

535

**THE MARRIAGE LAW  
OF THE  
PEOPLE'S REPUBLIC OF CHINA**



FOREIGN LANGUAGES PRESS  
PEKING, CHINA

## FOREWORD

*This booklet contains the Marriage Law of the People's Republic of China which came into force on May 1, 1950, and also two explanatory articles by the Vice-President of the Supreme People's Court and the Vice-Chairman of the All-China Democratic Women's Federation.*

*The adoption of this Law represents a further step taken by the Chinese people in uprooting China's centuries-old feudal system. Its importance in this respect is comparable to the great agrarian reform now being carried out in China. As the agrarian reform sets free hundreds of millions of landless and land-hungry peasants from oppression by the feudal landlords, so the Marriage Law marks the emancipation of the Chinese women from the feudal marriage system under which they were utterly bereft of any rights.*

*The new Law brings to an end the arbitrary and compulsory feudal marriage system under which both men and women had no free choice of marriage*

partners, these being chosen for them by their parents—a practice which led to the widespread prevalence of child-marriage.

Polygamy in the case of men was openly connived at and while divorce was possible on the application of husbands it was made practically impossible for women.

The old feudal family traditions similarly rendered it out of the question for a widow to re-marry. Many young widows met death at the hands of their own brothers or parents whose concern for the family "reputation" was greater than that for their own kinswomen who ventured to re-marry.

China's new Marriage Law paves the way for a wholesome new system based on "free choice" of partners, on monogamy, on equal rights for both sexes, and on the protection of the legitimate interests of women and children." Love and mutual respect and nothing else is regarded as the only tie which holds a man and a woman in matrimonial relationship.

It is not only the Chinese women who benefit from the new Law but the whole community and its provisions are framed in such a way as to ensure special care for the legal and other rights of children.

Infinite care was taken in drafting the new marriage regulations. Nearly eighteen months was spent in investigating local marriage customs in different parts of China and in sounding out the views

and opinions of both men and women, as well as in making a comparative study of the marriage laws in the Soviet Union and the New Democracies. As with all major laws of the People's Republic of China these regulations were drawn up only after a full democratic process of study and analysis of the problems involved.

It was quite natural therefore that the publication of the new Law met with an instant and wide welcome, although it is recognised that it will require some considerable period of education and actual operation of the Law in its many aspects before it will be possible to completely eradicate the old feudal attitude towards women.

There can be no doubt, however, that the new marriage relations that will arise on the basis of this Law will do much to foster the building of a healthier and happier society in which women, for the first time in China's long history, will play a full part as equal partners with their men-folk.

*The Publishers.*

## CONTENTS

	Page
The Marriage Law of the People's Republic of China .....	1
A Much Needed Marriage Law <i>by</i> Chang Chih-jang .....	13
On the Marriage Law of the People's Republic of China <i>by</i> Teng Ying-chao .....	25

THE MARRIAGE LAW  
OF THE  
PEOPLE'S REPUBLIC OF CHINA.\*

CHAPTER ONE

GENERAL PRINCIPLES

*Article 1.*

The arbitrary and compulsory feudal marriage system, which is based on the superiority of man over

---

\* Promulgated by the Central People's Government on May 1, 1950.

woman and which ignores the children's interests shall be abolished.

The New Democratic marriage system, which is based on free choice of partners, on monogamy, on equal rights for both sexes, and on protection of the lawful interests of women and children, shall be put into effect.

#### *Article 2*

Bigamy, concubinage, child betrothal, interference with the re-marriage of widows and the exaction of money or gifts in connection with marriage shall be prohibited.

### CHAPTER TWO

#### THE MARRIAGE CONTRACT

#### *Article 3*

Marriage shall be based upon the complete willingness of the two parties. Neither party shall use compulsion and no third party shall be allowed to interfere.

#### *Article 4*

A marriage can be contracted only after the man has reached 20 years of age and the woman has reached 18 years of age.

#### *Article 5*

No man or woman in any of the following instances shall be allowed to marry:

- a) Where the man and woman are lineal relatives by blood or where the man and woman are brother and sister born of the same parents or where the man and woman are half-brother and half-sister. The question of prohibiting marriage between collateral relatives by blood within the fifth degree of relationship is to be determined by custom.
- b) Where one party, because of certain physical defects, is sexually impotent.
- c) Where one party is suffering from venereal disease, mental disorder, leprosy or any other disease which is regarded by medical science as rendering a person unfit for marriage.

#### *Article 6*

In order to contract a marriage, both the man and the woman shall register in person with the people's government of the sub-district or village in which they reside. If the marriage is found to be in conformity with the provisions of this Law, the local people's government shall, without delay, issue marriage certificates.

If the marriage is found not to be in conformity with the provisions of this Law, registration shall not be granted.

#### CHAPTER THREE

##### RIGHTS AND DUTIES OF HUSBAND AND WIFE

###### *Article 7*

Husband and wife are companions living together and shall enjoy equal status in the home.

