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Women's Rights in the Family Setting

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A well-versed quoted by Chairman Mao follows along the lines of, “Women hold up half the sky.” This maxim was an outgoing statement that women were capable of the same things attributed to men. The broadcasted propaganda during Mao’s time in the 1950s provoked strong imagery of powerful and rising women. It advocated and encouraged women to step into the work force enabling them to take part in building society referred to as “socialist androgyny.” It was emboldening. It supported equality amongst genders, but that was no match for traditionally respected values that has deteriorated to devaluing women leaving them vulnerable and unprotected especially in cases of divorce. As found in the first Women’s Newspaper, Nübao, the five goals established during the Qing dynasty were, “abolish foot binding, educate girls, free marriage, a job, equality with men.”<sup>1</sup> Following that it states, “We got the first four. But not the last one.”<sup>2</sup>

The past year in 2016 marked the sixth consecutive year that divorce rates in China have been increasing as reported by China’s Ministry of Civil Affairs with 3.8 million filings for divorce in 2015.<sup>3</sup> Figure 1 displays the sudden and rapid increase of divorces taking place in China beginning from the leap seen in 1996 to 1997 and onwards. The reasons for divorce in China are inclusive of bigamy, adultery, excessive drinking and gambling, long period of separation from work.<sup>4</sup> With the filings for divorce on the rise,

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<sup>1</sup> Gillies Sabri, *Holding Up Half the Sky* (The New York Times, 2012).

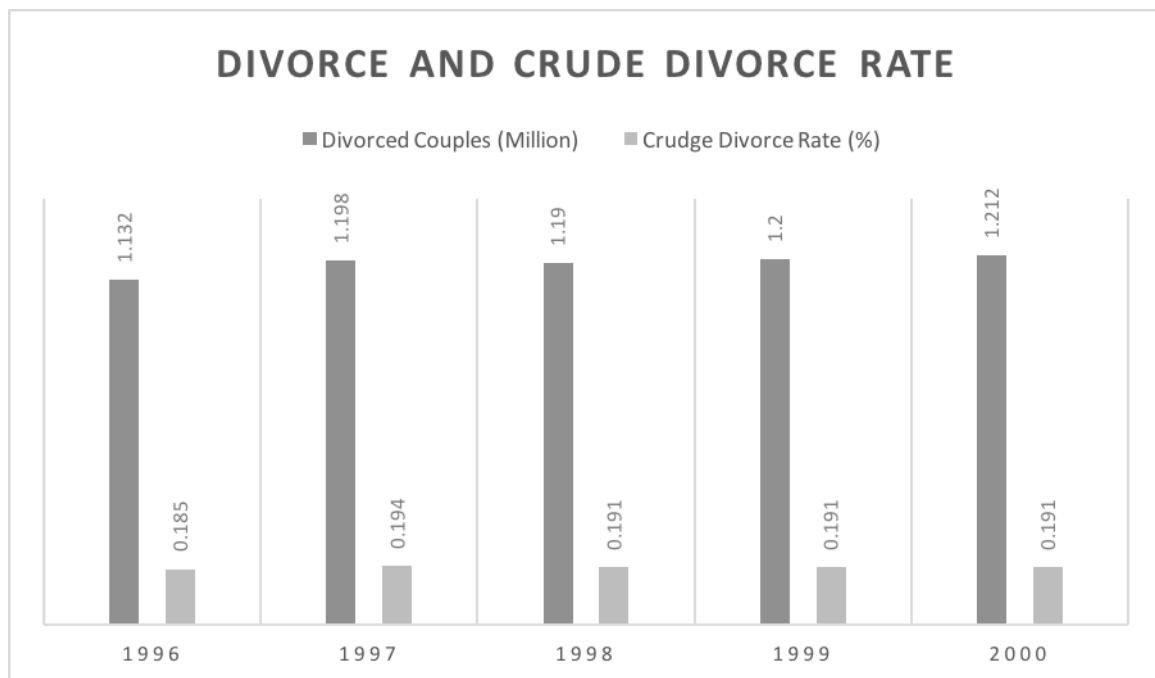
<sup>2</sup> Ibid.

