

## LEGAL BASIS OF THE MARRIAGE INSTITUTION IN MODERN CHINA

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The global trends of the family institution's development and the "policy of reform and openness" have influenced the transformation and dynamics of family relationship in China. Tradition of living in multigenerational families and having many children families were subjected to the modernization influence. The radical shift from patrilineal to the bilinear family and kinship relations is taking place nowadays. The PRC (the People's Republic of China) legal system adapts to intrastate and global changes in order to maintain social stability, modernization of the law, legal procedure and public relations in general.

More than five-year work of the Commission of Legislative Affairs preceded the adoption of the new Marriage Law of the PRC. Leading sociologists, psychologists, demographers and lawyers were employed to take part in a preparation for the research and discussion of problems in the sphere of family and marriage. The offers of the All-China Women's Federation (ACWF) and numerous non-governmental women's organizations were analyzed and considered. (Почагина, 2002) The legislators paid special attention to legal assessment of extramarital affairs, liability for breach of monogamy and fidelity, domestic violence and division of family property in case of divorce. Special meetings were held in Beijing, Shanghai and Guangzhou (Почагина, 2002), where leading experts and parliamentarians loudly discussed an amendment for compensation to the wife provided that her husband has a mistress. The inclusion of extramarital affairs section in grounds for compensation was estimated as a "breakthrough" which provides for the protection of the rights and interests of married women. The problem of marital fidelity: whether it should be controlled by law, or would have a moral obligation, was the subject of heated discussions in China at various levels. (Почагина, 2002)

In January 2001, the Presidium of the NPC (the National People's Congress) Standing Committee submitted the question of the amendments for the wide public discussion, as the law changes affected the interests of all the inhabitants of China. Stability of the marriage and the family is a key factor in ensuring social stability and social progress. January 15, 2001 the draft law was published in Chinese mass media. (Richter, 2012)

April 28, 2001 session of the NPC Standing Committee approved a new version of the Law (127 votes - in favor, 1 – contra, 9 - abstaining), which came into force on the same day. The Law 2001 compensates the shortcomings of the two previous laws, and resolves current problems of marriage and family by detailing the provisions of the Marriage Law 1980 and the introduction of new rules. The new version of the Marriage Law of the PRC is based on the text of the Marriage Law 1980, which had 5 chapters and 37 articles. In the new edition Chapter 5 is completely new and is dedicated to the judicial responsibility, all other sections have been revised. (Marriage Law of the People's Republic of China)

The Marriage Law has a number of new items.

Article 3 in addition to prohibition of bigamy was supplemented with a provision that reads: "Anyone who has a spouse shall be prohibited to cohabit with another person of the opposite sex." (Marriage Law of the People's Republic of China) Person found guilty of bigamy, subject to arrest and imprisonment of up to two years in accordance with the Criminal Code of the PRC. Moreover, the injured party is guaranteed monetary compensation in case of divorce. However, this law seems to be rather declarative, because cohabitation is difficult to prove, and it can be qualified as a simple adultery.

New Article 4 contains a provision on conjugal fidelity: "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." (Marriage Law of the People's Republic of China) It follows that, the Chinese parliament, rejected a proposal to introduce criminal liability for adultery as contrary to the freedom of the individual, freedom of choice. Legislators consider that this article is the appeal to traditional Chinese mentality, such values as mutual loyalty, mutual support of family members and the priority of family ties, which are still widespread in Chinese public consciousness. Strictly speaking, the consolidation of marital fidelity as a duty cannot be under the juridical control, as it concerns the sexual relationship. Also, in the comments emphasis was made on the fact that party and administrative disciplinary action

that should be applied on the person who has extramarital affairs, he should be the object of public condemnation. (Почагина, 2002)

Devoted to marriage, the 2nd chapter of the new law was considerably upgraded. Article 8 added a provision requiring mandatory registration of marriage. Thus, the law does not recognize de facto marriage. This amendment was introduced in order to confine the practice of marital relations without registration, especially in rural areas. The addition of this amendment satisfies the state interests, because of threatening growth of de facto marriage and the difficulties arising in these conditions with the implementation of the birth control. If people, being in such a relationship, apply to the court with property or other claims, court will accept their suit only after contracting a legal marriage. (Marriage Law of the People's Republic of China) According to lawmakers, the announcement of de facto marriages should encourage people to register their relationships. Really this principle of family law, exempting common-law spouses from actual obligations by mutual content, makes property disputes between cohabitants more complicated, due to lack of opportunity to seek judicial relief. In fact this amendment does not answer interests of women and does not protect their rights.

