

A Comparative Study of the Divorce Systems of the Tang Dynasty and Japan at the same Era

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Abstract: The system of divorce, which is a very important part of the marriage system, also formed a complete system and developed to its peak in the feudal era of the Tang Dynasty. In the process of economic, cultural and political exchanges between the Tang Dynasty and other countries, the divorce system of the late Asuka Period, the Nara Period and the early Heian Period in Japan, which corresponded to the Tang Dynasty, had a certain influence. This paper mainly combines the historical material "Tang Laws and Regulations" and Japanese "Pension Laws", "Household Marriage Laws" and other laws to carry out theoretical research, literature research method, and comparative research method. In the process of transplantation of Chinese law, it also reflects the different social ideologies of two different countries for the divorce system, and it produces a certain difference for the maintenance of harmonious family relations, social stability, and the sense of well-being of the divorce system to different.

Keywords: Divorce Regime; Tang Dynasty; Japan.

1. Introduction

The article mainly discusses four aspects, the first part is about the regulations and characteristics of the divorce system in the Tang Dynasty, the second part is about the contents and characteristics of the Japanese divorce system, the third part is about the comparison of the similarities and differences of the regulations in the divorce system of the two countries, and the fourth part is about the influence of the political culture and the outlook on marriage that led to the two contemporaneous marriage systems on the divorce system. By comparing horizontally and vertically the divorce systems of the two different countries in the same period to explore the similarities and differences, as well as the deeper influences on the system, the present marriage systems of the two different countries will be given more reference significance and practical value.

2. Theoretical Overview of the Divorce System in the Tang Dynasty

2.1. Forms and Contents of the Divorce System in the Tang Dynasty

2.1.1. Compulsory Divorce: Righteousness and Violation of the Law

"Righteous extinction," means that one or the other of the spouses may be forced by the government to divorce a relative who has been beaten or killed, etc., within the limits of the law. The Laws of the Tang Dynasty - Household Marriage Laws" states: "Those who commit the crime of righteousness will be separated from each other, and those who are far away from each other will be sentenced to one year's imprisonment." And the stipulation of the righteousness of the situation is as follows: "righteousness of the wife's grandparents, parents, and kill the wife's grandparents, uncle parents, brothers, aunts, sisters, if the couple's grandparents, parents, grandparents, uncle parents, brothers, aunts, sisters to kill each other, and the wife's husband's grandparents, parents, and kill her husband's grandparents, uncle parents, brothers, aunts, sisters, and with the husband's fine linen Above relatives if the wife and mother adultery, and those who want

to harm the husband, although it will be pardoned, all for the righteousness of the end". The main reason for this is "domestic violence." No matter which side of the violent behavior, can be reported to the government, by the state and county officials to force the divorce, the object of violence in addition to the husband and wife can also be in-laws and relatives. As long as the government that one of the husband and wife have violent behavior, that can be ordered to divorce, the marriage is null and void. As can be seen from the above, the emergence of the system of divorce forced by the government in this period reflects the protection of vulnerable groups. Is the progress of the law, with the embodiment of humanization.

Tang law for the marriage of those who violate the law will be mandatory divorce by decree. Tang Law Review" in the "marriage against the law from the positive" in the provisions: "the marriage against the law, when the article said 'away from the', 'positive', although it will be pardoned. The same applies to those who are divorced from the marriage in violation of the law. What is a marriage against the law, in general terms, in the Tang law decree means that all marriages not in accordance with the formal marriage procedures and concluded are "marriage against the law" and are required to force a divorce.

2.1.2. Seven Exits and Reconciliation

In addition to the compulsory divorce by the government, either spouse can file for divorce if they meet the requirements. Starting with the man, a man cannot just repudiate his wife after marriage, and if he is not satisfied with the woman and wants to repudiate her, he needs to meet one of the seven circumstances stipulated in the "Seven Out". Tang law - household marriage" on the "seven out" provisions: "seven out, according to the order, a son, two obscene, three do not serve aunt and uncle, four mouth and tongue, five theft, six jealousy, seven maladies" this The seven cases are women who have not had children for many years after marriage, who do lewd things that are against ethics, who do not serve their in-laws well, who often get into verbal disputes with their neighbors and aunts and sisters-in-law, who steal other people's property, who are obviously jealous of their wives and concubines, or who suffer from a serious disease.

