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A Comparative Study of Divorce Systems between China and Japan

Liyan Sun

Department of Japanese Language, Zhijiang college of zhejiang university of technology, Shaoxing, CO 312000, China

Abstract: China and Japan are separated by a strip of water and have a long history of exchanging social and cultural systems. There are many similarities and differences between China's Civil Code and Japan's Civil Code in the marriage system. This paper focuses on the divorce system of the two countries and makes a comparative study. While affirming the advantages of China's divorce system, we can learn the advantages of the Japanese divorce system, and, provides positive meaning and function for the perfection of divorce system in China's basic marriage system.

Keywords: Divorce System; Civil Law; Comparison between China and Japan.

1. Introduction

With the continuous development of social economy, people's morality and values have also changed, and the traditional concept of marriage and family has been impacted. The divorce rate in China has also gradually increased, and although it has declined in the past two years, it has remained at a high level. Both China and Japan belong to the Chinese cultural circle, and there are many similarities in the concept of marriage and family, and there are also many references in legislation. While affirming the advantages of China's divorce system, we can learn the advantages of the Japanese divorce system, and, provides positive meaning and function for the perfection of divorce system in China's basic marriage system.

2. Similarities and Differences of Divorce System in China and Japan

2.1. Divorce Mode --Agreement Divorce and Litigation Divorce

There are two kinds of divorce in China and Japan, namely divorce by agreement and divorce by lawsuit.

2.1.1. Agreement Divorce

Negotiated divorce, also known as registered divorce, voluntary divorce, in China, it mainly refers to the termination of a marital relationship due to the agreement of both parties at the time and through the registration process. The definition of divorce agreement in Japan is similar, with differences mainly in the following aspects:

(1) Formal requirements: Article 1076 of China's Civil Code clarifies the form, content and registration requirements of divorce by agreement. The divorce agreement should state the intention of the two parties to divorce voluntarily and the matters such as child support, property and debt disposal, and require the husband and wife to register in person; Article 764 of the Japanese Civil Code applies the requirement for marriage declaration to the declaration of divorce agreement, and constitutes the formal requirements for divorce agreement. That is, both husband and wife and two adult witnesses must apply to the registered residence authority. If no application is made, the marriage relationship will not be dissolved even if the substantive requirements are met.

(2) Divorce cooling off period: Article 107th of China's Civil Code stipulates the length and legal effect of the cooling-off period for divorce. Within 30 days from the date the marriage registration office receives the application for divorce registration, either party who is unwilling to divorce may withdraw the application for divorce registration with the marriage registration office. But Japan has no cooling-off period for divorces.

(3) Withdrawal of divorce agreement: The Civil Code of Japan applies the annulment of marriage by fraud or coercion to divorce by agreement. If there is fraud or coercion between the spouses who divorce by agreement, the victim of fraud or coercion can request the withdrawal of the divorce agreement. But China has no such requirement

2.1.2. Litigation Divorce

In China, it mainly refers to a divorce system in which both spouses cannot reach a consensus on whether to divorce or the division of property, and file a lawsuit with the court. After trial, the court terminates the marital relationship through mediation or judgment. Litigation divorce is also a legal form of divorce in Japan, and the laws of both countries have stipulated the legal conditions for litigation divorce. Same legal conditions include bigamy or infidelity; Those who commit domestic violence, abuse, or abandonment; And those declared missing/life or death unknown; The differences are mainly reflected in the following aspects:

(1) Legal situation: Article 1079 of China's Civil Code stipulates legal divorce situation such as "those who have bad habits such as gambling and drug abuse and refuse to mend their ways after repeated education; those who have been separated for at least two years due to emotional discord; "Article 770 of the Japan's Civil Code stipulates legal divorce situation such as "spouses who suffer from severe mental illness and have no hope of recovery". Comparatively, the Chinese legal system can be more lenient in determining the criteria for divorce.

(2) Court mediation: The Civil Code of China clearly stipulates that court mediation is a statutory prerequisite procedure for divorce in litigation, while the Civil Code of Japan does not explicitly stipulate it.

(3) Trial institution: The China's Civil Procedure Law does not stipulate that divorce proceedings should be heard by a specific judicial body, but by the basic people's court. Japan, on the other hand, has established a special family court to handle divorce lawsuits.

2.2. Custody of Children

Articles 1084 and 1085 of China's Civil Code and Articles 766 and 771 of Japan's Civil Code have made special provisions about the custody of children. Both China's Civil Code and Japan's Civil Code give priority to negotiation. If the negotiation fails, China stipulates that the court shall make the judgment, but in Japan, it is stipulated that the decision shall be made by the family court. And both countries make judgments or decisions based on the principle that is most beneficial to underage children.

