


RESEARCH ARTICLE

Divorce Petitions by Trafficked Women Denied: Legal Consciousness, Circuit of Commerce and the State

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Abstract

This paper explores the reasons that divorce petitions by trafficked women in China were denied in courts in the wake of the chained woman incident. The author collected and examined divorce verdicts involving trafficked women from China Judgements Online. Among 100 unique cases, 87 were denied in their first attempts. Most of these cases were treated in the same way as regular divorce cases, with trafficking allegations either blatantly ignored or dismissed as irrelevant. The author argues that the systematic denials and ignoring of trafficking allegations is enabled by a hegemonic legal consciousness within the Circuit of Trafficking that includes not only parties directly engaged in trafficking activities, but also state actors such as the judges and legislators who prioritise “family” preservation and social stability over the rights and well-being of trafficked women. Without addressing and changing this hegemonic legal consciousness, any reform, if it should take place, would be rendered futile in practice.

Keywords: divorce petition; trafficked women; legal consciousness

1. Introduction

In the wake of the infamous “chained woman incident” in 2022 (Cao and Feng, 2022; Li, 2022), a divorce verdict surfaced in online media, in which the plaintiff claimed to be trafficked and sold for coerced marriage but was denied a divorce by the judge. This rejection is far from singular—in my collection of divorce verdicts drawn from China Judgements Online, rejections are common in the cases with trafficking claims—among 100 unique cases, 87 were denied in their first attempts. This high rate of denial is both perplexing and troubling: the Chinese state has always been anti-trafficking (see State Council of China (2021), for example), and yet the legal apparatus of the state—the court and the law—does not put this into practice. How and why do divorce petitions by trafficked women get denied in courts, even though the state is anti-trafficking? What is the key to potential law reforms that battle against the trafficking of women for coerced marriage?

In this paper, I argue that divorce petitions by trafficked women are denied because the state can be viewed as a part of the Trafficking Circuit, in the way it conceives and deals with the aftermath of trafficking once these women have been raped and impregnated. Aligned with the buyers in the Trafficking Circuit, the state perceives the situation as being one in which “rice is cooked,” and sees no better option than acknowledging the legitimacy of trafficking-based “families” so as to preserve social stability. This is a form of hegemonic legal consciousness that constitutes the common understanding within the Trafficking Circuit, and thus helps to perpetuate the trafficking of women for coerced marriage.

Any attempts at legal reforms would be rendered futile without first addressing this prevailing legal consciousness within the Trafficking Circuit.

Superficially, the high denial rate of trafficking-based divorce petitions could seem to be a result of current legal practice with regard to regular contested divorce. Divorce cases with trafficking claims are denied under similar mechanisms used to deny regular contested divorce cases, which includes but is not limited to the highly institutionalised practice of “breakdownism” (Michelson, 2019, p. 327; Palmer, 1995, p. 123), performance evaluation of judges, and case overloads within the court system (He, 2021, p. 34; Zheng, Ai and Liu, 2017, p. 190).

However, these mechanisms cannot fully explain the high rate at which divorce petitions by trafficked women are denied in court. First and foremost, marriages formed through trafficking are coerced marriages, which violate the consensual basis of marriage and theoretically invalidate the legitimacy of marriage; thus, treating trafficking-based coerced marriage in the same way as regular marriage is in and of itself an issue that deserves scholarly scrutiny. Second, the rate of denial in first attempts for divorce cases involving trafficking allegations is actually higher than the rate of regular contested divorce cases being denied in first attempts—for example, 63.1% in Henan or 79.6% in Zhejiang Province (Michelson, 2019). There could be a potential bias related to the geographic location of coerced marriages, as most trafficking occurs in terms of both origin and destination in economically less-developed Provinces (Xia et al., 2020, p. 239). Nonetheless, the substantial rate of denial of contested divorce cases with trafficking claims suggests that the rationales in these cases might be distinct from law practices commonly found in regular contested divorce cases.

Therefore, I argue that a critical element sustaining and justifying these denials is the legal consciousness within the Trafficking Circuit as related to the consequences of trafficking. Once the trafficked women are impregnated, no good solution seems to be available other than to maintain the resulting household. This legal consciousness is inherently relational, based on the notion that an “intact” family with married parents is the sole legitimate environment in which to raise children, even in the case of trafficking, and thereby necessitates substantial sacrifices by the trafficked women as mothers and wives.

This legal consciousness is shared by the state, the buyer households, and, in many cases, the trafficked women themselves once their children are born. The state thus deems “intact” families and social stability as of higher priority than the well-being of trafficked women. As surrogates of the state, legislators justify the delegation of the “choice” of legitimising a coerced marriage to trafficked women themselves (Hu and Wang, 2002) while retaining the power to authorise contested divorces so as to keep families whole. In the same vein, judges as state actors largely ignore trafficking claims not only due to resource restriction or case overload, but due to a seemingly justified dismissal in the presence of legal marriage. The buyer households feel comfortable in setting their bought wives “free” once they are impregnated or have given birth, for because of their desire to take care of the children, they are more likely to remain and get registered for marriage. The trafficked women could, in many cases, also share this legal consciousness not only because they have culturally become wives and mothers, but also because they have no place to return to, or as evidenced by verdicts in my sample, “rice is cooked.” On top of that, trafficked women may also “voluntarily” register for marriage because any resulting children need the social benefit tied to the Hukou system, enrollment in which demands a marriage certificate from parents¹. This inherently relational legal consciousness

¹ Until 2023, unmarried single parents could encounter numerous administrative barriers ranging from fines to outright rejection if they wanted to register their children in the Hukou system without a marriage certificate.

constitutes the common understanding that sustains and perpetuates women trafficking as a Zelizerian Circuit of Commerce.