If a man discovers that his wife has one of these seven conditions after marriage, he can choose to file for divorce and repudiate his wife and marry someone else. During this period, there were strict rules for men to repudiate their wives, and it was only when these seven conditions were met that they could repudiate their wives.

If there is no problem between the man and the woman, a divorce can be filed, and it is written in the Tang Laws: "If the husband and wife are not at peace with each other and leave each other peacefully, they will not be seated." In the Tang Dynasty, the "system of reconciliation and divorce" was also written into law for the first time, and the system was established through the rule of law. Under this system, if a man and a woman were not in harmony, and if they did not feel that they could not get along with each other, they could write a "peace and separation letter" to propose to each other that they should leave each other. By jointly signing the "divorce letter", the two persons end their relationship as husband and wife.

2.2. Characteristics of the Divorce System in the Tang Dynasty.

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2.2.1. Protection of Female Marital Autonomy

Ancient China has always emphasized the superiority of men over women, and the husband over the wife. During the Tang Dynasty, women's status was elevated to a certain extent amidst the openness of the people. If a woman was dissatisfied with her husband, she could file for divorce and choose to dissolve the marriage. After the divorce, she could choose to remarry and find another man. This is also the first time that women's choice of marital autonomy is respected and protected.

2.2.2. Policy Guarantees for a Lax Divorce

During this period, the restrictions on divorce were more relaxed. In particular, women were allowed to file for divorce, which was a major advancement in feudalism. The lenient divorce policy was also a major feature of the marriage system in the Tang Dynasty.

2.2.3. The Hierarchical Nature of the Marriage System

In According to their status, they can be categorized into good people and slaves, and good people and slaves cannot be married. A "good man" is a resident who is registered in the household register, while a "slut" is a person of lower status, such as a slave. The status of "slaves" is very low and they have no personal freedom. In addition, those who were officials were not allowed to intermarry with commoners. In the Tang Dynasty, where there was a clear hierarchy, the marriage system was also hierarchical.

3. Overview of the Contemporaneous Divorce System in Japan

3.1. Forms and Contents of the Japanese Divorce System

In the Hitori-Nara period, marriage in Japan was mainly in the form of "wife-visiting marriages," also known as conjugal apartments. The man and the woman stayed at their respective parents' houses, but at night the man went to the woman's house and left her house before dawn. In the Heian Period, there were three types of marriages: the "wife-visiting marriage," the "son-in-law marriage," and the "marriage into marriage." In addition to the "wife-visiting marriage" mentioned above, the "son-in-law marriage" is a marriage in which a man is married to a woman who has been married to his wife. The so-called "son-in-law marriage" is similar to the "son-in-law at the door", in which a man marries into the woman's family, which is the opposite of a man marrying a woman. In the so-called "marriage into marriage" (also known as "wife-visiting marriage"), the woman goes to the man's house and lives with her husband. In this form of marriage, the Japanese divorce

3.1.1. "Righteousness" and Divorce Against the Law

A similar definition of righteousness is given in article 31 of the Pension Decree - Household Marriage, which, as can be seen from the text of the decree, covers the following cases: first, beating the wife's grandparents; second, killing the wife's grandparents, uncles and aunts, brothers, sisters and aunts; third, killing the husband and the wife's grandparents, parents, grandparents, uncles and aunts, brothers, sisters and aunts; and, fourth, the wife's insulting and beating of the husband's grandparents; Fifth, the wife kills or injures the husband's grandparents, uncles, brothers, sisters and aunts; sixth, the wife wishes to injure the husband, the above six cases.

Divorce against the law in Japan. Article 27 of the Pension Decree-Household Decree concerning prior adultery. "Whoever first commits adultery. Marrying later as a concubine. Though it will be pardoned. Utah divorces." For the act of having sexual relations first and marrying later. It is mainly for this kind of behavior that there is no legal formality for marriage, and Article 22 of the Miscellaneous Laws stipulates that "adultery shall be punished by one year's imprisonment."

