

SCTCMG 2021
International Scientific Conference «Social and Cultural Transformations in the Context of
Modern Globalism»

FAMILY AND HEREDITARY RELATIONS IN THE OIRAT
LEGAL ARTIFACTS

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Abstract

The paper provides a comprehensive historical and legal overview of the norms that governed family, matrimonial, and hereditary relations in the Oirat legal artifacts of the 17th–18th centuries, thus allowing for an insight into the formation and development of legal family and inheritance institutions in the early statehood. The following legal artifacts are analyzed including Ik Tsaajin-Bichig 1640, Decrees of Galdan Khuntaiji, the Toktols of Donduk-Dashi. The paper gives a rationale for the role of secular, canonical Buddhist and ancient Mongolian law in the design and development of family and inheritance law. Marriage is one of the oldest legal institutions of the Oirat society, with marriage relations to be originally regulated by customs. Ancient Mongolian legislation on marriage and family had a significant impact on the most important legal institutions of the Oirat society in this field. The personal and property rights of spouses lay behind the father's and husband's primacy in the family, which was shaped by the entire way of life of feudal society. Husband's absolute powers, as established in Mongolian society by the century-old practice, remained after the resettlement of the Oirat tribes on the territory of the Russian state. The civil legal capacity of the population that is addressed by common law was determined by a system of legislation that was sophisticated in its hierarchical nature. Inheritance law was formed and developed in line with the development of private property. Inheritance relations were also regulated by Oirat legal sources that secured property to sons.

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Keywords: Feudal law, institution of marriage, inheritance, Oirats



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1. Introduction

A necessity to explore matrimonial, family and hereditary relations in the feudal Oirat society is caused by the role that the family, as a primary structural element of any social formation, plays in its history. The paper evaluates the institution of marriage and family according to the Oirat secular law, as well as the resolution of these relations in feudal legal sources. Due to some exceptional circumstances, there was a need to record matrimonial and family norms in the feudal legislation of the Oirats. The political power and complementary organization and management structures were established and operated in the conditions of a nomadic cattle breeding way. The imperious decrees of the nomadic state were aimed at either consolidating social transformations in society in the interests of the state, or defending social values that were devalued in the new conditions.

2. Problem Statement

Legal regulation of matrimonial and family and hereditary relations became increasingly relevant in our country in the post-perestroika period, when the facts were low birth rates, an increased number of illegitimate children, and the growth of single-parent families. During the legal reform, the Russian state faced a challenge of improving the legal system, giving it a form that would meet modern needs. Russian experience shows that it is impossible to address this challenge without regard for the interests of numerous ethnic groups inhabiting its territory, ignoring their traditions and customs that give a true view of their status. Exploring the provisions of Oirat legal sources expands our knowledge about the initial stage of Oirat family and inheritance law, allows us to gain a deeper insight into traditional national foundations of legal regulation of family and marriage, affecting modern legislation, and revitalize scientific reasoning on one of the central problems of the history of domestic law.

3. Research Questions

The subject of research is the patterns of genesis, development of a specific social phenomenon – family and inheritance law of the Oirats in the Oirat legal sources of the 17th–18th centuries including Ik Tsaajin-Bichig 1640, Decrees of Galdan Khuntaiji, the Toktols of Donduk-Dashi, clarification of the impact of law in the regulation of public relations in the traditional Oirat society.

4. Purpose of the Study

The paper aims to address the main dimensions of personal, property, hereditary relations during the formation and development of the feudal society of the Oirats.

5. Research Methods

The authors used the provisions of the general scientific dialectical method of cognition, dialectical logic, analysis and synthesis. They turned to formal legal, comparative legal, historical and

other methods of scientific knowledge, which made it possible to study the object of research in all its diversity.

