



1-1-2001

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Automated Citation

Anna M. Han, *Holding-Up More Than Half the Sky: Marketization and the Status of Women in China*, 11 J. CONTEMP. LEGAL ISSUES 791 (2001),

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Holding-Up More Than Half the Sky: Marketization and the Status of Women in China^{†††}

ANNA M. HAN*

I. INTRODUCTION

As China approaches the new millennium, much is made of the direction its economic policies have taken and how these changes affect its people. While these changes impact everyone in China, half of its population, the female half, should be especially concerned about how these shifting policies affect their place in society. In this inquiry, Chinese women have found that they have come a long way from the feudal days when they were little-better than property and that communism has improved their status dramatically, making them legally equal to men. However, looking ahead, the future of Chinese women may be much less optimistic. China is going through tremendous changes politically, socially and economically. The question that Chinese women should ask is, will these developments make it easier or more difficult for them to achieve the promised equality?

Despite the failings of communism, as evidenced by the collapse of the former Soviet Union and other Eastern European governments, China continues to adhere to the principles of Marxism while gradually introducing market concepts to its economy.¹ While most Chinese and

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^{††} This article is dedicated to all the women who attended the UN Conference on Women in Beijing in 1995 for inspiring this topic and to the many scholars whose works are cited in this article. The author also wishes to thank her research assistant, Elizabeth Loh, for her help.

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1. After the death of Mao in 1976, China, under the leadership of Deng Xiao Ping adopted the "Open Door Policy" which allowed for the introduction of foreign investment and the accompanying capitalist concepts. China, however, still clings to

foreign observers are encouraged by China's experimentation with capitalism, they ignore the adverse effects these policy changes have on Chinese women. To date, no other system of government has benefitted the Chinese women more than communism. Under this system, which stressed equality and theoretically eliminated all social and economic class structures, tremendous strides in gender equalization were realized.²

As China makes its evolutionary transition from a centrally controlled economy to a market-based one, the Chinese government and the Western world have observed for some time that the resulting economic boom has not benefitted everyone equally.³ While the world media, including China's, seems to focus its attention on the ever-widening social and economic gap between the urban dwellers in the coastal cities and the agricultural workers of the inner regions, the pervasive division between the sexes is being overlooked. The purpose of this article is to examine generally how Chinese women fared under communism and more specifically, delve into how marketization has adversely impacted the status of women in China. It is this author's contention that despite the overall improvements in the standard of living, Chinese women are increasingly being marginalized economically. The long-term effects of subjugating the advancement of women for the immediate benefits of China's experimentation with a market economy hold vast implications for the future of the country. As China progresses economically, politically and socially, it cannot afford to leave half of its population behind as it marches toward the next century.

II. HISTORICAL PERSPECTIVE

To gain a greater understanding of the implications of marketization, there first must be a brief discussion on roles women have played historically in Chinese society. This paper divides the historical discussion into two periods: pre-1949, which was marked by agrarian life and feudalism; and post-1949, which captures the era of Maoism and Marxism, followed by *Socialism with Chinese Characteristics*.⁴ In the post-1949

Marxism politically, and terms the capitalist concepts adopted as "marketization" or "Socialism with Chinese characteristics."

2. While clearly beyond the scope of this paper, the benefits which communism conferred on women in other countries are the subject of other scholarly research. See BARBARA JANCAR-WEBSTER, *WOMEN UNDER COMMUNISM* (1978).

3. See Robert Weil, *China at the Brink: Class Contradictions of Market Socialism* Part 2, MONTHLY REV., January 1995, at 11.

4. While it is true that China remains a primarily agrarian society and that some may argue that the advent of communism merely changes the ruler and not the form of the rule, the demarcation is nevertheless useful as the most dramatic changes in the

era, there have been significant constitutional, legal and social changes in China that have advanced the rights of women throughout the country's socioeconomic evolution.

