

People's Republic of China

1. Discrimination in the family

a) Overarching legal framework for marriage

The law mandates that marriage must be based upon the consent of both parties and both women and men desiring to contract a marriage shall register in person with the marriage registration office (Marriage Law of the Republic of China, Article 5).

This law also offers protection when one party is coerced to enter into the marriage against his/her real intention. In such case, the coerced party may make a request to the marriage registration office or the people's court for the dissolution of the marriage contract (Article 11). In addition, other specific legal provisions prohibit forced marriage such as article 44 of the Law on the Protection of Rights and Interests of Women which provides that "Interference with women's freedom of marriage or divorce shall be prohibited". The Criminal Law also prohibits forced marriage.

In practice, the Chinese government's birth limitation policy and a cultural preference for sons has created a gender imbalance in People's Republic of China (China) (in which men outnumbered women) and left large numbers of men single, especially in rural areas. According the US Department of State, this led to an increase in the demand for foreign women from neighbouring countries as brides for Chinese men and sparked an increase in human trafficking and forced marriages (US Department of State, 2017). Women in such situations are often kidnapped or sold by relatives to be transported to China (Tahirih Justice Centre, n.d.).

b) Child marriage

The legal age of marriage in China is 22 years for men and 20 years for women (Marriage Law, Article 6). A marriage is considered invalid if the legal age has not been attained (Article 10). In addition, article 11 of China's Protection of Minors Law prohibits parents or other guardians from allowing or forcing minors to enter into marriage and arranging marriages on behalf of the minors. While UNICEF collects data on child marriage for child marriage for East Asia, there is a lack of comparable data on child marriage in China in UNICEF global databases.

c) Household responsibilities

Women have the same legal rights as men to be recognised as the head of household (Regulations on Household Registration, Article 5). Women are not required to obey their husbands and have equal rights to their husbands to choose where to live. The default marital property regime is partial community of property and both spouses must agree to administer the property (Marriage Law, Art 17 & 19). In addition, the Marriage Law and the Law on Protection of Minors grant both the mother and father equal rights and responsibilities to their children during and after marriage (Law on the protection of minors, Article 8 & Marriage Law, Article 21). The same system is applicable to children born out of wedlock (Marriage Law, Article 25).

Despite government's efforts to promote the elimination of social prejudices regarding the roles of men and women (more particularly in education's programs), discriminatory stereotypes in respect of the roles and responsibilities of women and men in the family and in society persist in China (CEDAW, 2013). Women take major responsibilities for household work, whereas men are more active in the labour force (Robert E. Emery, 2013).

d) Divorce

The Marriage Law does not discriminate against women's divorce rights. Both women and men have the same right to initiate divorce (Marriage Law, Article 31). In the case of divorce, both parents continue to share parental authority over their children and have the "right and the duty to bring up and educate them" (Article 31). There are no customary, religious, or traditional practices that discriminate against women's legal rights to initiate divorce, or be guardian of their children after divorce.

In addition, the CEDAW Committee noted that China made further provisions for the better protection of the rights and interests of women in relation to marriage and family. More particularly, Article 45 of the Law of the People's Republic of China on the Protection of Rights and Interests of Women, which was amended in 2005, establishes that "during the period of pregnancy, within one year after childbearing or within 6 months after termination of pregnancy of a woman, her husband shall not apply for divorce. If the woman applies for divorce or if the people's court deems necessary to accept the divorce application of the husband, the case shall not be subject to this restriction" (CEDAW, 2013).

However, social stigma is still attached to divorce, although less than in the past. Evidences show that women suffer more from the stigma attached to divorce because traditional Chinese norms are more liberal for men when it comes to family (Robert E. Emery, 2013). In addition, divorced women in rural areas are more likely to suffer from poverty and economic hardship as most of them were stay at home housewives and their husbands were their main and sometimes only source of financial support (Robert E. Emery, 2013).

e) Inheritance

Daughters and female surviving spouses have equal rights as men to inherit land and non-land assets. Article 9 of the Law of Succession of the People's Republic of China clearly states that "males and females are equal in their right to inheritance". In addition, women also have equal rights to execute or administer a will (Law of Succession, Article 16). Furthermore, successors have right to apply to the People's Court for protection of inheritance when it is infringed by others (Law of Succession, Article 15).

The CEDAW Committee noted that the People's Courts, in resolving civil cases on division of property, give rulings to follow the principle of women's rights and interests (CEDAW, 2013). There are also no customary, religious, or traditional practices or laws that discriminate against daughters and female surviving spouses' legal rights to inherit.