6. Findings

The principal artifacts of traditional Oirat law, primarily, involve the legislative document “Tsaajin-Bichig” that was created in 1640 at the congress of princes and major religious figures of Khalkha, Dzungaria, Kalmyk Khanate and Kokonur. The unification of four Oirat and forty Mongol tribes gave rise to a legal compromise – a new Tsaajin-Bichig (1640). The second Mongol-Oirat charter dates back to the middle of the 17th century. It was created against the background of the consolidation of the Mongol tribes of Khalkha, Dzungaria, Qinghai, Siberia and the Volga region in the face of the Manchu threat. The congress of princes held at that time in Dzungaria consolidated the creation of the union in the form of a kind of federation of principalities and approved a new Tsaajin-Bichig that mainly aimed, as noted by Zlatkin (1964), “to create a kind of confederation of khanates and principalities connected by common class interests of their feudal rulers on the basis of the united Khalkha and Dzungaria” (p. 167). Since ancient times, preserving a nomadic way of life, the Oirats transferred it to the field of normative regulation. Representing the simplest codification of secular law, the charter acquired the role of a universal regulator of social relations. This document is based on a generic mode of life, the generic structure of the Mongol, including Oirat tribes. However, in the target era, a tribal life had already been decomposed to a certain extent. Generic, primitive communism was being replaced by private (not only family-wide, but also individual) ownership of movable property, means and instruments of production (for example, livestock), society was highly differentiated. A number of nomad tents ranged to 200,000 where 600,000 souls of Oirats of both sexes resided (Ryazanovsky, 2000). Labels viewed as separate legislative and administrative acts were also issued in the era of the Oirat union. An example is the decrees of Galdan Khan, as well as a decree called a petroglyph by way of presentation, and a Shalabolinsky petroglyph – by its location. The acts of the Oirat khans (chiefly their decrees), issued in the form of rupestrian drawings, represent a peculiar form – the decrees and orders of the khans were carved or painted on rocks and cliffs. This was a primitive and convenient way for the nomadic people to publish laws. Cliffs and rocks, as Prof. Leontovich says, served as a kind of books for the old nomads, open and accessible to everyone at all times. Carved with giant signs in the cliffs and rocks where nomads were making their paths, the khan’s orders involuntarily caught the eye of those going and riding past, and indeed, were available to all literate people (Leontovich, 1879).

Until 1640, in the public sphere of the Mongol-speaking peoples, legal relations were regulated by numerous legal customs and some written criminal laws, the totality of which was also included in Tsaajin-Bichig. Gurliand wrote: “... before 1640 the Oirats had laws independently developed from the Yassa of Genghis Khan and based on secular law” (Gurlyand, 1904, p. 101).

The Oirat law contained a large number of secular legal norms (family life and mutual relations, some punitive measures and legal procedures). This can be proved by the fact that for almost 200 years most of the Mongol-Oirat Code of 1640 was a valid law among the Kalmyks and continued to be binding for a considerable time onward. The force and effect of the Mongol-Oirat charter in Kalmykia is based on the fact that the charter reproduced a slowly changing secular law of the Mongol tribes. (Sarangov, 2007).

The norms of private law regulated family, marital relations, issues of marriage and the duties of children, some property relations and issues of inheritance.

The destruction of the tribal foundations, their rapid displacement by new social bonds could not but affect the marriage relationship and the family at large. The law-making efforts of the Oirats were aimed at counteracting the destructive tendencies of social development and protecting traditional relations. It is due to these specific circumstances that the artifacts of secular law give an illuminating insight into the legal life of people. According to Kolesnik (2003, p. 54), “a family composition of the Kalmyk population is characterized by the predominance of the nuclear family”.

From the 17th – to the early 20th century, the nomadic Kalmyks-pastoralists had a small monogamous family as the dominant form of the family that was part of family-related groups. Along with a small monogamous family, Kalmyks also had large households consisting of representatives of three generations: parents, children and grandchildren. Households were commonly headed by the father – an old man, very rarely – the mother. If he (she) lost the ability to work, then the eldest son was in charge of the entire household and social life.

A legal analysis leads to the conclusion that family and matrimonial law was the implementation of paternal law based on the recognition of family ownership and the exogamy of marriage. People got married in compliance with many conditions that were stipulated by the Oirat secular law and later enshrined in legal sources. These include:

- legal age. The Kalmyks used to get married as soon as they reached physical maturation that was marked by the rite of cutting the original hair, for girls – at the age of 13–14, and for boys – 15. Marriages at such an early age, i.e. almost children, were also caused by the short life expectancy of people during that period. People who lived in conditions of great military, natural and other types of risks tried to fulfill their duty to reproduce society as soon as possible (Erdniev, 1985).
- lack of close degrees of kinship or affinity. There were blood and spiritual relations, legal relations arose from marriage. A marriage based on the prohibition of marital relations between the members of one kinship community was ensured by the entire mode of social life. Intending spouses couldn't get married if they were paternal relatives. According to Nefedev (1834): “the most distant relationship through parental lineage prevents marriage”. According to the Oirat customs, a girl can only be married to a different clan. Intra-family marriage was widely viewed as a violation of the fundamental principle of the institution of marriage. That is why the Oirats obliged each person to know their ancestry up to the ninth degree. When people who were related (up to the 7th degree of relationship) decided to get married, the marriage was declared invalid
- consent from parents or guardians of a courting couple to marriage as one of the canonical conditions for its conclusion. It was parents' and close relatives' care and responsibility to choose a bride for a son, a groom for a daughter. When a girl reached marriageable age, her parents informed relatives and friends that they had a “marriageable girl”. Young man's parents collected information about girls of marriageable age and selected a bride for their son. An official agreement, reaching a consensus between representatives of two families that

involved not only close relatives of a courting couple, but also representatives of the clan, made this institution legal, legitimate, and the future family a full-fledged member of the community and society and the legal relations adopted there (Sergeev & Sergeev, 1998).