A. Chinese Women Pre-1949

Images of traditional Chinese women, particularly as portrayed in films, often focus on the powerful (e.g., the Empress Dowager),⁵ the unusual⁶ (e.g., prostitutes) or the strong⁷ (e.g., martial artist). However, the reality is far less glamorous. Historically, the great majority of Chinese women were peasant farmers who lived in the countryside, tied to their land. Until this century, however, women were never allowed to own the land that they tilled. Property, including the women themselves, belonged to the fathers, husbands, brothers, or sons.⁸

In an agrarian society, the physical demands and rigors of eking out a living created the social hierarchy. In this hierarchy, children served not only as farmhands, but also as old age social security plans. Reinforced by a patriarchal system, the second-rate status of women was further perpetuated in feudal society by the fact that females could not hold title to property and that marriage meant that females became legally divorced from their birth families.⁹ As such, families diverted their property and other resources to their sons, ensuring that the investment remained in the family.¹⁰ The inability to hold property meant that women could never accumulate wealth and wield any economic influence on society. This left them economically powerless and dependent upon men.

The Chinese family unit, being patrilineal, also reinforced the notion that wealth left to the males stayed in the family and wealth given to daughters benefitted others. Additionally, the Chinese practiced

Chinese women's lives have taken place in the last 50 years.

5. *THE LAST EMPEROR* (Bertolucci, 1988). For a more detailed explanation of the portrayal of Chinese women by the media, see GINA MARCHETTI, *ROMANCE AND THE "YELLOW PERIL"* (1993).

6. *THE WORLD OF SUZIE WONG* (Richard Quine, 1960).

7. *MULAN* (Walt Disney Pictures 1998).

8. See Ann Jordan, *Women's Rights in the People's Republic of China*, *JOURNAL OF CHINESE LAW*, Spring 1994.

9. Under the Tang legal code once a woman becomes betrothed to a man, she became a legal member of her fiancée's family. A betrothal was legally binding on both families. See ESTHER S. LEE YAO, *CHINESE WOMEN: PAST & PRESENT* 54-58 (1983).

10. See Jordan, *supra* note 9, at 73.

primogeniture for centuries, where property was left to the eldest son and not to the daughters. Usually, younger sons were provided for if the family had sufficient assets. These practices continued the cycle of gender discrimination based on the ability of sons to continually contribute to the family's wealth and to continue the family name. In Chinese culture the basic social unit is the family. In an agrarian society, it was crucial that every member contributed its labor for the survival of the family. Grandparents helped with child care as adults worked in the field. Children who were old enough worked with the parents. "Social security" to the Chinese meant having enough children to support the parents in their old age. To the extent that a son could contribute a greater amount of labor in the fields than a daughter, he received more food and other resources. When a son reached marrying age and took a wife, this brought an extra worker to the family and the ability to have more sons. A daughter's contribution was perceived as outweighed by the economic burden on the family. Having a daughter of marriageable age was considered a sign of poverty. The family not only lost a worker to the groom's family, but the parents also had to provide a dowry. A daughter's value depended on her contributions to domestic work and as a possible source of a bride price. However, since the family also needed to pay a corresponding dowry upon marriage, this tended to offset the bride price gained. The economic aspect of marriage was clear as a bride's reception and subsequent treatment by the groom's family often directly corresponded to the amount of her dowry. A woman who married without a dowry was essentially "sold" for the bride price. Often, their treatment was little better than that of a slave. Once a woman was married, any economic resources invested in the raising a daughter was considered lost. The Chinese saying, "[a] married daughter is like water spilling out of a bucket" reflects this sentiment.¹¹

Chinese philosophy and culture further reinforced this gender-based view of women as second-class citizens. Signs of this prejudice permeated every facet of society.¹² The Confucian doctrine of the

11. Yao, *supra* note 10, at 54-58.

12. Chinese literature does not always paint an accurate picture of the everyday life of women. Fiction tends to portray ideals for women: The mother who sacrifices herself for her children, the wife who waits years for a missing husband, the daughter who obeys all of the commands of her parents. Historical accounts of women tend to focus on the few aberrant women rulers in China's history. The characters usually gain their positions by cunning and by elimination of their spouses or rivals. Such was the literary trend that when the book, *The Dream of the Red Chamber* was published in 1791, it caused a major stir by portraying a family with many strong female characters. To date, the study of this novel still commands the intellectual interests of many Chinese scholars. CAO XUE QIN, *HONG LOU MENG*, (1791, Translated as *Dream of the Red*