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In a study on forced marriage between Cambodia and China conducted by UN-Act in 2016, one of the main reasons cited for this practice was the expectation that women could send money home to their families by marrying a rich man or working and earning more than they would in Cambodia. In some other cases, they were told that, in order to get a well-paying job, they needed to marry a Chinese man. Upon arrival in China, Cambodian women often had their passports confiscated by traffickers and those who managed to escape struggled to reach an embassy or consulate. It was also reported that during the escape, some women were caught by Chinese authorities and returned to their husbands (UN-Act, 2016). While the Chinese government has taken steps to curtail human trafficking, there is little information about investigation and prosecution of traffickers (Tahirih Justice Centre, n.d.). However, according to the US Department of State, the recent government's removal of the birth limitation policy may decrease future demand for foreign women as brides for Chinese men and therefore, have an impact on forced marriages in the country (US Department of State, 2017).

Human trafficking is the most common form of violence against women in China as women and children are the primary targets of abduction, physical and sexual assault, and sale. The women's slave trade is particularly frequent and has not only affected hundreds and thousands of families in rural areas but also the population in cities. Although no official statistics exist on how many women and children were abducted and sold in the black market, those facts were frequently reported by the media and various NGOs (Ren, n.d.).

2. Restricted Physical integrity

a) Violence against women

The Chinese Constitution adopted in 1982 and amended in 2004 provides that the maltreatment of old people, women and children is prohibited (Article 49). The Protection of Women's Rights and Interests Law, Article 38 also provides that "the cruel treatment causing bodily injury to or death of women by means of superstition or violence is prohibited". However, the law is primarily designed to help women who are victims of domestic violence or trafficking and does not contain civil or criminal provisions to punish the perpetrators. The legal framework is complemented by special courts for the protection of the rights of women and children that were set up in a number of courts facilities at the local level. In addition, women's federation workers are also participating as people's assessor in the adjudication of violence against women's cases (UN Women, 2009).

b) Domestic violence

In 2015, China passed its first-ever national law addressing domestic violence, which went into effect on 1 March 2016. The law is the result of a decade-long campaign driven by grass roots civil society's advocacy. According to NGOs, the law is ground-breaking for addressing what has long been considered as a private matter in China (The Asia Foundation, 2016). It defines domestic violence as physical and psychological abuse of family members and cohabitating non-family members (Domestic Violence Law 2015, Article 2). However, it does not cover divorced couples or former

partners, nor does it address sexual abuse or economic control. The law contains measures to counter domestic violence such as written warnings or protection orders but does not contain criminal provisions (Domestic Violence Law 2015, Article 33). The victim but also close family relatives of the victim are allowed to report and/or file a case. In addition, authorities are required to directly intervene in suspected abuse cases involving those with no or limited capacity. Social workers, schools, medical practitioners, welfare officers, and community workers are required as well to perform mandatory reporting. Police, women's federations, community administrations, civil affairs departments, and shelters can also request the courts to grant restraining orders (The Asia Foundation, 2016).

The law also clarifies the responsibilities of various stakeholders, including but not limited to government, and encouraged and supported legal services organizations to provide legal aid to victims of domestic violence and to carry out medical identification and social assistance related to domestic violence (Domestic Violence Law 2015, Chapter II). The legal framework is also complemented by an active state policy, as more than 12,000 complaints stations and alert-the-police locations have been opened for reporting domestic violence and nearly 60 cities have set up shelters for domestic violence victims. In addition, a special hotline for victims was established in 31 provinces and courts at all levels have set up collegial panels against domestic violence (CEDAW, 2013).

Thanks to these measures, NGOs reported that, more women were willing to report domestic violence incidents to police. Nevertheless, implementation of the law remained inconsistent largely due to authorities' lack of awareness of the law's implementing measures (US Department of State, 2016). Despite the existence of a comprehensive legal framework, domestic violence is still a widespread problem in China. In addition, victims are often reluctant to contact authorities or go to court due to the societal sentiment that such incidents are personal, private matter (Tahirih Justice Centre, n.d.).

c) Rape

The Criminal law does not specifically address sexual violence but does criminalise rape. The definition of rape, which is based on the lack of consent, only applies to female victims and it's punishable by a maximum of 10 years' imprisonment (Criminal Law, Article 236), although, according to the US Department of State, some persons convicted of rape were executed (US Department of State, 2016). The law also provides for increased penalties for aggravated forms of rape and sexual violence (Criminal Law, Article 236). Furthermore, China statutory rape law is violated when an individual has consensual sexual contact with a person under age 14, regardless of sexual orientation or gender. Punishment is more severe if the younger party is both under age 14 and was acting as a prostitute. However, the legislation does not address spousal rape but a wife can still file a complaint based on article 236 of the Criminal law addressing rape. There is currently no national plan supporting the application of the legislation on rape.

