

**SOVIET FAMILY LAW:  
WOMEN AND CHILD CARE (FROM 1917 TO THE 1940s)**

EKATERINA MISHINA,  
Independent Scholar (Ann Arbor, USA)

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*In the Russian Empire, family law did not constitute an independent area of law and was a part of civil law. Family relations were handled by the church. Divorces were hard to get and disapproved of by the church and society. The status of illegitimate children was disfavored; they were not allowed to have the birth status of their mothers or her last name, to inherit the property of the mother and her relatives, nor were their mothers and relatives allowed to inherit from them. Illegitimate children had no right to the father's financial support or property and could not inherit from him. The Bolsheviks addressed the issue of family law immediately after coming to power in 1917. Their main goal was to repeal pre-revolutionary regulations and to discontinue the Russian Orthodox Church's leading role in handling marriages and divorces. The first efforts undertaken by the Bolsheviks in the realm of family law were remarkably progressive, namely simplification of the procedures of marriage and divorce, providing women with many rights that were non-existent before October of 1917, elimination of the concept of illegitimacy, and granting the children of unmarried couples rights equal to those of children of officially married parents. In 1920, Soviet Russia became the first state to legalize abortions. Sadly, most positive developments of the early Bolshevik years disappeared in the 1930s–1940s. Family law followed the general pattern of escalation of repression and strengthening of regulations.*

*Keywords: family law; marriage; divorce; illegitimate children; abortion; Bolshevik law.*

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## Table of Contents

### Introduction

#### 1. Ideological Basis of Early Soviet Family Law

#### 2. Conclusion and Termination of Marriage

#### 3. Property Relations of Spouses

#### 4. Legal Status of Illegitimate Children

#### 5. Abortion

### Conclusion

## Introduction

The phenomenon that became known as Soviet law came into existence shortly after the October Revolution of 1917. Purporting to eliminate everything related to the previous regime, the Bolsheviks planned to repeal the pre-revolutionary legislation in its entirety. At the same time, they understood that it was impossible to create a brand new legal system from scratch, and from the very beginning, Soviet law appeared to be a mixture of pre-revolutionary law, Marxist-Leninist ideology, and revolutionary legal consciousness. All areas of law underwent tremendous transformation, but changes in family law were the fastest. There are sufficient grounds to state that the October Revolution of 1917 resulted in another revolution – the revolution in the realm of family law. The initial task to replace the “bourgeois family” was formulated in the Manifesto of the Communist Party of 1848. The Founding Fathers of Marxism stated that

the proletariat is without property; his relation to his wife and children has no longer anything in common with the bourgeois family relations... Law, morality, religion, are to him so many bourgeois prejudices, behind which lurk in ambush just as many bourgeois interests.<sup>1</sup>

The general attitude towards early Soviet law changed together with the political regime in Russia. Under Soviet rule, the first laws of the Bolsheviks were referred to as model examples of the class-based legislation characterizing the period of the dictatorship of the proletariat. After the break-up of the Soviet Union, the Bolshevik legislation became an object of criticism together with other features of Bolshevik rule. Whatever the attitude, it was always one-sided. The main goal of this article is to demonstrate that early Bolshevik acts appear to be a *mélange* of good and bad. Remarkably progressive developments (such as acts regulating family law), came

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<sup>1</sup> Karl Marx & Friedrich Engels, *Manifesto of the Communist Party* in Karl Marx & Friedrich Engels, *Selected Works*. Vol. 1 98–137 (Moscow: Progress, 1969) (Nov. 4, 2017), available at <https://www.marxists.org/archive/marx/works/1848/communist-manifesto/>.

into existence simultaneously with a number of disruptive and ugly regulations, especially in the realm of criminal law. Some early Bolshevik legislative efforts represent the initially good intentions of the Bolsheviks aimed at the improvement of the legal status of women and illegitimate children, the simplification of marriage and divorce procedures, and legalization of abortion. Unfortunately, later these intentions became transmuted into their opposite.

### 1. Ideological Basis of Early Soviet Family Law

The works of A. Goichbarg and A. Kollontai served as a source of inspiration for the drafters of the first Soviet family code. Alexander Goichbarg, previously a *privat-docent* at the law school of St. Petersburg University, was the author of the first Soviet scholarly piece on family law, which was published in May of 1918. In early 1918 he became the head of the Department of Codification and Legislative Proposals of the People's Commissariat of Justice. Until the mid-1920s, Goichbarg was almost the only legal scholar who addressed the specific features of Soviet family law. He took an active part in development of the most important pieces of early Bolshevik legislation, namely the Code of Laws on Labor of 1918 and the Code on Marriage, the Family, and Guardianship of 1918 (hereinafter referred to as the 1918 Family Code). Goichbarg's "New Family Law" explained the key characteristics of Soviet family law. The key goal of this work was to present the main features of the first Soviet decrees on family issues in the context of the Bolshevik ideas on the principles of legal regulation of marriage, termination of marriage, invalidity of marriage, "previous marriages," and relations between spouses, parents, children, guardians and their wards.<sup>2</sup> Goichbarg aimed to demonstrate that the Bolshevik revolution created the new family law "free of chains and prejudices of the pre-existing exploitative state."<sup>3</sup> He viewed family law as a part of civil law. According to Goichbarg, family law embraced three areas: marriage law; relations between spouses, parents and children; and guardianship. In his next work "Marriage, Family and Guardianship Law of the Soviet Republic," he argued that the Soviet legislation considers the "origin" (*proiskhozhdeniye*) and not the "conclusion of marriage" to be the basis of the family or kinship. Goichbarg pointed out that the Soviet legislation completely separated family relations from matrimonial relations. He stated that family relations or kinship were recognized by Soviet legislation irrespective of the nature of the union of the parents, and of whether they were officially married.<sup>4</sup>

<sup>2</sup> See Олейник И.И. Роль А.Г. Гойхбарга в становлении советской науки семейного права [Irina I. Oleynik, A.G. Goichbarg's Impact on the Formation of Soviet Science of Family Law] (Nov. 2, 2017), available at [http://teoria-practica.ru/rus/files/arhiv\\_zhurnala/2014/12/yurisprudentsiya/oleynik.pdf](http://teoria-practica.ru/rus/files/arhiv_zhurnala/2014/12/yurisprudentsiya/oleynik.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> See Гойхбарг А.Г. Брачное, семейное и опекуное право Советской республики [Alexander G. Goichbarg, *Marriage, Family and Guardianship Law of the Soviet Republic*] (Moscow: Gosizdat, 1920).

During the early years of Soviet rule, the Bolsheviks' legislative efforts were firmly founded on class-based ideology, so the "origin" (*proiskhozhdeniye*) played a crucial role. The stated goals of the Bolsheviks were to eliminate the exploitation of man by man, create a classless society, and ensure the worldwide victory of socialism. Chapter 4 of the 1918 Constitution of the RSFSR proclaimed that at the decisive moment in the battle of the proletariat with its exploiters, the members of the exploiter class were banned from holding official positions in any branch of the Soviet Government. Naturally, the exploiters were also prevented from voting.<sup>5</sup> Affiliation with a certain class could also serve as an aggravating or a mitigating circumstance. The 1926 Criminal Code of the RSFSR established a list of especially aggravating circumstances, which included committing a crime "with the purpose of restoring bourgeois rule" or "by a person one way or another belonging currently or in the past to the class of individuals that exploit other people's labor."<sup>6</sup> Committing a crime for the first time, by a worker or peasant or "though beyond the limits of necessary defense, but with the purpose to defend against infringement of Soviet Power, the revolutionary legal order, or to defend the defender himself, his rights or another person"<sup>7</sup> constituted a mitigating circumstance.

