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Reform of the law on marriage and family in the PRC: history and modernity

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Abstract

The family in China is an important unit of society, marriage and family relations are the most basic social relations. The historical evolution of marriage and family law in the PRC is also, to a certain extent, a microcosm of modern Chinese social changes. An attempt at a detailed analysis of marriage and family law in the PRC in the light of the reforms of various years will help not only to understand the laws and regulations of the party and government in the field of marriage and family, but also to understand the historical trajectory of the development of marriage law after the founding of the new China. Based on the relevant research, this article analyzes the features of the formation of the understanding of marriage and family in Ancient China and the main legislative changes in the norms on marriage and family since the founding of new China. The legislation on marriage and family in the PRC has the following characteristics: first, it is applicable to all citizens, which is what the legislators and rulers of the state pay attention to throughout all dynasties. Secondly, the legal content of marriage and family norms is not only mandatory, but also ethical, emphasizing traditional virtues and strengthening family ethics. Third, legal and cultural traditions in the field of marriage and family have a long history and heritage, and are a consequence of the traditional laws of the Chinese legal system.

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Keywords

Legislation on marriage and family, development of legislation, social and ethical norms, marriage and family relations, marriage, divorce.

Introduction

Until January 1, 2021, the Law of the people's Republic of China On marriage, adopted 10.09.1980 year (hereinafter – the Law of the PRC from the marriage) was the main criterion of definition of marriage and family relations – important law aimed at legal regulation of relations within families and between families, between men, women, young people and elderly people and to ensure the harmony of married life and progress of Chinese marriage and family relations in the social civilization. From 1 January 2021, the PRC Law on marriage has lost its force, and all the rules on marriage and family relations are now enshrined in the provisions of the new Civil code of the people's Republic of China (hereinafter – the Civil code of the PRC). However, the change in the legislative approach to the procedure for establishing marriage and family norms has not changed the state's approach to marriage and family relations, which is based on the system of norms on marriage and family.

One of the important signs of the transition of human society from barbarism to civilization is the creation of systems and norms for marriage and the family. According to historical data, in ancient times, men and women were indistinguishable from each other. Taihao (Fu Xi) (the legendary first emperor of China (Celestial Empire), a deity with the body of a snake or the moon (Chinese dragon), but with a human head — the lord of the East), began to make marriages between people, using the skin of his wife for the ritual. According to the Fu Xi Book of Rites: “those who are married will have two surnames together: the ancestors and temples at the top, and the next generations at the bottom, so the man is the most important” [Pochaina, 2008; Hu Naixin, 2020; Qiao, Feng Huai, 2014].

In ancient China during the Zhou Dynasty, six ceremonies were required before marriage. The order of marriage was fixed in each legislation of successive dynasties, among such documents establishing the order of marriage in ancient China are: “The Law of the nine Chapters”, “The Law of Northern Qi”, “The Law of Kaihuang”, “The Law of Yonghui”, “Song Xing Tong”, “The Laws of Yuan Tong”, “The Law of the Qing Dynasty”, etc. All the above-mentioned acts included not only the rules on the order of marriage and its content, but also the rules aimed at “correcting” the situation in marital and family relations through criminal measures, in order to ensure the stability of marriage and family relations in the state during a specific period of development of Chinese society.

Due to the constant changes in the social economy and living conditions, the norms of Chinese marriage law have also been constantly revised and changed in accordance with the needs of social development. However, in order to deeply understand the current marriage and family legislation and the spiritual essence of the People's Republic of China, it is necessary to conduct a comprehensive and systematic analysis of the features of the reform of marriage and family legislation in various historical periods, paying special attention to the development of marriage and family legislation during the New Democratic Revolution and changes in marriage and family legislation after the founding of New China.