2. Background

2.1. Divorce, “Twofer” and social stability

State intervention in family and marriage is nothing new in China. Before and shortly after the Open and Reform in the late 1970s, divorce was extremely difficult, even though the Marriage Law never forbids divorce. Divorcing couples had to seek approval of their Danwei supervisor, often a party member, Danwei party secretary, and the local court, and yet all three tended to deny divorce petitions (Huang, 2005, p. 154). Since the Open and Reform, the Marriage Law has been through several revisions, with the state receding substantially from the divorce practices on the ground in comparison with the previous era (He, 2021, p. 31). No-fault divorce became feasible with the agreement of the divorcing couple, requiring no proof of support from workplace or local courts. However, couples in contested cases are still subject to a mandatory mediation process that is substantially different from a typical mediation in the “western” countries (Wang, 2013, p. 83). It is mandatory rather than voluntary, and it is conducted in court by judges as opposed to outside of court with lawyers. According to the Marriage Law Article 32 (1981), the court needs to “mediate” a contested case first, and adjudicate only when the mediation has failed. All contested divorce cases end up in one of four situations: mediated divorce (*Tiaojie Lihun*), mediated reconciliation (*Tiaojie Hehao*)², adjudicated divorce (*Panjue Lihun*), and adjudicated reconciliation (*Panjue Hehao*). Furthermore, since the mediation has a strong normative orientation with the goal being to avoid divorce, a mediated divorce almost never happens if the case is contested.

Parallel to this state intervention in divorce is a nationwide restriction of unmarried single parents registering their children’s birth, and subsequently in the Hukou system, which provides access to a wide range of social amenities including public schools (Qian, Cheng and Qian, 2020, p. 1; Wang and Schwartz, 2018, p. 28). This can create a difficult situation for trafficked women who often resist marriage with their buyer husbands until their children have reached school age. The level of this restriction varies by regions—in Guangdong Province, for example, unwed single mothers are not required to pay punitive fees for their first children as long as they fulfil the “make-up” registration for marriage (NPC of Guangdong Province, 2018). These restrictions administered by Provinces were not lifted until 2015 (State Council of China, 2015b) in face of the unabated drop in fertility rates after the removal of One Child Policy (Guo, Gietel-Basten and Gu, 2019, p. 245).

In comparison to these profound state interventions in matters of divorce and childbirth, the state explicitly leaves “family issues” to families once a family has “formed.” Coerced marriage has always been denounced in Marriage Law since its promulgation in the 1950s (Hu and Wang, 2002). However, once coerced intercourse has resulted in children, a “family” has formed, and the state is then hesitant to interfere in “internal” family issues when the trafficked women are “willing” to take care of their children, thus relegating the decision of making marriages “legal” to trafficked women who are then seen as individuals with free choices (Hu and Wang 2002). The Marriage Law (Zhonghua renmin gongheguo hunyinfa [PRC Marriage Law], 1981) states that marriages can be rescinded if one party was coerced or threatened into marriage, but actions must be taken within a one-year window starting from the time the coerced party regains

² Given the strong normative orientation of divorce mediation, mediated divorce is rare. Mediated reconciliation does not incur any legal status changes, so usually the court will not provide formal verdict. See National People Council (2000).

“freedom.” In other words, if a trafficked woman has failed to petition to local courts within one year, her coerced marriage established based on trafficking, rape, and unlawful confinement could automatically become legal and formally acknowledged by the state. This coerced marriage becomes no different from a voluntary marriage *de jure*, regardless of whether a marriage certificate is obtained from the local government. If no certificate is obtained, the marriage will be treated as “factual marriage” (Chinese Government Website, 2005), a common practice in many rural regions where couples go through a wedding ceremony, voluntarily cohabit, and raise children together. When a marriage certificate is absent in a trafficking-based marriage, the concept of “factual marriage,” combined with the relegation by the state, jointly insulates the legitimacy of marriage from the legal consequences of trafficking.

Besides explicit state interventions through law, contested divorce cases often encounter numerous barriers as the law in practice is decoupled from the law on the paper. This is partially due to “breakdownism,” which refers to the decision to grant a divorce being based on whether a marital relationship has “broken down” or not, *as deemed by the judge*. The Marriage Law Article 32 (1981) states four explicit bases on which a divorce should be granted: (1) bigamy or cohabiting with others, (2) domestic violence, maltreatment, or abandonment of family members, (3) gambling or drug addiction with no sign of remorse, (4) separation due to broken relationship. All allegations related to these four conditions are hard to “prove,” as the burden of proof falls on whoever made the allegations, with the validity of evidence again subject to court judgments. Domestic violence allegations are often ignored in courts and have little substantial impact on the verdicts of divorce (Michelson, 2019, p. 325). The “breakdownism” concept contributes to the common practice of denying divorce petitions in their first attempts, while more likely granting a divorce in the second or more attempts—a “twofer” (Michelson, 2019, p. 327)—as the plaintiffs often “fail” to prove that their marital relationships have broken down in their attempts. The only reliable evidence of a marital relationship breaking down is a previous failed attempt, from the judge’s perspective.

The court system also poses institutional challenges to divorce adjudication in two other ways. First, the family and marriage division of civil courts have been and continue to be increasingly understaffed (Zheng, Ai and Liu, 2017, p. 190). Since the late 1990s, the caseload has skyrocketed, increasing approximately fivefold in 2012, while the number of judges has increased by only 50%. Each judge may handle as many as 200 cases a year. This case-overloading situation will likely remain or become even worse, since divorce cases increased quadratically during the pandemic (Zhang, 2022, p. 735), and the family division shows little sign of expanding at relative speed. Second, judges face performance evaluations consequential to their careers (He, 2021, p. 35). This evaluation firstly includes case-closing rate and complaint rate, which demands that the judges close a case as soon as possible, in a way least likely to induce complaints. Combined with the heavy caseload per judge, this evaluation tends to further limit the attention and time allocated to each case. Another important element of the evaluation involves social stability—any court decision that could potentially result in protests or bodily injuries should be avoided as much as possible (He, 2021, p. 40). This aspect of performance evaluation of judges is seamlessly connected to the role of the State and its role in social control. From the perspective of the State, judges should never disrupt existing social relationships and power structures. In divorce cases, if a husband threatens to kill his wife once the divorce is granted, the judge may consider avoiding that decision, ironically. Judges might also prioritise preserving local conventions with regard to marriage. Marriages in rural areas have been conventionally defined in terms of cohabitation and childrearing without formal registration; once a man and a woman cohabit and raise children, they are a “legally” married couple, even without formal paperwork, a relationship formally acknowledged by the state as “factual marriage” until 1994 (Chinese Government Website, 2005). If any

ambiguity arises as to whether or not the relationship was fully voluntary and consensual, judges who acknowledge such ambiguity might be viewed as challenging the long-standing local convention of marriage and thus risk disturbing social stability.

