

# The Marriage and Family Law of North Vietnam

## I. Introduction

A code of family law entitled "the Marriage and Family Law of the Democratic Republic of Vietnam" has been effective since January 13, 1960 in North Vietnam.<sup>1</sup> The code consists of 35 articles, divided into six chapters: general principles, marriage, rights and duties of husband and wife, relations between parents and children, divorce and enforcing provisions.<sup>2</sup> This code is perhaps the first significant legislative measure adopted by the North Vietnamese National Assembly since the promulgation of the December 31, 1959 Constitution of the Socialist nation.<sup>3</sup> The new Constitution specifically prescribes that "the State protects marriage and the family."<sup>4</sup>

A perusal of the text of the North Vietnamese statute reveals that the Marriage Law of the People's Republic of China of May 1, 1950 has strongly influenced the final version of the North Vietnamese law.<sup>5</sup> It is a well-known historical fact that the Chinese civilization became instilled in the Vietnamese society from the ancient and middle ages.<sup>6</sup> In terms of time

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<sup>1</sup>Novoe brachno-semeinoe zakonodatel'stvo v. Demokraticheskoj Republike V'etname 37 Sotsialisticheskaia Zakonnost' 55 (1960); Saburo Kuroki, Koninhono Kindaika 262-265 (1966).

<sup>2</sup>The author expresses his thanks to Professor Saburo Kuroki, Faculty of Law, Waseda University, Tokyo, Japan, who kindly provided him with the French text of The Marriage and Family Law of the Democratic Republic of Vietnam from which the English translation is made in Appendix A.

<sup>3</sup>Constitution of Vietnam (Democratic Republic) in AMOS J. PEASLEE, ed., 2 CONSTITUTIONS OF NATIONS 1197 (3rd ed. 1966).

<sup>4</sup>Article 24, *Id.*

<sup>5</sup>M. J. MEIJER, MARRIAGE LAW AND POLICY IN THE CHINESE PEOPLE'S REPUBLIC (1971); Saburo Kuroki 244-257, *supra* note 1; Noboru Niida, *The Marriage Law of the People's Republic of China* in Kojiro Miyazaki, ed., 1 A COMPARISON OF LAWS RELATING TO MARRIAGE AND DIVORCE (in Japanese) 1-110 (1960).

<sup>6</sup>See Vietnam, 23 ENCYCLOPAEDIA BRITANICA 145A (1960); KING C. CHEN, VIETNAM AND CHINA 3-32 (1969).

span, the North Vietnamese effort to codify its family law materialized almost ten years after Socialist China codified its marriage law.

The codification reflects desired changes which have taken place or will take place in the social structure of the Vietnam Democratic Republic as a result of the socialist transformation of society. Again, in terms of chronology, almost ten years after the North Vietnamese codification, North Vietnam's brother country, "the great Soviet Union"<sup>7</sup> adopted the "RSFSR Code of Laws on Marriage and the Family," and put it into effect on November 1, 1969.<sup>8</sup>

The New Socialist Russian code offers a good comparative basis for its counterpart in the Socialist Vietnam.<sup>9</sup> It will be informative for the North Vietnamese to notice that the Union of Soviet Socialist Republics took the principle of sexual equality in family relations seriously. The word "women" precedes that of "men" in the text of the law,<sup>10</sup> and the marriageable age was set for 18 years for both sexes.<sup>11</sup>

Systematic exposition of laws of Asian countries in the English language have hitherto been neglected. The materials are widely scattered and few translations are readily available. However, there has been a growing interest in introducing the native laws of the Asian countries into legal publications in English through a series of efforts both here and abroad.<sup>12</sup> This task is by no means easy because cultural heritage and Western influence in terms of social and legal systems in these countries are diverse. For this reason alone, it is worthwhile to describe salient features of the codified North Vietnamese family law with its English translation.

## II. Guiding Principles

The first three articles spell out the fundamental principles of the North Vietnamese code of family law. The State is to guarantee and carry out a free and progressive marriage system, which could protect monogamy, equality of the sexes and the interest of women and children.<sup>13</sup> By promot-

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<sup>7</sup>Preamble, CONSTITUTION OF VIETNAM (Democratic Republic), *supra* note 3.

<sup>8</sup>Law of the Russian Soviet Federated Socialist Republic on the Adoption of the RSFSR Code on Marriage and the Family (A complete English translation of the text from Sovetskaia iustitsiia, 1969, No. 17) 9 Soviet Law and Government 103-158 (1970).