Results

Marriage and family in China since the time of Ancient China has always been not only a matter of only two people—a man and a woman, but also a matter of two families, so traditional family values remain the most important components of human life for the Chinese today. As for the reform of the law on marriage and family in the PRC through the prism of history, the most important fact here is the fact that the content of the norms on marriage and family in a particular period of historical development corresponded to the level and characteristics of the life of Chinese society. In ancient Chinese history,

each dynasty and each generation had feudal rituals and rules that established the characteristics of the relationship between husband and wife, but the ancient marriage system in the PRC was not perfect. In the specialized literature devoted to marriage and family issues in the People's Republic of China from the time of Ancient China to the present day, it is customary to focus on the rigid patriarchal system of Chinese society and the restriction of women's rights in Chinese families [Bokshchanin, 2010; Svistunova, 2002; Kozina, 1986; Korostovets, 2003; Kychanov, 1986; Litvintsev, 2016; Sukharev, 2003; Protopopova, 2016, 2015; Hu Naixin, 2020]. However, such unambiguous judgments are erroneous, since during the Zhou Dynasty, the husband and wife had equal rights in certain matters, and it was impossible to terminate a marriage just on the basis of the husband's desire alone. There were seven cases in which divorce was possible: not serving the mother-in-law after marriage, lack of children, jealousy, theft, poor health of the wife. The status of the wife in the same historical period was absolutely not low. So, for example, the emperor was allowed to have only one wife-the queen, the emperor himself was considered the king of the world, and the queen mother was the most important tool for ensuring peace and order. Since the beginning of the Zhou Dynasty, as noted earlier, a man had to go through six ceremonies to get married. Separate rules were established regarding the presence of concubines. In the spring and autumn, it was impossible to take a concubine, you could only marry someone who would later be considered a wife. Under the Han Dynasty, Confucian thought began to be used by concubines to govern the state. So, in order to solve the problem of paying taxes, they began to prescribe parental orders to prove that a man is married, and concubines were considered as a household unit, so that it was convenient to pay taxes and military service. At the same time, concubines could not be had without the presence of grounds. So, a concubine was allowed to be in the family when, after twenty years of marriage, there are no children in the family, or there are only daughters, and the wife agrees to accept the concubine into the family. Most of the concubines are from poor families in which only daughters were born. The concubine was restricted in her rights, and she was allowed to sit at the common table only with the consent of her wife in the absence of her husband in the house. It should be noted that the status of concubines was so low in ancient China that they are still perceived as "something always standing in the corner". In addition, a concubine could never become a wife, even after the death of her wife, it was forbidden to marry concubines. If the husband died, the concubine was taken care of by the wife of the allowance. Worse than the status of a concubine in Ancient China was the status of a servant and *ji* (women found guilty of any acts).

Despite the fact that in Ancient China there was no independent written law on marriage, all Chinese society followed the general rules of marriage and divorce, fixed by each dynasty. It should also be noted that in the feudal Chinese society of that time, to a large extent, the protection of women's rights was very humanized.

During the Song Dynasty, certain aspects of marriage and family relations began to be fixed at the legislative level, for example, a law was passed that allowed the right to own property only before the marriage of employment and the right to divorce on the part of the husband if he learns about the presence of "unclean facts" in relation to the wife. In addition, in some cases of marriage, a bride price was provided for.

It should be noted that by the time the Tang and Song dynasties came to power in the Chinese legal consciousness, the power of the husband in the family was constantly strengthened, which was reflected in individual acts, and subsequently the woman in Ancient China was completely reduced to the state of property, she was not only considered as a commodity for which her parents sell, but also property that a man is going to buy. At the same time, polygamy was allowed. Nevertheless, marriage in ancient China has not yet risen to the height of the law. This is due to the fact that in ancient times there was

only criminal law, there was no civil law as such [Litvintsev, 2018; Ugolovnye ustanovleniya Tan..., 2008]. Civil law, on the other hand, was mainly enforced by the law of etiquette.

The humiliating status of women and polygamy in the PRC were allowed until the end of the Qing Dynasty (from 1644 to 1912). However, during the Qing Dynasty, the situation of concubines improved – marriage with a concubine was allowed in the event of the death of the first wife, if no sons were born in the family and if the concubine was the mother of the only surviving son [Bichurin, 2001; Granet, 2004; Dampilon, 2011; Sukharev, 2003; Hu Naixin, 2020]