2.2. Legal consciousness

Actions and decisions within and outside of courts are contingent upon how people understand law, which intrinsically connects to the concept of legal consciousness. From among a plethora of definitions of this concept, this project adopts Chua's and Engel's (2019) version: "legal consciousness refers to the ways in which people experience, understand, and act relative to law." Such consciousness is often applied to laymen outside the court system (Boittin, 2013, p. 247; Gallagher, 2006, p. 783). In the context of trafficking for coerced marriage, the buyer households, traffickers, and, in some cases, the trafficked women themselves, might be bounded by a similar set of legal consciousness. In addition to the common application of this concept to laymen, it can be fruitful to explore the legal consciousness of the state, as represented by state actors such as legislators and judges. If their conception of law overlaps with those directly involved in trafficking, the consequences might be more deleterious as the legal consciousness comes to mingle with the law itself.

First, the legal consciousness of buyer households assumes a prominent role in sustaining trafficking activities and is especially pernicious when the legal consciousness is socially justified within particular networks. In villages or towns where trafficked wives are common, women trafficking for coerced marriage is never deemed morally wrong; neighbours of households with bought wives may thus demonstrate a nonchalant attitude towards the pains and suffering of the trafficked women (Hung, 2023, p. 370). In the same vein (Xu, 2023), I have argued that from a phenomenological perspective, local communities are dominated by subjectivities of the Patriarchal Man and the Paradigm of Family and see the goal of producing biological (male) children as superseding the rights and well-being of women. From this perspective, the identity of being a single, childless man is greatly destructive and should be avoided at any cost—thus, buying a trafficked woman and impregnating her becomes justifiable, given the highest priority given to producing offspring and continuing the family line. In other words, the legal consciousness related to whether or not to engage in a nominally illegal activity is rooted in and justified by a collective subjectivity known as the Patriarchal Man.

Second, trafficked women can potentially be trapped in the local cultural sphere and come to have their legal consciousness aligned with that of the buyer household. In a stereotypical situation of trafficking for coerced marriage, once a woman is set free, she naturally faces a dilemma—she is now a mother to her child, whose father bought her from traffickers and raped her. In this moment, *qing*, the deeply-felt communal relationship norms (Liu, 2018), and the law are at odds. For many trafficked women, it could be the case that they know more about traditional Confucian moral standards for being a good mother and wife than about human rights, as shown in many cases of domestic violence (Liu and Chan, 1999, p. 1478). The *Qing* in Confucian terms means that the trafficked women feel obligated to take care of her child and the father of her child once they have delivered children, despite the law giving her a fleeting chance to leave the "marriage" and run away for her own good. As women have often failed to invoke the law to protect themselves, it is not uncommon for trafficked women to stay for the sake of their children, choosing to honour *Qing* over the law. Once this transient chance is gone, the state law will never again be on their side, and the legal consequence of coerced marriage effectively vanishes. A classic agenda in transnational human rights activism is to open up families for legal surveillance and to help women to stand on their own feet and become more aware of their rights (Merry, 2006, p. 212). Unfortunately, in the case of

trafficked women, even if they understand the law as providing an opportunity to flee from the coerced marriage, they might fail to do so and thus yield to the hegemonic state law and local conventions.

Last but not least is the legal consciousness of legislators and judges—how legislators and judges understand, practise, or write law, which arguably is the “law” itself (Kidder, 1983) and which could be more consequential than the legal consciousness of laymen outside the court. The legal consciousness of legislators dictates how “legal” marriage is defined; the legal consciousness of judges shapes which marriages are deemed legal in court. If buyer households know that the bought wives are deemed “legal” wives despite the criminal nature of the transaction in itself, they will be emboldened in the transaction. If the trafficked women know they will be denied divorce in court despite being coerced into marriage, they will have less faith in taking actions to achieve justice for themselves. The legal consciousness of these state actors bridges state control of social stability and patriarchal norms in local communities. The legal consciousness of judges, being itself a form of law, falls into the hegemony school (Chua and Engel, 2019, p. 340) of legal consciousness, which sees law as hegemonic state control.

Closely related to the legal consciousness of judges is whether or not this consciousness is gendered within the courtroom. Could it be the case that male judges are more sympathetic to local patriarchal norms than female judges, and, concurrently, that male judges are disproportionately dominant in the regions with rampant trafficking? The empirical evidence on these questions is relatively scant and the statistics on judges are extremely opaque in the Chinese system.³ Female judges have begun to compose an increasing share in the past three decades, reaching 28.8% in 2015 (State Council of China, 2015a), but they primarily occupy low and mid-rank positions and face an “elastic” ceiling in matters of promotion (Zheng, Ai and Liu, 2017, p. 168). If female judges are primarily to be found in the lower ranks within the system, they would have little discretion in relation to the standard institutionalised practices and have no choice but to conform. In addition to this, many female judges are unfamiliar with the feminist approach to constructed female criminality in patriarchy; they may rule by law and value impartiality, regardless of how much they may empathise with female victims (Shen, 2017, pp. 135–176). Gendered consciousness remains a possible factor in divorce rulings, but future research is required to investigate the specific role it might play in the cases involving trafficking.