“Three Following” mandated that daughters were to honor and obey their fathers until married, heed their husbands upon marriage and yield to their sons if widowed. Girls were also taught the “Three Followings” and the “Four Virtues” based on Nuer Jing (*The Classics for Girls*).¹³ A woman must revere her husband as she does heaven and be compliant, silent, clean and diligent. The accepted practice of polygamy also insured that a woman’s position in her husband’s household was precarious at best.¹⁴ For periods in Chinese history, the custom of foot binding prevented daughters from pursuing any education and career options outside the home.¹⁵ The education of daughters was considered a waste since it was unnecessary for child rearing and housekeeping, the primary responsibilities of Chinese women.¹⁶ Girls were taught basic vocabulary and mathematics, sufficient for managing the household. Since women were not allowed to participate in the Imperial Exams which was the only route to civil service and possible upward mobility for the poor and the middle class, education of women was considered a poor investment. Viewed as economic burdens, women were naturally treated as second- class citizens. As such, abuse and violence against females became acceptable.¹⁷ The most extreme form of violence, killing of females, remains prevalent even today.¹⁸

Chamber, 1929).

13. See CONFUCIOUS, CONFUCION ANALECTS, THE GREAT LEARNING AND THE DOCTRINE OF THE MEAN (James Ledge trans, Dover Publications 1971) (1893).

14. Husbands were legally entitled to take concubines. Furthermore, concubines held a legal status in the family. See Kellee Tsai, *Women and the State in Post-1949 Rural China*, JOURNAL OF INTERNATIONAL AFFAIRS (Winter 1996).

15. Ironically, the practice of foot binding, even at its zenith, was never popular in the rural areas where women were expected to engage in physical labor outside the home. See ALISON R. DRUCKER, THE INFLUENCE OF WESTERN WOMEN ON THE ANTI-FOOT BINDING MOVEMENT 1840-1911, 181 (1981).

16. Furthermore, even if a girl was taught to read and write, she was discouraged from reading anything but the proscribed “Classics” such as *Nu Jie* (precepts for Women) since it was believed that reading anything else could corrupt her morals. Stories of famous literate courtesans throughout Chinese history tended to reinforce this notion. See Yao, *supra* note 10, at 87–89.

17. One scholar argues that once a culture sees women as being an inferior social class, women become legitimate victims of abuse. See Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311, 1315 (1991).

18. See Yao, *supra* note 10, at 90-96. For an excellent discussion of female infanticide in China, see Sharon Hom: *the Human Rights Specter and Thoughts Towards an (other) Vision*, 23 COLUM. HUM. RTS. REV. 249 (1992).

Through the ages, Chinese women survived as second-class members of society. Without any political power and lacking economic clout, Chinese women were powerless to elevate their status. With the 1911 Revolution which overthrew the Manchu Dynasty, the possibility of improvement surfaced in China.¹⁹ At the turn of this century, Chinese women were employed in certain positions such as textile workers and domestic servants, jobs which required no education. During the early years of the Republic, women began to receive education outside the home and a few pioneers secured professional jobs.²⁰ Foot binding was outlawed and polygamy discouraged.²¹ Universal education was first promoted in the Republic. However, few families allowed their daughters to receive an education. Most educational institutions open to women were all girl schools sponsored by missionaries in major cities. Even the more educated women were often not allowed to pursue a career after marriage. Due to its tenuous political hold on China, equality of the sexes was never a high priority of the Nationalist government.²²

B. Chinese Women Post-1949

To achieve victory against the ruling Nationalists, the Chinese Communist Party (CCP) believed that the existing social order needed to be undermined. Recognizing the need to equalize the status of all, the fledgling CCP focused on the majority of the Chinese population, who were peasant farmers. While Marxism does not explicitly address the issue of equality between the sexes, the CCP recognized that women, disproportionately underprivileged, needed to be included. Half of the peasants were women. Upon its establishment in 1921, the CCP adopted a policy of mobilizing peasant and working class women. The CCP gained these women's support by promising legal rights, educational opportunities and legal accountability.²³ Moreover, these opportunities

19. The 1911 Revolution ended China's imperial rule. However, as political power was never consolidated in any one group, the Chinese government was fractionalized and regionalist. Even if there had been a policy to end discrimination against women, no one government was able to carry out the policy.

20. See Margaret Y. K. Woo, *Biology and Equality: Challenge for Feminism in the Socialist and the Liberal State*, 42 EMORY L. J. 143 (1993).

21. See OLGA LANG, CHINESE FAMILY AND SOCIETY, 45-46 (1946).

22. Janice A. Lee, *Family Law of the Two Chinas*, 5 CARDOZO J. INT'L AND COMP. L. 217, 224 (1997). The Nationalist, or the Kuomintang, was the official government ruling China after the 1911 Chinese Revolution that overthrew the Manchu Dynasty. However, parts of China were controlled by various military commands under regional warlords.

