

# Analysis of Property Rights and Gender Inequality in Chinese Society

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# Analysis of Property Rights and Gender Inequality in Chinese Society

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Scholars argue that the subordination of women is a result of their inferior property rights and the possession, dominance and inheritance of property are considered important indicators for measuring women's status (Sun, 2005; Sharanya, 2011; Pallas, 2011;). Accordingly, scholars studying the legal and economic position of women in modern China often draw on studies of law, either as evidence of what China was like before modern reforms or as key to understanding the traditional social forms that persisted into modern times. However, does the present law stay in gender equal position in relation to property? In addition, if the law is without gender bias, does it create a gender equal environment for women to achieve equal status in current society? By reviewing previous research and available archival records, this paper aims at examining the changes of women's rights towards property in ancient China and compare with the new changes after 1949 to briefly introduce the relationship of property rights and gender inequality in Chinese society.

## 1 Analysis on Women's Access to Property in Ancient Chinese Society

Studies of gender differences have great interests in traditional Chinese ideology, as well as the history of marriage in relation to family property and divorce, which helped in shaping the gender practices of men and women in all social classes. Studies of marriage-related law, which are based on characterization of traditional Chinese society, also followed a property regime that favored transmission through males (McCreery 1976; Dull 1978; Shiga 1978; Meijer 1981; Ng 1987; Ocko 1989). This ideology refers to the prevalence of male dominance in Chinese society and culture. Traditional Chinese society was constituted by

an essentially masculine value system developed over thousands of years. Feudalism started from the Western Zhou Dynasty. The institution of dividing country's land to king's relatives combined the political feudalism and family kinship together, which generated the strict patriarchal feudal hierarchy - the patriarchal clan system - one of the greatest features of Chinese society. The affection of this system keeps working through the transition of Chinese social structure. A key element of this system was rigid hierarchy of authority based on the so-called *Wu Lun*<sup>1</sup> (five relations), composed of ruler-ruled, father-son, elder brother-younger brother, husband-wife and friend-friend (male friends). The family was patriarchal, patrilineal and patrilocal. Family is a prototype social organization, and principles of family living are applied to the larger society (Hyun, 2001). In later Han period, this system generated the Three Obediences<sup>2</sup> - A woman was to be obey her father before marriage, her husband when married, and her sons in widowhood - and Four Virtues<sup>3</sup> - morality, proper speech, modest manner and diligent work of women in ancient China - to further control women's behavior. The "Three Obediences and the Four Virtues" became a common phrase throughout the imperial period. As for the historical development of Chinese patriarchy, during Tang and Song dynasties, a fad for small feet arose, and foot binding for women became more and more common for the elite family in the Song dynasty. In late Song and Ming dynasty, a tradition of virtuous widowhood developed. Widows, even if widowed at a young age, would be expected not to remarry (Rosenlee, 2006). Her virtuous names might be displayed on the arch at the entrance of the village. All these show that Chinese women were tightly controlled by the patriarchal ideology during the imperial period. In the hierarchy of traditional

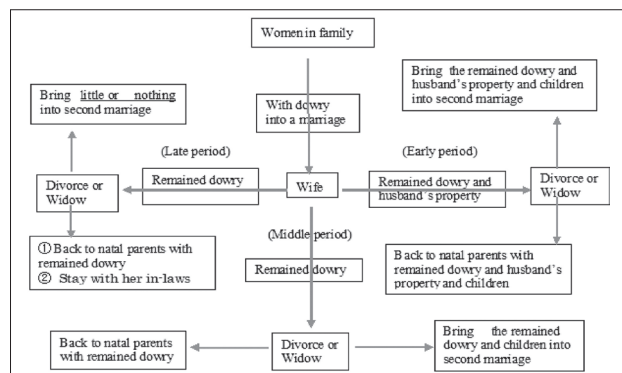
Chinese cultural family life, the fathers and sons took prominence over the mothers and daughters. The elder generation dominated the family and power was invested in the male head of the household. Women were seen as temporary members of their families and had no rights to property or inheritance (Muhammad, 2011; Xing, 2018).

