

Gender Effects on Judicial Decision-Making in Chinese Divorce Cases: A Qualitative Analysis

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Abstract: After decades of feminist development and a growing number of women in the legal profession, scholars continue to debate whether gender influences judicial outcomes. Most existing research focuses on Western judicial systems, while studies on China remain limited. This paper explores gender differences among Chinese judges in divorce cases through 23 semi-structured interviews. Findings show male and female judges differ in understanding marital breakdown, trial perspectives, stress coping, and mediation styles. Female judges tend to adopt a care-oriented approach, while male judges lean toward a justice-oriented, rule-based stance. All interviewed judges confirm that gender does not undermine judicial fairness, as decisions remain grounded in law and discretion. This study supports Gilligan's "different voices" theory and reveals how gender shapes judicial practice in Chinese divorce proceedings.

Keywords: Gender difference; Female judges; Divorce cases; Judicial decision-making; Chinese judiciary; Ethic of care; Judicial justice.

1. Introduction

Over the past decade, China has maintained a persistently high divorce rate. According to statistics released by the Ministry of Civil Affairs of the People's Republic of China in the Statistical Communique on the Development of Civil Affairs in 2024, the number of marriage registrations nationwide has decreased significantly compared with the previous year, while the number of couples undergoing divorce procedures has shown a slight fluctuation. Divorce procedures in China mainly include civil registration and court judgment or mediation, with a certain proportion of cases handled through each channel. Marriage has always been treated with great rigor in Chinese society. A divorce case not only involves the dissolution of the marital relationship between husband and wife but also entails conflicts between the two families involved. Therefore, the proper handling of divorce cases is crucial for reducing the appeal rate and improving court efficiency [1].

In China, most divorce cases are tried by district courts, except for foreign-related divorce cases under specific circumstances and cases where the Supreme People's Court designates jurisdiction to intermediate people's courts or other competent courts [2]. Additionally, divorce cases are unique in that each case involves one male and one female litigant. Previous studies have also indicated that male and female judges exhibit differences in the trial of family law cases [3]. Thus, exploring the trial of divorce cases in district courts enables us to better understand the current status of divorce adjudication in China, from both the perspective of judicial procedures and gender differences. The purpose of this study is to explore the differences between male and female judges in the trial of divorce cases and ultimately determine whether such gender differences lead to judicial injustice.

Existing academic research has extensively addressed gender differences in the judicial system. Scholars have primarily focused on areas related to liberation, discrimination, and human rights, where male and female

judges may demonstrate significant disparities in determining guilt or innocence. However, such cases are rarely adjudicated in Chinese courts. With the promotion of the sentencing standardization policy, differences among Chinese judges in criminal, administrative, and commercial trials have been narrowed [4]. In contrast, judgments in divorce cases are more likely to reflect judges' personal tendencies and value orientations.

Furthermore, American scholars have placed considerable emphasis on judges' pre-judicial experiences, particularly their experiences in law school and as practicing lawyers. This is because women often face overt discrimination when entering the legal profession [5] and struggle to establish their distinct identities within the male-dominated legal field [6]. Such pre-judicial experiences are believed to exert a lasting impact on their subsequent careers as judges. In China, however, law school graduates can become judges after passing the national unified judicial examination, with equal standards applied to both male and female candidates. While gender differences in the judicial system are widespread, this study adopts a novel perspective by integrating these differences with the unique contextual characteristics of China.

2. Methodology

2.1. Research Design

This study adopts a semi-structured interview design. A total of 23 judges from the same district court were selected as research participants. Under China's institutional context, gaining access to interview sitting judges presents considerable practical challenges. In this research, adequate access to participants was secured through established personal networks. The researcher's long-standing local connections and familiarity within relevant professional circles helped secure high willingness among potential participants to take part in the study, ensuring a sufficient pool of eligible interviewees. Meanwhile, prior familiarity with the target group supported the use of purposive sampling,

allowing the selection of a sample closely aligned with the research focus.

