

Marriage Law of the People's Republic of China

(1980-- amended according to the Decision on Amending the Marriage Law of the People's Republic of China made at the 21st meeting of the Standing Committee of the Ninth National People's Congress on April 28, 2001.

Contents

Chapter One General Principles

Chapter Two Marriage

Chapter Three Familial Relations

Chapter Four Divorce

Chapter Five Remedies and Legal Liabilities

Chapter Six Supplementary Provision

Chapter One General Principles

Article 1 This Law lays the basic principles for marriage and family relations.

Article 2 A marriage system based on freedom, monogamy and equality between man and woman shall be implemented.

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

Birth control shall be practiced.

Article 3 Marriage arranged by any third party, mercenary marriage and any interference in the freedom of marriage shall be prohibited. Any exaction of money or property by means of marriage shall be prohibited.

Bigamy shall be prohibited. No one who has a spouse may cohabit with any other person.

Familial violence shall be prohibited.

Maltreatment or desertion of any family member shall be prohibited.

Article 4 Husband and wife shall be truthful to and respect each other. Family members shall respect the old, take good care of the underage, and help each other so as to maintain an equal, harmonious and cultured matrimonial and familial relationship.

Chapter Two Marriage

Article 5 Marriage shall be based on the complete willingness of both man and woman. No party may coerce the other party to enter into marriage, and no third party may interfere with the marriage.

Article 6 In order to get married, the man shall not be younger than 22 years old and the woman shall not be younger than 20. Late marriage and late child birth shall be encouraged.

Article 7 Marriage shall be prohibited in any of the following circumstances:

a. if the man and the woman are lineal relatives by blood or collateral relatives by blood up to the third degree of kinship;

b. if either the man or the woman is suffering from any disease that is regarded by medical science as rendering a person unfit for marriage.

Article 8 The man and woman who apply for marriage shall go to the marriage registration authority in person to get registered. If they meet the requirements of this law, they shall be registered and be given a certificate of marriage. The obtaining of a certificate of marriage means the establishment of the relationship of husband and wife. Those who live as husband and wife without registration shall go through remedial registration procedures.

Article 9 Having gone through the registration procedures, the woman may become a member of the family of the man and the man may also become a member of the family of the woman, whatever is agreed upon by both parties.

Article 10 If any of the following circumstances occurs, the marriage shall be invalid:

- a. if either party is a bigamist;
- b. if both parties are in the kinship that is forbidden from getting married by law;
- c. if any party has suffered from any disease that is held by medical science as rendering a person unfit for getting married and the disease has not been cured after marriage;
- d. if any party has not come up to the legitimate age for marriage.

Article 11 In the case of intimidated marriage, the intimidated party may apply to the marriage registration authority or the people's court for canceling the said marriage. The intimidated party shall make the application within one year since the day of marriage registration. Where any party who is unlawfully confined in personal freedom applies for canceling a marriage, he or she shall make the application within one year since the day he or she resumes personal freedom.

Article 12 An invalid or cancelled marriage shall be invalid ab initio, and the parties concerned do not have the rights and obligations of the husband and wife. The property incurred during the term of cohabitation shall be disposed of by both parties upon agreement. Where no agreement is achieved, the people's court shall make a judgment according to the principle of favoring the innocent party. The property rights of the party to a lawful marriage shall not be infringed upon in the disposal of the property relating to a marriage invalidated by bigamy. The relevant provisions of this law concerning parents and children shall apply to the children borne by both the parties concerned.

Chapter Three Familial Relations

Article 13 Both husband and wife shall be equal in familial status.

Article 14 Both husband and wife are entitled to have his or her own name.

Article 15 Both husband and wife have the liberty to participate in production, work, study and social activities. Either party may not confine or interfere with the activities of the other party.

Article 16 Both husband and wife shall be under the obligation of following the policy of birth control.

Article 17 The following properties incurred during the existence of marriage shall be jointly owned by both husband and wife:

- a. wages and bonuses;
- b. any income incurred from production or management;

(Unofficial English translation, original Chinese) (In case of discrepancy between the English translation and the original Chinese text, the Chinese text shall prevail.)

- c. any income incurred from intellectual property;
- d. any property inherited or bestowed, with the exception of those as mentioned in Article 18 (c) of this law;
- e. other property that shall be jointly owned. Both husband and wife shall have equal rights in the disposal of jointly owned property.

Article 18 The following property shall be owned by either the husband or the wife:

- a. the pre-marital property that is owned by one party;
- b. the payment for medical treatment or living subsidies for the disabled arising from bodily injury on either party;
- c. the articles of living specially used by either party;
- d. other property that shall be used by either party.

Article 19 Husband and wife may come to an agreement whether the property incurred during the existence of marriage or prior to marriage to be owned by each party, to be jointly owned or partially owned by each party and partially owned by both parties. The agreement shall be made in written form. Where there is no such agreement or it is not explicitly agreed upon, the provisions of articles 17 and 18 shall apply.

The agreement concerning the property obtained during the existence of marriage and pre-marital property shall be binding upon either party.