<sup>3</sup> Sarah Lin, *China's divorce rate on the rise for the 13th year in a row* (Shanghaiist News).

<sup>4</sup> Ying Mingque *Guiding Zhizhi Jiating Baoli-QuanguoFulianXiugai Hunyin Fa Jianyi Zhi'er [Domestic Violence Shall be Expressly Prohibited - Suggestion on Draft MarriageLaw by the All China Women's Federation 2]*, LEGAL DAILY, Sept. 28, 2000,

there is a need for active protection of women's rights both in developed and rural areas in the familial setting still strongly bound by ancient Confucian ways of thinking.

Figure 1. Number of divorces and the crude divorce rate.



Note: Statistical Reports of the Reports of the Development of Social Services from 1996 to 2000 by the Ministry of Civil Affairs from the People's Republic of China (<http://cws.mca.gov.cn/article/tjbg>)

Before delving into women's rights in divorce, it is important to mention that China carries an incredibly long history of male-centric societal thinking as seen illustrated throughout the course of the one-child policy. Male centered societal thinking is depicted in the outspread infanticide of baby girls for reasons that they were physically weaker, making them inept to provide strength in labor, and the most lacking of abilities was being unable to carry on the family name, all tying together to equal lesser value. Females played the role of being married off to carry along the lineage of another family no longer being

considered a part of the family, but to make great the name of another. Families were thought to have lost a member of their family when a daughter got married. They were a vessel that played a role in the carrying out of the name, not being the actual, physical carrier of the family name, hence the lack of value placed upon women. With this upheld line of thought, to prevent imminent discrimination against baby girls, the law went to the extent to outlaw ultrasound scans for the gender reveal in 1980 because of the tended favorability towards males, but regardless of this implementation, there were still countless number of mothers going through abortions of because the child that they were carrying was a baby girl. Further, in the case of later discoveries, after crudely giving birth, in the rural regions, abandonment of baby girls on streets were commonplace.<sup>5</sup>

The core issue of male-centric societal framework can be traced back to the ancient philosopher, Confucius with his concept of family.<sup>6</sup> The traditional family system in China that is still intact today is a hierarchical system with status being judged through generation, age, followed by your sex, keeping in mind that in most instances age was overruled by gender.<sup>7</sup> The virtue of a woman was to have no ability, and they were labeled as subordinate to men. There was also a saying, “an incapable man is better than a capable woman.”<sup>8</sup> This patriarchal system has a history surpassing five thousand years making it difficult to forgo, but changes are forthcoming.<sup>9</sup>

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<sup>5</sup> Yuan Ren, *Oh China, this isn't how to solve your 'girl problem'* (The Telegraph).

<sup>6</sup> Jianfu Chen, *Chinese law: context and transformation* (Leiden: Brill Nijhoff, 2016), 523.

<sup>7</sup> Ibid, 525.

<sup>8</sup> Anna M. Han, *Holding-Up More than Half the Sky: Marketization and the Status of Women in China*, 11 J. CONTEMP. LEGAL ISSUES 791, 793-95 (2000-2001).

<sup>9</sup> Ibid.

The formation of the 1950 Marriage Law focused on the switchover from the feudalist framework to a socialist one, setting its focal point on the basic social cell, man and woman. To follow, the first policy statement set goals leading up to the liberation of women. The first communist constitutional document, known otherwise as the Provisional Constitution of 1931 stated,

The purpose of the Soviet Government is to guarantee the fundamental liberation of women. Freedom of marriage is recognized, and measures of the protection of women will provide the material basis to enable them to cast off the bonds of the family by gradual stages, and to participate in economic, political and cultural life.<sup>10</sup>