In Marxist-Leninist theory, law, family and the state were assumed to be in the process of withering away in the face of the birth of world communism. The authors of the 1918 Family Code expected that the family as a phenomenon, as well as family law, would eventually disappear. Goichbarg and other revolutionary lawyers believed that under socialism children, the elderly, and the disabled would be supported by the state; all housework would be socialized, and women would no longer be economically dependent on men. The family would lose its social functions and be replaced by free unions of men and women based on mutual love and respect.

Alexandra Kollontai, one of the first Russian feminists, a Communist revolutionary, the People's Commissar of Public Assistance in the first Bolshevik Government in 1917–1918, and the head of the Women's Department of the Central Committee of the Russian Communist party of Bolsheviks from 1920, addressed this issue in "The Social Basis of the Woman Question," the first Russian Marxist work on this subject published in 1909. She argued that in order

to become really free, a woman has to throw off the heavy chains of current forms of the family, which are outmoded and oppressive. For women, the solution of the family question is no less important than the achievement

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<sup>5</sup> Article 65 of the 1918 Constitution contained an explicit list of categories of individuals deprived of voting rights.

<sup>6</sup> Уголовный кодекс РСФСР 1926 г. [Criminal Code of the RSFSR of 1926], Art. 47(b) (Nov. 2, 2017), available at <http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=ESU;n=3274#0>.

<sup>7</sup> *Id.* Art. 48(a).

of political equality and economic independence... In the family of today, the structure of which is confirmed by custom and law, woman is oppressed not only as a person but as a wife and mother, in most of the countries of the civilized world the civil code places women in a greater or lesser dependence on her husband, and awards the husband not only the right to dispose of her property but also the right of moral and physical dominance over her... Does one have to repeat that the present compulsory form of marriage will be replaced by the free union of loving individuals? The ideal of free love drawn by the hungry imagination of women fighting for their emancipation undoubtedly corresponds to some extent to the norm of relationships between the sexes that society will establish. However, the social influences are so complex and their interactions so diverse that it is impossible to foretell what the relationships of the future, when the whole system has fundamentally been changed, will be like. But the slowly maturing evolution of relations between the sexes is clear evidence that ritual marriage and the compulsive isolated family are doomed to disappear... Women can become truly free and equal only in a world organized along new social and productive lines.<sup>8</sup>

Professor Sergey Kara-Murza argues that Bolsheviks strictly followed the provisions of the “Manifesto of the Communist Party” and removed almost all limitations in the realm of sexual relations immediately after the October Revolution of 1917.<sup>9</sup> Propaganda of sexual freedom was conducted under the slogan “Make Way for the *Winged Eros!*,” which was suggested by Alexandra Kollontai in her essay that was published under this title. In this essay, Kollontai severely criticized the *Unwinged Eros* by stating that it contradicted the interests of the working class:

“it inevitably results in surfeit and physical depletion... impoverishes the soul, impedes development and strengthening of spiritual bonds... and is usually based on inequality of rights in sexual relations, a woman’s dependence on a man, male dominance or lack of sensitiveness, which apparently slows down development of comradeship.”<sup>10</sup> Kollontai pointed out that bourgeois ideology required a person to demonstrate empathy,

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<sup>8</sup> Alexandra Kollontai, *The Social Basis of the Woman Question in Selected Writings of Alexandra Kollontai* (London: Allison & Busby, 1977) (Nov. 2, 2017), also available at <https://www.marxists.org/archive/kollonta/1909/social-basis.htm>.

<sup>9</sup> Кара-Мурза С.Г. Маркс против русской революции [Sergey G. Kara-Murza, *Marx against the Russian Revolution*] (Nov. 2, 2017), available at [https://www.e-reading.club/chapter.php/145404/26/Kara-Murza\\_-\\_Marks\\_protiv\\_russkoi\\_revolyucii.html#n\\_43](https://www.e-reading.club/chapter.php/145404/26/Kara-Murza_-_Marks_protiv_russkoi_revolyucii.html#n_43).

<sup>10</sup> Коллонтай А. Дорогу Крылатому Эросу! (Письмо к трудящейся молодежи) [Alexandra Kollontai, *Make Way for the Winged Eros! (A Letter to Working Youth)*] (Nov. 2, 2017), available at [https://www.marxists.org/russkij/kollontai/winged\\_eros.htm](https://www.marxists.org/russkij/kollontai/winged_eros.htm).

sensitiveness, and a wish to help others (the qualities, which, according to Kollontai, were so much needed by the builders of new culture) to the one and only person – his (her) sweetheart. For the proletarian ideology, the most important thing was to wake up and develop these qualities in a person; such qualities were expected to be demonstrated not only in the relationship with one's sweetheart, but also with all members of the collective.<sup>11</sup> She also introduced the notion of "sexual communism."<sup>12</sup>

As William Rozenberg states, Kollontai and some other Bolshevik women argued quite early that special attention had to be paid to family issues through separate "women's sections," but most opposed this as unwarranted (and divisive) attention to gender.<sup>13</sup> According to Kara-Murza, all these aforementioned efforts contributed to the conflict between Marxists and traditional Russian society, which prioritized family as one of the fundamental values. In 1923–1925, the People's Commissariat of Justice developed three new drafts of the Family Code, which followed the line of the "Winged Eros." When published, these drafts occasioned a huge public debate. Kara-Murza pointed out that peasants strongly opposed these drafts stating that marriage *de facto* in the absence of official registration undermined the fundamentals of the agricultural household and was incompatible with the principles of the patriarchal family.

So-called "protectionists"... thought that the new law would place women in a much harder position. This group included Communist party officials, skilled workers, white-collar employees and also prominent lawyers.<sup>14</sup>

Rozenberg mentions the party's growing "Thermidorian reaction" in this area and lists possible reasons, including popular reaction, particularly among male peasants, to the party's support of women's independence. The other was the unwillingness on the part of party figures to give these issues the energy and attention they required, since other problems had higher priorities. He points out that

still, the explosion of traditional myths and prejudices concerning the "appropriate" roles of men and women in society, the freeing of church restraints in this regard, and particularly the liberation of women in many national minority areas from conditions approaching forced female servitude, remained one of the revolution's most remarkable cultural achievements.<sup>15</sup>

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<sup>11</sup> Kollontai, *Make Way for the Winged Eros!*, *supra* note 10.

<sup>12</sup> Kara-Murza, *supra* note 9.

<sup>13</sup> *Bolshevik Visions: First Phase of the Cultural Revolution in Soviet Russia* 63 (W.G. Rozenberg (ed.), 2<sup>nd</sup> ed., Ann Arbor: University of Michigan Press, 1990).

<sup>14</sup> Kara-Murza, *supra* note 9.

<sup>15</sup> *Bolshevik Visions*, *supra* note 13, at 66.