The modern understanding of the Chinese in marriage and family was formed at the end of the Qing Dynasty and the beginning of the formation of the PRC. At this time, Chinese traditional feudal marriage began to change. In this historical period, the most typical event was often the dissolution of a marriage, and people began to pay attention to the marriage rules. In 1916, the Committee for the Revision of Laws under the Ministry of Justice prepared a draft of the Civil code. With regard to the marriage system, the third chapter of the draft Civil Code contained detailed provisions that undoubtedly played a role in helping to change marriage customs. In particular, it should be noted, norms focused on the execution of the marriage contract, similar in its effect to modern marriage certificate, and this event (the creation of the civil code) in marriage and family relations of China can be called the epitome of civilization and modernization of married life. Contractual and legally based marriage, although it was a very individual phenomenon at that time, since many citizens of the country still paid tribute to traditions and customs, but already significantly changed the situation of inferiority of women in relation to men, formed over hundreds of years. Thus, we can say that started in the beginning of the last century in China, the policy of legislative consolidation of the marriage was the beginning of a journey civilizational marriage in the history of marriage and family legislation PRC – right out of the middle ages and entered the new time legal civilization.

The historical evolution of the law on marriage and family in China is evident not only in the revision and improvement of the text, but in a deeper understanding of the use of state-legal means in different historical periods in order to standardize the integration of marriage and family relations and institutional mechanisms to promote socialist marriage.

Fully-fledged institutional mechanisms that promote socialist marriage and family relations were formed during the founding of the new China. Since its inception, the Communist party of China paid great attention to the issue of female marriage and the family, and in different historical periods of development of the revolution put forward the ideas against the feudal marriages, advocated freedom of marriage, practiced equality of men and women, monogamy and protect the interests of women and their children. The general program of the Chinese People's Political Consultative Conference clearly provides for the abolition of the feudal system that binds women, proclaiming that women have equal rights with men in all aspects of political, economic, cultural, educational and social life. The freedom of marriage between men and women establishes the basic principles of the formulation of the first independent law on marriage in the PRC. Over the past 60 years, the law on marriage and family has been revised three times (in 1950, 1980 and 2001), and since January 1, 2021, it has been transferred to the provisions of the new Civil Code of the People's Republic of China, which has allowed for constant enrichment and improvement of the legal text.

Thus, the first marriage law, promulgated on May 1, 1950, as the “firstborn” of the independent family legislation of the People's Republic of China, had a direct impact on the fact that the democratic legal order of marriage and divorce was first legislated in the country. This law reflected the use of legal means by the new people's regime in the early days of the founding of new China to integrate marriage and family relations, to get rid of the old marriage system, to create and implement a new type

of institutional mechanisms for marriage and family relations.

In 1980, the Chinese legislation governing marriage and divorce was again revised and refined. Thus, the changes introduced in 1980 became a new integration and regulation of marriage and family relations by legal means at the early stages of the openness reforms. As for the changes of 2001, they can be called a response to a number of new problems arising in connection with marriage and the family during China's economic transition, as well as the re-regulation of marriage and family relations by legal means at the beginning of the new century. In this process, the "marriage law" is increasingly moving out of politics, regulating marital behavior more from a legal point of view, and paying attention to the development of marriage and family problems, the trend of the need to solve them is becoming more and more obvious. The progress of the changes in the marriage law also shows that there is a long way to go to eliminate the old marriage practices in rural areas through the introduction of correctional registration: in the absence of official registration of marriage, a man and a woman will be able to go through the registration procedure.

Currently, the academic community has studied in more detail the prerequisites for the formulation and revision of the law on marriage and the family and its main content, and some scientists have discussed and summarized the patterns and essence of this issue in the process of formulating and revising the law on marriage [Bichurin, 2002; Belikova, 2017; Zhonghu Wei, 2015; Nan Gong, 2014; Pochaina, 2008; Hu Naixin, 2019; Tsypilova, 2015; Chelnokova-Shcheika, 2013].

As a social norm formulated by the State, the law has the role of guiding, evaluating, predicting, educating, and enforcing norms. The Marriage Law of the People's Republic of China, adopted in 1950, embodies the new people's regime's use of legal means to integrate and standardize marriage and family relations, get rid of the old marriage system, and establish and implement a new type of institutional mechanisms for marriage and family relations. This law can be called part of the comprehensive transformation of society by the new regime, it is the plan of the new regime to free more than half of the population from the double oppression of the family and society by transforming the traditional marriage and family system and its concept, as well as the need to further expand the base of mass management.