23. See BOBBY SIU, WOMEN IN CHINA, 151 (1981).

were not limited to the political arena. The party encouraged women to contribute to the economic development of the new China; and in response, women joined the workforce in record numbers under the CCP rule.²⁴

III. LEGAL DEVELOPMENTS POST-1949

When Mao introduced Marxist reforms, it did little to change the status of Chinese women culturally. What it did accomplish was the elimination of legal discrimination against women. Through constitutional reforms in 1949, Mao succeeded in turning women into full-fledged citizens with all of the attendant rights therein. Among these changes were laws that allowed females to own property, to obtain a divorce, and to seek a formal education and training.²⁵ It also provided regulation aimed at preventing females from becoming child brides brokered through marriage.²⁶ While the immediate impact was not sweeping or drastic, the legislation enacted did serve to lay the foundation for providing and protecting basic rights for Chinese women for the first time in Chinese history.

Over the years, the CCP would reaffirm the rights first created in the 1949 Constitution. In 1954, when the Chinese Constitution was rewritten, Article 91 acknowledged the contributions of Chinese women by "guaranteeing women equal rights with men in all areas of political, economic, cultural, social and domestic life."²⁷ Despite these assurances in the Constitution, women in China had yet to enjoy "equal rights with men in all spheres" of life. Many of the promises laid out in the Constitution were aspirational and seldom enforced. Many of the so-called "rights" detailed in the Constitution were not accepted by society.²⁸ The best evidence of the disparity between what the laws

24. See Patricia Beaver, *Rural Chinese Women: Two Phases of Economic Reform*, MODERN CHINA, Apr. 15, 1995, at 207.

25. The 1950 Marriage Law denounced patriarchal authority in the household, granted both sexes equal rights to file divorce and outlawed marriage by sale and other venal practices involved in the negotiations of marriage; the Agrarian Reform Law recognized a woman's right to marry, divorce and own property; and the Labor Insurance Regulations of 1951 made much of the same promises. See Henry R. Zheng, *China's New Civil Law*, 34 AM. J. COMP. L. 669, 671 (1986).

26. See HARRIET EVANS, *WOMEN AND SEXUALITY IN CHINA* 168 (1997).

27. The full text of the 1954 Constitution may be found in ZHONGHUA REMIN GONGHEGUO FAGUI HUICIAN, 4-31 (1956).

28. See Ann D. Jordan, *Women's Rights in the P.R.C.*, 8 J. CHINESE L. 47, 57

promised and what society was willing to tolerate was the periodic need to enact more laws to address specific areas of discrimination.

A. Marriage Law

Before 1949, Chinese women did not have the right to choose their own marriage partner and once married, could not initiate divorce.²⁹ Marriages were seen as an alliance of two families. The decision was made by the parents of both the bride and the groom. Most couples never met until the wedding night. Although a man also did not have much say in the selection of his partner he had the option of taking concubines or divorcing his wife if he were unhappy with her. A woman did not have this option. The custom of extracting money from the groom's family as a bride price resulted in widespread practice of "mercenary marriages" where women, especially from poor families, were bought and sold as commodities.³⁰ To address these issues, China passed the Marriage Law of the People's Republic of China in 1950.³¹ This Marriage Law abolished all laws allowing arranged marriages and introduced the concept that marriage is a contract of choice. The Marriage Law grants the freedom as, "the provision of full rights to individual to handle his or her own matrimonial affairs without any interference or obstruction from third parties and without regard to social status, occupation or property."³² Despite the proclamations in the 1950 Marriage Law, consideration of class, social status and property continued to influence decisions on marriage. The consideration of "class" was especially important as marriage to a person with a "bad" social background virtually guaranteed the denial of access to good housing, jobs and education for the children.³³

In 1980, a new Marriage Law was enacted to promote certain government policies. This new version covers not only the legal formation and dissolution of a marriage, it also includes pronouncements on inheritance, family planning, custody, adoption and support obligations of

(1994).

29. See ELIZABETH CROLL, CHANGING IDENTITIES OF CHINESE WOMEN 96 (1995)

30. See ELIZABETH CROLL, CHINESE WOMEN SINCE MAO 74-75 (1983). For a different cultural perspective on "bride prices," see Adrien K. Wing and Eunice P. deCarvalho, *Black South African Women: Toward Equal Rights*, HARV. HUM. RTS. J. 64 (Spring 1995).