## 2. Conclusion and Termination of Marriage

Russian family law became an independent area of law only after the October Revolution of 1917. There was no codified family law in the multinational and multi-religious Russian Empire. Both bride and groom, irrespective of their age, had to obtain parental consent:

Getting married in the absence of permission of parents, guardians or foster parents shall be prohibited.<sup>16</sup>

In order to get married, both military and civil servants had to receive the written permission of their supervisors. Marriages and divorces were handled by the church. Couples who belonged to different confessions and wanted to get married had to seek the approval of the Tsar and of the churches they belonged to. In most cases, either the bride or groom had to convert. Divorces were hard to get and disapproved of by the church and the society. Divorces were handled by specialized church courts. Sometimes the party at fault was prohibited from getting married in the future. Possible reasons for such prohibition included

(a) termination of marriage in the event of adultery committed by one of the spouses;

(b) if a married person entered into a second marriage, and the previous marriage was not terminated before that in any manner;

(c) if one of the spouses was missing for five years.<sup>17</sup> In this case, if a missing person showed up and failed to present sufficient excuses for such a long absence, he had to be sentenced to lifetime celibacy. However, this rule did not apply to the military officers of lowest ranks who were taken captive or reported missing in wartime.<sup>18</sup> The number of marriages allowed by the church was also strictly regulated: members of the Russian Orthodox Church were prohibited from entering into a fourth marriage.<sup>19</sup>

According to Professor Gabriel Shershenevich, a family union creates two types of family rights: a husband's right to have controlling authority over his wife and children,<sup>20</sup> who, in return, had the right to be financially supported by their

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<sup>16</sup> Свод законов Российской империи [Digest of Laws of the Russian Empire], Vol. X, Part 1, Art. 6 (Nov. 2, 2017), available at <http://civil.consultant.ru/code/>.

<sup>17</sup> *Id.* Art. 37.

<sup>18</sup> Устав духовных консисторий [*Charter of the Clergy Consistory*], Art. 236 (St. Petersburg: Synod's publishing house, 1883).

<sup>19</sup> Digest of Laws of the Russian Empire, *supra* note 16, Vol. X, Part 1, Art. 21.

<sup>20</sup> This authority included powers similar to *manus mariti* (in Roman family law, in a *cum manu* marriage the wife was placed under the legal control of her husband and subordinated to him) and *patria potestas* (in Roman family law, the power that the male head of the family exercised over his children).

*paterfamilias*. Shershenevich argued that the rights to mutual love and respect set forth in law should not be treated as family rights since these rights were not legally enforceable.

A husband has controlling authority over his wife, parents – over their children, and guardians – over their wards. A right to financial support belongs to the wife in relation to her husband, to children in relation to their parents and vice versa... The right to have controlling authority possesses an absolute nature, whereas the rights to financial support belong to the category of *rights in personam*.<sup>21</sup>

He pointed out that Russian legislation placed the husband's authority over his wife above the wife's father's paternal powers; in the event of contradiction between the paternal powers and the husband's power, the latter prevailed. The husband's authority allowed him to require his wife to obey his legitimate orders; specifically, the husband had the right to require his wife to be with him in his place of domicile. Without his permission, the wife was not entitled to stay even temporarily in another place. At the same time, the husband's right of controlling authority went together with his obligations in relation to his wife. These obligations included a duty to provide for her decent financial support and to be faithful to his spouse. According to Dmitry Meyer, violation of fidelity either by husband or by wife constituted a criminal offence in the Russian Empire.<sup>22</sup> Meyer mentioned that in different classes of Russian society, the husband's controlling authority over his wife was exercised in practice in various forms. Educated people exercised this right mildly

with due regard to the modern ideas about the high role of women and their equality to men. In uneducated classes, which constitute the majority of the population of our Motherland, the husband's right to have controlling authority over his wife is exercised in a rather bitter and rude mode. The husband not only appropriates the right to be the master of his wife... he also thinks he's empowered to beat her.<sup>23</sup>

Early Soviet acts regulating family issues had the main ideological goal of repealing the pre-revolutionary system of concluding and terminating marriages. The Joint Decree of the All-Russian Central Executive Committee (VTsIK) and Soviet of People's

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<sup>21</sup> Шершеневич Г.Ф. Учебник русского гражданского права [Gabriel F. Shershenevich, *Russian Civil Law: Textbook*] 407 (Moscow: Spark, 1995).

<sup>22</sup> See Мейер Д.И. Русское гражданское право [Dmitry I. Meyer, *Russian Civil Law*] (Nov. 2, 2017), available at [http://civil.consultant.ru/elib/books/45/page\\_1.html#1](http://civil.consultant.ru/elib/books/45/page_1.html#1).

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



Commissars (Sovnarkom) on Divorce of 16(29) December 1917, was the first act of the new regime that introduced fundamental changes in the area of family law. Divorce procedure was simplified; divorces were subjected to the jurisdiction of local courts. All pending divorce cases or cases in which decisions had not entered into legal force were invalidated, and case materials had to be transferred for keeping to local courts.<sup>24</sup> Parties were entitled to bring up new divorce requests under the new Decree.

Another Joint Decree of VTsIK and Sovnarkom, "On Civil Marriage, Children and Vital Office Records" followed on 18(31) December 1917. This act was also a breakthrough in the area of family law. Civil marriage officiated by a representative of the state was proclaimed the only form of marriage that was officially recognized in Soviet Russia. Marriage requirements were made very simple: mutual consent of bride and groom and an age requirement: 18 years of age for men and 16 years for women. For the native population of the Transcaucasian area, the requirements were different: 16 years old for men and 13 years old for women.<sup>25</sup> Marriage was strictly prohibited if one of the couple was mentally ill or was married with that marriage still in force. Marrying an immediate family member was not allowed.

The Code on Marriage, the Family, and Guardianship<sup>26</sup> was put into effect in October of 1918. Being a follow-up to the Decrees on Divorce and Civil Marriage, the Code embraced the Bolshevik idea on the temporary nature of law in general and family law in particular. As Wendy Goldman states, the 1918 Code of Laws on Vital Records, Marriage, the Family and Guardianship<sup>27</sup> captured in law the revolutionary vision of social relations based on women's equality and the "withering away" of the family.<sup>28</sup>

A number of provisions of the new Code aimed at elimination of the "bitter legacy of the czarist regime" in the family law realm. If one of the spouses changed the place of residence, the other was not required to do the same. Only civil marriages registered in a Vital Records Office established rights and duties of spouses. Marriages concluded by a religious ceremony or by a clergyman entailed no rights and duties unless registered as provided by law. Religious marriages concluded before

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<sup>24</sup> Декрет ВЦИК и СНК от 16(29) декабря 1917 г. "О расторжении брака" [Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of 16(29) December 1917. On Divorce], Art. 12 (Nov. 2, 2017), available at <http://www.hist.msu.ru/ER/Etext/DEKRET/17-12-16.htm>.

<sup>25</sup> Декрет ВЦИК и СНК от 18(31) декабря 1917 г. "О гражданском браке, о детях и о ведении книг актов состояния" [Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of 18(31) December 1917. On Civil Marriage, Children and Vital Records Offices], Art. 2 (Nov. 2, 2017), available at <http://www.hist.msu.ru/ER/Etext/DEKRET/17-12-18.htm>.

<sup>26</sup> Кодекс законов об актах гражданского состояния, брачном, семейном и опекунском праве от 22 октября 1918 г. [Code of Laws on Vital Records, Marriage, the Family and Guardianship of 22 October 1918] (Nov. 2, 2017), available at <http://www.7ya.ru/article/Semejnyj-Kodeks-1918-goda-Sobranie-uzakonenij-i-rasporyazhenij-Rabochego-i-Krestyanskogo-Pravitelstva/>.