In different time periods, ways of property distribution were different. Based on the social historical background of ancient China, property distribution systems carried a strong patriarchal characteristic. Based on the patriarchal ideology, they could be summarized as following:

- (1) In China, most of the family estate was transmitted to patrilineal descendants. (Rubie, 1991) Property (mainly referring to land) was passed from father to son, and to his grandson. Typically, daughters have little or no inheritance rights. It was fairly common for some property to be delivered to daughters as dowries at the time of marriage. The kinship system emphasized more on male descent lines and family solidarity. Under this system, the daughter is but a temporary member of her natal family, and when she leaves because of marriage, she would take her labor and reproductive potential to her husband's family, with her dowry. According to the data, dowry mainly refers to movable property. Since land and houses are considered as immovable property, they belong to the male descendants. It will not directly distribute to a daughter as her dowry, rather as a financial support to the new family or as an investment to further strengthen the connection between two families and will be controlled by her husband as family property. That is why in an old Chinese saying, sometimes the expression of "commodity on which money has been lost" was used for a girl. Single women rarely have chance of owning property.
- (2) Since the inheritance distribution was mainly through male line, it was also difficult for wives to own property rights. Many Confucian scholars denied that women had rights or claims to property (Ebrey, 1984). A woman's capacity of obtaining private property during marriage was limited because of restrictions on female involvement in matters outside the family and the concept of the joint or extended family, where the most senior male member of the household or lineage

managed property. It was thus hard for women to acquire private property during marriage.

- (3) Chinese women seem to have had more influence over the goods they received at marriage. Dowry is important to a married woman. In the Song dynasty, women had an important role in managing the land, which often formed a portion of the dowries of the elite (Ebrey, 1981), and they could take their dowries with them when their marriage ended. However, during the Ming dynasty and Qing dynasty, a divorced woman would lose both her dowry and her children to her husband's family (Holmgren, 1985; Mann, 1987). Dowry therefore became a transfer of wealth from the wife-givers and wife-takers to the next generation of grandchildren rather than a direct endowment of the bride herself (Rubie, 1991). Some scholars consider dowry as one way of fulfilling inheritance rights (Ebrey, 1991). However, dowry is a marriage custom which has never been legitimized. The value of dowry was controlled by the male head of the household which contains many uncertainties (McCreey, 1976; Birge, 2002). In fact, even though women did not have inheritance rights, they could still get some of the family property through dowry. Mao (2009) defines it as "uncertain property inheritance".
- (4) Widows from mid and upper-class family were not permitted to remarry. Generally speaking, widows from lower classes of society or poor family could not take any property with them into their next marriage. The Chinese government encouraged widow-fidelity especially during the end of Song dynasty. After that, if a widow got remarried, it would be treated as a social disgrace or economic necessity.



**Diagram-1 Property Distribution for Women Based on Marital Status in Different Period**

Diagram-1 summarizes women's access to property in ancient China from dowry, divorce and inheritance rights during marriage. The idea of personal income did not exist in ancient China. However, some scholars argue that personal income can refer to income from her own labor, gifts and profits from her own labor, and since women were not allowed to keep it when they are daughters, dowry could be considered compensation of the income for her years of working. Japanese scholars in this field believe Song dynasty is special among all feudal kingdoms. Women (daughters) can have inheritance rights as half of what sons have. A discussion between Niida Noboru (1942; 1962) and Shiga Shuzo (1953; 1967) on daughter's inheritance rights in Song dynasty also demonstrates that in this period, daughters have inheritance rights according to the Law under certain conditions. Later, Kathryn Bernhardt (2003) refutes their points about how daughters can enjoy independent inheritance rights and points out that there is no exception in ancient Chinese society and women do not enjoy any inheritance rights.

### 1.1 Discussions One

In ancient China, women's access to property was always closely related to their marriage status. Through examining the four kinds of ways to gain property in ancient China, I found out that commonly speaking, women's first time to get property is through marriage. When a daughter gets married into another family, she will get dowry as her first property and this might be her only chance to get access to property in her life. Dowry was a social custom which was controlled by the male head household. Women could only get access to property through dowry, and the value is uncertain unless there are no male descendants in the family. Women were always the secondary choice and did not share the same property rights as men in ancient China. A wife only had the right to control her dowry but gets no access to family property in her marriage. Widow with son can become a temporary property keeper. But She still has no free rights to dealing with the property.