###### *Article 8*

Husband and wife are in duty bound to love, respect, assist and look after each other, to live in harmony, to engage in production, to care for the children and to strive jointly for the welfare of the family and for the building up of a new society.

###### *Article 9*

Both husband and wife shall have the right to free choice of occupation and free participation in work or in social activities.

###### *Article 10*

Both husband and wife shall have equal rights in the possession and management of family property.

###### *Article 11*

Both husband and wife shall have the right to use his or her own family name.

###### *Article 12*

Both husband and wife shall have the right to inherit each other's property.

#### CHAPTER FOUR

##### RELATIONS BETWEEN PARENTS AND CHILDREN

###### *Article 13*

Parents have the duty to rear and to educate their children; the children have the duty to support and to assist their parents. Neither the parents nor the children shall maltreat or desert one another.

The foregoing provision also applies to step-parents and step-children. Infanticide by drowning and similar criminal acts are strictly prohibited.

###### *Article 14*

Parents and children shall have the right to inherit one another's property.

###### *Article 15*

Children born out of wedlock shall enjoy the same rights as children born in lawful wedlock. No

person shall be allowed to harm or discriminate against children born out of wedlock.

Where the paternity of a child born out of wedlock is legally established by the mother of the child or by other witnesses or by other material evidence, the identified father must bear the whole or part of the cost of maintenance and education of the child until it has attained the age of 18.

With the consent of the natural mother, the natural father may have custody of the child.

With regard to the maintenance of a child whose natural mother marries, the provisions of Article 22 shall apply.

#### *Article 16*

A husband or wife shall not maltreat or discriminate against children born of a previous marriage.

### **CHAPTER FIVE**

#### **DIVORCE**

#### *Article 17*

Divorce shall be granted when husband and wife both desire it. In the event of either the husband or the wife insisting upon divorce, it may be granted only when mediation by the sub-district people's government and the sub-district judicial organ has failed to bring about a reconciliation.

In cases where divorce is desired by both husband and wife, both parties shall register with the sub-district people's government in order to obtain divorce certificates. The sub-district government, after establishing that divorce is desired by both parties and that appropriate measures have been taken for the care of children and property, shall issue the divorce certificates without delay.

When only one party insists on divorce, the sub-district people's government may try to effect a reconciliation. If such mediation fails, it shall, without delay, refer the case to the district or city people's court for decision. The sub-district people's government shall not attempt to prevent or to obstruct either party from appealing to the district or city people's court. In dealing with a divorce case, the district or city people's court must, in the first instance, try to bring about a reconciliation between the parties. In case such mediation fails, the court shall render a verdict without delay.

In the case where, after divorce, both husband and wife desire the resumption of matrimonial relations, they shall apply to the sub-district people's government for a registration of re-marriage. The sub-district people's government shall accept such a registration and issue a certificate of re-marriage.

#### *Article 18*

The husband shall not apply for a divorce when his wife is with child. He may apply for divorce only

one year after the birth of the child. In the case of a woman applying for divorce, this restriction does not apply.

#### *Article 19*

The consent of a member of the revolutionary army on active service who maintains correspondence with his or her family must first be obtained before his or her spouse can apply for divorce.

As from the date of the promulgation of this Law, divorce may be granted to the spouse of a member of the revolutionary army who does not correspond with his or her family for a subsequent period of two years. Divorce may also be granted to the spouse of a member of the revolutionary army who had not maintained correspondence with his or her family for over two years prior to the promulgation of this Law and who fails to correspond with his or her family for a further period of one year subsequent to the promulgation of the present Law.

### CHAPTER SIX

#### MAINTENANCE AND EDUCATION OF CHILDREN AFTER DIVORCE

#### *Article 20*

The blood ties between parents and children do not end with the divorce of the parents. No matter

whether the father or the mother acts as guardian of the children, they still remain the children of both parties.

After divorce, both parents still have the duty to support and educate their children.

After divorce, the guiding principle is to allow the mother to have custody of a baby still being breast-fed. After the weaning of the child, if a dispute arises between the two parties over the guardianship and an agreement cannot be reached, the people's court shall render a decision in accordance with the interests of the child.

#### *Article 21*

After divorce, if the mother is given custody of a child, the father shall be responsible for the whole or part of the necessary cost of the maintenance and education of the child. Both parties shall reach an agreement regarding the amount and the duration of such maintenance and education. In the case where two parties fail to reach an agreement, the people's court shall render a decision.

Payment may be made in cash, in kind or by tilling land allocated to the child.

Such agreement reached between parents or a decision rendered by the people's court in connection with the maintenance and education of a child shall

not prevent the child from requesting either parent to increase the amount decided upon by agreement or by judicial decision.

*Article 22*

In the case where a divorced woman re-marries and her husband is willing to pay the whole or part of the cost of maintenance and education for the child or children by her former husband, the father of the child or children is entitled to have such cost of maintenance and education reduced or is entitled to be exempted from bearing such cost in accordance with the circumstances.

