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Marriage Law of the People's Republic of China

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Marriage Law of the People's Republic of China

(Adopted at the Third Session of the Fifth National People's Congress on September 10, 1980 and promulgated by Order No.9 of the Chairman of the Standing Committee of the National People's Congress on September 10, 1980; and amended in accordance with the Decision on Amending the Marriage Law of the People's Republic of China, adopted at the 21st Meeting of the Standing Committee of the Ninth National People's Congress on April 28, 2001)

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Chapter I

General Provisions

Article 1 This Law is the fundamental code governing marriage and family relations.

Article 2 A marriage system based on the free choice of partners, on monogamy and on equality between man and woman shall be applied.

The lawful rights and interests of women, children and old people shall be protected.

Family planning shall be practised.

Article 3 Marriage upon arbitrary decision by any third party, mercenary marriage and any other acts of interference in the freedom of marriage shall be prohibited. The exaction of money or gifts in connection with marriage shall be prohibited.

Bigamy shall be prohibited. Anyone who has a spouse shall be prohibited to cohabit with another person of the opposite sex. Family violence shall be prohibited. Maltreatment and desertion of one family member by another shall be prohibited.

Article 4 Husband and wife shall be loyal to each other and respect each other; family members shall respect the old and cherish the young, help each other, and maintain the marriage and family relationship characterized by equality, harmony and civility.

Chapter II

Marriage Contract

Article 5 Marriage must be based upon the complete willingness of both man and woman. Neither party may use compulsion on the other party, and no third party may interfere.

Article 6 No marriage may be contracted before the man has reached 22 years of age and the woman 20 years of age. Late marriage and late childbirth shall be encouraged.

Article 7 No marriage may be contracted under any of the following circumstances:

- (1) if the man and the woman are lineal relatives by blood, or collateral relatives by blood up to the third degree of kinship; or
- (2) if the man or the woman is suffering from any disease which is regarded by medical science as rendering a person unfit for marriage.

Article 8 Both the man and the woman desiring to contract a marriage shall register in person with the marriage registration office. If the proposed marriage is found to conform with the provisions of this Law, the couple shall be allowed to register and issued marriage certificates. The husband-and-wife relationship shall be established as soon as they obtain the marriage certificates. A couple shall go through marriage registration if it has not done so.

Article 9 After a marriage has been registered, the woman may become a member of the man's family or vice versa, depending on the agreed wishes of the two parties.

Article 10 the marriage shall be invalid if:

- (1) either of the married parties commits bigamy;
- (2) there is the prohibited degree of kinship between the married parties;
- (3) before marriage either of the parties is suffering from a disease which is regarded

by medical science as rendering a person unfit for marriage and which has not yet been cured after marriage; or

(4) one of the married parties has not reached the statutory age for marriage.

Article 11 Where marriage is contracted by coercion, the coerced party may appeal to the marriage registration office or the People's Court for annulment of such marriage. Such an appeal for annulment of marriage made by the coerced party shall be submitted within one year from the date of marriage registration. Where the party concerned whose personal freedom is illegally restrained, such an appeal for annulment of marriage shall be submitted within one year from the date of the restoration of the personal freedom.

Article 12 Any marriage that is invalidated or annulled is null and void from the very beginning. The parties concerned are devoid of any rights or duties of a husband and a wife. The property acquired by them during the period of their cohabitation shall be disposed of by agreement between the parties; if they fail to reach an agreement, the People's Court shall make a judgment on the principle of giving consideration to the unerring party. Where property is to be disposed of because marriage is invalidated as a result of bigamy, the rights and interests in respect of the property enjoyed by the party under lawful contract of marriage may not be encroached on. With regard to the children born by the party concerned, the provisions of this Law on parents and children shall apply.

Chapter III

Family Relations

Article 13 Husband and wife shall have equal status in the family.

Article 14 Both husband and wife shall have the right to use his or her own surname and given name.

Article 15 Both husband and wife shall have the freedom to engage in production and other work, to study and to participate in social activities; neither party shall restrict or interfere with the other party.