Each interview consisted of approximately 30 open-ended questions, with most interviews lasting 40 to 60 minutes. From the initial stage of interview protocol design, the research received professional guidance from serving judges. Two senior judges provided detailed feedback on question design, offering insights into daily judicial practice and helping to ensure that the instrument reflected real-world courtroom dynamics rather than purely theoretical speculation. This expert consultation anchored the research in authentic judicial operations and enhanced the validity of the data collection process.

2.2. Why divorce cases

Divorce cases were selected as the focal context for three key reasons. First, divorce cases inherently involve one male and one female litigant, creating a natural structural basis for observing gender effects in judicial behavior [7]. Second, marriage and divorce carry profound cultural significance in Chinese society, and judges commonly prioritize mediation over strict legal adjudication in family disputes, which amplifies the role of judicial discretion and personal orientation. Third, the outcome of divorce proceedings is strongly shaped by the parties' preferences rather than being dictated solely by legal rules, requiring judges to exercise strong communication and empathy skills. These characteristics make divorce cases an ideal setting for examining gender-related differences in judicial practice.

2.3. Question design

The interview questions were structured into three thematic modules. The first section collected basic demographic and professional information to establish the background of each participant. The second section focused on judicial practice, covering core issues including infidelity, domestic violence, and child custody. Hypothetical case scenarios were also used to elicit consistent and comparable responses. The third section concentrated explicitly on gender, asking judges to reflect on perceived gender differences in decision-making, work style, and stress management. This three-part structure ensured comprehensive data coverage while maintaining flexibility for participants to elaborate on their practical experience.

2.4. Selection of interviewees

Purposive sampling was used to ensure the suitability of the sample. The 23 interviewees included 10 male and 13 female judges, all of whom were married, middle-aged, and had at least 15 years of judicial experience. This homogeneity in age and career experience helped minimize confounding variables and strengthened the focus on gender as the key differentiating factor. All participants worked in the same district court, which controls for regional variation in judicial culture and local policy implementation. The deliberate inclusion of more female judges supported in-depth exploration of female judicial perspectives, which constitute the core focus of this study.

3. Literature Review

3.1. In the practice: does different gender lead to different outcomes?

Scholars have long explored whether gender shapes

judicial decision-making. Early studies were limited by the small number of female judges, with a focus on judicial voting behavior. Some research found no significant gender differences. For example, Davis (1992) examined the U.S. Court of Appeals for the Ninth Circuit and found no evidence that female judges alter the nature of the law [8]. Similarly, Westergren (2004) and Walker & Barrow (1985) detected no assumed gender gaps among federal district court judges [9, 10]. Former Supreme Court Justice Sandra Day O' Connor also stated that a wise female judge and a wise male judge would reach the same conclusion [11].

Other studies confirmed observable gender differences in judicial practice. Female judges are more outspoken on women's issues and show distinct tendencies in criminal and economic cases [12]. Allen & Wall (1987) noted that female judges may display decision-making patterns closer to male judges in higher courts, but generally differ in family and gender-related cases [12]. In criminal courts, male judges tend to give more lenient sentences to female defendants, while female judges more often support women's positions [12, 13].

Female judges also render more liberal decisions in wartime and show stronger support for claimants in sex discrimination and employment discrimination cases [14, 15, 16]. They tend to interpret the same case facts differently and more strongly uphold constitutional equality for marginalized groups such as the LGBTQ+ community [17, 18].

3.2. Women's status in judiciary and marriage life

Historically, women were marginalized in law-making and judicial practice, and their formal entry into the judiciary is a relatively recent development [19, 20]. The legal profession exhibits a pyramid structure where women are underrepresented at senior levels, a phenomenon described as "the separation of women and the legal profession" [21]. Women in the criminal justice system are often viewed as "doubly deviant" and face victim-blaming attitudes, especially in sexual violence cases [22, 23].