CHAPTER SEVEN

PROPERTY AND MAINTENANCE AFTER DIVORCE

*Article 23*

In case of divorce, the wife shall retain such property as belonged to her prior to her marriage. The disposal of other household properties shall be subject to agreement between the two parties. In cases where agreement cannot be reached, the people's court shall render a decision after taking into consideration the actual state of the family property,

the interests of the wife and the child or children, and the principle of benefiting the development of production.

In cases where the property allocated to the wife and her child or children is sufficient for the maintenance and education of the child or children, the husband may be exempted from bearing further maintenance and education costs.

*Article 24*

After divorce, debts incurred during the period of marriage shall be paid out of the property acquired by husband and wife during this period. In cases where no such property has been acquired or in cases where such property is insufficient to pay off such debts, the husband shall be held responsible for paying these debts. Debts incurred separately by the husband or wife shall be paid off by the party responsible.

*Article 25*

After divorce, if one party has not re-married and has difficulties in maintenance, the other party shall render assistance. Both parties shall work out an agreement with regard to the method and duration of such assistance; in case an agreement cannot be reached, the people's court shall render a decision.

## CHAPTER EIGHT

### BY-LAWS

#### *Article 26*

Persons violating this Law shall be punished in accordance with law. In cases where interference with the freedom of marriage has caused death or injury, the person guilty of such interference shall bear criminal responsibility before the law.

#### *Article 27*

This Law shall come into force from the date of its promulgation. In regions inhabited by national minorities, the People's Government (or Military and Administrative Committee) of the Administrative Area or the provincial People's Government may enact certain modifications or supplementary Articles in conformity with the actual conditions prevailing among national minorities in regard to marriage. But such measures must be submitted to the Government Administration Council for ratification before enforcement.

## A MUCH NEEDED MARRIAGE LAW

By CHANG CHIH-JANG\*

The abolition of the feudal marriage system and the introduction of a new marriage system on the basis of New Democracy is the one basic principle that runs through the whole structure of the Marriage Law of the People's Republic of China.

The salient features of the New Democratic system are: freedom of marriage for both men and women, monogamy, equal rights for both sexes, and the protection of the lawful rights of women and children. The chief aim of the Law is to set our women free from the bondage imposed upon them by the old system, protect the lawful rights of women and children, ensure equality and cooperation between husband and wife, and promote their mutual aid and love, and their joint endeavour for a common cause. The Law also takes into account the rights of the husband, of the parents, and the many complications

---

\* This article first appeared in the *People's Daily*, Peking, April 17, 1950. The author is the Vice-President of the Supreme People's Court.

involved in the matter of marriage. To put the new law into effect is to lead our women and men on to the road of sincere cooperation, true love and life-long companionship. It serves as an important and sure guarantee for social emancipation and paves the way for the wholesome development of our future generations.

Chairman Mao Tse-tung, in his investigation of the peasants' movement in Hunan Province, pointed out: "The women, besides being under the control of state power, divine power and clan power in common with men, were also under the control of the power of their husbands." These four powers represented the whole ideology and the system of ancestor worship. They were four thick ropes binding our peasants tight. In the past, Chinese men and women solved their marriage problems within the confines of these four ropes.

Freedom of marriage includes the freedom to marry and to divorce. In the past days of the feudal emperors, freedom of marriage was non-existent, either in law or in practice for men or women. In the time of the warlords and the Kuomintang reaction, although there was legal provision for freedom of marriage, it was not carried out in practice. As a rule, the ruling class never cared about anything which was of great interest to the people but which was of no interest to them; and the question of freedom of marriage was no exception. So freedom

of marriage in the past existed only on paper. Our people have always been under the oppression of the feudal marriage system.

To those whose sphere of social activities is rather limited, such an analysis may seem an exaggeration. But if they go deeper into society and take a look, especially at the situation in the rural areas, they will be convinced of the widespread influence of the old system.

Although great changes have been made in the old liberated areas, compared with the newly liberated areas, and in the former, considerable accomplishments have been made along the line of promoting the freedom of marriage, nevertheless, because the feudal marriage system is so deep-rooted, it is still found not an easy thing, even in the old liberated areas, to carry through the new policy regarding marriage. The absence of freedom of marriage is still notable. Taking China as a whole, the seriousness of the problem cannot be overlooked.

According to our incomplete data collected in the second half of 1949 divorce cases accounted for from 50.21 to 68.52 per cent of all the civil lawsuits in the four provinces of Pingyuan, Hopei, Chahar and Shansi in North China. The percentages of marriage disputes in relation to all civil lawsuits covering various lengths of time for the individual places are given below:

Locality	Percentage of Marriage Disputes in Relation to Civil Cases	Period of Time
Hsinhsien	99%	Jan.-Nov., 1949
Yuhsien	97%	Sept., 1949
Shihchiachuang	46.9%	Jan.-June, 1949
Harbin	42.8%	Aug. 23, 1948-Apr., 1949
Peking	13.4%	1949

The figure for Peking excludes cases dealt with by the various sub-district people's governments. Of the above marriage disputes, the vast majority are divorce cases. These figures speak for the prevalence of unsatisfactory marriages in the cities. The situation in rural areas is even more serious. According to data collected in three rural areas in Shansi Province, 81 per cent of the marriage cases came about as a result of the buying and selling of wives, arbitrary arrangement of marriage by parents, ill-treatment of wives by husbands or mothers-in-law, child marriage and bigamy. That the feudal marriage system is still prevalent cannot be denied.