<sup>27</sup> *Id.*

<sup>28</sup> Wendy Z. Goldman, *Women, the State and Revolution: Soviet Family Policy and Social Life, 1917–1936* (Cambridge: Cambridge University Press, 1993).

10 December 1917 in accordance with Arts. 3, 5, 12, 20, 31, or 90 of the Digest of Laws of the Russian Empire (Part 1 of Vol. X) had the legal force of registered marriages.

The Code confirmed the simplified divorce procedure established by the Decree of 16 December 1917, and established uncontested divorce and divorce at the request of a spouse. Under Art. 88, divorce requests could be executed in writing or expressed orally and then put on record.

Certain provisions clearly indicated that its authors gave careful consideration to the problems of motherhood and childhood protection. According to Art. 140,

a woman who is pregnant and not legally married should, not later than 3 months before giving birth, submit an application to the registry office at the place of residence, with the time of conception, the father's name and place of residence... A legally married woman can submit the same application if the child conceived by her is not her legal husband's.

The Registry Office obligingly notified the person mentioned in the application, and the latter had the right to challenge the mother's application in court (Art. 141). Article 144 of the Code arouses mixed feelings. It stipulated that

if the court finds that, at the time of conception, the child's mother had sexual relations with the person mentioned as the father, but also with other men, the court brings the latter as respondents and demands that they participate in expenses

related to (as mentioned in Art. 143) "pregnancy, childbirth and child support."

On 1 January 1927, the 1918 Family Code was officially replaced by the RSFSR Code on Marriage, Family and Guardianship, which was adopted in November of 1926. The new Code established that marriages *de facto* had almost the same status as did marriages duly officiated in the Vital Records Offices. Divorce procedure was made even simpler. It was not necessary to go to court anymore: divorces were brought under the competence of the Vital Records Offices.

Moreover, the new Code legalized the termination of marriage in the absence of one of the spouses. The absent spouse had to be informed about the fact of divorce. According to another provision of the new Code, a single mother had a right to indicate the father of the child in the birth certificate without any proof. The only requirement was that she had to submit an application to the Vital Records Office. After the issuance of such a birth certificate, the father had to be informed about it. He also had a right to contest it in court. With the aim of protecting the rights of children, mothers were entitled to submit an application indicating the father's first and last name and place of residence to a Vital Records Office before or after childbirth. A person indicated as a father had to be notified of it by a Vital Records

Office and, in the absence of objections from him, after 30 days he was included on the birth certificate as the father.

In early 1930s, the idea that law, family and the state will inevitably wither away disappeared from the domestic political agenda. The followers of Marxism discussed the problems of the forms of family in the future society in a less contentious context. August Bebel in his “A Woman and Socialism” argued that the family would transform into a union based on a private contract “without any interference of the officials.” Kara-Murza points out that the Marxist vision of the issue strongly disagrees with the Russian culture:

in late 1920s the subject of family relations was practically withdrawn from “vulgar Soviet Marxism.”

Slowly but steadily, the Marxist view on family relations was bypassed, and constituted one of the subjects of intra-party disagreement. In 1917–1936, the Soviet Union completely reviewed the role of family in society – from the utopian “withering away of the family” to its “state and ideological support.”<sup>29</sup> According to W. Goldman, family became a part of the “new Holy Trinity of the party ideology” together with “socialist statehood” and “socialist legality.”

Article 27 of the 27 June 1936, joint ruling of the Central Executive Committee and Council of People’s Commissars “On the Prohibition of Abortion [and] Provision of Financial Aid to Women Giving Birth”<sup>30</sup> symbolized the first step towards the re-formalization of marriage.

In order to change the existing laws on marriage, family and guardianship and to oppose irresponsible attitude towards family and family obligations, in the course of handling a divorce, both divorcing spouses shall be summoned to the Vital Records Office and receive a divorce stamp in their passports.

In comparison with the wordings from the 1918 and 1926 Family Codes, the language of this paragraph is very telling. This paragraph also sends a completely different message: formalities do matter in the realm of family relations. Divorce registration fees were also increased: 50 rubles for the first divorce, 150 rubles for the second, and 300 rubles for each subsequent divorce.

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<sup>29</sup> Kara-Murza, *supra* note 9.

<sup>30</sup> Постановление ЦИК и СНК СССР от 27 июня 1936 г. “О запрещении аборт, увеличении материальной помощи роженицам, установлении государственной помощи многодетным, расширении сети родильных домов, детских яслей и детских садов, усилении уголовного наказания за неплатеж алиментов и некоторых изменениях в законодательстве о разводах” [Ruling of the Central Executive Committee and Council of People’s Commissars of 27 June 1936. On the Prohibition of Abortion [and] Provision of Financial Aid to Women Giving Birth] (Nov. 2, 2017), available at <http://istmat.info/node/24072>.

In the early 1940s, it became obvious that certain provisions of the 1926 Code had become non-enforceable. This happened due to a variety of reasons, with World War II being the key factor. The war completely changed every aspect of life in the Soviet Union including the demographic landscape. The Great Purge and World War II cost tens of millions of young men's lives. A great number of children were left fatherless. An 8 July 1944 Decree of the Presidium of the USSR Supreme Soviet "On Increase of the Government Assistance to Pregnant Women, Mothers of Large Families, Single Mothers, on Strengthening of Protection of Motherhood and Childhood, on Establishing the Honorary Title 'Mother-Heroine,' the Order of 'Maternal Glory,' and the 'Maternity Medal'" introduced tremendous changes in the existing legislative framework. This Decree abolished the previous equality between registered and informal marriages and fundamentally changed the attitude of the Soviet state towards official recognition of the matrimonial relations between spouses. Article 19(2) of the Decree stated that only a duly officiated marriage established rights and duties of spouses stipulated in the republican family codes. Couples who lived in a *de facto marriage* were allowed to officiate their union by registration of their marriage with the indication of the length of the period of cohabitation. Article 22 established the obligation to make a mandatory record of the registered marriage in the passports with indication of the name and birthdate of a spouse, as well as the place and time of the registration of marriage.<sup>31</sup>

Divorce procedures were also modified. The Decree returned the function of termination of marriage to the courts and established a mandatory two-tier procedure. Article 24 stipulated the obligatory requirements for initiating the court proceeding of dissolution of marriage, including publication of information about the beginning of the divorce proceedings in the local newspaper at the expense of the spouse who filed for divorce. Under Art. 25, the people's court had to determine the reasons for divorce in order to undertake measures for reconciliation of spouses, and subpoena both spouses. In case of necessity, the court could also subpoena witnesses. If the people's court failed to reconcile the spouses, the plaintiff was eligible to file for divorce in an upper court. A. Koshcheev argues that before the Decree of 8 July 1944 was issued, the governmental bodies simply registered the fact of divorce; after the Decree came into effect, courts began to play an excessively active role in deciding whether it would be reasonable to preserve a particular marriage.<sup>32</sup> Families

<sup>31</sup> Указ Президиума Верховного Совета СССР от 8 июля 1944 г. "Об увеличении государственной помощи беременным женщинам, многодетным и одиноким матерям, усилении охраны материнства и детства, об установлении почетного звания "Мать-героиня" и учреждении ордена "Материнская слава" и медали "Медаль материнства"" [Decree of the Presidium of the USSR Supreme Soviet of 8 July 1944. On Increase of the Government Assistance to Pregnant Women, Mothers of Large Families, Single Mothers, on Strengthening of Protection of Motherhood and Childhood, on Establishing the Honorary Title "Mother-Heroine," the Order of "Maternal Glory," and the "Maternity Medal"] (Nov. 2, 2017), available at [https://www.lawmix.ru/docs\\_cccp/3096](https://www.lawmix.ru/docs_cccp/3096).

