplines.

On 3 March, 2020, Ms. Ning Shuahua sued her husband in the Hengyang County Court for divorce. This was for the fifth time in the past five years Shuahua took the bold step. She is from China's post-80s generation and lives in Jingtou town (Hengyang County), Hunan province, China. On all previous four occasions, her divorce petition accusing her husband Chen Dinghua of gambling, was rejected. During this period, Chen Dinghua had been detained three times due to divorce related disputes; Ning Shuahua too was detained once for the same reason; the Hengyang County Peoples' Court had also issued habeas corpus twice. Chen Dinghua has on several occasions told the local press he would retaliate once the divorce comes through.

The failure to get a divorce four times in five years sounds hard to believe. However, it is well-known how difficult it is to submit divorce litigation.

Following the implementation of the new Civil Code from 1st January, the divorce "cooling off" period system has now come into effect. Although many divorce seekers have become aware of the "cooling off" period system, still many people do not know about it.

There is an unwritten judicial practice in China: the divorce court generally grants divorce only in the second and not at the time

of the first divorce petition (of course, there are exceptions, like in the case of Ning Shuahua). According to the provisions in China's Civil Procedure Law, a divorce application can be re-submitted only if after six months of the filing for divorce in the first instance a divorce has not come through or the application has been withdrawn or the divorce dispute has been mutually settled outside of the court. It is this six month period which has de facto become "cooling off" period under the new Civil Law.

Why is getting a divorce not so easy in China?

1. Difficult to produce evidence

How easy it is to get married?

The reality in China is that it is easier to get married than to get a divorce.

As per the provisions in the Civil Code under sections Family and Marriage, a divorce is possible only if the marriage has broken down. How to define what is a relationship breakdown? How can a judge, who is not a psychologist, judge whether a relationship has broken down?

The Family and Marriage Civil Procedure Law define four such situations:

- 1) Bigamy or the spouse cohabitating with another person;

- 2) Domestic violence or abuse and abandoning of family members;
- 3) Bad habits such as gambling, drug addiction and failure to give up or reform such behaviour even after repeated warnings;
- 4) Separated for over two years due to emotional incompatibility.



Image: Ning Shuahua's husband (above) told reporters he will continue to beat up Ning Shuahua and her family members and he is confident the court will not grant divorce to Ning Shuahua

Source: redstarnews.cn

However, it is almost impossible to prove or establish any one of the above. Take the first condition for example – bigamy or spouse living with another person. How does one prove or supply evidence? It is very uncertain. How does one produce evidence to establish such a relationship – documents or pictures or surveillance camera footage!

Even if there are pictures to prove two persons in a compromising position, how do you establish the nature of the relationship?

Furthermore, there is also this quite widespread (false) belief that two-year long separation automatically leads to divorce. This is just rumour.

The court can only grant divorce if the two year separation based on emotional incompatibility is established – but who will testify this? China does not have a system which can legally establish a couple has been separated on emotional breakup grounds, how and who will prove this? Even if one turns for help to an enthusiastic neighbour or to neighbourhood committee aunts to come forward and testify in the court, how are they going to establish that the separation was caused due to emotional discord?



Image: Ning Shuahua

Source: guanacha.cn

Unlike other civil cases, marriages are different and often involve personal, individual and family privacy. These privacy issues make it extremely difficult for others to give evidence in marriage case.

To fight a lawsuit is actually to fight evidence. Without evidence it is extremely difficult and complicated to fight a divorce lawsuit.

2. Reality obstructs

In addition to the systemic hurdles, there are several other practical issues which prevent settlement of the first time divorce lawsuits. When I was appointed a judge a decade ago, a senior colleague of mine shared one of his interesting experience-based wisdoms with us: it is best to settle a divorce lawsuit, if unresolved they never leave you! At the time we nodded in agreement, though we didn't understand what he meant. I realized how painful it was only when I once tackled a divorce case in my courtroom.



Image: Want a divorce in China? Fail this quiz first
Source: nytimes.com

The case was the first time divorce application from a woman who had submitted documents from her employer saying she was a victim of domestic violence. In my opinion which was based on the prevailing Marriage Law provisions, a domestic violence victim had the lawful right to file for divorce and seek redressal. The law also stipulated the neighbourhood committee members, village committee members and the employer of the

victim etc. should intervene and dissuade to mediate. So, based on the documents from the employer proving the woman was a victim of domestic violence, I granted her divorce.

However, just because my ruling was questioned by her husband as based on inexperience and uncommon practice, he frequently visited my courtroom challenging my decision. Once he even threatened to shoot me with a gun. He also approached higher courts seeking intervention in my ruling and the case was dragged on for years. I later learnt he kept visiting my courtroom for years after I had retired and left the legal practice.

There was also another case handled by another judge colleague. He had ruled in favour of granting a divorce in a lawsuit filed by a woman. This was the second divorce application filed by the woman. In his ruling, besides granting her divorce, the judge also awarded the custody of the couple's son to the woman. Following the court ruling, her husband did not make an issue out of it. But the father-in-law was adamant in opposing the court ruling. One day, the old man reached the judge's residence. Later on, the old man appealed in the higher court and to my surprise got the earlier verdict amended.