3.1.2. The "Six Out" and the Right to Dissolution of Marriage

Article 28 of the Order on Pensions and Households also contains the same provisions as those of the Tang Dynasty regarding the "seven departures". In the commentary to the Old Age Pension Order, the Collected Explanations of the Order, it is written: "Ancient records ask. Wife has six out of the situation". The "six out" are childless, obscene, do not serve uncle and aunt, mouth and tongue, theft, jealousy, the above six in the "Order Jiejie" in the notes are quoted in the original text after the "ancient records", and the malady of an article and did not cite the ancient records to further explain, it can be speculated that in the old canon of the "Dabao Laws Order" of the "ancient records", the "old records", the "old records", the "old records", the "old records", the "old records". It can be assumed that in the old code of "Dabao Ruling", there was no malignant disease in the article of "seven outbreaks", and it was not "seven outbreaks", but "six outbreaks", but the era of "Pension

Ruling" has further restored the Tang Dynasty about the "seven outbreaks". However, the Pension Laws and Decrees further restored the provisions of the Tang Dynasty on the "seven outbreaks" and added the "malignant diseases" to the Household Orders.

Article 26 of the Pension Decree - Household Decree also stipulates: "Where a marriage has been finalized although it has been finalized. His husband has not fallen out of the foreign tombs. He has a son for five years. If he does not have a child, he will not return for three years. And fleeing from the country. He has a son for three years, but does not return without a son for three years. Those who have been childless for two years. And listen to remarriage." That is, after a man and a woman are married and have a son, the woman can remarry again when the legal period is reached, and the woman has certain rights to dissolve the marriage.

3.1.3. Night Leopard

It is written in the Tale of Genji that divorce in Japan is more often done in a consensual manner. "Night Leaving", which means to leave at night. The husband who left his wife secretly at night and never returned to Arai declared that their marriage was over, and although this was not stipulated in the Torah, it became a customary practice among the current aristocracy, mainly due to the custom of "wife-visiting marriage". This was neither an informal nor a de facto marriage. This kind of divorce under the consent of both parties is different from the "peace and divorce" stipulated by the law, which does not go through the corresponding divorce procedures and formalities, and does not have the specific substantive reasons and time of the divorce, but has the factual effect recognized by both parties in practice. At the same time, we can not determine whether they agreed to divorce whether they will get back together again. There is also no binding force. It is this form of divorce that was customary in ancient Japanese society.

3.2. Characteristics of the Japanese Divorce System

3.2.1. Law Transplantation and Localization

During the Tang Dynasty, the Chinese legal system spread to Japan in Southeast Asia, and in the Tang Law, the divorce system of "righteousness", "divorce in violation of the law", and "seven out of seven" had already given women a certain amount of marital autonomy and the right to dissolve their marriages. The same provisions existed in the Japanese law. There is also the localization of the amount of process, Japan does not prohibit the husband and his wife and mother adultery, in the Nara, Heike era of Japan has just left the matriarchal clan society, the establishment of feudalism not long ago, in the imperial family of Japan at that time, the magnates, there is a general inbreeding marriage, relatively more open and free, and even the same father, half-mother, or half-mother, the blood relations of the siblings of the very close will also become a husband and wife, in fact, China has also had intra-clan In fact, in China, there were also intra-ethnic marriages, but later on, when the ritual system was established, "adultery between relatives" was not recognized. The Pension Decree was not transplanted into a law that did not conform to the laws of the society in which it was written.

3.2.2. Coexistence of Inclusiveness and Set-aside

In the Tang Dynasty, it was clearly stipulated that there should be no marriage between people with the same surname, but in Japan, there is no prohibition of "no marriage between

people with the same surname." Japanese clans have always emphasized the purity of their own lineage, and in order to maintain this so-called pure lineage, they exclude other lineages, and do not prohibit the non-marriage of people with the same surname. This idea is not only inherited in the noble family, the common people family also can be inherited, which led to the rise of inbreeding within the clan, which also reflects the inclusiveness of the Japanese marriage, according to historical records, relative to the monogamy of the Tang Dynasty, Japan has a monogamous polygamy system of the existence of multiple concubines, and then the social facts of the real marriage is seldom applied to the Tang law about "seven out of the According to the historical records, compared with the monogamy system of Tang Dynasty, Japan had the system of monogamy and polygamy, and the real marriage facts of the society seldom applied the provisions of Tang Law about "seven out of seven".