The 1950 Marriage Law granted women basal freedom rights from abusive marriages and gave them status as citizens.<sup>11</sup> The lives of women were largely improved with greater freedom with the introduction of the 1950 Marriage Law, but with socialist thinking that was not maintained for long. It was not until 1980 with the revision that this was corrected. Following the revision of the 1980 Marriage Law, in 1982 the People's Republic of China (PRC) constitutionalized that all citizens were deemed as equal before the law in Article 33.<sup>12</sup> Furthermore, it clarified that in all citizens being equal before the law, both women and men shared equal rights in politics, economic, culture and social, and in the family sphere as stated in Article 48.<sup>13</sup>

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<sup>10</sup> Ibid, 530.

<sup>11</sup> Margaret Y.K. Woo, *Shaping Citizenship: Chinese Family Law and Women* (Yale Journal of Law & Feminism: Vol. 15: Issue 1, Article 4, 2003), 107.

<sup>12</sup> Ronald C. Brown, *China's Employment Discrimination Laws During Economic Transition* (Column J. Asian L., 2006), 361.

<sup>13</sup> Ibid.

Breaking down the construct of marriage in China, it was not something that took place between two individuals, but it was viewed in a collective manner inclusive of entire families. Marriage was a unification of families founded upon the idea of harmony and friendship (*jie lianxing zhihao*), and by opposite, divorce meant not only the separation of two people, but families being turned against one another (*jie lianxing zhihao*).<sup>14</sup> This traditional system of thinking that is presently carried out in divorce institutions, it shows a favorability towards men and rather strictly enforced the filial roles of women in a family of faithfulness, being chaste, bearing children, and etc.<sup>15</sup> For women to get a divorce equates to disgrace and failure in their duties as a woman during traditional times and even now, many feel labeled as lower class citizens if they are found to be a divorced woman.

The newfound freedom granted to women was only short-lived with the Cultural Revolution (1966-1976) and the introduction of a new constitution in 1954. Specifically, in 1954, divorces came to be regarded as socially unnecessary and a cautious stance was taken in regards to divorces as well as marriages. Divorce required a proper and acceptable reason and was discouraged, “divorce was not a decision to be based on one’s personal and private individual happiness. Instead divorce needed to advance the greater goals of the socialist collective and be considered within the broader context of existing political campaigns.”<sup>16</sup>

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<sup>14</sup> Jianfu Chen, *Chinese law: context and transformation* (Leiden: Brill Nijhoff, 2016), 557.

<sup>15</sup> Ibid.

<sup>16</sup> Margaret Y.K. Woo, *Shaping Citizenship: Chinese Family Law and Women* (Yale Journal of Law & Feminism: Vol. 15: Issue 1, Article 4, 2003), 108.

From the standpoint of the law, women appear to have the upper hand in the case of a divorce with specific laws that require consideration for women in the case of divorce and specific circumstances where husbands are prohibited from filing for divorce during pregnancy and a year following delivery. There are other various laws in the distribution of property, but regardless, many divorcees are left nothing because circumstances have been naturally set to be more favorable to men.

There is also a stark difference between the understanding of divorce and the law between the urbanized parts of China versus the rural areas. In the urban, developed parts of China, women are assertive in their pursuit of divorce not because of higher education, but because of the greater financial stability that they hold. Surprisingly, the more educated a female is, studies have shown that women are more unlikely to bring it to court, as in the case of Shanghai where they make efforts to keep it as private as possible. The more educated they are, the more they seem to be tightly bound by tradition, whereas lower class workers show a higher percentage of bringing matters to court in seeking a form of protection in the law. It can possibly be due to the gap of individual financial stability that women in developed areas have over women in lesser developed areas, where they prefer the minimal protection that is offered in court. Overall, rural or urban, majority of the plaintiffs in both areas are females and the reasoning behind their initiating is that they want to be proactive in protecting themselves and taking measure to keep from being victimized.<sup>17</sup> The only difference found is the preference towards keeping it private or bringing it to face in court.