In addition, the China's Civil Code has made detailed provisions on the ownership of children's custody rights, visitation rights, and maintenance costs, but the provisions of Japan's Civil Code are relatively general, and only stipulate that the children should be guardianship when the parents agree to divorce, however, it is not limited to those who have been divorced for more than two years.

2.3. Division of Property

Article 1087 to Article 1090 of China's Civil Code and Article 768 and 771 of Japan's Civil Code both stipulate the division of divorce property, and respect the autonomy of the parties' will. If the negotiation fails, China stipulates that the court shall make the judgment, but in Japan, it is stipulated that the decision shall be made by the family court, and it is not limited to those who have been divorced for more than two years.

Compared with Japan's Civil Code, China's Civil Code has more detailed provisions on the division of property, and at the same time has made provisions on the joint debt of the couple and appropriate help for the party in difficulty.

2.4. Other Aspects

Articles 767 and 769 of the Japan's Civil Code stipulate the handling of matters related to the restoration of surnames during divorce. Since China's Civil Code does not provide for the change of surname at the time of marriage, it does not provide for the change of surname at the time of divorce.

3. The Advantages of China's Divorce System

Compared to Japan's divorce system, China's divorce system has many advantages:

Firstly, in terms of the ownership of child custody and property division, China's Civil Code provides more detailed provisions, ensuring a fairer and just handling of child custody and property division. Make it easier for both parties to accept the division result, reduce disputes, protect vulnerable groups better, especially protect the rights of women and children, and minimize the psychological trauma caused by divorce.

Secondly, the China's Civil Code also stipulates a cooling off period for divorce. Although this system still needs to be improved, it must be acknowledged that the cooling off period for divorce greatly reduces the number of impulsive divorces, and plays an effective buffering role in preventing impulsive divorces, maintaining family and social stability.

Third, China's Civil Code also clarifies the legal situation of divorce damage compensation. Through the exercise of the right of divorce damage compensation, it can not only effectively protect the non-fault party, provide economic and spiritual compensation and comfort, achieve effective relief, but also sanction the fault party and increase its divorce cost.

Finally, China's Civil Code also sets up a special protection system for women during pregnancy and a special protection system for military marriage, both of which reflect the further protection of the marriage relationship of special groups, and reflect the humanistic care and superiority of China's legal system. The Reference of Japan's Divorce System

4. The Reference of Japan's Divorce System

Of course, Japan's divorce system also has something to learn from:

Firstly, during the process of divorce agreement, the Japan's Civil Code requires two or more adult witnesses to testify in writing or orally. Through the witness system, a third party can intervene in the process of divorce agreement between spouses, ensure the authenticity of the divorce intention of both parties, conduct mediation in advance, stabilize the marriage relationship, reduce fake divorce, and save judicial costs and maintain social stability.

Secondly, Japan's Civil Law stipulates that if there is fraud or coercion in divorce by agreement, the party subjected to fraud or coercion can demand the withdrawal of the divorce agreement. The withdrawal system of divorce agreement can play a role in relieving the right of the fraudulent or coerced party, fake divorce, and stabilize the marital relationship better, reduce the occurrence of false expressions of divorce intentions.

Finally, divorce lawsuits in Japan are mediated or adjudicated by family courts, with specialized courts having exclusive jurisdiction to better ensure the professionalism and efficiency of case proceedings and unify trial standards. With the continuous increase of divorce cases in recent years, the author believes that it is also necessary for China to learn from Japan's experience and establish specialized family trial courts in some large and medium-sized cities where divorce cases are predominant, to carry out the trial of marriage and family cases.

5. Summary

Divorce, as a civil legal act, will cause a series of social problems such as property disputes, juvenile psychological trauma, interpersonal disputes and so on, which will affect social security and stability.

With the continuous development of Chinese society and economy, the concepts of traditional family ethics and marriage are under fierce impact, and the number of divorce cases accepted by courts is constantly increasing. This requires that China's divorce system should also keep pace with the times, absorb legislative and judicial experiences and lessons from other countries and regions, and continuously improve on the basis of meeting China's basic national conditions.

The divorce system in Japan belongs to the marriage system of capitalist countries and is not in line with China's national conditions in many aspects. However, it has certain reference significance for improving China's divorce system in terms of divorce declaration system, divorce mediation and trial institutions, and the scope of agreement divorce.

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