- the bride price. The legal norms regulated the rate of a ransom for the bride and her dowry, depending on the position occupied by the parents of those getting married in the feudal hierarchical system. Domestic animals were the main source of prosperity, thus being the main object of property relations. Therefore, the bride price for matchmaking between bureaucratic princes and tabunangs included thirty valuable things, one hundred and fifty herds and four hundred sheep. The bride price between minor princes and tabunangs included fifteen valuable things, fifty herds and one hundred sheep. The dowry paid in things depended on the number of cattle. Subject to the will of both related parties, this number could be lower (Sergeev & Sergeev, 1998). The ransom between people of the lower class included two camels, ten heads of cattle and fifteen sheep.

Artifacts of Kalmyk feudal law provided for the rules designed to resolve civil disputes caused by failures to observe engagement conditions. Thus, “if parents give their agreed-upon daughter to another man, they should give in return: from the nobles – five nines with a camel atop, from the low class – a nine with a camel atop, and the first groom has to take his wife with the cattle as a ransom (Golstunski, 1880).

- monogamy. Two persons free from marriage bonds were entitled to get married. Husbands had the right to marry a second time unless they had no children or had only daughters (Dugarova, 2016). Then he, with the consent of his wife, could take a second wife, and the first remained the eldest in the family, patronizing the second who was subordinate to her, i.e. Kalmyks who strictly adhered to Lamaistic norms did not recognize polygamy. This was especially true of the steppe Kalmyks who never had more than one wife (Sergeev & Sergeev, 1998). The target legal sources contain information about the right of the khan and noions to dispose of women’s marriage fate, giving them in marriage to a member of a foreign clan, in order to establish special relations, the obligation of dependent people to show their daughters to their masters annually (Rashid-ad-Din, 1952).

Relationship between children and parents. Children were obliged to provide their parents with food and allowance until their death, if they were in poverty, decrepitude or infirmity of age. Parents’ obligation to support their children did not end when the latter reached the age of majority if they still needed care, but this obligation could end before the onset of adulthood, especially in relation to the daughter: after her marriage, the obligation to support passed to her husband. “Iki-Tsaadzhi” of 1640, on the obligation of the father to make a separation in relation to his adult son, should be recognized as a novelty in the legal regulation of property relations (Dzalan-aadzaav & Khalkh, 1972).

The norms of the Oirat feudal law regulated in detail the issues of adoption. During the period under review, adoptions of children of their close relatives were not uncommon. Most often, this was customary for childless families. As evidenced by legal norms, occasionally adopted children were returned to their parents. The conditions for the termination of adoptions were legally regulated. In accordance with them, adopted male children who wished to get back to their parents were allowed to do

it without ransom. The norms of law enshrined the obligation of the family that took a girl into their house and her parents to jointly prepare a dowry when this girl got married.

Joint household property of spouses. A study of the legal norms governing a property sphere of family relations leads to the conclusion that they contain a number of specific features. The main feature could be the way of forming joint household property. It was made up mainly of two sources: an apportionment of spouse's father and wife's dowry. A husband's share (onch) was made up of a part of his father's property portioned at the time of marriage or immediately before the major life event.

Various cattle were mainly viewed as the property of Oirat cattle breeders. In addition, a son's share included a yurt and sometimes a hunter's gun, craftsman's tools, etc. A wife's contribution included *inzhi baraa* and *inzhi mal*. The former in its nature is the closest to the concept of "bride's dowry", as it consisted of household utensils, clothing, jewelry, as well as a riding horse with a saddle and harness. During the matchmaking, the parents of the newlyweds discussed the issue of the bride's *inzhi mal*, i.e. the number of livestock portioned by the wife's parents to her new family. It had to be aligned with the rate of the ransom granted, so the groom's parents could challenge the size of the *inzhi mal* (Perlee, 1973).

The family existed based on undivided ownership of entire household property shared by small families that consisted of land and pasture allotments, livestock, tools and products, except for women's dowry. The head of the family, usually the father and, in rare cases, the widow mother, had the right to solely dispose of all this property. It was characterized by the synthesis of collective property that was composed of the property of a large family and the private sector associated with the separate consumption of farm products by small families (Shlykova, 2005).

The target artifacts of the Oirat feudal law, regulating in great detail the procedure for getting married, very sparingly highlight the conditions for getting divorced. This era was dominated by the idea that marriage lasts "forever" and extends beyond the grave. *Tsaajin-Bichig* alone has a norm that presented to the relatives of a wife whose husband had gone out of the world, having paid *nines* from the valuable: for the wife of a middle class man – five heads of cattle and for the wife of a low class man – a horse and a camel (Sergeev & Sergeev, 1998).