<sup>32</sup> Кошечев А.В. Расторжение брака по советскому законодательству, 4 Вестник Вятского государственного университета 75 (2010) [Albert V. Koshcheev, *Termination of Marriage under*

with minor children could not get an uncontested divorce in a Vital Records Office. Instead, they continued to live together, because judges were instructed to save as many marriages as possible. In order to do that, in any divorce case a judge had to give the parties a so-called “reconciliation period” at least twice. The average length of such period was 6 months. Article 23 established that divorces had to be handled in open court hearing. If necessary, a hearing *in camera* was also possible upon the request of the spouses, but this decision was at the court’s discretion.

The 10 November 1944 Decree “On the Procedure of Recognizing Informal Marriage in the Event of One of the Spouses Dying or Going Missing” stipulated that an informal marriage which existed before the Decree of 8 July 1944 could be legally acknowledged.<sup>33</sup> In order to do that, the surviving partner was entitled to file an application to the people’s court in order to be acknowledged as spouse of the person dying or going missing according to the legislation previously in force (Arts. 11 and 12 of the 1926 Code of the RSFSR and appropriate provisions of other republican codes). But this provision was hypocritical, because not many people knew about it, only a few could provide evidence of a preexisting informal marriage, and even fewer were ready to take their case to the courts, which usually acted as punitive agencies.

Due to inconsistency of the case law of that time, grounds for rejection of a divorce lawsuit and the reasons for obligatory termination of marriage were widely debated. Koshcheev adds that the complicated divorce procedure established by the Decree of 8 July 1944 was sometimes unjustified and unreasonable. The Resolution of the USSR Council of Ministers of 29 August 1946 No. 1945 was adopted as a follow-up to the Instruction of the USSR People’s Commissariat of Justice of 27 November 1944 No. 1622 “On the Order of Adjudication of Divorce Cases by the Courts.” Resolution No. 1945 established that if one of the spouses was certified as missing, was missing in action, convicted for a lengthy term of imprisonment (at least three years), or suffered a chronic mental disease, the other spouse had the right to file for divorce directly to the upper court without preliminary consideration of a case in the people’s court. In the event of a divorce from a prisoner, the latter was required to be notified in writing. Publication of information in a local newspaper was also mandatory.<sup>34</sup>

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*Soviet Legislation*, 4 Vyatka State University Herald 75 (2010)] (Nov. 4, 2017), also available at <https://cyberleninka.ru/article/v/rastorzhenie-braka-po-sovetskomu-zakonodatelstvu-1>.

<sup>33</sup> Указ Президиума Верховного Совета СССР от 10 ноября 1944 г. “О порядке признания фактических брачных отношений в случае смерти или пропажи без вести на фронте одного из супругов” [Decree of the Presidium of the USSR Supreme Soviet of 10 November 1944. On the Procedure of Recognizing Informal Marriage in the Event of One of the Spouses Dying or Going Missing] (Nov. 2, 2017), available at <http://pravo.levonevsky.org/baza/soviet/sssrb390.htm>.

<sup>34</sup> Постановление Совмина СССР от 29 августа 1946 г. № 1945 “О дополнении Инструкции Наркомюста СССР “О порядке рассмотрения судами дел о расторжении брака”, утвержденной Постановлением Совнаркома СССР от 27 ноября 1944 г. № 1622” [Resolution of the USSR Council of Ministers No. 1945 of 29 August 1946. On Amending the Instruction of the USSR People’s Commissariat of Justice No. 1622 of 27 November 1944 “On the Order of Adjudication of Divorce Cases by the Courts”] (Nov. 2, 2017), available at <http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=ESU;n=23934#0>.

February of 1947 saw further restrictions in the realm of family law: the Decree of the Presidium of the Supreme Soviet of 15 February 1947 imposed a ban on marriages between Soviet citizens and foreigners. This act remained in force until 26 November 1953.

People's attitude towards divorce also changed and became hostile. Local Communist Party committees discussed divorce cases in all their juicy details, and character references of every divorced Soviet citizen contained the same wording: "The Communist Party Committee is aware of the fact of divorce." Koshcheev points out that an attempt to terminate marriage, even when *de facto* the family ceased to exist, was treated as immoral and condemned with all appropriate consequences, including public censure and expulsion from the Communist Party.<sup>35</sup>

### 3. Property Relations of Spouses

Married women were allowed to conduct certain types of professional activities to the extent these activities did not interfere with their spousal responsibilities. Professor Vsevolod Udintzev pointed out:

if engaging in trading or business prevents a woman from fulfillment of her family obligations, her husband has a right to forbid it

and marked that in such cases a husband's consent constituted a general rule<sup>36</sup>. He stated that if the spouses lived separately, there were sufficient grounds to presume the implied consent of the husband to his wife's engagement in business or other commercial activities. Alexander Bashilov made the point that whereas the Russian imperial legislation did not require a husband's consent for his wife to start a commercial business by his wife, such trading business could be halted at any time at the husband's request.<sup>37</sup>

Shershenevich addressed this issue in more detail:

In order to carry on trade, a married woman doesn't need her husband's prior consent, and her husband has no right to veto his wife's trading, which she performs on her own behalf. Nevertheless, pursuant to Art. 103 of the Civil Laws, which establishes the duty to live together for married couples, the husband is entitled to force his wife to follow him and leave her business in the event the husband selects a different city as a place of habitual residence.

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<sup>35</sup> Koshcheev 2010.

<sup>36</sup> Удинцев В.А. Русское торгово-промышленное право [Vsevolod A. Udintzev, *Russian Commercial and Industrial Law*] 62–63 (Kiev: Tip. I.I. Chokolova, 1907).

<sup>37</sup> Башилов А.П. Русское торговое право [Alexander P. Bashilov, *Russian Trade Law*] 79–80 (St. Petersburg: Tip. A.S. Suvorina, 1887).