Where husband and wife agree to individually own their property, the debt of either the husband or the wife shall be cleared off by the individual property of the debtor if the creditor has the knowledge of the said agreement.

Article 20 Husband and wife shall be under the obligation of supporting each other. Where either party fails to perform the obligation of supporting the other party, the party that needs support shall be entitled to ask the other party to pay aliments.

Article 21 Parents shall be under the obligation of upbringing and educating their children, and the children shall also be under the obligation of supporting their parents. Where the parents fail to perform their obligations, the underage children and the children without the ability to live an independent life shall be entitled to ask their parents to pay aliments.

Where any child fails to perform his or her obligations, the parents thereof who are unable to work or who are living a difficult life shall be entitled to ask their child to pay aliments.

It shall be forbidden to drown or desert infants or commit any kind of infanticide.

Article 22 A child may take the surname of either the father or mother.

Article 23 Parents shall have the rights and obligations of protecting and educating their children. Where the underage child causes any damage to the state, collective or other person, the parents thereof shall take civil liabilities.

Article 24 Both husband and wife shall be entitled to inherit the property of each other. Both parent and child shall be entitled to inherit the property of each other.

Article 25 A natural child shall have the equal rights of a legitimate child, and shall not be harmed or discriminated against by any person. The natural father or mother that does not directly upbringing his or her

natural child shall undertake the expenses for the living and education of the natural child until the child is able to live an independent life.

Article 26 The state defends lawful adoptions. The relevant provisions in this law concerning the relationship between parents and children shall be applicable to foster parents and foster children.

The rights and obligations between the foster children and natural parents are eliminated by the establishment of the adoption.

Article 27 The step parent and the step child shall not maltreat or discriminate against one another.

The relevant provisions in this law concerning the relationship between parents and children shall be applicable to step parents and step children.

Article 28 Capable grandparents and maternal grandparents shall be under the obligation of upbringing the grandchildren and maternal grandchildren whose parents have deceased or are incapable of upbringing their underage children. Capable grandchildren and maternal grandchildren shall be under the obligation of supporting the grandparents and maternal grandparents whose children have deceased or whose children are incapable of supporting them.

Article 29 Capable elder brothers and sisters shall be under the obligation of supporting their younger brothers and sisters whose parents have deceased or whose parents are incapable of supporting them. The younger brothers and sisters who have been brought up by the elder brothers and sisters shall be under the obligation of supporting their elder brothers and sisters who are without labor capabilities and without sources of living aliments.

Article 30 Children shall respect the matrimonial rights of their parents and shall not interfere with the digamy and post-digamous life of their parents. The obligation of the children to support their parents does not terminate as a result of the change of matrimonial relationship of their parents.

Chapter Four Divorce

Article 31 Divorce shall be allowed if both husband and wife are willing to divorce. Both parties shall apply to the marriage registration authority for divorce. The marriage registration authority issues a certificate of divorce after confirming that both parties are indeed willing to divorce and have made proper arrangements for their children and have properly disposed of their property. Article 32 Where either the husband or wife applies to get divorced, the departments concerned may make mediations, or he or she may file a suit at the peoples court for divorce. The peoples court shall make mediations in the process of hearing a divorce suit; divorce shall be granted if mediation fails because mutual affection no longer exists. Divorce shall be granted if any of the following circumstances occurs and mediation fails:

- a. either party is a bigamist or a person who has a spouse but co-habits with another person;
- b. there is family violence or maltreatment or desertion of any family member;
- c. either party is indulged in gambling, drug-abuse or has other vicious habits and refuses to mend his or her ways despite of repeated admonition;
- d. both parties have lived separately due to lack of mutual affection for up to two years;
- e. other circumstances that have led to the nonexistence of mutual affection as husband and wife.

If either party has been declared by court as to be missing and the other party applies to be divorced, divorce shall be granted.

Article 33 The application of the spouse of a soldier in active service for divorce shall be granted by the soldier unless the soldier is in grave fault.

Article 34 The husband may not apply for divorce when his wife is pregnant or within one year after giving birth to a child or within six months after terminating gestation. This restriction shall not apply to the case where the wife applies for divorce or the peoples court deems it necessary to accept the application of the husband for divorce.

Article 35 If, after divorce, both parties desire to resume their husband-and-wife relationship, they shall go through the registration procedures at the marriage registration authority.

Article 36 The relationship between parents and children does not terminate due to the divorce of parents. After the divorce of the parents, the children remain the children of both parties no matter they are supported directly by either the father or mother.

Both father and mother shall, after divorce, have the right and the obligation of upbringing their children.

It is the principle that the children during lactation shall be brought up by their mother after the divorce of the parents. If any dispute arises concerning which party shall bring up the children beyond lactation, such dispute shall be settled by the peoples court according to the specific conditions of both parties and in light of protecting the rights and interests of the children.