Article 16 Both husband and wife shall have the duty to practise family planning.

Article 17 The following property acquired by the husband and the wife during the period in which they are under contract of marriage shall be in their joint possession:

(1) wages and bonuses;

(2) proceeds of production and business operation;

(3) incomes of intellectual property rights;

(4) property acquired from inheritance or presentation, with the exception of such property as stipulated by the provisions of the third item of Article 18 of this Law; and

(5) other property which should be in their joint possession.

Husband and wife shall enjoy equal rights in the disposition of their jointly possessed property.

Article 18 The property in the following cases shall belong to one party of the couple:

(1) the property that belongs to one party before marriage;

(2) payments for medical expenses received by one party who suffers physical injury, subsidies for living expenses granted to the disabled subsidies, etc. ;

(3) the property to be in the possession of one party as determined by will or by an agreement on gift;

(4) articles for daily use specially used by one party; and

(5) other property which should be in the possession of one party.

Article 19 The husband and the wife may conclude an agreement that the property acquired by them during the period in which they are under contract of marriage and the property acquired before marriage shall be in their respective possession separately or jointly or part of the property shall be in their possession separately and the other part jointly. Such an agreement shall be in written form. Where such an agreement is lacking, or the provisions in the agreement are not clear, the provisions of Articles 17 and 18 of this Law shall apply.

The agreement concluded by the husband and the wife with regard to the property acquired during the period in which they are under contract of marriage and the property acquired before marriage shall be binding on both parties.

Where the husband and the wife agree that the property acquired by them during the period in which they are under contract of marriage shall be in their possession separately, debts contracted by the husband or the wife shall be paid off with the property in the possession of the party of the husband or the wife, if the third person knows that there is such an agreement.

Article 20 Husband and wife shall have the duty to maintain each other.

If one party fails to perform. this duty, the party in need of maintenance shall have the right to demand maintenance payments from the other party.

Article 21 Parents shall have the duty to bring up and educate their children; children shall have the duty to support and assist their parents.

If parents fail to perform. their duty, children who are minors or are not capable of living on their own shall have the right to demand the costs of upbringing from their parents.

If children fail to perform. their duty, parents who are unable to work or have difficulty in providing for themselves shall have the right to demand support payments from their children.

Infanticide by drowning, abandonment of infants and all other acts causing serious harm to infants shall be prohibited.

Article 22 Children may adopt either their father's or their mother's surname.

Article 23 Parents shall have the right and duty to protect and educate their children who are minors. If children who are minors cause damage to the State, the collective or individuals, their parents shall have the duty to bear civil liability.

Article 24 Husband and wife shall have the right to inherit each other's property.

Parents and children shall have the right to inherit each other's property.

Article 25 Children born out of wedlock shall enjoy the same rights as children born in wedlock. No one may harm or discriminate against them.

The natural father or mother who does not directly bring up a child born out of wedlock shall bear the child's living and educational expenses until the child can live on his or her own.

Article 26 The State shall protect lawful adoption. The relevant provisions of this Law governing the relationship between parents and children shall apply to the rights and duties in the relationship between foster-parents and foster-children.

The rights and duties in the relationship between a foster-child and his natural parents shall terminate with the establishment of his adoption.

Article 27 Maltreatment and discrimination shall not be allowed between step-parents and step-children.

The relevant provisions of this Law governing the relationship between parents and children shall apply to the rights and duties in the relationship between step-fathers or step-mothers and their step-children who receive care and education from them.

Article 28 Child support and parental maintenance shall be secured by the State.

Article 28 Grandparents and maternal grandparents who can afford it shall have the duty to bring up their grandchildren and maternal grandchildren who are minors and whose parents are dead or have no means to bring them up. Grandchildren and maternal grandchildren who can afford it shall have the duty to support their grandparents and maternal grandparents whose children are dead or have no means to support them.

Article 29 Elder brothers and elder sisters who can afford it shall have the duty to maintain their younger brothers and sisters who are minors, if their parents are dead or have no means to bring them up. Younger brothers or sisters who are brought up by their elder brothers or sisters and can afford it shall have the duty to maintain their elder brothers or sisters who lack not only the ability to work but also source of income.