If so, the wife could appoint her trade representative and continue doing business on her own behalf through this trade representative. In the event the wife was under-age, and her husband was her guardian, in order to carry on trade she had to obtain his prior consent. In the event the guardian of the under-age wife was a person other than her husband, the wife needed to get the guardian's and not the husband's consent.<sup>38</sup>

In the Russian Empire, property relations between spouses were limited to the husband's obligation to support his wife financially and also to the right of each spouse to inherit a proper part of the other spouse's property (in the event the spouse died without leaving a will). The husband's obligation to support his wife financially was derived directly from the legislation of that time and included the duty to provide food, housing and clothing. Meyer specifically noted that such financial support had to be in accordance with the husband's standing, though the legislation didn't offer precise definitions on this point. The wife's right to receive financial support from her husband was unaffected by the fact of whether she had property of her own or not. The surviving spouse was entitled to receive the so-called "*ukaznaya chast'*" (statutory share) of the late spouse's property: one seventh of the real estate assets and one quarter of the personal property.<sup>39</sup>

Article 105 of the 1918 Family Code provided that marriage did not result in community property, so a married woman remained the owner of the property that belonged to her before marriage. At the same time, spouses were allowed to enter into all property and contractual relations permitted by law. Interspousal agreements aimed at denial of property rights of one of the spouses were invalid and not binding both as to third persons and between the spouses in question.<sup>40</sup> Per Art. 107, an impecunious spouse incapable of work was entitled to financial support to be rendered by the other spouse in the event the latter could afford to do so. This right was preserved after divorce in case the circumstances constituting grounds for financial support persisted.<sup>41</sup>

The 1926 Family Code established that property belonging to the spouses before marriage remained their separate property. Property which was acquired by the spouses at the time of their marriage constituted community property. In the event of a property dispute, the court had to determine the amount of the community property belonging to each spouse (Art. 10). The 1926 Code also stipulated that marriages *de facto* had almost the same status as did duly officiated marriages, so provisions on property of married couples applied to the property of persons

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<sup>38</sup> Шершеневич Г.Ф. О праве замужней женщины на производство торговли, 7 Журнал гражданского и уголовного права 107 (1888) [Gabriel F. Shershenevich, *On the Right of Married Woman to Engage in Trade*, 7 Journal of Civil and Criminal Law 107 (1888)].

<sup>39</sup> Digest of Laws of the Russian Empire, *supra* note 16, Vol. X, Part 1, Arts. 1149, 1151–1155.

<sup>40</sup> Code of Laws on Vital Records, Marriage, Family, and Guardianship Law, *supra* note 26, Art. 106.

<sup>41</sup> *Id.* Art. 130.

who cohabit, but are not officially married, if they recognize each other as spouses or if the fact of marital relations was established by court.<sup>42</sup>

The subsequent Soviet family legislation followed the principle of community of property in a marriage, whereas the property acquired by the spouses before marriage constituted their separate property. E. Chefranova points out that the introduction of the legal regime of community property of spouses was determined by the logic of the creation of the Soviet socialist system, as well as by the intention to establish the priority of the interests of society and to minimize the private sphere in people's lives.<sup>43</sup>

#### 4. Legal Status of Illegitimate Children

As some scholars (S. Zhilayeva, E. Selyutina) argue, in the Russian Empire, it was better to be an orphan than an illegitimate child. The legal status of children born out of lawful matrimony was never equal to the legal status of children born to duly married parents. For the first time in Russian legal history, a clear demarcation line between the legal statuses of legitimate children and the "offspring of adulterers" was put in the 1649 Council Code of Tsar Alexey Mikhailovich. The Decree of the Governing Senate<sup>44</sup> of June established that illegitimate children had to be assigned to the people who raised them, and had to stay with these people forever "like serfs." The Russian Empire was a class-based society, so the general rule was that the birth status of an "offspring of adulterers" was equal to the status of the mother. However, this principle did not apply to the illegitimate children of women who belonged to the Russian nobility: normally the noble status of their mothers was not conferred on them. An exception could be made in a form of a special Emperor's favor. Selyutina states that Russian legislation of the 19<sup>th</sup> century provided "bastards" with the right to receive financial support from the biological father, if the mother was in poor financial standing. Property relations between an illegitimate child and his mother included the child's right to receive financial support from his mother and the corresponding obligation to take care of her in her old age. Children born out of wedlock were not entitled to inherit the property of the mother and her relatives, nor were the mother

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<sup>42</sup> Кодекс законов о браке, семье и опеке от 19 ноября 1926 г. [Code on Marriage, Family and Guardianship of the RSFSR of 19 November 1926], Art. 11 (Nov. 2, 2017), available at <http://ppt.ru/newstext.phtml?id=32274>.

<sup>43</sup> See Чефранова Е.А. Исторический аспект правового регулирования имущественных отношений супругов в российском праве, 11 История государства и права 19, 21–22 (2006) [Elena A. Chefranova, *The Historical Aspect of Statutory Regulation of Property Relation of Spouses in Russian Law*, 11 History of State and Law 19, 21–22 (2006)].

<sup>44</sup> The supreme body of state power in the Russian Empire, which was appointed by and subordinated to the monarch.



and her relatives entitled to inherit the property of a child born out of wedlock. The higher the status of a mother, the stronger were the negative consequences for her illegitimate child.<sup>45</sup> Before 1829, there was a possibility to legitimate a “bastard” by subsequent marriage of the parents (*legitimatío per subsequens matrimonium*), who had to petition the sovereign and request legitimization of their child who was born prior to their marriage. However, a final decision was at the discretion of the monarch, who usually allowed such legitimization.<sup>46</sup> In 1829, such petitions were prohibited. The 1880s saw active public debate on the issue of legislative derogation of “adulterates”; both Russian society and legal scholars expressed concerns on this issue.<sup>47</sup> Vasily Rozanov also addressed this problem in his “The Family Question in Russia”. In its official statement of 1880, the State Council of Russia pointed out that there is a strong bond between parents and children (even illegitimate ones), and the very fact that a child is born imposes important obligations on both parents and children.

Being deprived of both the privileges that could be inherited from their parents and of family and home, being labeled by their illegitimate birth status, these children must have exceptionally strong feelings about their miserable position, which they do not deserve. They suffer because of their status and, therefore, they can naturally multiply the number of those who are displeased with the existing social system and, consequently, with the Government.<sup>48</sup>

The Law “On Approval of the Rules of Improvement of the Status of Illegitimate Children” was approved by the State Council on 3 June 1902. This act was an important milestone in development of the legal status of illegitimate children in the Russian Empire. The definition “illegitimate child” was replaced with the milder notion “extramarital child.” The new law introduced an important positive development: children who were born in invalid marriages (those concluded in violation of the legislatively established conditions and in the presence of obstacles for conclusion of marriage) were recognized as legitimate. The new law allowed an extramarital child to take his mother’s last name with the consent of the mother and father (if the latter was alive at that time). Extramarital children still had no right to the father’s property. Child support obligations of the father in relation to his extramarital child possessed a secondary nature and applied only if the mother was in poor financial

<sup>45</sup> Селютина Е.Н. Правовое положение незаконнорожденных в Российской империи во второй половине XIX – начале XX вв., 1(16) Вестник государственного и муниципального управления 61 (2015) [Elena N. Selyutina, *Legal Status of Illegitimate Children in the Russian Empire in Late 19<sup>th</sup> – Early 20<sup>th</sup> Century*, 1(16) Newsletter of Public and municipal administration 61 (2015)].

<sup>46</sup> *Id.* at 64.

<sup>47</sup> Meyer, *supra* note 22.

<sup>48</sup> Розанов В.В. Семейный вопрос в России. Т. 2 [Vasily V. Rozanov, *The Family Question in Russia. Vol. 2*] 109 (Moscow: Direct-Media, 2015).

standing. Law said nothing about the possibility to establish maternity in court, nor about voluntary acknowledgement of paternity, or the inheritance rights of illegitimate children in relation to their father. Such children could not inherit after their mother in the way legitimate children did. Irina Voynilova argues that the 1902 law was of a progressive nature; it synthesized the European experience of regulation of legal status of illegitimate children. For the first time in the history of development of Russian legislation, the principle of “welfare of illegitimate children” was made a priority.<sup>49</sup> However, the Law did not change the social status of children born outside of the wedlock. Whatever the mother’s status, her extramarital child was assigned to the so-called poll-tax-paying classes – peasants and low-middle class (*meshchane*)<sup>50</sup>. An exception was made only for the Baltic provinces, where illegitimate birth status had no impact on general legal capacity of an illegitimate child; such persons could also hold public offices.<sup>51</sup> Interestingly, the civil legislation of the Baltic provinces treated illegitimate children in a more liberal way compared to the civil legislation of the Russian Empire:

Any adultery committed by people who are not married, shall result in civil consequences, including obligations of the seducer in relation to the woman he had seduced, or the obligations of both of them in relation to their child(ren), as may be the case.