## 2 Analysis on Women's Access to Property in Modern Chinese Society after 1949

### 2.1 Transition Period (the End of Ch'ing Dynasty to 1930)

From the end of the Ch'ing dynasty until the promulgation of the Republic of China's Civil Code in 1930, there were relatively few changes in the law and traditional customs. Marriage was still a contractual relationship between families. The bride, "belonged to" the groom's family. Similar to ancient China, women gained property through marriage. Sometimes they received landed dowry, but more often they were excluded from inheritance because they were marrying out of their natal families. Women assumed control of marital property on behalf of their dead husbands, only in a fiduciary way. The 1930 Civil Code expanded women's inheritance rights but real property still essentially belonged to the husband.

### 2.2 After the Establishment of People's Republic of China (1949)

The communist party put effort in creating a regime that separated property, and freer divorce with benefiting women took a more conservative approach. The 1950 marriage law clearly established marriage as social affair, however, ideological and cultural attitudes meant people continued to treat it as "private issue" in practice marriage. In the years of the Cultural Revolution, less concentration was on property, but women did not benefit from it. With the economic reforms in the late 1970s and early 1980s, new types of property rights appeared. In order to adjust to new situation, the marriage law of 1980 and the inheritance law of 1985 were enacted to protect women's claims to both new and old forms of property and legally buttressed their status within their families. Although women remained subordinated, the changes of the last decade have shown that legitimately speaking, Chinese women no longer need to get access to property only through marriage.

Before the twentieth century women did not "belong in" their natal families and were not entitled to a shared family inheritance. To accord a daughter, some measures of dowry upon her marriage were

customary, and failure to do so might cause a family to lose face, but the award remained discretionary rather than mandatory and, as Ruble Watson (1984) points out, may have been largely derived from the groom's betrothal gifts.

A sharp increase in divorce and the shift of land ownership and production from household to collective soon prompted the government to emphasize that marriage as social affairs was suitable only in capitalist societies. In China, marriage had to be considered a private issue for it was the precondition for the formation of families; and families promoted social cohesion and stability through their socialization of children. This theme last for the next thirty years till 1980, with feudal family relations no longer face the same problem they had in 1950. Together with the Inheritance Law (1985), this new legislation created the framework for restructuring the relation of women to property and of women to marriage as both personal and social events.

In some areas, many of the betrothal gifts or much of their value accrue to the married couple themselves, as a form of dowry or indirect dowry (Whyte & Parish, 1984). However, even if there was no such reversion, a large bride price without certainty of return through dowry or labor is an effective affirmation to show the male's economic standing. Similarly, rather than having her family display its social standing through dowry, a woman can define herself in comparison to her peers by the quality and size of her betrothal gifts and wedding festivities.

From the legal point of view, there is a continuing lack of interest in dowry in modern society. For a daughter, though, a dowry is of some consequence, returning a measure of the income she has contributed to the family's property and providing her a measure of marital financial independence. Chinese families traditionally do not distinguish among the sources of family property and will draw from the total to help children establish their own households (Yang, 1985). Croll (1984) notes that in this competition for resources between siblings, daughters will lose out to sons, who must disburse substantial betrothal gifts in order to bring in a wife. Only few daughters are

against this custom. Nevertheless, it does not make it right for parents to give them less than their fair share of family property (Yang, 1985), nor does it mean that dowry is diminishing. Some research suggests that rises in dowry parallel those in bride price. And in wealth villages, dowries are becoming more significant.

Women's access to property is influenced by women's marital status under the traditional patriarchal ideology as I mentioned before. In next part I will show detailed facts in enacting the Inheritance Law as well as changes of Chinese Marriage Law related to women's property rights in this period.

In China, especially within rural area, "patrilocal marriage", in which a woman moves into her husband's village after marriage still persist. Daughters leave their natal families, but sons stay put. Such tradition persists in rural areas where rural residents continue to rely on sons for security and support in ill and retirement. This situation appears to be changing, however. Improved opportunities for women to have paid jobs, education and training have increased their confidence and bargaining power in the transfer and redistribution of resources within the household.

The Marriage Law has been the topic of highly contentious debates resulting from the rising demands of the Chinese people for more legal rights and protections in China's new market economy (William & Shen, 2004). Throughout the history of Marriage Law, property has always played a prominent role and influenced its development, particularly with respect to women's property rights.

Marriage Law changed several times in order to adapt to the demands of the Chinese people with the social and economic development. Through each change, the government used the law to promote certain values and model behavior. The changing of China's marriage laws illustrates a trend towards greater protection of individual rights (Margaret, 2003), particularly for women, who have traditionally been perceived as the weaker class (Marinus, 1971).