The Marriage Law really serves as a very effective remedy for this old social evil, by abolishing the arbitrary and compulsory marriage system, prohibiting the exaction of money or gifts in connection with marriage and providing that marriage must be based on the complete willingness of the two parties.

A second aspect of the freedom of marriage is the freedom of divorce. In the time of the feudal

emperors, there was the so-called "seven grounds" for divorce which amounted to nothing more than legalised oppression and insult of women. There was legal provision for divorce in the time of the warlords and the KMT reaction, but the provision was conditioned by so many qualifications that it was hardly ever applied. In addition, the courts obstructed in many ways the granting of divorce with the result that there was no actual freedom of divorce. Freedom of divorce, generally speaking, was even less than the freedom of marriage in the old society.

In the rural areas, the freedom of divorce was unheard of in the past. In places where feudalism was most deeply rooted, women who applied for a divorce were sometimes put to death.

The situation in the cities also leaves much to be desired. Evidence showed that following the liberation of a certain city, there were case after case of divorce; and the number of cases increased as time went on. For example, Harbin registered 108 marriage disputes from August 23, 1946 to the end of the year; 628 disputes in 1947; 1,081 disputes in 1948; and 448 disputes from January to April in 1949. Tientsin registered four marriage disputes in January 1949 and the number increased monthly and reached 176 in June the same year. In Shanghai, the number of marriage disputes for trial in August 1949 was 212 and it jumped to 501 in the following month, the number of marriage disputes for mediation was 15 in

September 1949, and it increased monthly and reached 78 in January 1950.

Most of the above-mentioned disputes were divorce cases, and the majority of them were filed by women. Of the 77 divorce cases that have been concluded in Shanghai, only seven were brought by men and all the rest by women. These facts speak of the absence of the freedom of divorce and this is especially true in the case of women.

There is no knowing how many unhappy families and tragic stories were brought about as a result of the absence of the freedom of divorce. Such a widespread and serious evil must be swept away through the impact of the law of the new state. The urgent demand of the people awaits a judicial solution.

It has been clearly laid down in the Marriage Law:

Divorce shall be granted when husband and wife both desire it. In the event of either the husband or the wife insisting upon divorce, it may be granted only when mediation by the sub-district people's government and the sub-district judicial organ has failed to bring about a reconciliation. When either the husband or the wife insists on divorce and when the mediation by the sub-district people's government fails to bring about a reconciliation, either the husband or the wife may appeal to the district or city people's government. The court must in the first instance try to bring about a reconciliation

between the parties. In case such mediation is of no avail, the court shall render a verdict without delay.

Such a stipulation offers the best way to properly solve the marriage problems. Any couple who need divorce may be divorced; and any couple who can be persuaded into reconciliation may be reconciled.

In a positive respect, freedom of divorce will bring about more happy marriages and reduce the number of unhappy ones. It will help both husband and wife to live in harmony and consolidate the unity of the family, so that they may fully engage in their common career. However, this positive function of freedom of divorce is easily overlooked.

Since there is freedom of divorce both men and women are forced to take a very serious and sincere attitude toward the problem of marriage. One has to be very careful before marriage lest one should repent and one should also be very frank and honest so that the other may not feel regretful. Thus there will be more happy marriages in society.

In married life both husband and wife should endeavour to be on good terms so that the idea of separation may not occur. Lenin long ago pointed out: *"As a matter of fact, freedom of divorce will not break down the relationship in the home, but on the contrary it will consolidate it on the basis of democracy, i.e., on the only possible solid basis of a*

*civilised society*". Then unity in the home can be achieved and the couple can undertake their common career whole-heartedly.

Monogamy is a good system but it has never really been put into practice in this country. During the reign of the imperial dynasties and the old "Peking Government," polygamy disguised in the forms of *Chien Tiao*\*, concubinage and adultery was either recognised or tolerated by law. Under the rule of the Kuomintang the hypocritical "A Complete Collection of Laws" prohibited by law the aforementioned polygamous practices, but indirectly permitted them to continue. So polygamy in fact and monogamy in law existed side by side. Such a phenomenon prevailed especially among the wealthy people.

In New China such phenomenon must be resolutely wiped out. The New Marriage Law at the very outset lays equal emphasis on free choice of partners and on monogamy and clearly prohibits polygamy and concubinage.

