



Population and Family Planning Laws, Policies and Regulations



CHINA

Marriage Law

Date: Adopted at the Third Session of the Fifth National People's Congress and promulgated by Order No. 9 of the Chairman of the Standing Committee of the National People's Congress on September 10, 1980, and effective as of January 1, 1981.

Source: The Legislative Affairs Commission of the Standing Committee of the National People's Congress of the People's Republic of China

Subject: marriage, family planning, rights of women, rights of children

Text:

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. Maltreatment and desertion of one family member by another shall be prohibited.

Chapter II Marriage Contracts

Article 4. 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 5. No marriage shall 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 6. 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 leprosy, a cure not having been effected, or from any other disease which is regarded by medical science as rendering a person unfit for marriage.

Article 7. 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 acquire the marriage certificates.

Article 8. 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.

Chapter III Family Relations

Article 9. Husband and wife shall have equal status in the family.

Article 10. Both husband and wife shall have the right to use his or her own surname and given name.

Article 11. 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 may restrict or interfere with the other party.

Article 12. Both husband and wife shall have the duty to practice family planning.

Article 13. The 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, unless they have agreed otherwise.

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

Article 14. 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 15. 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 and any other acts causing serious harm to infants shall be prohibited.

Article 16. Children may adopt either their father's or their mother's surname.

Article 17. Parents shall have the right and duty to subject their children who are minors to discipline and to protect them. If children who are minors cause damage to the state, the collective or individuals, their parents shall have the duty to compensate for the losses financially.

Article 18. 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 19. Children born out of wedlock shall enjoy the same rights as children born in wedlock. No one may harm or discriminate against them.

The father of a child born out of wedlock shall bear part or the whole of the child's living and educational expenses until the child can support himself.

Article 20. 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 21. 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 22. Grandparents who can afford it shall have the duty to bring up their grandchildren who are minors and whose parents are dead. Grandchildren who can afford it shall have the duty to support their grandparents whose children are dead.

Article 23. Elder brothers or elder sisters who can afford it shall have the duty to bring up their younger brothers or sisters who are minors, if their parents are dead or have no means to bring them up.

Chapter IV Divorce

Article 24. 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 without delay.

Article 25. 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 should carry out mediation; divorce shall be granted if mediation fails because mutual affection no longer exists.

Article 26. If the spouse of a soldier in active service desires a divorce, the soldier's consent must be obtained.

Article 27. A husband may not apply for a divorce when his wife is pregnant or within one year after the birth of the child. This restriction shall not apply in cases where the wife applies for a divorce, or when the people's court deems it necessary to accept the divorce application made by the husband.

Article 28. 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. The marriage registration office shall allow them to register.

Article 29. The relationship between parents and children shall not come to an end with the parents divorce. After divorce, whether the children are 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 30. 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 was decided upon in the said agreement or judgment.

Article 31. 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 make a judgment, taking into consideration the actual circumstances of the property and the rights and interests of the wife and the child.

Article 32. At the time of divorce, debts incurred jointly by the husband and the wife during their married life shall be paid out of their jointly possessed property. If such property is insufficient to pay the debts, the two parties shall discuss alternative ways of payment. If they fail to reach an agreement, the people's court shall make a judgment. Debts incurred separately by the husband or the wife shall be paid by the party who incurred them.

Article 33. If, at the time of divorce, one party has difficulty in supporting himself or herself, the other party shall render appropriate financial assistance. Specific arrangements shall be worked out by both parties through consultation. If they fail to reach an agreement, the people's court shall make a judgment.

Chapter V Supplementary Provisions

Article 34. Persons violating this Law shall be subject to administrative or legal sanctions in accordance with the law and on the merits of each case.

Article 35. In cases where a person refuses to abide by the judgments or rulings on costs of upbringing, maintenance or support payments, or on the partitioning or inheritance of property, the people's court shall enforce the execution of the judgments or rulings in accordance with the law. The organizations concerned shall have the duty to assist such executions.

Article 36. The people's congresses of national autonomous areas and their standing committees may formulate certain adaptations or supplementary provisions in keeping with the principles of this Law and in the light of the specific conditions of the local nationalities in regard to marriage and family. Provisions formulated by autonomous prefectures and autonomous counties must be submitted to the standing committee of the people's congress of the relevant province or autonomous region for approval. Provisions formulated by autonomous regions must be submitted to the Standing Committee of the National People's Congress for the record.

Article 37. This Law shall come into force 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 day this Law comes into force.

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