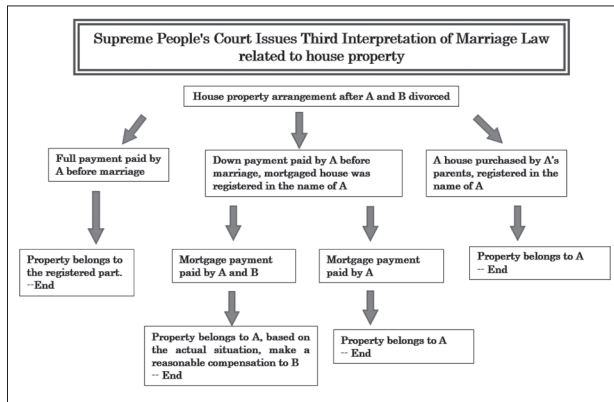
The development of Marriage Law can be divided

into three parts: 1) 1950 to 1979, the introduction and implementation of First Marriage Law; 2) 1980 to 2000, the promulgation and enforcement of Second Marriage

Law; 3) from 2001 till now, issued Amendment of Marriage Law and improved relevant policies and regulations.

Changes in Marriage Law		
	(1)	(2)
1950 Marriage Law	Clarified the protection of equal rights for both men and women in marriage, and also protect the legitimate interests of women and children.	Marital property include: 1) all property owned by both parties before marriage; 2) all property acquired during marriage through labor, inheritance and other approach (e.g. Land acquired from land reform) ; 3) property acquired as a gift by either of the parties during marriage.
1980 Marriage Law	Narrow the definition of joint family property.	Implementing new instruction to direct the courts on how to divide marital property during a divorce.
2001 Marriage Law	Further narrowed the joint property contents.	Addressed the definition of Separate property.
2001 First Interpretation of Marriage Law	Reaffirmed the equal rights of both parties in the disposal of jointly property and required both parties to discuss the matter on an equal basis so as to reach an agreement.	It still implemented the 1993 Opinions that certain property (included house) will be designated as joint property after 8 years of marriage with a clarify of property specifically designated as separated by both parties in a prior written agreement shall not become joint property.
2004 Second Interpretation of Marriage Law	Further clarified the application of the Marriage Law to disputes regarding housing property right.	It particularly mentioned that the house purchased by parents before marriage should be treated as a gift of their children, unless the clearly designated to both parties.
2011 Third Interpretation of Marriage Law	Marital immovable property issues are further claimed for the following two situations: 1) Property Purchased by Parents; 2) Property Mortgaged Before Marriage	1) Immovable property purchased by a spouse's parents for that spouse during a couple's marriage, if the property right is registered in the recipient spouse's name, may be deemed a gift to that spouse; 2) For property mortgaged before marriage, further explain has been clarified. The changes of third interpretation of the Marriage Law are also presented in Diagram-2.





**Diagram-2 Housing Property distribution during a Divorce under the 2011 Third Interpretation of the Marriage Law.**

### 2.3 Discussion Two

Chinese society is a human society, especially in rural areas, in which filial piety and respecting family ties are considered important qualities. But in relation to interests, brothers generally believe that after a woman is married, she is a member of her husband's family and naturally loses inheritance rights of her natal family, which is against the current Inheritance Law. The root reason of the large number of inheritance disputes lies in the lack of legal knowledge of peasants. Either they have little or no knowledge of the Inheritance Law or they followed the traditional ideology, ignoring the existence of the law. Even after the Marriage Law was enacted, there are still parents who attempt to determine their daughters' marriage; husbands who did not pay (even it is illegal to pay) substantial betrothal gifts, continue to treat their wives as property, beating them and refusing to allow them to have social lives outside the family (Wang & Wu, 1983; Chu, 1986); and human traffickers who persist in seeing women as a valuable commodity to make profit (Honig & Hershat, 1988). People blamed the social regime instead on remnants of "feudal thinking" that have not been completely expunged. Certainly, the changes in enacted law have been substantial since the revolution in 1949. Indeed, one recent legal treatise argues that while economic independence is critically important for wives, the freedom to have social relationships outside the family and attain educational accomplishments may be an even more crucial safeguard to spousal equality in marriages (Jen, 1988).