Also, stereotypes attached to rape are still prevalent in the Chinese culture where victims are likely to be blamed. A study conducted in 2016 by the University of Pennsylvania found that Chinese culture considers a rape at least partly a woman's fault. Therefore, the subject is taboo and shameful

in the society and those social norms hinder women's ability to report it (The University of Pennsylvania, 2016). From 2013 to 2015, courts adjudicated 66, rape cases in which 62,551 defendants were given criminal convictions but, in most cases, rapes were not reported and instead were closed through private settlement (US Department of State, 2016).

d) Sexual harassment

Sexual harassment is both addressed by the Law on the protection of women's rights and interests and the Decree No. 619 of the State Council. The first one specifies that "sexual harassment against women is prohibited" (article 49) while the latter provides that "in the workplace, the employing unit shall prevent and stop sexual harassment of female workers" (article 11). The Law on the Protection of Women's Rights and Interests empowers victims to file a sexual harassment complaint with their employer and/or with authorities. If employers failed to take effective measures to prevent sexual harassment, they could be fined. However, the definition of sexual harassment only address harassment in the workplace and does not specifically cover other settings such as educational establishments, sporting establishments, public places or cyber harassment/cyber stalking.

Due to the lack of a clear legal definition, legal allegations are rare and most of the time focus on harassment in the workplace (Lui, 2016). However, more legal clarification was given in a decision made by the Intermediate Court of Zhongshan, Guangdong Province, the judge ruled that workplace sexual harassment shall generally contain three aspects: firstly a "sexual action"; secondly the "action is not welcomed to the victim and impairs the victim's dignity" and thirdly "the action can make the victim feel threatened, hostile and humiliated in the working environment" (AllBright Law Offices, 2017).

In addition to the lack of a clear definition of sexual harassment in the law, many women remained unwilling to report incidents of sexual harassment, believing that the justice system was ineffectual (US Department of State, 2016). Moreover, prejudices on sexual harassment still persist within the Chinese society. Some still blame women's "improper" behaviour for the men's actions—blaming the victim and denying the issue of sexual harassment as a human rights issue (Amnesty International, 2017).

Sexual harassment in public transportation is also a widespread issue. In March 2015, five young feminists were detained for planning a campaign against sexual harassment on public transport (Amnesty International, 2017).

e) Female genital mutilation

There is no evidence that female genital mutilation is a common practice in China.

f) Abortion

The Criminal Code of China does not contain any provisions under which abortion, performed with the consent of the pregnant woman, constitutes an offence. According to Article 19 of Law on Maternal and Infant Health Care, abortion are free and shall be subject to the consent and signing of the person. Women receive 14 days of paid sick leave for a first-trimester abortion or 30 days if the

pregnancy is terminated after the first trimester.

There is no stigma attached to abortion in China as in the traditional culture, the foetus, rather than being regarded as a human is frequently considered as an instrument for the continuation of a clan. Therefore, performing an abortion is more of a family decision than a public ethical issue (UCL China Centre for Health and Humanity, 2017).

On 1 January 2016, the government raised the birth limit imposed on its citizens from one to two children per married couple, thereby ending the “one-child policy” first enacted in 1979. State media claimed the number of coerced abortions had declined in recent years in the wake of looser regulations, including the implementation of the two-child policy. However, according to the Human Rights Report 2016 of the US Department of State, the government’s birth-limitation policy sometimes denied women the right to decide the number of their children and in some cases resulted in forced abortions (sometimes at advanced stages of pregnancy) (US Department of State, 2016).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

The law provides for equal rights to married and unmarried women over the ownership, use, decision-making power, and use as collateral over land and non-land assets (Marriage Law, Article 17 & General principles of civil law, Article 75). The default marital regime is partial community of property and both partners must agree in the administration of marital property.

In addition, special measures were implemented to protect women’s land rights. More particularly, article 6 of The Law on Land Contracts in Rural Areas (August 2002) provides that the rights and interests of women are protected and no one may deprive them of their right to contractual management of land. However, experts explained that this particular provision was rarely enforced due to the complexity of the law and difficulties in its implementation. Women’s rights advocates also reported that in rural areas women often give their share of land and or property rights to their husbands in divorce proceedings (US Department of State, 2016).