In marriage, women have long held a disadvantaged legal and social position. Married women lacked independent legal rights in historical contexts, and traditional Chinese family systems granted women limited property and status [24, 25, 26]. Even in contemporary China, women often earn less than men, weakening their voice in family affairs [27]. Cultural attitudes still tolerate men's extramarital relations more than women's, placing women in a vulnerable position in marriage [28, 29, 30].

3.3. Female judges in China

Female judges constitute a growing and important part of China's judiciary. They accounted for 20% of Chinese judges in 1996 and rose to 22.3% in 2005, with the male-to-female ratio at 1.84:1 in 2015 [31]. Female judges are widely described as empathetic, patient, and communicative, with particular advantages in mediating family disputes. Their language style is emotionally resonant, precise, and relationally oriented [32].

Despite progress, female judges face work-family conflict, occupational risks, and limited promotion opportunities [33, 34, 35]. Many struggle to balance judicial duties with family roles, and their career advancement is often more difficult than that of their male colleagues [36].

4. Theoretical Framework

4.1. The concept of gender

The concept of gender can be understood from both biological and sociological perspectives. According to feminist theory, gender can be divided into physical sex and social gender [37]. From a biological or anatomical viewpoint, gender is based on natural attributes and exists as the physiological characteristics of human beings [38]. Under normal circumstances, gender is divided into male and female, distinguishable by physiological structures such as sex chromosomes and sexual organs [39].

From a sociological perspective, gender has strong cultural presuppositions; that is, gender is socially constructed rather than innate [40]. The anthropologist Margaret Mead first used culture to explain gender, noting that temperament differences between men and women are shaped by specific cultural contexts [41]. In *The Second Sex*, de Beauvoir proposed that women are made rather than born. Later, Gayle Rubin formally put forward the modern concept of gender as socially and culturally constructed characteristics and behavioral differences between men and women [42]. In this study, gender specifically refers to social gender rather than biological sex.

4.2. Theory of gender difference

Gender differences are reflected in three aspects: physiological structure, non-physiological structure, and social role.

First, physiological differences are objective and immutable. Biologists have confirmed that gender differences stem from chromosomes, sex hormones, and brain structure [43]. These physical differences form the natural foundation for intellectual, behavioral, and cognitive differences between men and women [44].

Second, non-physiological differences mainly involve intelligence and physical ability. Men tend to use linear and abstract thinking, while women are better at holistic and intuitive thinking [45]. Men generally have stronger physical strength, while women perform better in perception, emotion, and communication [46].

Third, social role differences refer to the behavioral norms and expectations shaped by social culture. From birth, individuals accept and internalize gender-specific behavioral standards [47]. This leads to a double standard in the social evaluation of men and women, as well as a distinct division of family and social roles [48].

4.3. Feminist legal theory

Feminist legal theory emerged in the 1970s with the core goal of promoting gender equality in politics, society, and economy [49]. A core proposition is that almost all public laws in history were formulated by men and carry gender bias [50]. Liberal feminism, radical feminism, and cultural feminism have formed different theoretical orientations [51].

Carol Gilligan's different voices theory is the most influential framework. It distinguishes two moral logics: the ethic of justice (male-oriented, focusing on rules and rights) and the ethic of care (female-oriented, focusing on relationships and empathy) [52]. This theory has been widely used to explain gender differences in judicial decision-making.

Many studies have supported Gilligan's view, confirming that female judges tend to adopt care-oriented judicial styles

[53]. However, critics argue that the theory oversimplifies gender differences and ignores internal diversity within gender groups [54]. Some also warn that the "different voices" idea may strengthen traditional gender stereotypes [55]. Despite these limitations, the theory remains the core theoretical basis for this study.