2.3. Zelizerian circuit of commerce

In contrast to the dominant thinking that intimate relationships are and should be separated from rational calculation of economic interests, a Zelizerian perspective of such relationships (Zelizer, 2005; Zelizer, 2011), including marriage, asserts these are two sides of the same coin. In fact, both social and legal definitions of intimate relationships are always intertwined with the economic transactions involved in the relationship (Zelizer, 2005, p. 12). For example, a sexual relationship between two parties could evoke drastically different meanings depending on whether payments are involved. In the case of marriage, the working definition under the common law evolves over time, gradually assigning more credit to cohabitation and the sharing of bed and board, which necessarily entails economic arrangements related to living expenses, apart from the presence or absence of a marriage certificate (Zelizer, 2005, p. 65). This evolving legal definition of marriage reflects the social transformation of increasing long-term cohabitation without marriage. In cases

³ Demographic statistics related to judges are not available on any official website. The gender breakdown for certain provinces or cities are available in some studies (Zheng, Ai and Liu, 2017), where the researchers have proprietary access to the data, but no summary table is available on a national scale. The only public source providing an overall gender ratio is the report on gender equality and women judges quoted in the text.

where ambiguity arises, relational work is often performed by judges or lawyers in order to categorise the relationship and apply corresponding law (Zelizer, 2005, p. 158). This relational work involves matching social and legal relationship categories as reflected in transactions and media. Yet the two categories are never perfectly aligned, for legal categories often conform to the normative social categories of their time. In Zelizer's depiction of the 1958 lawsuit *Schwegmann v. Schwegmann*, once the intimate relationship between owner and slave is recognised as concubinage, the de facto caregiver was deemed to have no claim to her partner's property, as concubinage is not marriage. The reason given by the court was that "to equate the non-marital relationship of concubinage to a marital relationship is to do violence to the very structure of our civilized society." (Zelizer, 2005, p. 48).

Similar co-constitution of economic transactions and interpersonal relationships exists in a multi-party network—a Circuit of Commerce (Zelizer, 2011, pp. 303–355). Inherent in a circuit is an emic, shared understanding of the transactions among members of the circuit, as well as of a particularised meaning of money. In other words, within a circuit "individual experiences of economic relations put them in different subject worlds, even if these are invisible from a distance." (Collins, 2004, p. 268) Especially in a circuit of profane transactions, members of the circuit could see a commonly "profane" obfuscation as justifiable, as they only experience the economic activities in their shared subjective worlds. For example, the baby markets, largely unacceptable in a contemporary view, were in fact justifiable and popular in the 1920s–1930s as children, particularly those from working class and rural families (Zelizer, 2011, p. 293), were still recognised as future labourers bringing income for the household, and could thus be priced and exchanged in a market. This is a view emic to people of that period and etic to most people today, for the circuit of the baby market in that time was propagated by then-current understandings of the status of children. The money used within the circuit is often earmarked for certain purposes and the particularised meaning of money within that circuit helps to distinguish one circuit from another.

In disreputable or taboo exchanges, participants need to resort to different techniques, such as rhetorical or structural obfuscation, to ameliorate and legitimate the exchange in the view of either members in the circuit or others. Rhetorical obfuscation (Anteby, 2010, p. 631; Quinn, 2008, p. 738) refers to various conceptual masks applied to the exchanges, with each conceptual mask yielding a different framing and understanding of the underlying exchange. Different conceptual masks are often used to target different audiences. For example, in selling strangers' life insurance to investors (Quinn, 2008, p. 755), a "consumerist consolation" conceptual mask is adopted when the imagined customers are dying people and their families, as this mask brands strangers' life insurance as a way of helping people die with dignity and security, especially in face of expensive healthcare. Alternatively, a "rationalised reconciliation" mask is adopted when the imagined customers are older, wealthier investors trying to diversify their portfolios, with the corresponding narrative framing strangers' life insurance as a rational investment that has attracted many institutional investors.

Often coupled with rhetorical obfuscation is structural obfuscation (Rossman, 2014, p. 43), in which participants manipulate the physical or temporal structure in order to downplay or hide the taboo exchange. The first such technique is bundling the disreputable exchange with a reputable one. For example, if loans are banned in certain religions, while regular purchase is allowed, the local arrangement to circumvent the ban is to combine the loan and the regular purchase; i.e., the loaner would "purchase" an item from the loanee for \$100 and later on return it and receive \$105 back. Another technique for structural obfuscation involves brokerage—for when a disreputable exchange is mediated through a third party, the nature of exchange becomes ambiguous. The third party may possibly be equipped with legitimating power, such as in the case of the state or

the court. A third technique in structural obfuscation involves gift exchange—when there is a time delay between one action and another, the disreputable exchange can be translated into an expression of the relationship as opposed to an exchange. For example, a distinction is drawn between pimping for prostitution and being a “sugar daddy” according to the timing of the payment, for if the temporal gap between sex and payment is elongated, it becomes more difficult to determine whether prostitution is involved.

3. Data and method

The first major source of data relied upon in this study is the record of public verdicts from China Judgements Online (<https://wenshu.court.gov.cn/>), which provides full access to all 136 million court documents made available by all levels of courts, upon the order from the Supreme Court in 2013.⁴ Theoretically, the database includes all effective sentence documents that do not contain classified information or commercial intellectual property, or that pose a risk to the privacy of minors (e.g., juvenile cases). Using the keywords “divorce” and “trafficking,” I found 104 divorce verdicts in 100 distinct cases from 2012 to 2022, in which the wife claimed to have been trafficked and sold to her current husband. In 99 cases, the wife is the plaintiff who filed the petition for divorce, and in 1 case, the husband is the plaintiff who filed for divorce from a trafficked woman who had run away. These verdicts provide a strictly formatted, highly summarised perspective of the plaintiff, the defendant, and the judge.

The second major source of data is the Explanations of the Marriage Law (the Explanation) provided by the National People’s Congress (NPC) official website, edited by leaders of the Legislative Affairs Commission of the Standing Committee of the NPC (Hu and Wang, 2002). The NPC, as the legislating body of China, is clearly a valid source to convey the perspective of the legislators. Even though it may be difficult to determine which group of legislators hold this perspective, or to what degree it is a consensus view, the perspectives presented in the Explanation are acknowledged as representing the state.