But disguised and hidden polygamy did not take place without cause. In order to really understand this question of polygamy, we must view it in the light of its causes. The fundamental cause is the

---

\* is said of a man who is adopted by one or more related families which have no sons of their own and who therefore contracts several marriages for the main purpose of providing sons to his related families to carry on their unequal descent.

productive relations in society and the direct cause is the lack of freedom of marriage. So in solving the problem of polygamy we must at the same time wipe out the cause which directly gives rise to this question. The Communist Manifesto said: "*The abolition of the present system of production must bring with it the abolition of the community of women springing from that system, i.e., of prostitution, both public and private.*" This is viewed from the relationship between the system of production and monogamy. Engels, viewing the relations of the system of production and monogamy to the freedom of marriage, said: "*What will most definitely disappear from monogamy, however, is all the characteristics stamped on it in consequence of its having arisen out of the property relationships. These are: Firstly, the dominance of the man, and secondly, the indissolubility of marriage. . . . . If only marriages that are based on love are moral, then, also, only those are moral in which love continues.*"

It can be said that only in an atmosphere in which freedom of marriage prevails can the increase in the number of happy marriages be ensured. So apart from the full-scale carrying out of the New Democracy as the basic condition, the one direct condition for monogamy is freedom of marriage.

So far as marriage and the relationship in the home in general are concerned, men and women have never enjoyed equal rights in law, to say nothing

of practice. The Marriage Law stipulates: Husband and wife shall enjoy equal status in the home; both shall have the right to free choice of occupation and free participation in work or in social activities; both shall have equal rights in the possession and management of family property; both shall have the right to use his or her own family name and to inherit each other's property. Only after being given such rights and only under the New Democratic State can women attain real equality.

The Marriage Law also stipulates: After divorce, if one party has not re-married and has difficulties in maintenance, the other party should render assistance. Here the man also is given the same right which the Marriage Law gives to the woman. Even those men who view the Law from the standpoint of two contending parties should realise that the Law aims at the emancipation of women and not at discrimination against men. Furthermore the Law not only emancipates the woman but also the man, for as a matter of fact, the men who have obtained freedom of marriage are still in the minority.

To those who have overlooked the positive aspects of the Law, it is important to point out that the Law stipulates: Husband and wife are in duty bound to love, respect, assist and look after each other, to live in harmony, to engage in production, to care for the children and to strive jointly for the welfare of the family and for the building up of a new society.

To protect the interests of the children is just as important as to protect the interests of the women. It is clearly provided for in the Law that parents have the duty to rear and to educate their children; the children have the duty to support and to assist their parents; infanticide by drowning and similar criminal acts are strictly prohibited; a husband or wife shall not maltreat or discriminate against a child born of a previous marriage; after divorce, both parents still have the duty to support and educate their children; after divorce, the guiding principle is to allow the mother to have custody of a baby still being breast-fed; after the weaning of the child, if dispute arises between the two parties over the guardianship and an agreement cannot be reached, the People's Court shall render a decision in accordance with the interests of the child. The purpose of these provisions is to pave the way for national prosperity and development.

Special stipulations are provided for in the Law for the divorce of members of the revolutionary army and for the matrimonial problems of the national minorities. These serve to show that the Law has given consideration to all.

The Marriage Law of the People's Republic of China is a law which is born out of the times and will meet the needs of society, the government and the whole people; therefore everybody, irrespective of sex, should strive for the successful fulfilment of the Law.

ON THE MARRIAGE LAW  
OF THE  
PEOPLE'S REPUBLIC OF CHINA

By TENG YING-CHAO\*

1—HOW THE MARRIAGE LAW WAS DRAFTED

The Marriage Law of the People's Republic of China is something China has never had in her past several thousand years. It was one of the earliest laws promulgated following the inauguration of the People's Republic of China. The Law is the fruit of the long struggle of the Chinese working people and the victory of the People's War of Liberation. It is a product resulting from our having driven out imperialism, overthrown the rule of the Kuomintang reaction, established on a nation-wide scale the people's democratic dictatorship, and completed agrarian reform in areas inhabited by one fourth of the country's population. It represents the universal demand of the broad masses of our working people,

---

\*Teng Ying-chao, Vice-Chairman of the All-China Democratic Women's Federation, made this speech on May 14, 1950 at a meeting of cadres and students of Chahar Province.

especially the broad masses of our working women, with respect to the question of marriage.

To draft and prepare this Law ready for promulgation took fully 17 months. The drafting was first done under the direction of law-drafting organs and women's organisations assisted by the various departments concerned. In drafting this Law we conducted repeated studies and discussions on marriage data which were collected in cities and rural areas, and on the past marriage laws of the Kiangsi Soviet Area and the other liberated areas, as well as on the marriage laws of the Soviet Union and of the New Democracies in Eastern Europe.

After the first draft was made, forums were held to ascertain the views of the various democratic political parties, people's organisations, judicial bodies and other parties concerned. As a result, numerous changes were made in the first draft both of content and of phrasing. The draft underwent a final checking-up in two forums participated in by members of the standing committee of the National Committee of the People's Political Consultative Conference, members of the Central People's Government Council, and members of the Government Administration Council. It was then submitted to the Central People's Government Council and was approved at the 7th Council Meeting. In a decree issued by Chairman Mao

Tse-tung, the Law was made public and became effective as of May 1, 1950.