At the beginning of the formation of the new China, although the government took a number of measures to transform the old society, but the remnants of feudalism continued to exist in the country, bearing the mark and stigma of the Old China. In order to develop all the beginnings of the new China and, in particular, to break all the shackles that bind the development of the productive forces, it was necessary to establish a new marriage system corresponding to the new social development, especially to free women from the shackles of the old marriage system. To this end, the Marriage Law of the People's Republic of China of 1950 included the following provisions: "abolish the feudal marriage system of organized coercion, inferiority of men and women, and disregard for the interests of children". The new democratic marriage system proclaimed freedom of marriage between men and women, monogamy, equal rights for men and women, and protection of the legitimate interests of women and children. Bigamy and concubinage, as well as marriage with a female child, became prohibited. In addition, interference with the freedom of marriage of widows was also prohibited, and the use of family problems to obtain property was prohibited.

The above-mentioned provisions of the first independent Chinese law on marriage and family not only show the strict position and firm attitude of the party and the government to the abolition of the old feudal marriage system, but also reflect the concept of marriage and family under the new system. At the same time, the party and the government conducted a series of high-profile campaigns to promote and implement the provisions of the PRC Marriage Law in order to accelerate the decline of the old

marriage system and further establish a new type of marriage and family relations that meets the needs of the socialist system.

In 1980, the Chinese family law was again revised and finalized, and on 10.09.1980, a new Law on Marriage was adopted by the People's Republic of China. The Marriage Law of the People's Republic of China of 1980 can be called a new integration and norm of marriage and family relations in the early years of reform and openness.

Important elements of the PRC Marriage Law of 1980 were the new grounds for divorce, including the actual existence of problems in the relationship between husband and wife (emotional breakup). The inclusion of such grounds as the legal conditions for a divorce decision and the basic principle of family planning were largely a solution to the problems of marriage left over during the Cultural Revolution and a response to the new problems of marriage and the family in the early stages of reform and openness.

Yet using an emotional breakup as a new legal basis for divorce has nothing to do with the Cultural Revolution's impact on marriage. During the Cultural Revolution, political outlook and marital status became the focus of attention. After the opening-up reforms, the political and economic life of the country was on the right track, and people's demands for the quality of marriage and family were also increased, and the desire for feelings became the goal of people and the basis for marriage. Therefore, the Marriage Law of the People's Republic of China of 1980 accepted the fact of lack of feelings and emotional separation as the legal basis for determining the need for divorce, reflecting the restructuring of marriage and family relations left over from the Cultural Revolution.

The principle of family planning was also included in the provisions of the Marriage Law of the People's Republic of China in 1980. The inclusion of the family planning principle in the marriage and family legislation is inextricably linked to the huge demographic pressure following the openness reform. According to statistics from the early 1980s, with an annual net increase in China's population of more than 11 million people, each year it was necessary to increase the production of billions of pounds of food to provide rations for the new needs of the population. Of the nearly one billion people, 65 percent of teenagers and children were born after the country's new policies were introduced. In the seven years from 1954 to 1960, more than 130 million people were born. Some of them were already married, and some had to marry in accordance with the provisions of the law on the age of marriage. The subsequent peak in the birth rate caused by this situation was expected to cause a number of social problems: food shortages, lack of resources for education, health care, limited housing conditions, depletion of natural resources, etc. In the light of the above situation, the adoption of a strict family planning policy was seen as particularly relevant. To this end, the Marriage Law of the People's Republic of China of 1980 clearly spelled out the duties of the husband and wife to practice planning – and these duties have become the norm for every family in China. Changes in the Law of the PRC from the marriage also made mandatory official marriage registration, which has not previously been neglected in favor of national traditions, was also installed and a separate rule of marriage, annulment and divorce.

The revision of marriage and family law in 2001 was a response to a number of new problems in the field of marriage and family during China's economic transition, as well as a response to the revision of marriage and family law at the beginning of the new century. Thus, the innovations of 2001 are inextricably linked with the development of the socialist market economy. The 14th National Congress of the Communist Party, held in 1992, explicitly put forward the need for a socialist market economy system, and the 15th National Congress of the Communist Party of China, held in 1997, put forward the important goals of governing the country according to the law and building a socialist country under

the rule of law. With the deepening of reforms and the openness of the country, as well as taking into account the policy of transition from a planned economy to a market economic system, China's economic structure, the concept of marriage and the family, the concept of the rule of law have undergone great changes and are reflected in the relationship between marriage and the family. In the context of multiple new values, some traditional marriage and family values began to be seriously challenged: some people began to want to marry earlier, the divorce rate began to grow from year to year, extramarital affairs became a problem, the problem of domestic violence is becoming more and more noticeable.