Given the potentially large number of women trafficked for coerced marriage,⁵ the total number of verdicts in the system seems to be extremely low. There could be several reasons for this: first, trafficked women are often situated in economically, culturally, and politically vulnerable positions, with limited resources and/or knowledge to file for a divorce, even if they are aware of such a possibility; second, mediated reconciliation does not end up with a formal court document as an adjudicated case, because the marital relationship is presumed to have continued and no legal changes are entailed in the process; third, even though China Judgements Online claims to provide access to all documents, there are rumours suggesting that documents considered “sensitive” could be removed or made invisible to the public (Ma, Yu and He, 2016, p. 195). Nonetheless, the cases collected in this project still provide a valuable perspective on the divorce processes of those women who did garner resources and determination to file divorce petitions. If those who are relatively better informed and financially prepared still encounter structural barriers, the trafficked women who are not similarly advantaged would clearly face even more challenging and difficult situations.

The definition of trafficking could be seen as another point of contention. The court definition of women trafficking for coerced marriage refers to marriage through deception or kidnapping without women’s consent. The question is whether the women who claim to

⁴ In July 2013, the Supreme People’s Court issued the Provision on Publication of Judicial Documents. This provision aims to promote “transparency” and prohibits selective publication. Source: http://www.gov.cn/jrzq/2013-07/02/content_2439328.htm

⁵ The number of trafficked women within the three years between 1985 and 1988 in one out of 13 counties in Jiang Su Province is nearly 6000. See Zhuang (1991), p. 102.

have been trafficked in their divorce petitions apply the court definition of trafficking. It is not theoretically impossible for someone in an unsatisfying marriage to make trafficking allegations in retrospect, according to broader definitions of trafficking (such as for-profit marriages arranged by parents against the will of daughters), but the women in these verdicts are likely not informed enough to make retrospective allegations such as these. Their allegations of trafficking are more likely based on stereotypical definitions, wherein kidnapping and deception are deployed to transport these women and coerce them into marriage through illegal confinement. In the 1990s and early 2000s, many women were not even aware that beating and other forms of physical abuse constituted domestic violence (Liu and Chan, 1999, p. 1478), regarding those as a normal part of family life. Even today, women need to be better informed of the legal definition of domestic violence. A similar situation can also be applied with regard to trafficking, for the broader definition of trafficking that includes some arranged marriages is commonly adopted in academia but not by the general public, including these underprivileged women. Women would have to be particularly informed to become aware of non-stereotypical trafficking scenarios and make allegations accordingly; if they are that informed, they might also know that these allegations do not make a difference in divorce petitions.

4. Results

4.1. The verdicts

The highly standardised divorce verdicts are generally two to three pages in length, featuring five fixed components presented in order. The opening section presents the basic information concerning the plaintiff and defendant, including names, gender, hometown, and current residence. The following section states the type of case—divorce in the scope of this study—and the presence of litigants and lawyers. If a defendant is absent, as is often the case in my sample of verdicts, a statement in this section declares that the defendant declines court summons absent of valid justification, and trial proceeds without the defendant. The next section includes the statements by the plaintiff describing the status of her marital relationship and the reason that she wants a divorce. In my sample, the first sentence in this section features the plaintiff claiming herself having been trafficked in this region and then sold or “introduced” to her current husband. This claim is then followed by noting whether or not they have children and are registered for marriage officially. The bulk of this section is devoted to the reason for divorce, usually in a briefly summarised fashion including one or more items, ranging from lack of an emotional bond due to trafficking, to battering, quarrelling, and family conflicts (such as issues of gambling). The conclusion of this section points to a “broken” relationship, which is the official condition stated in civil law under which divorce can be granted. Following the plaintiff’s statements is the section for statements by the defendant. If the defendant is present in court, he usually denies the claims of the plaintiff or asks for a different property division. The last section documents the court’s verification of documents presented, such as marriage certificate and birth certificate, and the court’s opinion concerning whether the marital relationship is “broken” and the decision either to grant or deny the petition.

4.2. Rates of grants and denials

Among the 100 unique cases in this sample, only 13 divorces were granted on their first attempt (Table 1). The duration of separation has a relatively prominent role in the decisions compared to other factors outlined in the Marriage Law. In some of these granted cases, the couple has been separated for at least five years, and more likely, longer than ten

Table 1. Case counts by decision and number of attempts

Decision\No. attempts	1st attempt	2nd attempt	3rd or more	Total
Granted	13 (26.5%)	36 (85.7%)	8 (88.9%)	57
Denied	36 (73.5%)	6 (14.3%)	1 (11.1%)	43
Total	49	42	9	100

NOTE: Chi-squared test: $\chi^2 = 36.42$, $df = 2$, $p < 0.001$; percentages presented are column percentages that indicate the proportion being granted or denied among cases on a certain attempt.

or even 20 years, with little to no contact in the meantime. In one case, the plaintiff is the husband whose bought wife escaped and lost contact after a month; by the time of the petition, they had been separated for five years. However, the duration of separation is by no means a universally decisive factor in divorce attempts, as couples separated for more than ten years could still be denied a divorce.⁶ Nonetheless, the longer the separation, the less the judge sees the marital relationship as repairable.

As shown in Table 1, petitions in the first attempt were rejected at the rate of 73.5%, while petitions in the second or third were granted at a much higher rate, 85.7% and 88.9%, respectively. The grant rates among different attempts vary significantly ($p < 0.001$). This is not surprising given the two – for practice in contested divorce cases; in the second attempt, the marital relationship is almost surely deemed “broken,” given the existence of a previously denied petition. If the plaintiff remained separated from the defendant and filed another petition, judges would explicitly point to this fact in the verdicts as the criteria of the marital relationship being seen as broken. Although a previously denied attempt can substantially increase the chance of getting a divorce granted, there is still no guarantee. In the case of *Lan and Wu*, Lan filed her first petition for divorce in 2012, citing domestic violence and family conflicts, but was denied. She filed three additional petitions which were all denied, and finally filed her last petition in 2015. Even on the third attempt, the chance of being denied may not be negligible. In the case of *Zhang and Song*, their eldest son not agreeing to his parents’ divorce was cited as one additional reason why the marital relationship remains strong.