In the course of drafting this Law, the Central Committee of the Communist Party of China issued many directions. It carried out a number of special discussions on the problems involved. It instructed all Party members, when the Law was promulgated, to give their undivided support for its execution. To explain how the Marriage Law was drafted is to show with what prudence and with what a high sense of responsibility the Central People's Government, the Central Committee of the Communist Party of China, the department in charge and the departments concerned dealt with this Law.

This Law aims at uprooting the feudal marriage system. It is also fundamentally different from bourgeois marriage laws, which, though containing such high-sounding expressions as "the freedom of marriage" actually offers no freedom of marriage to the broad masses of the working people. In the *A Complete Collection of Laws* of the reactionary KMT Government, there are provisions for divorce but they are qualified by many conditions. If it was found not to be in conformity with these conditions, divorce would not be granted. Moreover, the KMT courts obstructed the granting of divorce in many ways. Freedom of marriage, as a matter of fact, was non-existent. Both in capitalist countries and under the rule of

the KMT reaction, the broad masses of the working people were denied political and economic freedom, and they could not expect to enjoy freedom of marriage. This accounts for the fundamental difference in contrast with our Marriage Law.

On the other hand, ours is by no means an exact duplicate of the present marriage law of the Socialist Soviet Union. Why can't we copy in full the marriage law of the Soviet Union? It is because we are today undergoing a transitional period, a period of change from the old society to the new. Today it is important for us to institute in a positive way a new marriage system; but what is of still greater importance is for us to destroy the old system in the first place. Our tasks at present are to ensure to people the full freedom of marriage, to deal a death blow to the old marriage system, and to encourage the forming of new families. It can thus be seen that the Marriage Law of the People's Republic of China is a New Democratic marriage law adapted to the present needs of the country.

The promulgation of the Law has won the ardent support of the broad masses all over the country. However, due to the inadequacy of our propaganda work, there are still some who fail to see the Marriage Law in its true light. Some say the Law has nothing to do with them, others argue that the Law "leans to the women's side", and still

others contend that the ties between husband and wife will no longer be secure. All such opinions are wrong and one-sided, for the Marriage Law not only represents the interests of women, but also those of the whole body of the people: men and women, the old and the young, the married and the unmarried. We must have a correct understanding of the Marriage Law.

## 2—THE CHIEF CONTENT OF THE MARRIAGE LAW

### (a) *Its Basic Principle*

The basic principle of the Law is clearly expressed in the first two Articles of the Law:

Article 1. The arbitrary and compulsory feudal marriage system, which is based on the superiority of man over woman and which ignores the children's interests shall be abolished.

The New Democratic marriage system, which is based on free choice of partners, on monogamy, on equal rights for both sexes, and on protection of the lawful interests of women and children, shall be put into effect.

Article 2. Polygamy, concubinage, child betrothal, interference with the re-marriage of widows and the exaction of money or gifts in connection with marriage shall be prohibited.

The spirit of these two Articles permeates the whole structure of the Law.

(b) *Safeguarding the Freedom of Marriage  
and Divorce*

Freedom of marriage includes the freedom to marry and the freedom to divorce. There are definite provisions in the Marriage Law for both. Marriage must be based on the complete willingness of both parties. Neither of the two shall apply compulsion and no third party shall be allowed to interfere. As to divorce, the Law provides that it shall be granted when both husband and wife desire it; or when either the husband or the wife insists upon it and when mediation fails to bring about a reconciliation. Both the freedom to marry and the freedom to divorce are thus ensured.

On the other hand, the Law provides marriage prohibitions, age limits, and that the parties to marriage must register in person with the local government. There are also legal procedures governing divorce or the resumption of matrimonial relations of a divorced couple. It takes into account those who apply for a divorce in a fit of temper and feel sorry for it later, by offering them a chance to resume matrimonial relations. It teaches our men and women to adopt a serious attitude towards marriage and divorce. It indicates the high sense of responsibility of the People's Government in dealing with the question of marriage of the people. It also places a heavy responsibility on our judicial bodies.

(c) *Some Questions on the Freedom of Divorce*

According to the Marriage Law, in the event of either the husband or the wife insisting upon divorce, it may be granted if mediation by the sub-district people's government and by the judicial body fails to bring about any result. Why is it so stipulated? It is because it is the demand of our urban and rural women, especially the demand of the broad masses of our women in areas where agrarian reform has been completed. According to data collected in rural areas in Shansi, Hopei and Chahar provinces, marriage disputes constitute from 38.3 up to 99 per cent of all civil lawsuits. And according to data collected in eight cities including Peking, Tientsin, Shanghai, Sian, Harbin, etc., marriage disputes make up 11.9 to 48.9 per cent of all civil lawsuits. Of all the marriage disputes, those applying for divorce and for breach of promise constitute on the average 54 per cent in the rural areas, and from 51 to 84 per cent in big cities. The chief cause of divorce applications was on account of the arbitrary and compulsory marriage system, the buying and selling of wives, ill-treatment of women-folk, child marriage, bigamy, adultery and desertion. These cases account for from 78 to 82 per cent of the divorce cases. Most divorces are applied for by women, constituting from 51 to 84 per cent of the total. It is noteworthy that the vast majority of the divorce cases involved young or middle-aged working people.