Article 30 Children shall respect their parents' right of marriage, they are not allowed to interfere in the re-marriage of their parents or their life after re-marriage. The duty of the children for supporting their parents shall come not to an end with the change in the marriage contract of their parents.

Chapter IV

Divorce

Article 31 Divorce shall be granted if husband and wife both desire it. Both parties shall apply to the marriage registration office for divorce. The marriage registration office, after clearly establishing that divorce is desired by both parties and that appropriate arrangements have been made for the care of any children and the disposition of property, shall issue the divorce certificates.

Article 32 If one party alone desires a divorce, the organization concerned may carry out mediation or the party may appeal directly to a People's Court to start divorce proceedings.

In dealing with a divorce case, the People's Court shall carry out mediation; divorce shall be granted if mediation fails because mutual affection no longer exists.

In one of the following cases, divorce shall be granted if mediation fails:

- (1) where one party commits bigamy or cohabits with another person of the opposite sex;
- (2) where one party indulges in family violence or maltreats or abandons family members ;
- (3) where one party indulges in the gambling, drug taking, etc. and refuses to reform. after repeated persuasion;
- (4) where both parties have separated from each other for two full years for lack of mutual affection;

(5) other cases which lead to the shattering of affection between husband and wife.

Where one party is declared to be missing and the other party starts divorce proceedings, divorce shall be granted.

Article 33 If the spouse of a soldier in active service desires a divorce, the matter shall be subject to the soldier's consent, unless the soldier has made grave errors.

Article 34 A husband may not apply for a divorce when his wife is pregnant, or within one year after the birth of the child, or within six months after the termination of her gestation. This restriction shall not apply in cases where the wife applies for a divorce, or where the People's Court deems it necessary to accept the divorce application made by the husband.

Article 35 If, after divorce, both parties desire to resume their husband-and-wife relationship, they shall apply for registration of remarriage with the marriage

registration office.

Article 36 The relationship between parents and children shall not come to an end with the parents' divorce. After divorce, whether the children are directly put in the custody of the father or the mother, they shall remain the children of both parents.

After divorce, both parents shall still have the right and duty to bring up and educate their children.

In principle, the mother shall have the custody of a breast-fed infant after divorce. If a dispute arises between the two parents over the custody of their child who has been weaned and they fail to reach an agreement, the People's Court shall make a judgment in accordance with the rights and interests of the child and the actual conditions of both parents.

Article 37 If, after divorce, one parent has been given custody of a child, the other parent shall bear part or the whole of the child's necessary living and educational expenses. The two parents shall seek agreement regarding the amount and duration of such payment. If they fail to reach an agreement, the People's Court shall make a judgment.

The agreement or court judgment on the payment of a child's living and educational expenses shall not prevent the child from making a reasonable request, when necessary, to either parent for an amount exceeding what is decided upon in the said agreement or judgment.

Article 38 After divorce, the father or the mother who does not directly bring up the child shall have the right to visit his or her child, and the other party shall have the duty to cooperate.

The manner and time for exercising the right to visit a child shall be decided by the

the manner and time for exercising the right to visit a child shall be decided by the parties through consultation; if they fail to reach an agreement upon in this regard, the People's Court shall make a judgment .

Where the visit to a child paid by the father or the mother is not conducive to the physical and mental health of the child, the People's Court shall terminate the right to visit; after the cause of such termination disappears, the right to pay visit to the child shall be resumed.

Article 39 At the time of divorce, the husband and the wife shall seek agreement regarding the disposition of their jointly possessed property. If they fail to reach an agreement, the People's Court shall, on the basis of the actual circumstances of the property and on the principle of taking into consideration the rights and interests of the child and the wife, make a judgment.

The rights and interests enjoyed by the husband or the wife in contracting land management on a household basis shall be protected in accordance with law.