According to statistics (Figure 1), in 1990, 340,000 couples divorced in China, in 1997 this figure was 1.19 million couples, and two years later in 1999, about 1.2 million couples divorced in China.

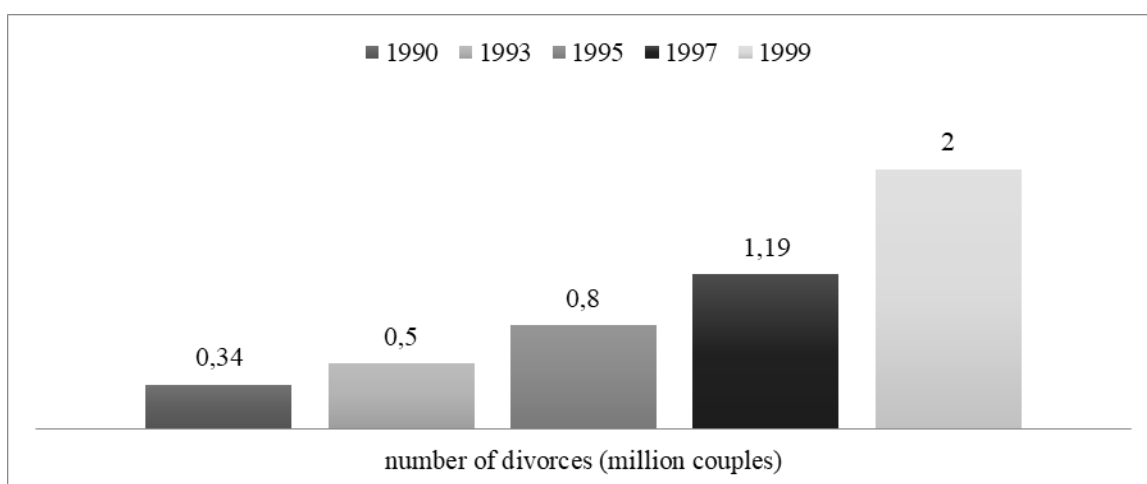


Figure 1 - Dynamics of divorce in the PRC before the reform of the law on marriage and family in 2001 [Statistics of marriages and divorces in the People's Republic of China, www]

When the law on marriage and family was amended in 2001, it added provisions that spouses are prohibited from cohabiting with other persons, domestic violence is prohibited, and that couples must be faithful and respectful to each other, and family members must respect the old and raise the younger generation in love, help each other and maintain equal, harmonious and civilized marriage and family relations.

Another important change in the law is the introduction of clearer and more specific provisions on the division of property during divorce, maintenance and upbringing of children after divorce, and legal liability for violations of the provisions of the law on marriage and family. This was due to the fact that since 1980, that is, in the 20 years since the last reform of marriage and family relations in China, the savings of urban and rural residents have increased significantly, and the composition of property has become more diverse. Due to the large volume, complexity and concealment of the amounts of property in the marital property relations and in the dissolution of marriage, problems arose. The Marriage Law of the People's Republic of China, adopted in 1980, did not clearly define common property, personal property and contractual property in the context of marital and family relations. There were no corresponding instructions in the norms of civil legislation. In practice, it is not uncommon for one party to conceal, transfer, sell, or damage the joint property of the husband and wife, or to forge debts in an attempt to encroach on the property of the other party, in divorce cases. However, the divorce process also created a number of new problems, such as the maintenance of children and inheritance of property. To this end, amendments to the law on marriage and family in 2001 included the procedure

for securing the property rights of both spouses, which more clearly ensured the protection of the rights and interests of children after divorce, which reflected the state's response to new social problems and phenomena and became a new norm for the formation of healthy and stable family relations.

Almost 20 years have passed since these changes, and it has become quite obvious that certain provisions of the Law of the People's Republic of China on Marriage no longer allow the Chinese to keep up with the times, in addition, the statistics also showed negative points – the number of marriages began to decline, and the number of divorces to grow exponentially (Figure 2 and Figure 3).