Sometimes I do think that compared to other judges both my friend and I were really fortunate.

In 2016, judge Ma Caiyun of Huilongguan Peoples' Court in Changping district in Beijing and her husband were both shot at outside their home by two criminals. Judge Ma Caiyun was shot twice and she died on the way to the hospital, while her husband was lucky enough to survive. One of the two gangsters who shot at the couple was a "victim" of Judge Ma's court ruling involving a case of post-divorce property dispute.



Image: Judge Ma Caiyun
Source: cctvnews.com

In divorce cases, especially when dealing with paranoid parties, the judges undergo huge amount of stress and psychological pressure. Judges are human beings too and they have families. In reality, there are very few judges who have the courage and stamina to withstand courtroom pressures and who are willing to put their own life and their family members' life at risk.

The easy way to escape such stresses and risks is to not grant divorce. The best way is to keep delaying divorce verdict. After four or five rejections, the petitioner will lose the will and

energy to go on fighting in the courtroom...that is when the ruling should be given. No risk involved at all.

3. Conventional or traditional thinking

Chinese traditional culture is very abhorrent to divorce and regards divorce as a very bad thing, even as a scourge. In China, it is popularly believed "family is prosperity" and "demolish a temple than destroy a marriage." China's lawmakers also uphold such conventional beliefs and therefore we have so many laws to protect a marriage (such as the divorce law that requires proof of emotional discord). So much so that in order to protect marriage, our legal system puts an invisible "yoke" on the weak in the marriage.

At times, the law which is meant to protect those who are kind actually ends up punishing those who are kind and honest.



Image: Frustration for women as China's new laws forestall divorce
Source: nbcnews.com

Before China's First "Marriage Law" was enacted in 1950, Comrade Deng Yingchao had once said: "Generally, everyone agrees on both

freedom of marriage and on the principle of freedom to divorce. However, people largely disagree on the principle of ‘grant divorce if one side asks for divorce.’ At the recently held joint symposium on Administrative Laws, Youth, and Woman, it was only me and one another comrade from the (Party’s) organization department who endorsed the principle that divorce be granted even if only one side asks for divorce, while all other participants advocated several conditions attached to the granting of divorce.

Why do I endorse the principle of divorce be granted even if one side asks for divorce? China has for very long remained stagnated in the feudal past and this has severely affected women who are also the most and the worst sufferers in a marriage. Early marriage, old and teenage marriages, sale-purchase of marriages, and arranged marriages are and have been prevalent phenomena in China. Therefore, if one party insists for a divorce, then this is the will of the majority of women in China.

Attaching various conditions to granting of divorce will only help cadres and officials with feudal thinking to regain control and restrict the freedom to divorce. The absence of ‘freedom to divorce’ in the past, led to numerous tragedies.”

Comrade Deng Yingchao had a clear perspective on the issue: divorce is essentially a matter between two persons. A “squeezed

melon is never sweet,” as she would often say. If one side insists for divorce, this means the marriage has already broken down. Therefore, a divorce must be immediately granted. Freedom to divorce actually serves the interests of and protects the interests of “vast majority of women” in China.

At present, it is true that the practice of arranged marriage and sale-purchase of marriage is disappearing in China. Yet it is true that marriages are still not “free.” When we look at the picture of Ning Shuahua’s face with scars, we realize how far away we are from the goal of “free” divorces in China.

The local police station in charge in Jingtou town told reporters in an interview: “I spoke with Ning Shuahua’s husband on phone for over 40 minutes and repeatedly told him that this is the fifth time she has filed for divorce...don’t you think your marriage with her is already long gone...?” Common sense says that Ning Shuahua’s marriage foundation is gone...how much more evidence the court wants?”



Image: ‘I can’t endure it anymore...’
Source: guancha.cn

4. A Little Hope...

According to recent reports, Ning Shuahua's divorce petition case has finally caught the attention of the Hunan Peoples' Court. Everyone is hopeful her divorce lawsuit will now be accelerated and proceed smoothly. But not everyone is lucky to draw attention of the media and the People's Court!

Shouldn't there be a proper way to do something to benefit more and more women? Shouldn't there be a proper way to help reduce and avoid "tragic" and sad experiences of some women? Isn't now the time to handle Freedom to Divorce issue more correctly? Isn't now the time to adequately revise the relevant laws and their judicial interpretations?

In January this year, the Supreme Peoples' Court of the Peoples' Republic of China released the "Interpretation on the guidelines of the 'Civil Code of the PRC' Marriage and Family Act (1)." Will this be followed by a more detailed and realistic relevant legal interpretation?

Just like in the past, with the announcement by the Supreme Peoples' Court of the "Law Interpreting the implementation of Trial Cases Involving Marital Debt Disputes," there has been some relief to the complainant "in financial debt," we hope the new legal interpretation of the Marriage "Civil Code" will benefit Chinese women.

[Series editor: Hemant Adlakha]

The views expressed here are those of the original author and not necessarily of the translator or of the Institute of Chinese Studies

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