4.3. Trafficking as ignored by the courts

Of the 100 cases, 99 involve plaintiffs who are women claiming to have been being trafficked; in 97 cases, sold to her husband, and in 2 cases, sold by her husband to others. Ten of them were younger than 18 years old; the youngest was 11. The statements of trafficking include varied levels of detail, with some describing how the women were forced into the coerced marriage:

“In January of 1986, when the plaintiff was 16, she was trafficked from her hometown in Sichuan Province and sold to the defendant. She tried running away several times but failed.”

The plaintiff was trafficked and sold to the defendant on March 22, 2002, but she resisted with full force and successfully escaped. The defendant was then traced to her hometown in He’Nan Province and threatened to kill her family. The plaintiff was scared and gave in. She went back to the defendant’s home.

⁶ In *Yu and Liu* (俞某梅和刘某辉)’s case, the couple separated in 1999 due to husband’s gambling and battering, yet the first petition in 2012 still was denied. In the next year 2013, Yu filed a second petition, and the divorce was granted.

Other statements are very brief:

“The plaintiff was trafficked and sold to the defendant in GA city, YY town in 1987.”

Among the 100 cases with allegations of trafficking, the courts in 74 cases ignored these allegations by either claiming the plaintiff and the defendant were “introduced” without trafficking being mentioned, or by stating that the plaintiff failed to provide evidence. In the aforementioned case⁷ where the plaintiff was trafficked and sold at 16, the court stated:

In 1986, the plaintiff moved from Mian’yang, Sichuan to this town and was introduced to the defendant. They started cohabiting and had a good relationship... even though the couple didn’t register themselves for marriage, they have cohabited for more than 20 years. Since they started cohabiting before 1994, they have met the requirements for factual marriage and thus are married under the status of factual marriage.

In a different case⁸ where the plaintiff claimed she was raped and impregnated, and the marriage certificate indicates a registration date after the birth of all three children, the court stated:

“The plaintiff and the defendant were introduced and registered for marriage voluntarily. The marriage is valid.”

In the rest of the cases where the court did acknowledge trafficking, the fact of trafficking was not deemed to be in conflict with lawful marriage. In one case, the court states:

“The plaintiff was trafficked to this town in June 1994 and registered for marriage in 1995. . . . They obtained their marriage certificate from the local government in 1995. Their marriage is lawful and should be protected by law. ”

4.4. “Rice is cooked”

Among the cases where trafficking was acknowledged by the courts, many women indeed lived with their husband for years and did not run away immediately once they regained their “freedom.” The reasons for this are often not offered, or assumed to be apparent, except in five cases where either the plaintiff section or the court due diligence section reveal some rationale. All of these cases mention pregnancy or children. In one case, the plaintiff claimed there was no emotional foundation between her and her husband—it is because of her children that she barely managed to cope with the marriage. In three other cases, police officers from the hometown of the trafficked women were able to trace the trafficking routes, locate the victims, visit them in their buyer’s household, and ask them whether they wanted to return to their hometown. It was stated that the plaintiffs were willing to stay because they had already given birth. In the last case, the parents of the trafficked woman found their daughter Dai in the buyer household and seemed to have a particular understanding of their daughter’s situation. In this case, the plaintiff claimed she was trafficked at the age of 15, “becoming husband and wife” with her husband, and gave birth to a daughter at 16 while isolated from the outside world for two years. Once her parents were able to find her at her current residence, this was the outcome:

⁷ Deng and Zhou (邓某某周某某).

⁸ Wang and Liu (王彩莲刘兵考).

“They came and visited in An’Hui Province, but then discovered ‘rice is cooked.’ They persuaded her to get married. Eventually she and her husband went to register for marriage in November 2009.”

“Rice is cooked” in Chinese refers to any process that is irreversible; in this situation, it refers to pregnancy and delivery of children, which is both physically and socially irreversible. The unstated logic is that once a woman gets pregnant and delivers children, she should perform her duty as a mother in that household. The household where she grew up has no space for her anymore and no other household would accept a woman with children except her current household. So, the best option is to get married and have the marriage protected by law.

This reasoning extends to “voluntary” registration for marriage after children have been born. In extremely brief wording, 22 cases mentioned, in either the plaintiff section or the court’s due diligence section, the term “make-up registration” (Bu Ban, 补办), which usually suggests that a formal certificate is obtained after the substantial activity occurrence. In this situation, it refers to a marriage certificate registered after children’s birth. In one case, this logic is explicitly spelled out:

“The plaintiff made a sacrifice for her children and went to register for marriage after the relentless begging from the defendant.”

Couples have to register for marriage after they have children because their children cannot be formally registered in the household system (Hukou) if born out-of-wedlock, and therefore are deprived of the associated social, educational, and medical benefits. A child without local Hukou cannot attend local public schools. Many trafficked women are aware of this issue and specify it in their statements. For example, Yi stated in her case:

“Because her children cannot get registered in the Hukou system if their parents are not married, they registered for marriage at ZF County’s office in May 2015.”

That was seven years after her first son was born and five years after her daughter was born. Her son was about school age and needed to enrol in elementary school. Needless to say, there are many other cases where the origin of the marriage certificate is more dubious. Terms such as “coerced,” “threatened,” “against my will,” “coaxed” sporadically showed up in the verdicts. In some cases, more disturbing details were included:

“The plaintiff was sold to the defendant for 8500 yuan and he used the ID number provided by the trafficker to register for marriage.”

“The plaintiff was imprisoned in the home of the defendant, gave birth to her first child, and was then coaxed by the defendant and his family into marriage registration in MTJ county.”