Article 40 Where the husband and the wife agree in writing that the property acquired by them during the period in which they are under contract of marriage is in their separate possession, if one party has performed more duties in respect of bringing up the child, taking care of the old and assisting the other party in work, it shall, at the time of divorce, have the right to request the other party to make compensation for the above, and the other party shall do so accordingly.

Article 41 At the time of divorce, debts incurred jointly by the husband and the wife during their married life shall be paid off jointly by them. Where their jointly possessed property is insufficient to pay the debts, or the property is in their separate possession, the two parties shall discuss alternative ways of payment; if they fail to reach an agreement, the People's Court shall make a judgment.

Article 42 If, at the time of divorce, one party has difficulty in supporting himself or herself, the other party shall render appropriate assistance with his or her own property such as his or her residential house. Specific arrangements shall be made by both parties through consultation. If they fail to reach an agreement, the People's Court shall make a judgment.

Chapter V

Selvage Measures and Legal Liabilities

Article 43 Where a person indulges in family violence or maltreats a family member, the victim shall have the right to advance a request; the neighborhood committee, villagers committee or the unit where they belong to, shall persuade the person to stop doing it and conduct mediation.

Where a person is committing familv violence. the victim shall have the right to

advance a request; the neighborhood committee or the villagers committee shall persuade the person to stop doing it; the public security organ shall stop such violence.

Where the victim advances a request, the public security organ shall, in accordance with the legal provisions on administrative penalties for public security, impose an administrative penalty on the person who commits family violence or maltreatment of a family member.

Article 44 The family member who is abandoned shall have the right to advance a request and the neighborhood committee, villagers committee or the unit where they belong to, shall persuade the person to stop doing it and conduct mediation.

Where the abandoned family member advances a request, the People's Court shall, in accordance with law, make the judgment on payment by the person who abandons the family member to the victim for the costs of maintenance, upbringing or support.

Article 45 The person who commits bigamy, family violence, maltreatment or abandonment of a family member, if it constitutes a crime, shall be investigated for criminal responsibility in accordance with law. The victim may, in accordance with relevant provisions of the Criminal Procedure Law, lodge a private prosecution with the People's Court; the public security organ shall investigate the case in accordance with law, and the People's Procuratorate shall institute public prosecution in accordance with law.

Article 46 Where one of the following circumstances leads to divorce, the unerring party shall have the right to claim compensation:

- (1) bigamy is committed;
- (2) one party who has a spouse cohabits with another person of the opposite sex;
- (3) family violence is committed; or
- (4) a family member is maltreated or abandoned.

Article 47 If, at the time of divorce, one party conceals, transfers, sells off or destroys the property in the joint possession of the couple, or forge debts in an attempt to encroach upon the property of the other party, the former may get less or no property when the property in the joint possession of the couple is partitioned. After divorce, if the other party discovers the above, it may bring a suit in the People's Court to demand re-partition of the property in the joint possession of the couple.

With respect to acts that hinder civil procedures as mentioned in the preceding paragraph, the People's Court shall mete out sanctions in accordance with the provisions of the Civil Procedure Law.

Article 48 Where a person refuses to abide by the judgment or ruling on the costs of maintenance, upbringing or support payments, or on the partitioning or inheritance of

property, or visit to a child, the People's Court shall enforce the execution of the judgment or ruling in accordance with law. The individuals and unit concerned shall have the duty to assist such execution.

Article 49 Where there are other provisions by other laws on illegal acts against marriage or family and on legal liabilities for the acts, such provisions shall apply.

Chapter VI

Supplementary Provisions

Article 50 The people's congresses of national autonomous areas shall have the power to formulate adaptations in the light of the specific conditions of the local nationalities in regard to marriage and family. Adaptations formulated by autonomous prefectures and autonomous counties shall go into effect only after approval by the standing committee of the people's congress of the relevant province, autonomous region, or municipality directly under the Central Government. Adaptations formulated by autonomous regions shall go into effect only after approval by the Standing Committee of the National People's Congress.

Article 51 This Law shall go into effect as of January 1, 1981.

The Marriage Law of the People's Republic of China promulgated on May 1, 1950 shall be invalidated as of the date when this Law goes into effect.



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