The above data serve as proof that the provision of the freedom of divorce is advantageous to women. This provision cannot be questioned or opposed on the ground that it is not advantageous to women, simply because the greater part of the small number of divorces among the cadres was brought up by men instead of by women—a phenomenon which in no way reveals the whole situation. It is wrong if we judge the Marriage Law from the standpoint of our own personal interests, and not from the interests of the broad masses of our labouring women.

We know that in old China, under the feudal social system which regarded men as superior to women, only men had the privilege of divorce. In the days of the feudal emperors, men might divorce their wives on "seven grounds"; and *A Complete Collection of Laws* of the KMT reaction was none the better in this connection.

Even today, in cities and rural areas in the newly liberated areas and in some places in the old liberated areas, women are still in a worse position to obtain divorce than men. This is because the old system has not yet been thoroughly eradicated and the influence of old traditions and old ideology cannot be expected to be wiped out in a short time. In the rural areas, there are still found many cases of women being killed, or committing suicide as a result of the absence of the freedom

of divorce. Therefore, the provision that divorce shall be granted when either the husband or the wife insists upon it, is absolutely advantageous to the broad masses of women, and likewise to the whole body of the people.

Will it not lead to reckless marriage and social disorder when we practise freedom of marriage, and grant divorce if either the husband or the wife insists upon it? It will not. In Chapters 3, 4 and 6 of the Marriage Law, the rights and duties of husband and wife, and the relations between parents and children are provided for. They call on us to take a serious attitude and to acquire a high sense of responsibility towards either marriage or divorce. So long as we can correctly put into effect the Marriage Law we can surely overcome step by step the chaotic situation as evidenced by the many cases of marriage disputes and lead our men and women and their children on to the road of happiness and prosperity.

Where does the chaos in marriage originate? First, it is due to the feudal marriage system, especially to the fact that there had been no freedom of marriage and divorce. This is the most fundamental cause. Second, it is due to misconception of freedom which is a consequence of the revolutionary struggle against the old-fashioned marriage system. Third, long years of war has resulted in men at the front being unable to keep

up correspondence with their wives and caused difficulties in the maintenance of husband-and-wife relationships. (This is an objective and temporary phenomenon, which can be easily remedied as soon as the war is brought to an end.) Fourth, owing to the existence of the remaining vestiges of feudal ideology and the suppression of the freedom of marriage on the part of the cadres, deviations have occurred in the course of implementing the policy of freedom of marriage.

From the above analysis we have come to understand that the only way to eliminate the various chaotic phenomena in marriage in the transitional period is to carry out the Marriage Law in its entirety, to completely abolish the feudal marriage system and to establish the New Democratic marriage system. It is also necessary to educate the people on a long-term basis and to promote new social morals.

Following the promulgation of the Marriage Law men and women who have been oppressed by the feudal marriage system are now set free. So they apply for divorce from their unsatisfactory spouses and seek to find new ones they really love. As a result quite a number of divorce cases may occur. This, however, is in line with the course of revolution, because to turn chaos into order is a normal phenomenon in social development. This is exactly the purpose of this new Marriage Law. Thus

it should never be confused with the chaos in marriage.

(d) *Great Respect for Married Life*

Provisions concerning the rights and duties of husband and wife and the relationship between parents and children are laid down in the Marriage Law. Such provisions are made in order to consolidate the relationship between husband and wife and to establish a happy home. Chapter 3 of the Marriage Law stipulates: "Husband and wife enjoy equal status in the home" and "husband and wife are in duty bound to love, respect, assist and look after each other, to live in harmony, to engage in production, to care for children and to strive jointly for the welfare of the family and for the building up of a new society."

Many people adopt an indifferent attitude toward the problem as to how to establish a good relationship between husband and wife after marriage. In consequence quarrels frequently ensue and develop gradually into a cause for divorce. It is not an easy matter to fully observe the rights and duties of husband and wife as provided for in the Marriage Law and to make the home a place of real happiness. It requires a conscious effort from both sides.

For example, the couple's equal status in the home will not be easily realised if there still remains

the ideology that man is superior to woman. For a long time the village woman had no position in the home. On the other hand there are a few women cadres who regard a career and a home as irreconcilable, like to have their own way, give no consideration to their husbands and do not wish to bear children. This is incorrect, either. We hold that husband and wife should unite and live in harmony and should love and respect each other.

Of course, we are not talking about unity and harmony without principle. Criticism and self-criticism should apply in the relationship between husband and wife. Unity is possible only when one side has made the essential and proper struggle against the mistakes committed by the other side.