Big changes came up to the agenda immediately after the October 1917 Revolution. The Decree “On Civil Marriage, Children and Vital Office Records” of 18(31) December 1917 provided equal rights to both legitimate children and to children born out of wedlock. These provisions were very progressive for that time. The remarkably progressive Art. 133 of the 1918 Family Code confirmed these provisions and eliminated the concept of illegitimacy. Children of unmarried couples were granted rights equal to those of children of officially married parents. Provisions of this Article applied also to children who were born out of wedlock before the Decree on Civil Marriage of 18 December 1917.

According to William Rosenberg, growing numbers of homeless and illegitimate children were indeed a serious problem.<sup>52</sup> The key tasks of the Bolsheviks at that time

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<sup>49</sup> Войнилова И.Г. Либерализация законодательства о правовом статусе лиц, рожденных вне брака, в России начала XX века [Irina G. Voynilova, *Liberalization of the Legislation on the Legal Status of Persons Born Outside the Wedlock in Russia in the Early 20<sup>th</sup> Century*] (Nov. 2, 2017), available at <http://отрасли-права.рф/article/15684>.

<sup>50</sup> Unlike members of the Russian nobility, peasants and *meshchane* had to pay poll-tax, and were subject to the “conscription obligation” on a random basis; unlike representatives of other classes, peasants and *meshchane* could be physically punished.

<sup>51</sup> Свод Гражданских узаконений губерний прибалтийских [*Code of Civil Laws of the Baltic Provinces*], Art. 164 (St. Petersburg: Edition of the Codification Department of the State Council, 1864).

<sup>52</sup> *Bolshevik Visions*, *supra* note 13, at 65.

were to abolish the role of the Russian Orthodox Church in family relations, to free men and women from the tsarist structures on marriage, and to improve the status of illegitimate children. In order to comply with these Bolshevik ideas, the 1918 Family Code aimed to provide a transitional legal framework for that short period in which legal duties and protections were still necessary.

Despite the aforementioned problem with homeless and illegitimate children, the 1918 Family Code imposed a ban on adoption. Article 183 provided that,

From the moment of the entry into force of the present law, the adoption of either one's own or someone else's children is not allowed. Any such adoption made after the time specified in this Article does not entail any responsibilities or rights for [either] the adoptive parent [or] the adoptee.

The abolition of the institution of adoption in a country where hundreds of thousands of children had been left orphans as a result of the World War I, the revolution, and the Civil War, was not only unreasonable and cruel, but also primarily ideological.

Russia was then a largely agrarian country, and it was claimed that peasants often adopted orphans in order to exploit them in farm labor. In this context, the abolition of adoption was proclaimed a necessary and temporary measure for the prevention of child exploitation. This justification did not, however, prevent the authorities from extending universal labor duty to all children aged 16 or older. The universal duty to work was established on the constitutional level (by Chapter 2 of Sec. 1 of the Constitution of the RSFSR of 1918) "for the purpose of eliminating the parasitic strata of society and organizing the economic life of the country." Per Art. 4 of the 1918 Labor Code, students had to exercise their labor duty in the schools. The ideological explanation for this discrepancy was that the Soviet state aimed to abolish child labor, but in view of the Civil War and a severe shortage of schools and orphanages, the prohibition of child labor would inevitably result in a rise in juvenile crime. No one explained why it was acceptable for children to be assigned labor duty but unacceptable for them to live in an adoptive family in the countryside and work on a farm. The abolition of adoption in 1918 unequivocally demonstrated how the unceasingly proclaimed policy of government care for children worked in practice.

Adoption was reintroduced by the 1926 Family Code. Professor John Hazard points out that with the growth of crime committed by parentless children left without care after the revolution and civil war, the government chose to again permit adoption of children as a means of providing supervision for homeless waifs. He adds that the necessity of adoption was evidenced by the statistics showing the potentiality of crime among children not cared for within a home.<sup>53</sup> The formal

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<sup>53</sup> John N. Hazard, *The Child under Soviet Law*, 5(3) *University of Chicago Law Review* 424 (1938).

procedure had to be performed by the guardianship authorities and then registered in a Vital Records Office. Adopted children and adoptive parents had the same individual and property rights and responsibilities as did the members of regular families. The Code addressed guardianship as an extremely important function that was regulated in details in its Chapter III.

An 8 July 1944 Decree of the Presidium of the USSR Supreme Soviet “On Increase of the Government Assistance to Pregnant Women, Mothers of Large Families, Single Mothers, on Strengthening of Protection of Motherhood and Childhood, on Establishing the Honorary Title ‘Mother-Heroine,’ the Order of ‘Maternal Glory,’ and the ‘Maternity Medal’” abolished the previous equality between illegitimate children and children born into a registered marriage. Under Art. 20 of the Decree, it was no longer possible to establish paternity by a court order. A single mother’s right to file a judicial claim for the recovery of alimony for a child born outside of wedlock was annulled by the same article. At the time of registration in a Vital Records Office, a single mother’s child received his mother’s last name; the child’s patronymic had to be indicated by the mother (Art. 21). Under Art. 19 of the Decree, informal marriages were no longer recognized by the Soviet state. In so doing, as Albert Koshcheev points out, the state freed itself from the obligation to pay pensions to the children whose deceased military parents had not been legally married. Mothers of such children were considered single mothers and were eligible only for an allowance, which was much smaller than a serviceman’s survivor’s benefit.<sup>54</sup>

## 5. Abortion

Historically, the church strongly opposed abortions and considered abortions as murder, and the Russian Orthodox Church was no exception. According to Canon 21 of the Synod of Ancyra (314 A.D.), an adulteress who killed an unborn child, or a person who prepared a poison with the purpose to kill an unborn child, was to be banned from the blessed ordinance for life.<sup>55</sup> Under Canons 2 and 8 of Saint Basil the Great it is clearly stated that a woman who intentionally killed her unborn child shall be convicted as a murderer.

Those who perform malpractice in order to induce miscarriage, are murderers, as well as those who take poisonous substances with the purpose to kill an unborn child.<sup>56</sup>

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<sup>54</sup> Koshcheev 2010.

<sup>55</sup> Правила святого поместного собора Анкирского (314) [Canons of the Synod of Ancyra (314)] (Nov. 2, 2017), available at [https://azbyka.ru/otechnik/pravila/kanony-ili-kniga-pravil/4\\_1](https://azbyka.ru/otechnik/pravila/kanony-ili-kniga-pravil/4_1).

<sup>56</sup> Правила святых отцов – Правила святого Василия Великого [The Writings of Saint Basil the Great] (Nov. 2, 2017), available at [https://azbyka.ru/otechnik/Vasilij\\_Velikij/pravila-svyatogo-vasiliya-velikogo-s-tolkovaniyami/1#1\\_2](https://azbyka.ru/otechnik/Vasilij_Velikij/pravila-svyatogo-vasiliya-velikogo-s-tolkovaniyami/1#1_2).