4. Comparison of the Tang Dynasty Divorce System and the Japanese Divorce System

4.1. "Seven Out" Article

From the "Tang Law Review" in the provisions of the "seven out", childlessness, prostitution, do not serve aunts and uncles, tongue, theft, jealousy, malignant disease. And Japan's "old age order - household order" in the "six out" for comparison, the commentary book "order set of explanation" for this article in the commentary recorded: "ancient records cloud asked. Wife has six out of the situation "" It can be seen that there is no malady in the Japanese law.

According to the Dunhuang documents, the proof of divorce in the Tang Dynasty was the "book of releasing the wife," and the proof of divorce in ancient Japan was the "certificate of separation," which were both proofs of divorce. They are both certificates of divorce. The divorce certificates of the two countries have the following points in common: firstly, the divorce certificate does not stipulate the reasons for the divorce or the contents of the "seven outlets", but the wife's idea of remarriage is written in the divorce certificate to guarantee the right to remarriage. There are many cases where the wife chooses to divorce, and although the "seven issues" have already stipulated the wife's obligations and the man's right to divorce, there are many cases of mediation by the matriarchs, who are the two parents in the real world. Women's rights are not completely unequal, and there is some freedom of choice and the right to remarry.

4.2. Forced Divorce

Although this provision of the Japanese Decree was inherited from the provision of the Tang Law, which stipulated that marriages that had not gone through "formal procedures" were to be treated as adulterous and were to be forcibly dissolved or divorced, Article 22 of the Miscellaneous Laws of the Pension Law stipulated that "adultery was to be punished by one year's imprisonment". Article 22 of the Miscellaneous Laws of the Pension Law stipulates that "adultery shall be punished by one year's imprisonment". However, the concepts of "adultery" in ancient China and Japan were very different. Although Japan also inherited the legal provisions of China's "first adultery" in ancient times, in fact, in the ancient Japanese society at that time, polygamous marriages started only by mutual consent were very common, so Article 27, "Anyone who commits

adultery first shall be punished by imprisonment for one year". Article 27: "Whoever commits adultery first and then marries a concubine If a person marries a concubine after the first adultery, he or she will be pardoned. Even if he or she is pardoned, he or she will be divorced. They shall be divorced from each other." This article is a provision of the Japanese Household Marriage Ordinance that requires men and women to have sexual relations before marriage. The effectiveness of this provision is worth exploring. In fact, the commentary on the same article in the "Order Collected Explanations" only cites the provisions of the Tang Order, and is unable to explain this article through the social realities of marriage at that time, so it can be seen that this article was very difficult to be established in ancient Japanese society.

From the above-mentioned Tang Law Review, which stipulates that couples who have violated the *yi jie* will be forced to divorce according to the law, and which cites many of the cases mentioned above, there are six types of "*yi jie*" in the same way as in the 31st paragraph of Japan's "Pension Decree - Household Marriages". The difference is that in the Tang Law, the scope of *yijie* includes adultery between a wife and her husband's relatives of fine linen or above, and adultery between a husband and his wife's mother. Japan, however, did not adopt it. The reason for this is that the traditional thinking of the Tang Dynasty rituals, for this kind of relatives of adultery as unethical, illegal behavior. With the seriousness of one of the ten evil sins, called "internal strife". On the other hand, consanguineous marriages were more common in ancient Japan, especially within the imperial family, and in order to ensure the purity of the bloodline, not a few members of the imperial family chose to marry a close relative within the family. Therefore, despite the establishment of the legal system, for the ancient Japanese society, there is no concept of the same family name is not married, the "old age order" of the "righteousness" article also did not include the Tang Dynasty strictly prohibit the provisions of the adultery of close relatives in the law, which should be out of the consideration of the actual situation of the local community.