Three completely new Articles (10, 11, and 12) are devoted to invalid marriages and annulment procedure. In accordance with Article 10 the marriage is considered void pursuant to four conditions: bigamy, marriage with a relative, marriage with an insane person, the marriage age discrepancy. Marriages, concluded under duress, are void. The ACWF and women's NGOs (Non-governmental organizations) played a significant role in the formulation and adoption of this article. Undoubtedly, Article 11 is intended to protect women rights, fights against trafficking in women and violence against women. This is motivated by the desire of the Chinese leadership to bring national legislation in line with the Declaration on the Elimination of Violence against Women and the Convention on the Elimination of All Forms of Discrimination against Women, to eradicate trafficking in women. (Почагина, 2002)

In modern China divorce issues are becoming more and more topical. Nowadays the problem of resolving property disputes in case of divorce affects the interests of many people. Every year, even before the adoption of the new law in the PRC among 9 million couples 450000 divorced amicably, and other 700000 couples parted the court. (Привалов, 2000) New law lists the types of income and assets that make up the overall family property of the spouses. These include salaries, bonuses, spouses, and revenues from the production, management and intellectual property, the property received by inheritance or as a result of the donation contract, as well as other marital property. The Law validates the marriage contracts, whose signing is conditioned by increase of people's income and the number of second marriages. The law recognizes the legitimacy of property contracts entered spouses, and property rights of the individual, but does not make this practice mandatory in marriage.

The main legal consequence of divorce is dissolution of the marital relationship. In addition, the dissolution of the marriage has the following additional consequences. Firstly, the division of joint property of spouses and co-payment of debts, secondly, the rendering of economic support to the side experiencing financial difficulties, thirdly, the mutual participation of the ex-spouses in the cultivation and education of the children.

The facts of domestic violence took place in China despite the fact that it was forbidden. During the anonymous survey, before the adoption of the new edition, it was found that about one-third of couples sorted their relationship with their fists, pans and other instruments of physical restraint. (Привалов, 2000) Absolutely new Chapter 5, "Salvage Measures and Legal Liabilities" is entirely devoted to the problems of domestic violence, domestic abuse, and sexual harassment. Of course, first of all, it protects the rights of women, children and elderlies, who are most often exposed to violence of various types.

A person, exposed to violence or abuse, leaving without livelihood, has the right to appeal to different authorities (committees of urban and rural residents, the public security organs, people's courts and the prosecutor's office). For the first time sexual harassment is recognized as a legal category in the Chinese law. It provides a legal basis for the trial of such cases. However, out of ten cases of sexual harassment, which dealt with by the courts in 2001, only one claim was allowed. Therefore, the UN Committee recognizing the success in the fight against gender-based violence and the importance of marriage amendments to the Marriage Law 1980 noted the lack of comprehensive

national legislation on violence against women. The Committee also noted the lack of victims' access to the justice system. (Воронина О.А, 2008.)

The Chinese government is trying to keep the basic unit of society – the family. The new edition of the Marriage Law is consistent with modern norms of civil law protects the interests of the elderly and children. Property rights of women in case of divorce are legally protected. Acts of domestic violence are criminal offenses. Unfortunately, many of the provisions are declaratory, the woman cannot get access to the appropriate authorities, and the system is imperfect. In addition to the legislative reformation should undertake a reformation of the executive system, improve to protecting women rights local system. The Chinese government is still concerned about the unresolved problem: the increasing number of divorces and marital infidelity. However, these issues cannot be resolved judicially. It's a matter of cultural development of society, its spiritual and moral values.

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