These Canons were included in the Book of Rules of the Russian Orthodox Church; in 680–681 A.D. they were confirmed by Canon 91 of the VI Ecumenical Council.<sup>57</sup>

In the Russian Empire, abortions were criminalized (Arts. 1461–1463 of the Code of Punishments) and punished by deprivation of rights and imprisonment: from 4 to 5 years for a pregnant woman who performed an abortion, and from 5 to 6 years in a civil correctional penal battalion for a person, who procured an abortion for the pregnant woman. If an abortion was performed without the knowledge and consent of the pregnant woman and caused serious health damage or death, the punishment was more severe – up to 10 years of hard labor.<sup>58</sup>

After the 1917 Revolution, the attitude towards abortion completely changed, and Soviet Russia pioneered legalization of abortion.

The 18 November 1920 ruling by the People's Commissariats of Health and Justice entitled "On Protection of Women's Health" is a compelling example of reasonable and progressive legislation from the early years of Bolshevik lawmaking. Despite considering abortion an evil, the government of workers and peasants foresaw the gradual disappearance of the procedure as a result of "strengthening the socialist system and anti-abortion propaganda among the masses of the working female population." The criminalization of abortion was strongly opposed:

Contrary to producing any positive results, this measure would drive this procedure underground and would make women victims of unscrupulous and often ignorant abortionists... As a result, up to 50% of women are infected, and up to 4% of them die.

"In order to protect women's health and the interests of the race from ignorant and selfish predators and considering repressive methods in this area clearly counterproductive," the resolution ruled as follows:

I. Artificial termination of pregnancy procedures are allowed free of charge in the setting of Soviet hospitals, which guarantees that such procedures are harmless to the maximum extent possible.

II. It is strictly and expressly prohibited for anyone other than a licensed physician to perform such an operation.

III. Those responsible for administering such an operation [without a license] shall be disqualified and brought before the people's court.<sup>59</sup>

<sup>57</sup> Каноны или Книга Правил [The Rules of the Russian Orthodox Church] (Nov. 2, 2017), available at [https://azbyka.ru/otechnik/pravila/kanony-ili-kniga-pravil/3\\_6](https://azbyka.ru/otechnik/pravila/kanony-ili-kniga-pravil/3_6).

<sup>58</sup> The Code of Punishments – Vol. XV of the Digest of Laws of the Russian Empire, *supra* note 16.

<sup>59</sup> Постановление Народного Комиссариата РСФСР по здравоохранению и Народного комиссариата юстиции РСФСР от 18 ноября 1920 г. "Об охране здоровья женщин" [Ruling of the People's Commissariats of Health and Justice of 18 November 1920. On Protection of Women's Health] (Nov. 2, 2017), available at <http://istmat.info/node/42778>.

Draconian restrictions on abortion were introduced in the USSR in the mid-1930s. The Short Course of the History of the All-Union Communist Party (of Bolsheviks) (1938) specifically addressed this issue by stating that

due to the increase of prosperity of people, in 1936, the Government issued the law on prohibition of abortions.<sup>60</sup>

The following are some excerpts from the 27 June 1936, joint ruling of the Central Executive Committee and Council of People's Commissars "On the Prohibition of Abortion [and] Provision of Financial Aid to Women Giving Birth."<sup>61</sup> This act remained in force until 1955.

1. In connection with the established fact that abortion is a health hazard, such procedures shall be banned both in hospitals and in other specialized health facilities, as well as at medical offices of private practitioners, or at places of residence of pregnant women. Abortion shall be allowed only in cases where continuation of pregnancy is a life-threatening condition, or can cause serious damage to the health of a pregnant woman, as well as when parents suffer from serious hereditary diseases, and exclusively in the setting of a hospital or a maternity clinic.

2. Abortions performed outside a hospital setting, or in a hospital setting, but in violation of the above conditions, shall be considered a criminal offense punishable by imprisonment of 1 to 2 years, and abortions performed in unsanitary conditions or by persons without specialized medical education shall be punishable by no less than 3 years in prison.

The penalty for pregnant women "terminating pregnancy in violation of this prohibition" was a public reprimand, and a repeat violation of the law was punishable by a fine of up to 300 rubles.

Prohibition of abortions, like many other strict legal prohibitions, backfired: the number of abortions went up dramatically. By 1939, the number of reported abortions had increased by more than 150,000 compared to 1937. From 1936 to 1955, most abortions were carried out illegally, often in unsanitary conditions. As a result, many women died or lost the ability to have children in the future. As was the case elsewhere, in the Soviet Union, prohibition and repression of abortion did not solve the problem, but only exacerbated it. Prohibited goods and services simply

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<sup>60</sup> Краткий курс истории ВКП(б) (1938) [*The Short Course of the History of the All-Union Communist Party (of Bolsheviks) (1938)*], Chapter XII (Nov. 2, 2017), available at [http://www.lib.ru/DIALEKTIKA/kr\\_vkpb.txt](http://www.lib.ru/DIALEKTIKA/kr_vkpb.txt).

<sup>61</sup> *Supra* note 30.

move into the informal market. We have been through this many times, and every time with a negative result.

### Conclusion

In the 1930s–1940s, most positive developments of early Bolshevik family law were repealed by later regulations. Equality of official and informal marriage was discontinued together with the simplified divorce procedure, and termination of marriage was placed in the exclusive competence of courts. Equality of rights of legitimate children and children born to unmarried parents, one of the main achievements of the Bolshevik family law, was also annulled. The striking contrast between the title and the content of the 8 July 1944 Decree gives a good example of a typical Soviet hypocrisy. Instead of the “strengthening of protection of motherhood and childhood” declared in the title of this Decree, single mothers were deprived of the right to establish paternity in court, to file a judicial claim of recovery of child support, or to get serviceman’s survivor’s benefits. The country that pioneered legalization of abortion recriminalized abortion in 1936. Amazingly, in the 1940s Soviet family law responded even to the beginning of the Cold War, and marriages with foreigners, previously allowed under Art. 8 of the 1926 Family Code, were prohibited.

The attitude towards divorce also underwent a fundamental transformation. The Soviet state had been totally indifferent to the fact of a person’s divorce in the 1920s and 1930s; in the 1940s, a divorce became a negative characteristic. Also, divorces were made a public matter, and it was up to the court to decide whether there were sufficient grounds for divorce. According to Koshcheev, analysis of the case law of that time clearly shows that under the Resolution of the Plenum of the Supreme Court of the USSR of 16 September 1949 “On Court Practice on the Cases of Termination of Marriage,” the courts oftentimes rejected divorce lawsuits if the reasons for divorce contradicted the principles of Communist morality.<sup>62</sup>

Changes in Soviet family law from 1917 to the 1940s reflect the transformation of the perception of the role of the family in the Soviet state. Whereas in 1917–1920s the family as an institution was expected to “wither away” together with the state and law, in the 1930s the attitude started to change. Making the family a part of the “new Holy Trinity of the party ideology” together with “socialist statehood” and “socialist legality” called for stricter regulations.

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<sup>62</sup> Koshcheev 2010.

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### Information about the author

**Ekaterina Mishina (Ann Arbor, USA)** – Independent Scholar (Haven Hall, 505 S. State St., Ann Arbor, MI 48109, USA; e-mail: [e.mishina@gmail.com](mailto:e.mishina@gmail.com)).