31. *Id.* at 75.

32. Wu Zhangzhen, "The principle of freedom of marriage should not be abused," *Guangming Ribao*, 1957.

33. As a communist state, China was purging its upper and middle classes. Those with that type of family history were considered an undesirable mate.

an extended family.³⁴ The drafters of this law gathered input from such diverse groups as the All China Women's Federation, the Ministry of Public Health and the People's Liberation Army.³⁵

The Marriage Law of 1980 reaffirms the principles of free choice in marriage and equal rights to divorce.³⁶ Under this new Marriage Law, Chinese women gained greater freedom to determine their fate in marriage.³⁷ Clearly, the pressures from family and society to marry the "right" person persisted. This is particularly evident when Han Chinese and minority Chinese intermarry. During the Cultural Revolution, it was also important to consider the "class background" of a spouse. Working class backgrounds were considered the most desirable and former landowners and capitalists were the worst candidates. Similarly, even though the right to divorce was granted, social pressure and practical considerations often prevented the couple from divorcing. One such consideration is the couple's housing. Housing in China is assigned from the couple's work unit. If the housing was assigned by the husband's employer, as is often the case, a divorce would leave the wife homeless. This problem is especially acute for couples in crowded urban areas. Often, estranged couples will stay married to preserve their housing.

The Marriage Law also clarifies that a man can become a member of a woman's family and vice versa.³⁸ This provision is a break from the century old custom that once a woman marries, she is automatically a member of her husband's family. Since family members have a legal obligation of support, including support of one's parents, this classification is vital.³⁹ The significance of this provision is especially notable in a country practicing a one-child policy. If the only child is female, the prospect of being left childless and without old age support is lessened with the possibility of the man becoming a member of the woman's family. In "adopting" a man into the family by marriage, the

34. See SWB, 23 Sept., 1980 (FE6530/C/1); *China Now*, Mar./Apr. 1982.

35. "Explanations on the Marriage Law (Revised Draft) and the Nationality Law (draft) of the People's Republic of China" Speech given at the Third Session of the Fifth National People's Congress on September 2, 1980 by Wu Xinyu, Vice-Chairman of the Commission for Legal Affairs of the Standing Committee of the National People's Congress.

36. *Id.*

37. See *China: Survey reveals problems with Marriage Law*, CHINA DAILY, Oct. 31, 1997.

38. Article 8 of the 1980 Marriage Law.

39. Article 15 of the 1980 Marriage Law.

drafters hoped to lessen the instances of female infanticide. Unfortunately, this provision may not be sufficient to overcome age-old prejudices.

B. The Inheritance Law

In addition to marriage, another area where women fared far worst than men were in their ability to inherit property. Chinese custom, reinforced by laws which did not allow women to own property, traditionally favored male heirs. Families sometimes provided for female heirs by granting them a right to live in the family home or a stipend. However, they did not inherit property outright.⁴⁰ While the 1980 Marriage Law does briefly state that husbands and wives may inherit property from each other, the law does not specify any details.⁴¹ This issue was finally addressed with the passage of the Inheritance Law.⁴² This law gave both men and women the right to dispose of their property in a will.⁴³ In the absence of a will, the inheritance law gave daughters and sons an equal right to inherit their parent's property.⁴⁴ The Inheritance Law also provided protection for widows, granting them the right to inherit from their deceased husband's estate. The protections granted to women under this law were further reinforced through the creation of laws such as the Law of the People's Republic of China on Protection of Rights and Interests of Women.⁴⁵ Chapter 5 of this law provides that "the state guarantees that women will enjoy equal right to property."⁴⁶ More specifically on the issue of inheritance, Article 31 provides that in the case of intestate succession, women shall enjoy equal rights as men.⁴⁷ Although the laws provide for equality in the case of intestate succession, there is nothing to prevent a testator from discriminating based on the sex of the beneficiaries in a will.⁴⁸

40. See Jordan, *supra* note 9, at 73.

41. Article 18 of the 1980 Marriage Law.

42. Law of Succession of the People's Republic of China (Oct. 1, 1985) Trans. In Laws of the People's Republic of China (1979-1982) (Beijing 1987)

43. *Id.* at Art. 16

44. *Id.*

45. Law of the People's Republic of China on Protection of Rights and Interests of Women, Chapter 5, Adopted April 3, 1992

46. *Id.*

47. *Id.* at Art. 31.