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<sup>17</sup> Dawen Yang and Jianmei Guo, *Theory and practice of protection of women's rights*

In the Wulian Court of the Shandong province located south of Beijing, 27.6% of women faced interferences in their trial for divorce by either relatives and/or husband.<sup>18</sup>

The methods used in interfering ranged from physical refrainment, jailing, threats, and other means of force which is more commonly found in the rural regions.<sup>19</sup>

Table 1. Legal workers' responses to marital disputes, by gender and issue

	Interaction with Male Disputant	Interaction with Female Disputant
<b><i>Response to claims on child custody</i></b>		
Invoke status-based stereotypes	0%	50.0%
Manipulate interpretation of state law	0%	37.5%
<b>Total applicable interactions</b>	<b>14</b>	<b>8</b>
<b><i>Response to claims on marital property</i></b>		
Instruct to forgo marital property	0%	50.0%
Instruct to buy off the spouse	16.7%	11.1%
<b>Total applicable interactions</b>	<b>6</b>	<b>18</b>
<b><i>Response to complaints of domestic violence</i></b>		
Divert complaint of domestic violence		50%
Normalize spousal abuse		43.8%
Legitimize marital rape		6.3%
<b>Total applicable interactions</b>	<b>0</b>	<b>16</b>

Note: Divorce Litigation and Gender Inequality in China from Law & Policy Volume 37, No. 3: 153-179.

Divorce petitions outline certain drawbacks and inequality in terms of division of property and other matters. In the event that women are seeking consultation whether to prepare for or either going through the divorce procession, traditional thinking still remains

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*and interests in contemporary China* (2000), 522.

<sup>18</sup> Margaret Y.K. Woo, *Shaping Citizenship: Chinese Family Law and Women* (Yale Journal of Law & Feminism: Vol. 15: Issue 1, Article 4, 2003), 117.

<sup>19</sup> Ibid.



as an irritant factor portrayed through remarks of lawyers and legal workers. Through a research conducted of divorce litigations in southwest China, it largely depicted the inequalities present today as well as the stereotypical naming that follows. Commonly in any divorce, disputants pursue claims for child custody, but in China, many females were discouraged and often hindered in their attempts at legal mobilization in gaining full custody of their child.<sup>20</sup> In several similar cases, women were discharged and dismissed, being labelled as “migrant workers” (*dagong de*) or “the divorced” (*lihun de*), both seemingly harmless translated to English, but in Chinese it carries condescending tones.

Migrant workers are classified as having unstable living circumstances with a nomadic lifestyle, namely, uncivilized and being labeled a divorced woman noted failure in their duty as a woman and wife. As shown in Table 1, 50% of the interviewed women were susceptible to status-based stereotypes thus perceived to be deemed incapable of parenting compared to the absence of males being regarded in that manner. The reasoning behind this mode of thinking follows the patrilineal tradition followed through in China. The gender roles that small children carried, especially males, to carry along the family name instilled the idea that it was proper for children to be raised by fathers instead of remaining with their mothers was present even during divorce litigations.<sup>21</sup>

Property disputes are also a central part of divorce litigation and in this case as well, many women are actually encouraged to give up their property rights. Property disputes are the reason why the divorce procession is lengthened and the area where most women find

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<sup>20</sup> Ke Li, *'What He Did Was Lawful': Divorce Litigation and Gender Inequality in China* (Law & Policy 37, no. 3: 153-179, 2015), 163.