<sup>9</sup>Soviet Russian marriage law underwent a number of important revisions throughout more than 50 years of history of the U.S.S.R. as compared to the relatively short history of Socialist Vietnam.

<sup>10</sup>Article 3, Law of the Russian Soviet Federated Socialist Republic on the Adoption of the RSFSR Code on Marriage and the Family, *supra* note 8.

<sup>11</sup>Article 15, *Id.*

<sup>12</sup>The Law Association for Asia and the Western Pacific has undertaken to survey the Asian legal systems. The first three volumes will cover: The Phillipines, India and Ceylon.

<sup>13</sup>Article 1, The Marriage and Family Law of the Democratic Republic of Vietnam, *supra* note 2.

ing this marriage system, happy, democratic and united families are made, and members of these families are to solidify, love and help each other to contribute to the cause of social progress.<sup>14</sup> To achieve this goal, the remnants of the feudalistic matrimonial system are to be liquidated.<sup>15</sup> "Precocious marriage, forced marriage, acts impeding the freedom of marriage, delivery of properties as a condition of marriage, and violence and ill-treatment directed toward the woman are prohibited."<sup>16</sup>

### III. Marriage

The Code specifically prescribes that any one can marry during the period of mourning,<sup>17</sup> and a widow has a right to remarry with the guarantee of her rights and interests concerning her children and properties.<sup>18</sup> Material validity and formal validity of a marriage are clearly distinguishable in the Code.

#### 1. *Material validity*

For marriage, the consent of the parties is a material requisite.<sup>19</sup> Bigamy is prohibited, since Socialist marriage is monogamous.<sup>20</sup> The marriageable age was fixed at the age of 18 for a woman, and 20 for a man.<sup>21</sup> For eugenic reasons and respect for family relations, marriages between persons within certain degrees of consanguinity are prohibited. Thus, marriages between lineal relatives, and between brothers and sisters of full blood or half blood are prohibited.<sup>22</sup> Custom is to prevail over marriages between collateral relatives up to the fifth degree, or between persons related by the union of blood.<sup>23</sup> A marriage between an adopting parent and an adopted child is also prohibited.<sup>24</sup> Impotence is a bar to a valid marriage.<sup>25</sup> Any one who has contracted leprosy, venereal disease or mental disease and is not yet cured may not marry.<sup>26</sup>

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<sup>14</sup>*Id.*

<sup>15</sup>Article 2, *Id.*

<sup>16</sup>Article 3, *Id.*

<sup>17</sup>Article 7, *Id.*

<sup>18</sup>Article 8, *Id.*

<sup>19</sup>Article 4, *Id.*

<sup>20</sup>Article 5, *Id.*

<sup>21</sup>Article 6, *Id.*

<sup>22</sup>Article 9, *Id.*

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*

<sup>25</sup>Article 10, *Id.*

<sup>26</sup>*Id.*

## 2. Formal validity

The basic administrative committee of either the domicile of the bride or that of groom examines the material validity.<sup>27</sup> If material requirements are met, the bride and groom may register. Any other form of marriage, *i.e.*, a religious marriage rite, has no legal standing.<sup>28</sup>

## IV. Husband and Wife

Husband and wife have equal status within the family,<sup>29</sup> and are by duty bound to love, respect, care for and aid each other, to engage in productive work, to care and educate the children and to establish a happy and integrated family.<sup>30</sup> Both husband and wife have the right to free choice of occupation, and free participation in political, cultural and social activities.<sup>31</sup>

Under the principle of equality of husband and wife, both are entitled to equal rights to possess, use, and dispose of properties acquired prior to and during the marriage.<sup>32</sup> The spouses have the right to inherit from each other.<sup>33</sup> However, in case of a dispute concerning the distribution of properties owned by the predeceased spouse, such factors as contribution of each spouse in the process of acquiring properties, the condition of properties and the actual situation of the family are to play an important role in the final settlement.<sup>34</sup>

## V. Parents and Children

While parents have the duty to love, to raise and to educate their children, the children also have the duty to "love and to respect their parents, and to take care of them and to provide for their needs."<sup>35</sup> Parents are not to maltreat and discriminate against their children, daughters-in-law, adopted children and children born of a previous marriage.<sup>36</sup>

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<sup>27</sup> Article 11, *Id.*; As to the Chinese practice on this topic, see Niida, 32, *supra* note 5; As to the Russian practice, *see* article 6, *supra* note 8.