1985, the Inheritance Law, incorporating principles already employed by some courts, guaranteed the inheritance rights of daughters and widows and in particular confirmed the widow's right to take property away with her into a new marriage. The 1986 General Principles of Civil Law ratified many of the new economic forms that had appeared over the past eight years and added new elements, in addition to promising greater economic latitude for individuals, especially women.

Two factors make assessing the influence of the law difficult. Particularly in the rural areas, the center's truncated reach meant that localities could deflect its "normative penetration" and maintain their own resilient set of social ideals alongside the somewhat attenuated central values. Moreover, because "patriarchy is not only a domestic ideology but a social ideology as well" that permeates all of society (Wolf, 1985), "feudal remnants" have also thought of urban residents, not to mention the governors and party leaders who made the decisions on how aggressively and thoroughly to attack attitudes and policies that derogated women or discriminated against them.

The Marriage Law supports for a woman's life outside her marriage and the Inheritance Law guarantees of a widow's removal of her late spouse's estate mirror the economic policies that allow enterprises to do business with organizations outside their "system" and to lease collectively owned assets to outside contractors. Property represents a social relationship. As the economic reforms replace vertical, administrative control with horizontal, voluntary relations between equals, one may see a parallel reordering of women's relation to property. Women need no longer relate to property only through marriage. However, China still has a considerable way to go before equal property rights and spousal relations are the norm.

### 3 Conclusion

Through analyzing the previous studies and archive data, the discussions one two show that the changes of law are the adjustments to the new social situation. On the one hand, the purpose is to establish a social legal

system without gender bias, and on the other hand, it is to adapt to the new social environment. We have to admit that gender equal legal system has improved women's social status to a certain extent. However, due to the incomplete ideology revolution and the lack of law enforcement and its weak influence in rural areas, many people are unable to put it into practice. In order to maintain family harmony, keep a good relationship with relatives, and not lose face, some people (mostly women/wives) give up the opportunity to claim their rights towards inheritance properties. Furthermore, some of them accuse those who defend their rights and consider them as the culprits who break family relationships.

Modern Chinese women enjoy equal property rights and inheritance rights. However, women are still in an inferior position compared to men in the proportion of social resources. Rather than only establishing equal laws to achieve gender equality, it is better to encourage and guide women to consciously realize the importance of property issues. On the basis of establishment of equal laws, through enriching approaches to property and in-depth publicity, to recognizing the importance of maintaining individual's ownership for the whole society.

Future research will focus on housing property which occupy the highest share of personal property. From the perspective of housing property rights, I will further analyze the current situation of house ownership on gender inequality and the changes of law (2011) related to housing property influenced gender inequality in China. Moreover, as mentioned above, multiple and equal access to property rights can improve women's social status. Since gender-based social hierarchy of traditional Chinese ideology has not been deeply destroyed, and the complain about the changes of Marriage Law demonstrates the point that not only do women lack of awareness of the importance of being property owners, but also the social atmosphere fail to support women to be property owners. Therefore, in order to avoid and reduce inheritance and divorce disputes, it is important to have a comprehensive and accurate understanding of the law and construct more social policies to help

women expand equal approaches to property which could further improve women's social status as well as reducing gender inequality.

## 注

<sup>1</sup> 《孟子》卷五《孟子·滕文公上》The Mencius, Tengwen Gong, First Volume.

<sup>2</sup> Three Obediences first appears Book of Etiquette and Ceremonial.

<sup>3</sup> Four Virtues came from book of Rites of Zhou. And later in the Han dynasty, the female historian Ban Zhao wrote the Lessons for Women (nv jie), also use it as advices on how women should behave.

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## 中国女性の財産権をめぐるジェンダー問題の分析

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### 要 旨

従来の研究は、女性の従属地位の原因が財産権の弱さの結果であると主張している。したがって、現代中国における女性の法的立場と経済的立場を研究している学者は、経済改革以前の中国の現状に基づきながら、現代まで持続してきた伝統的な社会形態を理解することに焦点を当て、法律の研究をしばしば行ってきた。財産権は、社会における女性の立場を理解するためには非常に重要である。本稿では、これまでの先行研究と利用可能な歴史記録を見直すことにより、中国封建社会の財産所有に対する女性の法的な権利の変化を検証し、1949年以降の新しい変化と比較して、中国社会における財産所有権とジェンダー不平等の関係を議論する。