The Marriage Law stipulates that both husband and wife should have the freedom to choose occupations and to participate in social activities. But, for the sake of ensuring security, certain couples try to limit each other's social activities. Such restrictions, in fact, cannot bring about real security. On the contrary, husband and wife should allow each other to freely choose his or her occupation and to freely take part in social activities. This will enable them to improve themselves through work, to have wide contact with people and to be a good companion in marriage. Of course it is not easy to do this. Nevertheless it can be realised step

by step if both husband and wife can cultivate new social morals.

(e) *Protecting the Rights of Women and Children*

It is perfectly right that the new Marriage Law should place emphasis on the protection of the interests of women and children, because in present-day China the old feudal influence has not been completely wiped out, and a new society not completely established. Man is still superior to woman and the head of the family superior to the children. Only by emphasising the protection of the interests of women and children can genuine equality between man and woman be achieved. Only thus can the principle of equality between man and woman which is provided for in the Common Programme adopted by the Chinese People's Political Consultative Conference be embodied. The emancipation of women is a yardstick of social emancipation and the welfare of the children is indicative of social progress. The emphasis upon protection of the interests of women and children in the Marriage Law is also a landmark of the progress of the new society.

Besides, the Marriage Law protects not only the interests of the wife and children but also the legitimate interests of the husband and parents. It is entirely groundless to regard the New Marriage Law as unequal.

### 3—HOW TO CARRY OUT THE MARRIAGE LAW

A many-sided and long term propaganda and education among the people will be required in order to thoroughly implement the Marriage Law. The process of the struggle will be difficult, because it will take a long time to eliminate the feudal customs and the remnant feudal ideology that stands in the way of implementation of the Law. Such a struggle should be waged in four ways.

First, The cadres should study the Marriage Law and remould their ideology in order to eliminate the remnant feudal ideology that man is superior to woman and that women are playthings. To guarantee the correct carrying out of the Marriage Law the cadres should first abide by the Law themselves. Some of the cadres, though they themselves want freedom of marriage, oppose others or their own children having the same freedom. Some are against the Marriage Law solely out of self-interest, fearing that their own marriage relationship will not be consolidated. Some even dictate other people's matrimonial arrangements, preventing women of their village from marrying men from other villages or forcing people to marry or divorce. Such phenomena must be strictly corrected. Every member of the Communist Party must abide by and carry out the Law faithfully. If a Party member violates the Law he or she shall not only be subject to legal action by the

Government, but also to the penalty of Party discipline.

Second, organisations at all levels of the Party, of the Government, and of the people should earnestly conduct widespread and penetrating educational and propaganda campaigns among the people, so as to transform the opposition to the feudal marriage system into a broad movement of the masses. The Central Committee of the Party has made the statement that the whole Party should "make the publicity and organisational work guaranteeing the correct carrying out of the Marriage Law one of its important and regular tasks at the present time."

Upon the consciousness of the masses depends the carrying out of the Marriage Law; only thus can the masses be liberated in the long run from the suppression of the feudal marriage system. At the same time we oppose unprincipled concessions to the mistaken ideas of the masses as well as haste and compulsion resulting from a subjective and patronising attitude. To be on the safe side it would be better for the judicial organs to consult in every possible way with the people's organisations, especially women's organisations in handling disputes in marriage.

Third, the social freedom between men and women and the freedom to fall in love between unmarried men and women should be promoted.

There is no denying that an unhealthy point of view in this respect still exists in the minds of some of our cadres. More often than not gossiping runs riot when a man comrade becomes friendly with a woman comrade. We should oppose such an attitude.

We must provide the proper social environment for the carrying out of the Marriage Law. It must be pointed out here that love and marriage are the private affairs of individuals and should not be interfered with by others, and, if viewed more positively, they are part of the make up of social life. The smooth course of love and marriage of an individual is essential to a satisfactory social life. Nevertheless we oppose the idea that "love is supreme" just as much as we oppose those who trifle with love. Besides, we are opposed to those things which are insufficient to guarantee a lasting love, such as social status, money, appearance, etc., as conditions of love and marriage. It is solely for the purpose of increasing happiness in marriage that we take this attitude. Moreover, proper sympathy should be extended to the victims of an unhappy marriage, especially the women, so that they may not lose opportunities to continue to serve society.

Fourth, the emancipation of women is first and foremost women's own business. To be sure, the Marriage Law gives support to the interests of women and children. But it is important that the

full realisation of their rights must depend upon their own struggles and can never be bestowed upon them by others. Women should first cast off their feudal ideology, increase their efforts to participate actively in the various tasks of reconstruction. Then they can raise their status and struggle for the attainment of their emancipation and for the New Democratic marriage system.

It is my belief that the Marriage Law can be fully carried out by the united efforts of the various circles. Its full realisation will greatly contribute to the healthy development of society. The Central Committee of the Party has so well said: "The correct carrying out of the Marriage Law will not only emancipate the masses of the Chinese people, especially the women, from the barbarous and backward marriage system of the past several thousand years, but can also establish a new relationship in the home, a new social life and a new social morality, so as to promote the development of political, economic, cultural and military construction in New Democratic China."