Legal relationship of inheritance. Inheritance law also had its own specifics, being regulated both by the norms of the Charter of 1640 and by the norms of secular law, with the latter to play a greater role than the legislative provisions of the Kalmyk khans. All this had an impact on the specifics of hereditary legal relations among the Kalmyks. The assets of an estate included settlement, movable property, cattle, household utensils, weapons, grain reserves.

Oirat legal sources established that inheritance was open following the father's death, and sons alone were heirs. Given brothers, daughters of the deceased were not included in the number of heirs. Nine-tenths of the inheritance property was distributed equally among the brothers, the remaining tenth share was transferred to the eldest of the brothers. When the sisters got married, the brothers who accepted their father's inheritance were obliged to bear all wedding-related expenses, providing their sisters with a dowry. A widow who had children got married to a single or widowed brother of her deceased husband, who received the rights and duties of a father and guardian of the inherited property of children until they reached the age of majority. Children, in turn, were equal in rights with adults, but

could not use the inheritance before reaching the age of majority. A childless widow did not have the right to inherit. After the death of her husband, she returned to her family, taking her dowry with her (Gariaeva, 2018).

7. Conclusion

The authors arrived at the following findings.

1. Ik Tsaajin-Bichig 1640, Decrees of Galdan Khuntaiji, the Toktols of Donduk-Dashi are the most important sources of feudal law of the Oirats, which largely had a formative impact on the further development of normative culture. An analysis of these sources points to the family legal relationship of the Oirats as a patriarchal-authoritarian family system that is characterized by a strict age and gender hierarchy of family life controlled by the head of the family over all household members.
2. Oirat family, inheritance law developed under the influence of secular law, Buddhist legal institutions, and ancient Mongolian law.
3. Marriage was contracted in compliance with many conditions enshrined in legal sources. They included reaching the established marriageable age, lack of close degrees of kinship or affinity, parental consent to marriage, monogamy, payment of bride price.
4. The relationship between children and parents was built based on paternal law (residing in the fact that father's will determines the marriage of children, separation of the son to manage an independent household, the size of the allotment, etc.).
5. Joint household property of spouses is based on two sources: a share of the spouse's father and the wife's dowry.
6. Oirat legal sources established that inheritance was opened only after the father's death, and sons alone were heirs.

References

- Dugarova, S. Zh. (2016). Regulation of matrimonial and family relations in medieval Mongolia. *Science of Krasnoyarsk*, 2(25).
- Dzalan-aadzaav, S., & Khalkh, J. (1972). Review of Mongolian law. *Ulaanbaatar*, 1.
- Erdniev, U. E. (1985). *Kalmyks*. Elista.
- Gariaeva, K. M. (2018). Oirat legislative artefact "their tsaaz" (Steppe Code, 1640) in the context of the preservation of traditional family and kinship relations among modern Kalmyks. *Scientific Thought of the Caucasus*, 2.
- Golstunski, K. F. (1880). *Mongolian-Oirat laws of 1640*. Printing House of Imperial Academy of Sciences.
- Gurlyand, Ya. I. (1904). *Steppe legislation from ancient times to the 17th century* (pp. 52–53). Kazan.
- Kolesnik, V. I. (2003). *The Last Great Nomad: Transition of Kalmyks from Central Asia to Eastern Europe and Back in the 17th – 18th Centuries*.
- Leontovich, F. I. (1879). On the history of the law of Russian foreigners. The ancient Mongol-Kalmyk or Oirat charter of penalties (Tsaajin-Bichig). *Notes of the Imperial Novorossiysk University*, 28. Book on demand.
- Nefediev, N. A. (1834). *Detailed information about the Volga Kalmyks, collected on site by N. Nefediev*. Printing House of K. Kray.

- Perlee, X. (1973). *Some of the laws left in the Secret Bureau*. Gurvan oguulal.
- Rashid-ad-Din. (1952). *The book of Chronicles* (Vol. 1). Leningrad: AN SSSR.
- Ryazanovsky, V. A. (2000). *Historical review of Mongolian legislative acts*. Institute of History of the Mongolian Academy of Sciences.
- Sarangov, Ts. A. (2007). Tsaajin-Bichig – the code of feudal law of the Kalmyks of the 17th century). *Law and Politics*, 5.
- Sergeev, A. N., & Sergeev, E. N. (1998). Nature Of Marriage And Family Law In Ulus. Institute of History of the Mongolian Academy of Sciences.
- Shlykova, E. S. (2005). *Buryat secular law: Historical and legal research* [Cand. dissertation thesis].
- Zlatkin, I. Ya. (1964). *History of the Dzungar Khanate, 1635–1758*. Nauka.