<sup>28</sup> Article 11, The Marriage and Family Law of the Democratic Republic of Vietnam, *supra* note 2. According to articles 78-79, the Constitution of North Vietnam. Basic administrative committees are towns, villages, townlets and wards.

<sup>29</sup> Article 12, *Id.*

<sup>30</sup> Article 13, *Id.*

<sup>31</sup> Article 14, *Id.*

<sup>32</sup> Article 15, *Id.*

<sup>33</sup> Article 16, *Id.*; Article 19, Constitution of Vietnam Democratic Republic prescribes that "The State by law protects the right of citizens to inherit private property," *supra* note 3.

<sup>34</sup> *Id.*

<sup>35</sup> Article 17, *Id.*

<sup>36</sup> Article 18, *Id.*

Any one who commits or premeditates an infanticide or abandonment of a newly-born child is to be punished.<sup>37</sup>

The principle of the equality of sexes governs boys and girls in their exercise of rights and duties in the family.<sup>38</sup> Any adult child who is living with his parents has a right to choose his own occupation and engage in his own political and social life, but he is by duty bound to contribute to the communal life of the family.<sup>39</sup> Provisions related to the ascertainment of the parent-child relations are somewhat elaborate. Adoption requires a special procedure. Some further discussion of these two topics may be appropriate.

### *1. The Ascertainment of the Parent-Child Relation*

A child born of parents who are not married may be recognized by the father or mother by declaration before the basic administrative committee.<sup>40</sup> If any dispute arises from this recognition, the People's Court resolves it.<sup>41</sup> The court also renders its assistance in the ascertainment of the paternity or maternity requested by a child born out of wedlock.<sup>42</sup> In the name of a minor child, his mother or his representative may bring an action to ascertain paternity or maternity or both.<sup>43</sup> When the paternity or maternity is established, a recognized child has the same rights and duties with respect to his parents and relatives as do children born of persons in a state of marriage with each other.<sup>44</sup>

### *2. Adoption*

The basic administrative committee sanctions an adoption and requires recording its effect on the civil registry.<sup>45</sup> The purpose of adoption in the socialist countries is to find the child a substitute family to take the place of his natural one.<sup>46</sup> Therefore, an adopted child is to be treated like the other children in the family.<sup>47</sup> If it proves to be contrary to the protection of interests of an adopted child, the People's Court can annul an established adoption.<sup>48</sup>

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<sup>37</sup>*Id.*

<sup>38</sup>Article 19, *Id.*

<sup>39</sup>Article 20, *Id.*

<sup>40</sup>Article 21, *Id.*

<sup>41</sup>*Id.*

<sup>42</sup>Article 22, *Id.*

<sup>43</sup>*Id.*

<sup>44</sup>Article 23, *Id.*

<sup>45</sup>Article 24, *Id.*

<sup>46</sup>DOMINIK LASOK, POLISH FAMILY LAW 175-176 (1968).

<sup>47</sup>Article 24, The Marriage and Family Law of the Democratic Republic of Vietnam, *supra* note 2.

<sup>48</sup>*Id.*

## VI. Divorce and Children

The formal dissolution of a marriage is allowed if the marital union no longer serves the cause of social progress. Thus, a divorce by mutual consent is sanctioned by the People's Court only after proof that the consent is a genuine one.<sup>49</sup> If one spouse requests a divorce, a conciliation method is utilized to obtain a workable marriage.<sup>50</sup> If the conciliation fails, a judicial divorce is granted.<sup>51</sup> A judicial divorce is also granted where "the situation between the spouses is grave, a common life cannot be sustained and the purpose of the marriage cannot be attained."<sup>52</sup>

A husband is barred from bringing a divorce action against his pregnant wife.<sup>53</sup> Once divorce is granted, claims related to the restitution of gifts and cost of nuptials are no longer in existence;<sup>54</sup> division of property will proceed in light of the contribution of each party, the condition of properties and the actual situation of the family, interests of the woman, children and the work production.<sup>55</sup> Support to the other party to the divorce continues even after the divorce if the need of support exists.<sup>56</sup>