4.5. Conventional cultural norms in judge’s opinion

Parallel to the court’s prevalence of ignoring the trafficking allegations is the presence of normative doctrines in judges’ opinions as to whether or not a marital relationship is repairable and, if so, how to repair it. With regard to the former, judges primarily look at the duration of marriage and presence of children. Despite frequent allegations of battering (49%), family conflicts (54%), unlawful confinement (14%), and separation (56%), in addition to trafficking allegations, one highly consistent statement is as follows:

“The plaintiff and the defendant have lived together for about thirty years, raised four children together, and have a solid marital relationship.”

This statement suggests that many judges see relationships as good, provided that the couple have cohabited long enough and raised children together. Apart from the issues of duration and children, “voluntary” registration for marriage, replacement of lost marriage certification, occasional visits, and children’s disagreeing opinion can all serve as subsidiary evidence indicating good marital relationships.

Once a marital relationship is deemed to have solid foundations and is thus reparable, judges sometimes express their opinions on how to fix it. In Wang and Xing's case, the judge stated:

Their daughter XJZ has claimed in court a good relationship between her parents. She doesn't approve of her parent's divorce. As long as both parties better understand each other, be more understanding for children, and collectively preserve this equal, harmonious, civil marital relationship, you can remain a happy intact family.

On top of this advice to be more understanding, the judge would sometimes make suggestions to the plaintiff, as in Fu and Zhang's case:

"Meanwhile, the plaintiff should not just focus on her grievances. The plaintiff should think about her roles in the family and the corresponding responsibilities to the family and the society."

Children also feature as reasons for telling the couple why they should repair their relationship.

"The couple have a minor child – an intact, harmonious family will be better for a child in development."

4.6. The legislators

The Explanation first illustrates and stresses the freedom to marry, as articulated in Article 5, and then provides detailed information on the contested views within the legislating body evident in Article 11, Rescindable Marriage, which pertains to the question of why coerced marriage is defined as rescindable marriage rather than invalid marriage, as well as why it is necessary to limit the rescinding window to one year.

With regard to how to define coerced marriage, the legislating body bifurcates on whether to define it as invalid (无效) or rescindable (可撤销) marriage. One group sees invalid marriage as a better option, because only invalid marriage gives the state the power to revoke a coerced marriage. The underlying assumption is that marriage registration is in essence an "administrative legal action (行政法律行为)," which means that even though the application is made by the marrying couple, it is granted by the state, and is thus "administrative." Therefore, only the state has the right to revoke a coerced marriage, and correspondingly, coerced marriage needs to be defined as invalid marriage in order for the state to intervene. The other group deems rescindable marriage as the proper term, since invalid marriages are those harmful to the entire society, while rescindable marriages are those jeopardising private interests, and coerced marriages belong to the latter category. In other words, the state needs to intervene in marriages that threaten social stability but refrain from intervening in marriages that pose little societal harm. In this view, only the coerced party has the right to rescind their marriage, and if the coerced party has already established "emotional foundations" with her husband and children, it is improper to declare the marriage invalid. The second view dominated the discussion and was passed into law: coerced marriages are defined as rescindable marriages, while bigamy, inbreeding, one party underage or with severe disease are defined as invalid marriages.

The rescinding window is limited to one year, primarily due to concerns with social stability: "If the coerced party doesn't invoke this right for a long time, without officially rescinding from the marriage, it would render the relationship in an unstable state,

detrimental to the rights of the couple and especially harmful to the rights of their children. It is also jeopardizing family and social stability.”

5. Discussion

This paper argues that the primary reason that divorce petitions by trafficked women are denied in court is the legal consciousness within the Trafficking Circuit that assumes there is no better way to deal with the consequences of trafficking than preserving the “family” once “rice is cooked.” In particular, the legal consciousness of the state, as reflected in the words and actions of state actors such as legislators and judges, legitimises and perpetuates this shared legal consciousness within the circuit.

The relevant law is undoubtedly hegemonic because trafficking-based marriages, although coerced and illegal in theory, are fully legal in practice as long as the couple cohabit for a substantial amount of time and raise children together. Specifically, if the trafficked woman went to register along with the buyer, the marriage certificate speaks for the legality of their marriage. If she did not, the marriage is still legal based on the notion of factual marriage, as she has “voluntarily” relinquished the opportunity to rescind from the coerced marriage, effectively “giving consent.” Under the current law, the legal consequences of trafficking are thus avoided through marriage.

However, the systematic neglect of trafficking claims as revealed in the verdicts can only be partially justified by the hegemonic law. Also reflected in this systematic neglect is the legal consciousness of judges. Although trafficking claims are sometimes dismissed with the usual “fail to provide evidence” argument, they are more commonly ignored by judges in a more blatant manner—when the plaintiff claims to be “trafficked” and “sold” to the buyer household, a judge can claim that she “moved” from her hometown and “got introduced” to her husband. Without checking the plaintiff’s statement, a reader cannot even tell that trafficking allegations are involved in the case. In my view, this is an even more pernicious form of legal consciousness than patriarchal comments by judges asking women to prioritise family and society over their own grievances, since judges often do not consider it compulsory to address trafficking claims in any way. From the perspective of these judges, long-term cohabitation and childrearing activities outweigh the alleged trafficking origin of the family, based on the underlying assumption that the couple has already lived as a family for years, and families are families.

Moreover, this legal consciousness of judges aligns with that of legislators, as revealed in their justifications for the hegemonic law. Consider a reform proposal providing an option for the trafficked women to retain the right to divorce their buyer husbands at any time, unconditionally, at their will, with guaranteed child custody, alimony, and child support. An option like this is far from sufficient to fully protect the trafficked women or for anti-trafficking purposes, but it is seen as too threatening to even be introduced. As explicitly stated in the Explanation (2002), the law is written to preserve families and social stability, and the time window for rescinding from coerced marriage is limited to one year for this reason. Coerced marriage is considered to only jeopardise private interests, as opposed to collective social interests, and should be best dealt with by the coerced party in the marriage. The legal consciousness of the legislators indicates that families should remain stable if the trafficked women have already “established emotional foundations, in a good relationship, and in particular had children.” The state law of delegating the responsibility of giving consent to coerced marriages to trafficked women themselves is far from incidental—it is a deliberate calculation. In the case of trafficking and trafficking-based families, declaring marriages invalid and thus enabling direct state intervention would threaten the institution of family—a particular type of family that privileges heterosexual married couples with biological children. And if the trafficked

women themselves “choose” to stay in the marriage, the state simply “respects” individual freedom, which conveniently solves a potential dilemma in a way that aligns with the goal of preserving families.