5. Gender difference in Chinese court

Gender plays an important role in social life and shapes individual attitudes and behaviors. Although judges are expected to maintain neutrality in judicial practice, their judgments are inevitably influenced by personal experience and social roles. The social divisions and role expectations between men and women may lead to different attitudes and decision-making styles in case handling. For judges dealing with divorce cases, life experience plays a particularly important role in mediation and fact-finding. Therefore, the gender of judges may affect their working styles and case evaluation [56].

In this study, judges were asked about details of case handling and specific divorce scenarios. Based on their responses, this section compares the differences between male and female judges in four dimensions: understanding of marital breakdown, trial perspectives, stress coping capacity, and working styles, as well as their general views on gender differences in adjudication.

5.1. Different understandings about factors that lead to the emotional breakdown

Emotional breakdown constitutes the core legal criterion for adjudication in divorce cases. Pursuant to Article 1079 of the Civil Code of the People's Republic of China (2021), a divorce shall be granted if mutual affection has indeed broken down and mediation proves ineffective [57]. Nonetheless, the application of these circumstances remains fact-intensive and highly dependent on judicial interpretation. The law does not exhaustively define or list all scenarios that constitute emotional breakdown, which still leaves considerable room for judicial discretion in practice.

even if the law has these provisions, we will give the couple a chance to repair their relationship in the mediation process as long as the circumstances are not too serious, and will not judge them to divorce at the first prosecution.

Judges interviewed stated that they do not fully rely on statutory grounds alone. Instead, they tend to give couples opportunities to repair the relationship unless the circumstances are serious. Thus, judges' personal understanding of emotional breakdown directly affects case outcomes.

Female judges are more sensitive to infidelity. Among 13 female judges, seven regarded infidelity as the most critical factor damaging marital relations, while only three out of 10 male judges shared this view. A female judge commented:

Derailment is a serious problem in marriage. And it may be because women have spirit cleanliness. I do not think any woman can totally accept it. For many women, men are their sky. If the husband is derailed, it is a radical change for the wife.

Female judges emphasized that women care more about emotional loyalty and spiritual purity. In practice, women litigants often tolerate husbands' infidelity to keep the family intact, while men are far less tolerant of wives' derailment. Influenced by traditional culture, judges tend to hold a

negative attitude toward marriages involving a wife's infidelity.

Female judges also consider a wider range of factors, including cold violence, bad habits, and conflicts over children's education, which were rarely mentioned by male judges. One female judge observed:

Although educating children seems like a trivial matter, it will slowly affect the marital relationship, which will lead to emotional breakdown if it lasting for a long time. Not only this thing, but any small thing can cause big contradictions. In fact, there are very few major events in marriage, and life is constructed by many trivial things.

For male judges, long-term separation is the most important indicator of collapsed marriage. Eight out of 10 male judges highlighted separation, viewing it as proof that the couple has already entered a de facto divorced state. One male judge stated:

Generally speaking, the case of divorce can be prosecuted once, accounting for less than 10%. Under normal circumstances, it is necessary to see whether they still live together, and separation time and the reason for separation. We will also assess the degree of harmony in this family. It is not just to look at the parties, but to listen to the attitudes of the children and parents.

In addition, male judges frequently mentioned the relationship between the wife and parents-in-law as a key factor, while no female judge regarded it as essential.

In summary, male and female judges focus on different triggers of marital breakdown. Female judges emphasize emotional betrayal and daily trivialities, while male judges focus on factual separation and extended family relations.

5.2. Trial perspective

Female judges often bring family roles into their trial perspective, while male judges rarely do so. This difference is closely related to women's heavier involvement in family life and unpaid care work.

First, female judges frequently take a mother's perspective. When deciding child custody, they prioritize the best interests of the child and tend to listen to children's views privately to avoid pressure from parental conflict. One female judge noted:

I usually ask this child privately. It will cause a bad impact for the child to watch their parents quarreling in the trial... Sometimes, in order to compete for the support of the children, the two litigants will take turns to persuade the children and even use intimidation. I think this is very cruel to the children.