5. Reasons for Differences in the Divorce Systems of the Joseon and Japanese Contemporaries

5.1. Impact of Political Culture on the Institution of Marriage

Economic prosperity. Productivity increased and the living standard of the people was rising, which favored the formation of an open civil culture in the Tang Dynasty. As the most crucial decision maker of the country, the state policy of the rulers also affects the popular customs. The rulers of the Tang Dynasty practiced relatively open social policies, which was conducive to the formation of an open public style. Under the influence of openness, the marriage system was also relatively relaxed. In all the dynasties, there were strict regulations on the age of marriage. However, during this period, the rulers of the Tang Dynasty did not specify the exact age of divorce, but adopted the marriage rate as a performance appraisal to motivate the government to actively promote and solve the problem of singles. In the marriage system of the Tang Dynasty, there was an open atmosphere such as free love, and the status of women was improved to some extent. They could freely decide whether to continue the

marriage or not, and had a greater right to divorce. It can be seen that the open-mindedness of the state also kept influencing the system of law, which was favorable to the progress of the marriage system in the Tang Dynasty. However, the confinement of Confucian backward hierarchical thinking. It has always been Confucianism as the ruling ideology. As the dominant ideology at that time, Confucianism also penetrated into the marriage system of the Tang Dynasty to a certain extent. The constraints on marriage, such as "no marriage between government officials and citizens, and no distinction between the good and the lowly", were in fact a hierarchical concept in Confucianism. Being born as a human being, one is born as an equal individual. However, under this backward hierarchical concept of Confucianism, the marriage system also reflected the hierarchy.

5.2. Impact of Differences in Views on Marriage on Divorce Rates

In the Tang Dynasty, women paid more attention to their fidelity to their husbands, their responsibility to the family, and made efforts to make the marriage relationship last better, even when there were problems in the marriage, they would first reconcile with the chief of the clan, the head of the village, and the respected clansmen in the family, and in the end, it was difficult to maintain the relationship before it came to the step of divorce. At that time, the order of marriage was clearly defined for men and women, but there was no clear punishment for violating the rules. There was no specific procedure for penalizing those who violated the law because of free love. This is a major loophole in the marriage system. Because of the immaturity of the marriage system, the Tang Dynasty saw a high divorce rate. Because of the relatively loose divorce policy, coupled with the open-mindedness of the people, remarriage and re-marriage were allowed after divorce. This made it possible to find another husband after divorce, which led to a high divorce rate in the Tang Dynasty.

However, contemporaneous Japan was somewhat different. From the Heian period of Japan's wife-visiting system, there were no strict procedures for marriage and divorce. Men and women as long as the two love, the man can often go to the woman's home at night to live on behalf of the existence of the marital relationship, if one day the man is not back on behalf of the end of the marital relationship, this loose if and if the relationship, and there is no so-called social responsibilities and obligations, and do not have to abide by each other's promises, and there is no chastity, so the divorce rate is naturally lower.

6. Summary

In the comparison, we can see that Japan's introduction of the Chinese system and culture in the process can be remarkable, it chooses to gradually promulgate the law to adapt to the social reality, but also can see Japan due to the matrilineal system from the leap into the class society of the rapid changes brought about by the visit of the wife of the wedding, marriage, such as the remnants of the old system of consanguineous marriage, brought about by the Japanese different from the Chinese form of marriage, polygamy, marriage within the family, which in turn affects the system of divorce. Japan in the Bird, Nara, Heian era of the divorce system are many in the Tang Dynasty again in the process of open cultural exchanges in the legal transplantation,

absorption and borrowing, but this completely copied form in fact is not adapted to the real needs of their own societies, so Japan's legal system of divorce there are more shelved, which also reflects the side of the transplantation of the law of exchange must be in the application of their own local conditions on the basis of improvement, in order to give full play to its legal system. This also reflects that the transplantation and exchange of laws must be based on the application of their own local conditions, in order to improve and give full play to its better effect.

From the side, we look at our own divorce system in the Tang Dynasty, we will find that for which the provisions of the law, there is almost no discussion of the feelings of husband and wife, most of them are about the birth of children, serve the elderly, support the clan's ritual provisions. In fact, men's and women's feelings are the key to the maintenance of marriage, we must holistically integrated, systematic consideration of the rationality of the existence of the system, but also fundamentally produce good social effects.

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