48. The right to inheritance was never a major issue in the early days of the People's Republic. Since there was little personal property to inherit and all real property was owned by the state, heirs had little to fight over. However, as China's economy progresses and the experiment with marketization has created a number of wealthy individuals, the issue of inheritance takes on new importance. With the One Child Policy, the issue of discrimination amongst heirs based sex may disappear of its

C. Employment Laws

From 1949 to the late 1970s, Chinese women were incorporated into the workplace in record numbers. During this era, women were encouraged to take on non traditional jobs outside the home.⁴⁹ The work assignment system responsible for assigning high school and college graduates was administered by bureaucrats who had little concern with matching talents of the students to the demands of the job. Men and women were often randomly assigned regardless of gender considerations.⁵⁰ Once assigned, however, women often received lower work points for the same job as their male counterparts.⁵¹

In the work place, women found employment conditions to be harsh. To address the workplace conditions, the Chinese government enacted the "Regulations Governing Labour Protection for Female Staff and Workers," in 1988.⁵² These regulations govern the conditions in which the women work. They address such details as how intense the labor may be depending upon specific physical conditions of women such as during menstruation, pregnancy and post partum. The laws limit the type of work an employer may assign to a woman employee during these periods and require them to provide maternity leave and child care facilities.⁵³

D. Women's Protection Law

The above laws address specific issues which affect women such as marriage, inheritance and labor. Despite the prohibitions to discriminate against women and pronounce their equality, vast differences between how men and women fared in each of these areas continued. As part of

own accord.

49. Although entry into the job market still depended upon the overall demand for labor, women were hired in factories and were assigned to work along side men in the fields. For further information on Chinese women entry into the work force, see Woo, *supra* note 21, at 143.

50. The system created many mismatched situations where English majors were sent to Botanical gardens and philosophy majors sent to toy factories. The author has met many of these assigned workers. For a discussion of the assignment system, see HILLARY K. JOSEPH, *LABOR LAW IN CHINA: CHOICE AND RESPONSIBILITY* 21 (1990).

51. See *Kang Keqing on Women's Role and Conditions*, BBC SUMMARY OF WORLD BROADCASTS, Mar. 9, 1979, available in LEXIS, Asiapc Library, Arcnws File.

52. For the text of The Regulations governing Labour Protection of Female Staff and Workers, see Croll, *supra* note 30, Appendix I.

53. *Id.* at Art. 11.

an effort to eliminate continuing discriminatory practices, China enacted a law for the protection of Chinese women. This law reiterates the equality of women with men in political, economic, social and family life and prohibits discrimination in any manner.⁵⁴ In 54 articles, this law essentially repeats rights which Chinese women should already be enjoying. Although the intent of these laws is to protect women, the impact of these laws may be very different.⁵⁵

Despite the assurances of these laws, equality of treatment remained illusive to Chinese women. Women continued to face many more obstacles to upward mobility than men. For example, for daughters, household chores were more important than homework; and private tutoring was almost always reserved for sons.⁵⁶ Although education was compulsory, females accounted for approximately 70 percent of China's illiterate and semi-literate population.⁵⁷ This disparity was even more acute in the rural communities,⁵⁸ and in the same period the differential between urban and rural rates of illiteracy among girls increased considerably while among boys it remained stable. As there is a direct relationship between education and economic empowerment, women still found themselves in lower-skilled and lower-paying jobs. Moreover, while the effort to assimilate women into the workforce was successful, women were not relieved of their traditional duties of cooking, housekeeping, and child care.⁵⁹ Thus, gender discrimination was never eliminated under the CCP rule. However, it was the CCP's reforms to the Chinese Constitution that at least, legally, promised equality between men and women. This was the legacy of the Marxist movement. The movement eliminated discrimination in theory, if not in

54. Law of the PRC on Protection of Rights and Interests of Women, promulgated on April 3, 1992, by the 5th Session of the Seventh National People's Congress. Article 1.

55. Margaret Woo has argued that these laws in fact, legitimize the disparate treatment of women in the work place by emphasizing women's biological differences. See Woo, *supra* note 21,

56. Many parents continue to see education as more valuable for boys than girls. Families with limited resources consider educating daughters to be a poor investment because traditionally daughters left their parents home after marriage. Another factor which reinforces the notion of not spending scarce economic resources for a daughter's education is that women generally make less money than a man, so there is less of a return on the family's investment. See Nancy E. Riley, *Holding Up Half the Economy; Chinese Women*, THE CHINA BUSINESS REVIEW 22 (1996).