Under this institutional priority of “family” preservation, the legal consciousness concerning trafficked women is severely constrained. A woman who was trafficked stands little chance in fighting against structural and systematic oppression, given limited social, cultural, and financial capital. In addition to the hegemonic Marriage law, the Hukou system further reifies the priority of family preservation. Supporting the goal of preserving the family of married parents as mentioned above, both national and provincial policies confine social benefits to the children born within wedlock. Until 2023, single women in many regions of China were not eligible to register pregnancy in hospitals. Even though they may still receive prenatal care, they can have a hard time getting birth certificates for their children without a marriage certificate. The absence of marriage certificates also makes it difficult to obtain Hukou for their children, which is of vital importance in China in obtaining most social benefits, including education and healthcare. All of these laws deliver an unmistakable message that a family comprising married parents is the sole legitimate institution for bearing and raising children. In this environment, trafficked women who stay with their buyer household have no option but to “voluntarily” register for marriage. Out of the 100 cases in my sample, the plaintiffs in 22 cases resisted marriage until their children were born and then went through “make-up registration” with their husbands in order to help their children enrol in school.

In some cases, even the natal families of trafficked women may contribute to an already dire situation. Even if a trafficked woman wants to stand up for herself by rescinding from the coerced marriage within the permit window, her natal family might not provide needed support and resources, due to the notion that “rice is cooked.” In the case of Dai, who was underage when trafficked, when her parents did find her after a couple of years, and realised their daughter already had children, they persuaded her to marry the buyer, who had culturally become her husband and the father of her children. The daughter is thus no longer deemed eligible to return home with her natal parents. While the logic behind “rice is cooked” is not specified in the verdict, I venture to speculate that it could potentially include two rationales. One is that the parents may view it as a moral responsibility for their daughter to stay. In societies dominated by Confucian thoughts, once a woman has culturally become a wife and a mother, she should conform to those roles in her own household (Gao, 2003, p. 116), which might be seen by some to apply even in the case of trafficking. Another rationale may be that a once-pregnant daughter is no longer popular in the local marriage market and thus lowers the potential to bring in a bride price.

Even though this is the only case in my sample of verdicts to bring up this kind of detail, the situation faced by Dai in coerced marriage may not be unique with regard to the support and resource she receives from her natal family. Despite being outlawed, arranged marriage cases are quite common in divorce verdicts databases—a quick search by the author yields almost 7500 results. By definition, arranged marriage means that the daughter’s preference of whom and whether to marry is far less important than her parents’ arrangement. Many parents need the bride price from their daughter in order to pay the bride price for their son (Jiang, Zhang and Sánchez-Barricarte, 2015, p. 222; Li and Li, 2021, p. 1332). In one case, the plaintiff claimed she was arranged into a marriage against her will when she was not yet 15. Although the reasons for the parents’ choice were unspecified, it may have been that they wanted to save on childrearing costs and derive profit early (Gupta and Li, 1999, p. 622; Warner, 2011, p. 239). In such an environment, a trafficked daughter would likely feel she has no place to return to, especially once her parents know of the pregnancy, and thus has to “voluntarily” stay with her buyer household.

Given the prevailing sense of legal consciousness, this paper argues that there is a Trafficking Circuit that is not limited to traffickers and buyers, but also includes the state and the natal families of trafficked women, who also identify with and perpetuate the core idea that “rice is cooked” and that “families” and children are of higher priority than the trafficked women themselves once they have been impregnated.

It is this relational understanding shared within the circuit that sustains and justifies the trafficking transactions and enables marriage to act as an obfuscation medium which functions to insulate the legal consequences of trafficking within a limited temporal space. The relational work of categorising relationships is inherently performed through the law and in court. The state leverages the local, social, and cultural definition of marriage as involving cohabitation and childbearing, and, by relying on this legal category of marriage, masks the underlying dynamic of illegality in the practice of trafficking. In court, this obfuscation manifests as a conscious assignment by the judges of three pairs of possible relationships among the plaintiffs and the defendants: husband and wife, mother and father, the buyer and the bought. The judges privilege the first two and ignore the third, thereby phasing out through marriage the legal consequence of trafficking, as implied in the buyer and the bought relationship. In theory, the buyer should be punished and the bought should be granted to leave. Yet in reality, the buyer gets exonerated, seen as a husband, a father, and a breadwinner, and retains his marriage without even showing up in court; the bought gets her divorce petition rejected and is instructed to think of her responsibility as a wife and a mother and her responsibility to society. Structurally, the trafficking transaction is thus legally bundled with the marriage—cohabitation and childrearing—that ensued from the transaction. The state superficially gives “the choice” to the trafficked women and seemingly respects their decision even when these women do not have any other option. This situation would be far different if the state were to provide the aforementioned option for these women: to retain the right to divorce unconditionally with guaranteed child custody, alimony, and child support. In the absence of such options, the state essentially acts as a broker providing the trafficking transaction with a legal cover achieved through delegation of responsibility.

In summary, divorce petitions by trafficked women are denied in courts in fundamentally different ways than they are denied in regular contested divorce cases. The high rate of denial of divorce petitions by trafficked women reflects the hegemonic legal consciousness of the state, which stands in contrast to its official stance of being anti-trafficking. This hegemonic legal consciousness is also inherently relational, constitutive of the shared understanding within the Trafficking Circuit, and is a potential barrier to legal reforms through the decoupling of legal practice from the law as recorded, even if reforms take place.

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