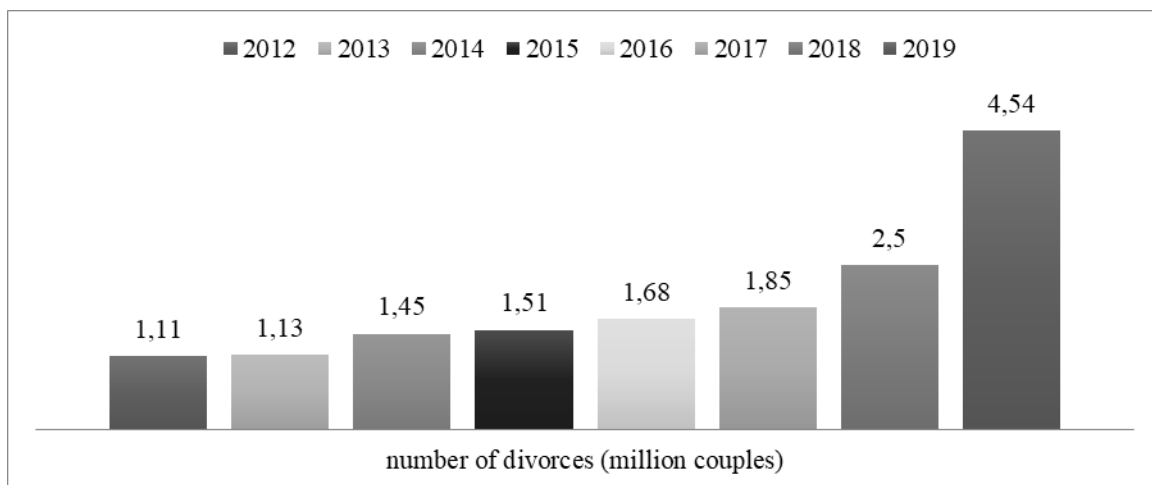


Figure 2 - Dynamics of divorce in China before the reform of the law on marriage and family in 2020 [Statistics of marriages and divorces in the People's Republic of China, www]

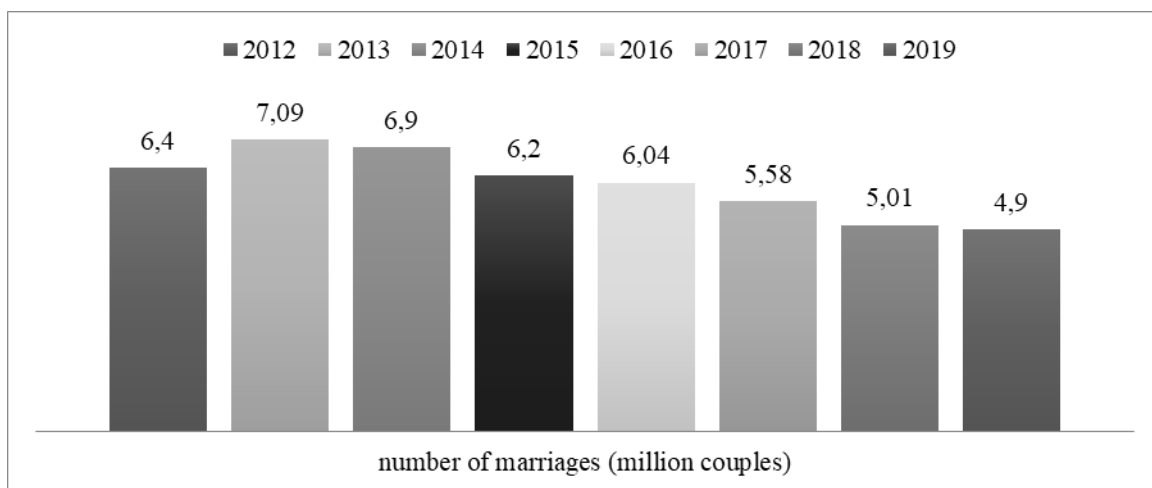


Figure 3 - Dynamics of marriages in China before the reform of the law on marriage and family in 2020 [Statistics of marriages and divorces in the People's Republic of China, www]