Article 37 If, after the divorce of parents, the children are to be brought up by either party, the other party shall undertake a part or all of the necessary living and education expenses. The amount and term of payment shall be agreed upon by both parties; if no agreement is achieved, the amount and term shall be decided by the people's court. No agreement or judgment concerning the expenses for the living and education of the children may in no way prevent the children from making reasonable requests, where necessary, to either parent for an amount beyond the amount as determined in the said agreement or judgment.

Article 38 After divorce, the parent that does not directly bring up the children has the right to visit the children, and the other party has the obligation to give assistance. The way and time for exercising the right of visiting children shall be agreed upon by the parties concerned. In case no agreement is achieved, they shall be decided by the people's court.

If the visit of either the father or mother is harmful to the soundness of the body and mind of the children, the said right shall be terminated by the people's court. When the reasons for terminating the said right disappear, the right shall be resumed.

Article 39 At the time of divorce, both husband and wife shall agree upon the disposal of the jointly owned property; if they fail to come to any agreement, the people's court shall decide the disposal thereof, taking into consideration the actual circumstances of the property and following the principle of favoring the children and the wife.

The rights and interests that both husband and wife enjoy in the contracted management of land shall be protected by law.

Article 40 In the case both husband and wife agree to separately own the property they respectively obtain during the existence of their marriage and either of them has spent considerably more effort on supporting children, taking care of the old or assisting the other party in work, etc, this party shall be entitled to demand the other party to make compensations at the time of divorce, and the requested party shall make compensations.

Article 41 At the time of divorce, the debts jointly incurred by both husband and wife for the common life shall be paid out of the jointly owned property. If the jointly owned property is not enough to pay the debts or if the property is individually owned, both parties shall agree upon the payment of the debts. If both parties fail to reach any agreement, the people's court shall decide on the payment of the debts.

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Article 42 If, at the time of divorce, either party has difficulties in life, the other party shall render appropriate assistance from his or her personal property like house, etc. Specific arrangements shall be agreed upon by both parties. In case no agreement is agreed upon, the people's court shall make a decision.

Chapter Five Remedies and Legal Liabilities

Article 43 In case of familial violence or maltreatment of any family member, the victim thereof shall be entitled to make petitions, and the villagers' committees, the relevant urban residents' committee, villagers' committee or the entity where the victim is a staff member shall make dissuasions or mediations.

The victim shall be entitled to make petitions concerning the familial violence that is happening, and the relevant urban residents committee or villagers' committee shall make dissuasions, and the public security organs shall stop such acts.

Where the victim of family violence or maltreatment makes a petition, the public security organ concerned shall give administrative punishment to the actor according to the provisions on the administration of public security.

Article 44 Any member deserted by his or her family shall be entitled to make petitions, and the relevant urban residents' committee, villagers' committee or the entity where the victim is a staff member shall make dissuasions or mediations.

Where any person deserted by his or her family makes a petition, the people's court shall make a judgment concerning the payment of expenses for upbringing, supporting and maintenance.

Article 45 Criminal liabilities shall be meted out to bigamists and those who has committed familial violence or maltreated or deserted any family member so seriously as to have constituted a crime. The victim may file a private prosecution at the people's court according to the provisions of the criminal procedure law; the relevant public security organ shall make investigations and the people's procuratorate concerned shall make a public prosecution according to the provisions of law.

Article 46 In any of the following circumstances which has led to the divorce of husband and wife, the innocent party shall be entitled to claim damages:

- a. bigamy;
- b. cohabitation between a person who has a spouse but co-habitats with a third person;
- c. familial violence;
- d. maltreating or deserting any family member. Article 47 If, at the time of divorce, any party conceals, transfers, sells or destroys the property jointly owned by both husband and wife, or fabricates any debt in an effort to seize the property of the other party, the person who conceals, transfers, sells or destroys the jointly owned property or fabricates the debt may, in the partition of jointly owned property, have a smaller or even no share. If any party discovers any of the afore-mentioned acts after divorce, he or she may file a suit at the people's court to apply for repartitioning the jointly owned property. The people's court concerned may punish any of the acts that hampers the civil litigation concerning the afore-mentioned acts according to the civil procedure law.

Article 48 In case any person refuses to execute the judgment or decision on the payment of expenses for upbringing, supporting or maintenance, the partitioning or inheritance of property or visiting the children, the execution may be enforced by the people's court in accordance with the law. Relevant persons and entities shall be responsible for giving assistance to the enforcement.

Article 49 Where there are different provisions in other laws concerning the illegal acts and legal liabilities in the area of marriage or family, such provisions shall be followed.

Chapter Six Supplementary Provision

Article 50 The people's congresses of the autonomous regions and the standing committees thereof are empowered to formulate adaptations according to the specific conditions of the marriage and family of the ethnic group of the local place. The adaptations formulated by the autonomous prefectures and counties become effective after being ratified by the standing committee of the people's congress of the corresponding province, autonomous region or municipality under the direct control of the central government. The adaptations formulated by the autonomous regions become effective after being ratified by the Standing Committee of the National People's Congress.

Article 51 This Law shall become effective as of January 1, 1981.