Second, female judges often use a wife's perspective in mediation. When communicating with female litigants, they draw on personal marital experience to provide comfort and practical suggestions. One female judge explained:

We are all women, and the problems face in marriages are nothing more than those. Sometimes I see a couple who quarrels because of a little thing and then comes to divorce. I feel so pity. I might persuade the wife and share my approach to dealing with family conflicts.

A small number of female judges also mentioned the perspective of mother-in-law when analyzing conflicts between mothers-in-law and daughters-in-law:

The relationship between the mother-in-law and the daughter-in-law is hostile. They all love a man, how could there be no contradiction? But it must be handled correctly. As a mother-in-law, we should not interfere, and let them solve problems by themselves.

Male judges maintain a more professional and neutral identity. They rarely integrate family experience into trials and focus more on legal facts and procedural rationality.

5.3. Stress Coping Capacity

Divorce cases may trigger strong emotional resistance and even violent risks from litigants. Judges must balance justice and personal safety.

When facing aggressive or threatening parties, most female judges choose to compromise appropriately and extend mediation to avoid conflicts. A female judge stated:

A judge cannot be injured because of the divorce case. The judge is also an ordinary citizen. I always say to my daughter "I am only a housewife when I am off duty." I don't want to create any fierce disputes.

Female judges prioritize personal safety and tend to avoid high-risk judgments. They are also more likely to feel guilty if litigants exhibit self-harm or extreme emotions.

In contrast, nearly all male judges stated that they would issue judgments firmly in accordance with the law. One male judge emphasized:

In the face of such a violence petitioner, the first thing as a judge is to be not afraid. You can't make him feel as if he has seized the soft underbelly of the court. As a judge, the executor of the law. And I must uphold the dignity of the law. The gentle solution is not the way to solve the problem. We still have to be decisive when the time comes, to withstand the pressure of judgment. As long as your judgment is legal, you should stick to it.

Male judges are less affected by emotional pressure and maintain stronger rationality in risk situations.

5.4. Gender impact on work

Gender differences significantly influence judicial working styles, especially in mediation, which is mandatory in Chinese divorce cases.

Both male and female judges acknowledged that female judges are more patient, meticulous, and emotionally sensitive. One judge commented:

The divorce is a sharpening of the contradictions formed for a long time. Especially women may be a little depressed. Who can they talk to? They can only tell the judge. Therefore, women are more patient and the judge can let her confide. When the litigant tells enough, there may be a relief of emotions, which is also conducive to our work.

Female judges are better at listening to female litigants' grievances and gaining trust. They are also more likely to incorporate women's unpaid family work into consideration when dividing property.

However, female judges are also more easily affected by negative emotions and sometimes show indecision in high-tension situations.

Male judges are generally described as decisive and neutral. They are less influenced by litigants' emotions and maintain authority in court. However, some male judges admitted a lack of patience:

I am especially afraid of them crying. Sometimes they repeat to talk a matter over and over again. At this time, I was a little impatient and might interrupt them "I know, you don't need to say more".

Male judges do not favor male litigants; they base judgments on evidence and procedure.

5.5. Judges' opinions toward gender difference

All judges interviewed agreed that gender differences exist but do not impair judicial justice. One judge stated:

The existence of differences makes sense. This kind of difference is not a misjudgment or a wrong judgment. It is because different people have different thoughts that lead to different outcomes. But the final result is fair and legal.

Another judge added:

When we work, we are all judges and there is no male and female.

In brief, gender differences in judicial performance are reasonable and limited. They do not violate the principle of justice but reflect the complexity and humanity of judicial practice in divorce cases.

Male and female judges exhibit notable differences in handling divorce cases. As Carol Gilligan noted, male judges tend to maintain greater neutrality, adjudicating from a judicial perspective with a focus on legal principles and justice standards. They are less susceptible to the influence of litigants and rarely rely on personal experiences in their rulings, embodying the "ethic of justice" [54].