The state thought about the need for new reforms in the field of marriage and family at the end of 2017. If you pay attention to the statistics presented in Figure 2 and Figure 3, you can see that the number of registered marriages is growing every year, and the number of divorces is increasing. So, in 2017, 5.58 million couples got married, and 1.85 million couples divorced. The highest data on the divorce rate in China in 2019 – 4,154 million couples. The number of divorces actually equated to the number of marriages in 2019. It is necessary to understand that means such a high divorce rate. Divorce

data for 2019 shows that 4.154 million families in China have filed divorce applications and those applications have been granted – meaning the couples have actually divorced. In total, in 2019, according to official data, the Chinese Civil Marriage Registration Authority processed a total of 9.471 million divorce applications. couples registering marriage, as well as 4,154 million couples registering divorce. The top 10 cities with high divorce rates in China include Beijing, Shanghai, Shenzhen, Guangzhou, Xiamen, Taipei, Hong Kong, Dalian, Hangzhou, and Harbin. Among them, the north of Shenzhen and Guangzhou were among the top four [ibid.]. The presented data allow us to conclude that the number of divorces in the PRC is enormous and there is an objective question about what reality such data reflect – it is quite obvious that the reality in which the concept of marriage and the structure of family relations undergo completely different changes – changes aimed at the loss of family values.

These statistics formed the basis for the need for a new reform in which the norms of special legislation on marriage and family are abolished, and all issues of legal regulation of marriage and family relations are fixed in the provisions of the new Civil Code of the People's Republic of China [Wang Zhihua, 2020; Hu Naixin, 2019].

The new provisions of the Chinese Civil Code are aimed at a number of improvements in the legal regulation of family relations. So, a number of improvements have been made to such issues as the annulment of the principle benefits of the adopted person in adoption, the order of marriage and assumptions of marriage only as a Union between a man and a woman, consolidate the “cooling-off period” during the dissolution of marriage (with the aim of making couples more informed and balanced decisions about divorce), property of the spouses.

This new policy in the field of marriage and family, according to Chinese experts, reflects the philosophy to keep up with the times-oriented approach and respect public opinion in the PRC law [Lu Hui, www].

Conclusions

Based on the conducted research, it is concluded that the legislation on marriage and family in the PRC has the following characteristics: first, it is applicable to all citizens, which is what the legislators and rulers of the state pay attention to throughout all dynasties. Secondly, the legal content of marriage and family norms is not only mandatory, but also ethical, emphasizing traditional virtues and strengthening family ethics. Third, legal and cultural traditions in the field of marriage and family have a long history and heritage, and are a consequence of the traditional laws of the Chinese legal system, and not the need to implement laws that are not peculiar to the legal system, aimed at further protecting the rights of citizens to marriage and family. In the context of constant changes in socio-economic and domestic conditions, the provisions of the legislation on marriage and family are constantly reviewed and changed. As for the history of socialist marriage and family legislation of the People's Republic of China, it can be divided into two periods of historical development: the period of the new democratic revolution and the period of the socialist revolution and modernization. The first is the embryonic form or the necessary stage of preparation of the second, and the last is the stage of inheritance and continuous improvement of the first in accordance with the needs of social development.

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Реформа закона о браке и семье в КНР: история и современность

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Аннотация

Семья в Китае является важной ячейкой общества, брак и семейные отношения являются основными общественными отношениями. Историческая эволюция брачного и семейного права в КНР также в определенной степени является микрокосмом современных китайских социальных изменений. Попытка подробного анализа брачно-семейного права в КНР в свете реформ разных лет поможет не только разобраться в законах и постановлениях партии и правительства в области брака и семьи, но и понять историческую траекторию развития брачного права после основания нового Китая. В данной статье анализируются особенности формирования понимания брака и семьи в Древнем Китае и основные законодательные изменения норм о браке и семье с момента основания нового Китая. Законодательство о браке и семье в КНР имеет следующие характеристики: во-первых, оно применимо ко всем гражданам, на что обращают внимание законодатели и правители государства на протяжении всех династий. Во-вторых, правовое содержание брачно-семейных норм является не только обязательным, но и этическим, подчеркивающим традиционные добродетели и укрепляющим семейную этику. В-третьих, правовые и культурные традиции в области брака и семьи имеют давнюю историю и являются следствием традиционных законов китайской правовой системы.

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Ключевые слова

Законодательство о браке и семье, развитие законодательства, социально-этические нормы, брачно-семейные отношения, брак, развод.

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