A divorced couple still exercise its parental rights, and assume responsibilities towards the children common to their marital union.<sup>57</sup> A divorced couple shares the responsibility of supporting the cost of livelihood and education for their children.<sup>58</sup> In the interests of minor children, the mother assumes custody of a child until it is weaned, and a party free of guardianship has a right to visit his children to give them attention.<sup>59</sup> The change of guardian or the modification of the amount of contribution for the cost of livelihood and education is possible if the interests of the children so dictate.<sup>60</sup> The party autonomy prevails over the matters related to "guardianship, livelihood and education."<sup>61</sup> In case of the disagreement between the parties, the People's Court intervenes.<sup>62</sup>

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<sup>49</sup>Article 25, *Id.*

<sup>50</sup>Article 26, *Id.*

<sup>51</sup>*Id.*

<sup>52</sup>*Id.*

<sup>53</sup>Article 27, *Id.*

<sup>54</sup>Article 28, *Id.*

<sup>55</sup>Article 29, *Id.*

<sup>56</sup>Article 30, *Id.*

<sup>57</sup>Article 31, *Id.*

<sup>58</sup>Article 32, *Id.* This article should be read in light of article 35, Constitution of Vietnam (Democratic Republic), *supra* note 3, which prescribes that "The State pays special attention to the moral, intellectual and physical education of youth."

<sup>59</sup>Article 32, *Id.*

<sup>60</sup>*Id.*

<sup>61</sup>Article 33, *Id.*

<sup>62</sup>*Id.*

**VII. National Minorities**

In regions where national minorities reside, articles of the present code could be derogated, to conform the actual conditions prevailing among minority races in regard to marriage and the family. But such measures require the sanction of the Standing Committee of the National Assembly.<sup>63</sup>

**APPENDIX**

*The Marriage and Family Law of the  
Democratic Republic of Vietnam*

Put into effect on January 13, 1960

**Chapter I. General Principles**

- Article 1. The State guarantees a full realization of a free and progressive marriage system based on monogamy, equality between man and woman, protection of interests of woman and children in order to establish happy, democratic and integrated families wherein members shall solidify, love and help each other toward the cause of social progress.
- Article 2. The remnants of a feudalistic matrimonial system based on arbitrariness, the superiority of man over woman and the defiance of the children's interests are abolished.
- Article 3. Precocious marriage, forced marriage, acts impeding the freedom of marriage, delivery of properties as the condition of marriage, and violence and ill-treatment directed toward the woman are prohibited. The second rank marriage is prohibited.

**Chapter II. Marriage**

- Article 4. A man and woman who have attained legal age shall have a full right to freely decide their marriage; no one of two parties

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<sup>63</sup>Article 35. *Id.* This article should be read in light of article 3, Constitution of Vietnam (Democratic Republic), *supra* note 3, which prescribes that "All the nationalities living on Vietnamese territory are equal in rights and duties. The State has the duty to maintain and develop the solidarity between the various nationalities. All acts of discrimination against, or oppression of any nationality, all actions which undermine the unity of the nationalities, are strictly prohibited. All nationalities have the right to preserve or reform their own customs and habits, to use their spoken and written languages, and to develop their own national culture."

can impose his will on the other, no one can force a person to marry or obstruct him from marrying.

- Article 5. Persons in marriage bond shall be prohibited to take up another spouse.
- Article 6. A woman can marry only after 18 years of age, a man, only after 20 years.
- Article 7. The period of mourning does not constitute a cause of obstructing a marriage.
- Article 8. Widows have the right to marry again; in case of re-marriage, their rights and interests concerning children and properties are guaranteed.
- Article 9. Marriages between relatives of lineal descent or between adopters and adopteds are prohibited. Marriages between full brothers and sisters and between half-brothers and sisters on the father's side or between half-brothers and sisters on the mother's side are prohibited. Marriages between collateral relatives up to the fifth degree or between persons related by the union of blood shall be regulated by custom.
- Article 10. The following persons shall not marry; those struck by total sexual impotence; those affected by such diseases as leprosy, venereal diseases or mental illnesses as long as these persons have not been cured.
- Article 11. The marriage must be approved by the basic administrative committee of either the domicile of the bride or that of the groom, and must be recorded in the marriage register. All other forms of marriage shall not have judicial effect.

### **Chapter III. Rights and Duties of Husband and Wife**

- Article 12. Within the family, husband and wife are equal in all points of view.
- Article 13. Husband and wife shall have the duty to love, respect, and take care of each other, to help one another towards the cause of social progress, to rear and educate their children, to participate in production labor and to establish an integrated and happy family.
- Article 14. Both husband and wife have the right to freely select their occupation and to freely engage in political, cultural and social activities.
- Article 15. Both husband and wife have equal rights of ownership, use and disposal towards the properties acquired prior to and during the marriage.