<sup>21</sup> Ibid, 164.

to be the most difficult to navigate. Similarly, in the case of the child custody, in the case of female disputants, nearly 50% of legal workers suggest women to forgo property and are not given the proper resources and shared knowledge in the available options. Furthermore, with the redefined Marriage Law in 2011, property purchased previous to the marriage was not available for negotiation, it would solely be given ownership to whoever's name was written on the deed.<sup>22</sup>

With this implementation, property ownership will always be given to the male because it is customary in China for the men to purchase the home and it is the women's task to furnish the home although the cost is nearly equal. A researcher of China's Marriage Law and the impact on the gender wealth gap at Tsinghua University, Leta Hong Fincher stated, "A lot of women contribute money to buying their marital homes together with their husbands, and the homes will be registered under the husband's name...[Those women's] efforts will be completely invisible after they divorce their husbands."<sup>23</sup>

Even in cases where women have aided in the payment of the house, because their names are not found in the property deed, they have no legal liability over the matter and receive no form of compensation under the law.<sup>24</sup> They are denied this right based off of arguments that men and/or his parents pay most of the financing acquiring property and so the wife should not be included. As depicted in 2012, from the 70% of real estate purchased, both bride and groom alongside their families input similar shares into the payment, but

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<sup>22</sup> Wendy Zeldin, *China: Supreme People's Court Issues Third Interpretation of Marriage Law* | *Global Legal Monitor*. (Global Legal Monitor, 2011).

<sup>23</sup> Jessie Jiang, *For Love or Real Estate: The Cost of Getting Divorced in China* (Time, 2011).

<sup>24</sup> Ibid.

only 30% had their names found in the deed.<sup>25</sup> The explanation for this is that outside of pragmatic rulings it is still largely tradition that come into play.

Outside of divorce, women are disadvantaged when having to provide for themselves and their children following the divorce as a result of the discrimination found in the employment industry. Women are subject to being denied social welfare benefits, early retirement, random dismissals, sexual harassment, wage disparities, and etc. in the workplace.<sup>26</sup> Specific laws set in stone to protect women by requiring certain benefits to be provided to women in cases of maternity and child care, made it much more difficult for women to find employment. Companies and employers saw women costlier to employ compared to men. In cases of hire, women are obligated to sign contracts stating that they will not become pregnant, face termination in the case of pregnancy or denying them the rights to have children, and etc.<sup>27</sup> To address these issues the Employment Promotion Law in 2007 was passed to create a workplace where equality and rights were ensured and discrimination was a faraway cry.<sup>28</sup>

Opposed to those displeased with the new legal interpretation in property division, Guo Wanhua, legal expert at Chang An Firm in Beijing, says that this is a step towards stability regardless of traditional values upheld in China.<sup>29</sup> From an objective standpoint this

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<sup>25</sup> Tania Branigan, *For richer, for poorer: how China's laws put women second* (The Guardian, 2015).

<sup>26</sup> *Country Reports on Humans Rights Practices* (U.S Department of State, Bureau of Democracy, Human Rights and Lab, 2007).

<sup>27</sup> Ibid.

<sup>28</sup> *Law on Promotion of Employment* (Standing Comm. Nat'l People's Cong., Aug. 30, 2007, effective Jan. 1, 2008) art. 1 (P.R.C.)

<sup>29</sup> Ibid.

legal interpretation is a step towards fair rulings. The new jurisdiction was purposed to provide more clear rulings in divorce litigation, but due to housing being traditionally provided by men, women are still largely left without any entitlement, but overall it does provide consistency and a solid framework and greater promotion of equality in rulings where rulings no longer differ from court to court.

Since the ordination of the 1950 Marriage Law, many improvements have been made in Chinese courts. Namely, one is the recognition of the individual as an individual rather than as a collective whole. A popular saying floating around is *dangshiren zhuyi*, meaning, litigants choice. There was a stepping away from outside intervention in the divorce procession making solely an issue present between the two parties.

The government has also taken it upon themselves to provide substantial post-divorce relief stated into law. Post-divorce relief refers to property division, financial and economic support as well as compensation for damages that have occurred during or as a result of the marriage.<sup>30</sup> Many amendments have been made to the 1980 Marriage Law, the results of these amendments are found in the updated marriage law in 2001, specifically in Article 27, 28, 29, 30, 42, and 46. There is specific clarification in the aftermath of the divorce: claiming of damages in cases of bigamy, maltreatment, and etc., economic compensation for the rearing of children, and things within familial matters usually seen to be the duty of a wife. There is active mediation taken place within the court. This proved to be a protective system for women since they have long been the more vulnerable party. There are proactive

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<sup>30</sup> Chen, Wei, and Lei Shi, *Developments in China's Provisions for Post-divorce Relief in the 21st Century and Suggestions for Their Improvement*". (Journal of Divorce & Remarriage. 54 (5): 363-380, 2013), 363.

measures taken by the court under law.