In addition, discrepancies persist between statutory law and customs. According to FAO, although Article 9 of the 1985 Law of Succession recognises equal inheritance rights to males and females, a daughter might be deprived of the right to inherit the land of her deceased parent, if she marries out of the native village, since she is no longer regarded as a member of the household (FAO, n.d.).

b) Secure access to formal financial resources

Married and unmarried women have equal rights as men to open a bank account at a formal institution. The laws contain no discriminatory restrictions with regard to women’s rights to secure loans, mortgages and other forms of credit.

In addition, a series of entrepreneurial policies specifically targeting female entrepreneurs have been

formulated and carried out by the Chinese government. These policies include subsidies for professional trainings, small-loan guarantees and preferential tax treatment and beneficial conditions for women entrepreneurs. Once a woman has gained her entrepreneurial training certification, new bank loans can be guaranteed without the requirement of providing collateral on her personal property. Furthermore, in certain provinces, regulations are in place so that loan departments in banks and credit guarantee organizations will cooperate and give priority to supporting women entrepreneurs via a simplified process (Deng et al., 2011).

The Chinese government has also adopted various policies to help rural women out of poverty and facilitating their development efforts. For instance, micro-credit projects give preference to poor women when they are equally qualified in other aspects and practical technical training is provided to women who stay behind in the rural areas. Thanks to those efforts along with the participation of the civil society actors, China has been able to considerably reduce the rate of poverty among women, particularly in rural areas (CEDAW, 2013).

c) Workplace rights

China has ratified ILO Conventions 100, 111 but not 156, 183 or 189.

Article 13 of the Labour Law mandates non-discrimination on the basis of sex in employment and calls for the elimination of discrimination in employment, in order to ensure that women enjoy equal rights with men. In their recruitment exercises, employers shall not refuse to recruit women or increase the thresholds for recruitment of women. When recruiting female employees, employers shall not include in the employment contract any content that restricts their rights in the areas of marriage or childbirth (Labour Law, Article 13).

The law mandates equal remuneration for work of equal value (Labour Code, Article 46). However, the law prohibits women from entering certain professions such as working in mines (Labour Code, Article 59). Women can work the same night hours as men and they do not need permission from their husband or legal guardian to either choose a profession or register a business.

Regarding parental benefits, on September 29, 2015, the Communist Party of China Central Committee announced that China would end its decades-long “one child policy”, allowing all married couples to have two children. As for maternity and paternity leaves policies, while Article 62 of the Labour Law gives a general rule providing that birth-giving women workers shall be entitled to maternity leave no shorter than 90 days, those policies are issued by China’s localities and the amount of benefits that a couple can possibly get depends on their location. In response to the possibility that a husband and a wife may come from different localities and therefore be subject to different local regulations, the Law added that in such a situation, the couple may choose which regulations will apply. Since the implementation of the two-child policy in late 2015, many cities and provinces have made new rules of paternity and maternity leave (Junlu et al., 2017).

For instance, Beijing has maternity leave but does not have specific paternity leave policies. However, according to Beijing family planning regulations, an additional late birth incentive leave of 30 days awarded to mothers can also be extended to fathers. In addition, if the father does not choose to take these 30 days, he may enjoy an additional one month wage bonus according to the

mother's basic salary (China Briefing, 2015).

The People's Courts is tasked with receiving, investigating and enforcing complaints based on sex discrimination in employment (CEDAW, 2013). In addition, the National Human Rights Action Plan of China (2016-2020) provides that "employment discrimination of any form shall be strictly prohibited" and one of its priority is to improve the labour security supervision and law enforcement system and labour dispute settlement mechanism.

In practice, it was reported that discrimination on the basis of sex at the workplace including unfair dismissal, demotion and wage discrepancies were significant problems. On average, women earned 35% less than men doing similar work (US Department of State, 2016). This wage gap was greater in rural areas (US Department of State, 2016).

4. Restricted Civil liberties

a) Citizenship rights

Married and unmarried women have the same rights as men to acquire, change, retain their nationality, as well as confer their nationality to their children (Nationality Law of the People's Republic of China, Articles 4, 7 & 9). If a baby is born to one foreign national and one Chinese national, the baby automatically has Chinese citizenship. However, it should be noted that Chinese nationality law does not recognize dual nationality. If one of a baby's nationalities is Chinese, the Chinese authorities do not recognize the other nationality to which the new child is entitled.

Married and unmarried women have equal rights as men to register the birth of their children. Experts reported that a "birth permit" (also known as a "birth service certificate, "family planning certificate" or "family planning service permit") is required before the birth of a child in China. Unlike a birth certificate in other countries, which indicates that birth registration has taken place, in China this certificate means that the state authorizes a birth. This permit grants access to prenatal care and consent to legally register the child after birth (Immigration and Refugee Board of Canada, 2016). The document is obtained through the Population and Family Planning Commission and afterwards, within a month of the birth the child must be registered with the local Public Security Bureau.