In contrast, female judges adopt more diverse roles and approaches in divorce cases. They excel at communicating with litigants, particularly female ones, and pay close attention to litigants' understanding of the case and their emotional states. Beyond case facts, female judges also consider the judicial impact of rulings on litigants, demonstrating more humanistic care than their male counterparts. Additionally, shaped by China's unique cultural context, female judges, with their own similar life experiences, better understand women's marital predicaments and thus prioritize women's rights protection rather than adopting a uniform approach to both spouses.

The gender differences identified in this study are more reflected in judges' perceptions than in case outcomes, which is closely related to the selection of research methods. Firstly, during interviews, many judges stated that they had not previously recognized or reflected on such gender differences, indicating a gap between the researcher's focus on justice and judges' actual trial practices. This may have led to overemphasis on non-critical issues in interviews or the acquisition of superficial responses to key questions due to judges' lack of attention.

Secondly, while judicial decisions are influenced by multiple factors in practice, interviewees were asked to exclude these interferences during interviews, so their responses reflect their true views in an ideal scenario rather than actual trial decisions constrained by practical factors. Thirdly, this study adopted a qualitative rather than quantitative research method, focusing on interviewees' subjective perceptions rather than statistical analysis of judicial rulings. Furthermore, due to the privacy of divorce cases and the limited publication of relevant judgments, large-scale statistical data collection was not feasible.

In conclusion, the findings of this study primarily reflect differences in judges' perceptions rather than practical trial outcomes. This does not negate the significance of practical differences but highlights a limitation of the research method, which prioritizes interviewees' subjective views.

6. Conclusion

This research lasted for half a year, during which I collected a wealth of valuable information from interviewees and

relevant literature. Through this research, I not only gained a deeper understanding of judicial work in China but also acquired comprehensive independent research experience.

In the interviews, I focused more on the personal thoughts of judges rather than the professional trends of legal practitioners. The judges shared not only their professional views but also their life experiences. Through the analysis of these materials, it can be found that male and female judges still exhibit certain differences in the trial of divorce cases. Female judges tend to handle divorce cases from a social life perspective; most of their views on cases are derived from personal life experiences, and they are inclined to integrate their social characteristics into their work. In contrast, male judges act more like a "pure judge" when dealing with divorce cases, and their judgments on cases are mainly based on legal provisions.

In addition, women's inherent characteristics make female judges more suitable for handling divorce cases. Their care and patience enable them to obtain more useful information in the process of communicating with litigants. These findings are consistent with Carol Gilligan's "different voices" theory. Female judges adopt more diverse strategies in mediation and pay greater attention to the feelings of litigants; they strive to understand the entire context of the divorce rather than merely focusing on the legal facts. Female judges also pay a certain degree of attention to the extra-legal facts of the case and demonstrate feminine characteristics throughout the trial process, which aligns with the standpoint of the "ethic of care". In contrast, male judges maintain a more neutral attitude and act solely as judges; they are barely influenced by other non-legal factors, which also confirms the connotation of the "ethic of justice".

Most importantly, even though male and female judges show differences in the trial of divorce cases, these differences do not affect the justice of the judiciary. Gender differences exist reasonably in all areas of life, and the judicial field is no exception.

Due to the particularity of divorce cases, this research has certain limitations. First, I did not adopt data comparison methods to further verify and emphasize my findings. This is because the outcome of divorce cases is dominated by litigants' willingness, and more than half of divorce cases are resolved through mediation, resulting in vague and incomplete case records. Second, Gilligan's theory, while providing a theoretical basis, has also limited the research direction to a certain extent by ignoring the impact of judges' daily life experiences on their trial decisions. Overall, this study provides a new perspective for exploring gender differences in the Chinese judicial system and lays a foundation for further related research.

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