- Article 16. In case of the predecease of one spouse, if distribution of properties become an issue, the distribution shall be carried out pursuant to article 29.  
Both husband and wife have the right to inherit from each other.

#### **Chapter IV. Relations Between Parents and Children**

- Article 17. Parents have a duty to love, to rear and to educate their children.  
Children have a duty to love and to respect their parents, to take care of them and to provide for their needs.
- Article 18. Parents shall not mistreat their children, nor ill-treat their daughters-in-law, adopted children or children born of a previous marriage.  
It is strictly prohibited to abandon a newly-born child or to make an attempt upon his life. Every person who abandons a newly-born child or makes an attempt upon its life, likewise one who incited the perpetration of these crimes shall be liable before the criminal law.
- Article 19. Boys and girls have the same rights and the same duties in the family.
- Article 20. Any adult child who lives with his parents is free to choose his occupation, to engage in political and social activities, and to possess and own properties; on the other hand, he has a duty to fit himself into the community life of the family.
- Article 21. The father or the mother who recognizes a child born out of wedlock shall make a declaration with the basic administrative committee. In case of litigation, the People's Court shall resolve.
- Article 22. A child born out of wedlock shall have a right to bring an action before the People's Court to search the paternity or the maternity created out of wedlock.  
The mother shall equally have a right to bring an action to search the paternity created out of wedlock in the name of the minor child.  
A representative of a minor child shall also have a right to bring an action to search the paternity or maternity created out of wedlock in the name of the child.
- Article 23. A child born out of wedlock recognized voluntarily or judicially shall have the same rights and duties as a legitimate child.

Article 24. An adopted child shall have the same rights and duties as a child born by blood.

The adoption must be sanctioned by the basic administrative committee of the domicile of the adopter or that of the adopted, and must be recorded in civil registry.

People's Court can annul said sanction at the personal request of the adopted, or that of all other persons or organizations. This request is to be made to protect the interests of the adopted.

#### **Chapter V. Divorce**

Article 25. In a case where a divorce by mutual consent is requested, if the investigation establishes that the divorce is freely and completely consented by the two parties, the People's Court will sanction the divorce.

Article 26. In the case of the request of a divorce made by one of the spouses unilaterally, competent organs initiate an investigation and conciliation. In a case where conciliation bring no result, the People's Court shall resolve. In case the situation between the spouses is grave, a common life is unable to be prolonged and the purpose of the marriage cannot be attained, the People's Court will pronounce a divorce.

Article 27. If the wife is pregnant, the husband cannot request a divorce until one year after the delivery. This restriction shall not apply to a request of divorce made by the wife.

Article 28. In case of a divorce, all claims for the restitution of gifts and the cost of nuptials are prohibited.

Article 29. In case of a divorce, the division of properties shall be made taking into consideration the contribution of each party, the condition of properties and the actual situation of the family. Household labor is considered equivalent to production labor. At the time of the division, the interests of the woman, children and the work production are to be protected.

Article 30. At the time of divorce, if the party who is in need of support requests alimony, the other party pays it according to his own ability.

The amount of alimony and the duration of the payment shall be decided by the agreement of the parties; in a case where both parties cannot agree, the People's Court shall resolve.

If a person benefited by alimony remarries, there will be no more right to any alimony.

Article 31. A divorced couple reserves all their duties and rights towards the children common to their marriage.

Article 32. In case of divorce, measures concerning guardianship, livelihood and education for minor children must be based on the well examined interests of minor children. As a principle, a child in suckling must be left with the mother. The party who is not a guardian of children has a right of visit and of giving them attention.

A divorced couple must together, each according to his or her own ability, support the cost of livelihood and education of children. In the interest of children, if the necessity arises, it is possible to change the guardian or to modify the amount of contribution for the cost of livelihood and education.

Article 33. Guardianship, livelihood and education for the children and the contribution for the cost of livelihood and education shall be decided by the agreement of parties.

If they cannot agree or their agreement contains illegal elements, the People's Court shall resolve.

#### **Chapter VI. Enforcing Provisions**

Article 34. All acts contrary to the present law shall be punished according to the laws in effect.

Article 35. The present law enters into effect from the date of its promulgation.

In regions where ethnic minorities reside, provisions could be enacted to derogate the present law depending on the local particular circumstances. These said provisions must be approved by the Standing Committee of the National Assembly.