The underreporting and abandoning of baby girls are important issues in China. In order to prevent it, in some places a pilot real-name birth registration system has been put in place and promoted, in order to improve the monitoring of pregnancies and the management of childbearing processes (CEDAW, 2013).

Regarding passports and ID Cards, married and unmarried women have equal rights as men to apply for identity cards and passports (Regulations of the people's republic of China concerning resident ID cards Article 3 & Passport Law of the People's Republic of China, Article 6). The law also does not discriminate against women with respect to the passports and other travel documents of minor children and both unmarried and married women have the same rights as men to travel outside the country.

b) Voting

Women received the right to vote and stand for election in 1949 (Women Suffrage, n.d.). According to the Constitution, Art 34 “all citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence”.

However, political experts have reported wide gender gaps between voters, more particularly in rural China. Indeed, in rural areas, even though over 80% of eligible adults vote in village elections, only 60% of women actually vote, compared to nearly 90% of men. This 30-point gap reflects other disparities, as women usually have less education, lower literacy rates which hinder their ability to vote and are limited by traditional gender norms that might discourage civic participation (Harvard Kennedy School, 2013).

c) Political voice

Women in China have equal rights to men to hold public and political office in the legislature, executive and judiciary (Constitution Article 34 & General provisions of the Law of the People's Republic of China on the Protection of Rights and Interests of Women). China has also adopted various provisions in order to improve gender balance in politics and there are legislated quotas for women at the national and sub-national levels (Decision of the Fifth Session of the Tenth National People's Congress on the Number of Deputies to the Eleventh National People's Congress and on the Election of the Deputies, Article 8 & Organic Law of the Villagers Committees, Article 6).

More particularly, at the national level, China has a unicameral parliament with a legislated quota of 22% of women for the lower house. At the local level, more particularly in rural areas, the Government has been actively promoting women's participation in the leadership of villages' CPC branch committees and villager's committees by introducing a mandatory quota. The Law stipulates, inter alia, that there should be female members in the Villagers Committee, and that in the Villagers' Representatives Assembly, more than one-third of the representatives should be women (CEDAW, 2013).

In addition, in order to effectively promote women's participation in the political sphere, the State has adopted a series of strong measures to ensure the training of female cadres. In particular, Article 12 of the Law on the Protection of Rights and Interests of Women provided that “the State actively trains and select female cadres”.

In addition, the National Human Rights Action Plan (2010-2020) sets a specific target regarding the proportion of women in politics at all levels. It provides that “By 2020, women members shall make up over 30 percent of total members of villagers' committees, over 10 percent of the villagers' committee chairpersons, and about 50 percent of the members of urban residents' committees.”

While the government placed no special restrictions on the participation of women or minority groups in the political process, the CEDAW Committee noted that Chinese women's participation in political and public affairs remains a challenge, in spite of marked improvement, considering the proportion of women in the population versus the role they play in China's economy and society

(CEDAW, 2013). The dominant explanation given for women's numerical under-representation in politics is that women often lack self-confidence, which inhibits them from standing as candidates. Moreover, the common belief that women are not capable of leadership is still prevalent in the Chinese society which also hinders women's opportunities within the political sphere (Howell, 2007).

d) Access to justice

Married and unmarried women have equal capacity to men to sue and to be sued. Married and unmarried women's testimony also carries the same evidentiary weight as a man's in civil, criminal, family court, and tribunals.

In addition, the courts have established special collegial panels taking into account the particular interests of women and girls, along with family courts to properly try cases of marriage and family disputes and protect women's legitimate rights and interests in emotional distress compensation and property division (CEDAW, 2013).

The law also established a special body tasked with monitoring gender equality. Created in 1990, the National Working Committee on Children and Women (NWCCW) has been commissioned the responsibilities to organize, coordinate, guide, supervise and urge departments concerned in promoting gender equality and women's development. Its membership consists of various government ministries and social organizations. The Chinese Government also places an emphasis on strengthening its close cooperation with women's rights organizations at the grass roots level, seeking their comments and suggestions on, inter alia, women's development and the protection of their rights (CEDAW, 2013).

In order to obtain facts to inform the formulation of policies, efforts have been made to strengthen the production and dissemination of gender-disaggregated statistics. The National Bureau of Statistics (NBS) has edited and released several publications on gender statistics (CEDAW, 2013).

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