As stated above proactive measures have taken by the government in view of law, but a falling factor is in the actual operation. Empirical research shows that only 5% of divorcees receive financial assistance from their spouse, 0.3% have receive compensation for abuse, as well as housework and rearing of children rarely ever sees compensation.<sup>31</sup> Also, the time of compensation is limited to the time of the divorce which has proved to be difficult. In terms of direct assistance from the government, the standards to qualify are set much too high. The requirement consists of a degree of inability to self-support themselves even with financial subsidies received at the time of divorce or if they are found homeless after divorce.<sup>32</sup> Truth be told, care of women in divorce is still a matter of development.

As with women's rights, the best representatives are women themselves which calls for a demand in women lawyers to represent female disputants. In 1992, there were only 4,512 female lawyers. China numbered to have 150,000 lawyers in 2000, but women only made up 20% rounding out to about 50,000.<sup>33</sup> Though with a population of 1.38 billion it is quite lacking, it is still a growing percentage to the profession. The All China Women's Federation (ACWF) also attempts to provide counseling and legal aid throughout China. The Supreme People's Court has also made efforts to establish legal aid systems and hotlines nationwide to help provide services for women.<sup>34</sup> Aside from the many

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<sup>31</sup> Ibid, 373-374.

<sup>32</sup> Ibid, 373.

<sup>33</sup> *Statistics compiled by the All China Lawyer's Association* (All China Lawyer's Association).

<sup>34</sup> *Notice of the Supreme People's Court Concerning Legal Assistance in Civil Cases* (1999).

achievements in regards to women being represented and supported to a greater extent, there are still many areas found lacking. Aid is more readily available for those in urban locations, but rural areas are still very much neglected and the gender gap is still very present today which needs to be taken into consideration in the advancement of women's rights in the legal frame.

The challenge that China faces is the sheer number seeking aid in the legal field and the lack of it. A great benefitting point would be if there were more legal organizations run by women allowing them to be specifically understand and address the needs of women in the process. It would allow the concerns and perspectives held by women to penetrate through the long upheld traditional values. Women being women would specifically know which areas need targeting and where it is found most lacking.

The most important point to be highlighted is that regardless of how perfectly the law has been constructed what will prove to be sufficient will be starting the core of the Chinese people, thereby their mentality. The tradition-bound thinking will continue to remain a problem factor as individuals will continue to face problems and issues beyond their capability and the factor maintaining lasting impact of the actual laws implemented will be the morals and thought processes of the people. There is a need to redefine women in Chinese society: who women are, who women can be, what they are capable of, essentially reintroducing them into society as people of individual capabilities and strengths in ways different from men. Not in a sense that they are weaker than men, but equal in the different qualities that they bring to the table. This would introduce a complete breakaway from traditional mindsets. Not only a breaking away from traditional thinking, but

educating women what kind of rights are available to them and certain claims that they have in law to be able to properly enforce their rights.

Giving regard to the short duration of time that these laws were implemented into Chinese society, with the first introduction of the Marriage Law in 1950, China has come tremendously far in their lawmaking. It is quite possible that because of the sudden advancement of Chinese law hand in hand with the economic boom, there was not much time of adjustment in the culturally contextualized thinking explaining the present clash of thinking. In one hand, law has developed and is continually progressing whereas in the minds of people they are still adjusting to the changes set before them. Sudden acceptance of a new mode of thinking is difficult and foreign and takes time adjusting to. There is yet much more refining to be done, specific implementations and revisions to be made, but believe it is safe to say that China is headed in the right direction.

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