57. Zhonggong Funu Tongji Ziliao [Statistics on Chinese Women] 63, (1991).

58. The rate of illiteracy in 1982 among girls of fifteen in the rural areas was ten times as high as the male rate; between 1982 and 1990 female illiteracy as a percentage of the total rose from 69.2% to 73.49%.

59. See Tsai, *supra* note 15, at 493-524.

practice, against women. This protective legislation, coupled with the new movement towards market practices, has led to unforeseen results for Chinese women in the workplace. These will be explored in the next section.

IV. MARKETIZATION AND DISCRIMINATION

If the gains for women under communism were more theoretical than real, under marketization the gains are anomalous at best. The resurgence of gender discrimination in China can be linked to the abandonment of strict economic controls following the death of Mao.⁶⁰ The subsequent movement from communism to privatization has given rise again to the subordination of women.

A. Hiring Practices

Before China's experimentation with market concepts, Chinese enterprises were not particularly concerned with whether a man or a woman was assigned to the job. Employers had very little control over the nature of their workforce. Under communism, the economy was fully centralized and government administrators exercised full control over most of China's enterprises.⁶¹ The government micro-managed these enterprises, deciding purchasing, production and labor practices. Managers lacked the authority to hire or fire workers.⁶² Workers were assigned based on the government's need to place graduates, not on the enterprise's labor requirements. Although both men and women were often misassigned under the poorly administered system, the work assignment system did have one merit: its very randomness was nondiscriminatory. Workers and managers received comparable wages, despite differences in job demands. Hard work did not produce more pay and incompetence did not result in firing. Under this planned economy, the government took away any profits and subsidized any losses.⁶³ This system took away incentives for enterprises to be

60. See Sheryl WuDunn, *Profit and Loss: China's Affection for Capitalism Erodes Gains in Equal Rights*, CHI TRIB., Sept. 20, 1992, at 5.

61. See PETER M. LICHTENSTEIN, CHINA AT THE BRINK 80 (1991).

62. See CHEN JIYAN, THE PLANNING SYSTEM IN CHINA'S INDUSTRIAL REFORM (Gene Tidrick & Chen Jiyuan eds., 1987). See also Anna M. Han, *China's Company Law: Practicing Capitalism in a Transitional Economy*, 5 PAC. RIM L. & POL'Y J. 462 (1996).

63. See ZHOU SHULIAN, REFORM OF THE ECONOMIC STRUCTURE, IN CHINA'S

profitable. In turn, the costs of labor and the efficacy of the workers were unimportant to these enterprises. Furthermore, because the workers enjoyed the "iron rice bowl," or life long employment, women, once securing a job, enjoyed job security and its benefits.⁶⁴ As China's economy continues to make its transition from state-owned enterprises into competitive businesses, profitability is now of paramount concern.

Discrimination against women in hiring has been on the rise as enterprise reform takes place. As enterprises reform, decentralization of management is occurring. Control is shifting from government bureaucrats to individual managers of the enterprises.⁶⁵ State, cooperatives and private enterprises are now assuming primary responsibility for recruitment and organization of their labor force.⁶⁶ Since enterprises face the prospect of either surviving by being profitable or extinction, and since selection of employees now bears a direct relationship to the bottom line, employers are seeking the cheapest labor.

With the focus on profitability, women are finding it more difficult to find employment which utilizes their training. Employers frequently refuse to hire women, or create obstacles by artificially raising entry requirements for female applicants. In a survey conducted by the All-China Federation of Trade Union, of 660 factories with 15,000 workers, only 5.3 percent of the employers indicated that they were willing to hire a woman for positions that are suitable for either a woman or man.⁶⁷

The explanation for this resurgence of discrimination against women is primarily economics. The benefits accorded to women under the various laws, such as maternity leave, on site child care facilities and exemption from hard labor during certain periods,⁶⁸ are viewed as legitimate reasons to favor male employees.⁶⁹ These costs are often considered burdensome by the employer. One survey estimated that the cost of pregnancy, medical care for childbirth and maternity leave would cost 1,259 Yuan per worker.⁷⁰ Another survey showed that a male

ECONOMIC REFORM (George Totten and Zhou Shulian eds., 1992).

64. See JOSEPH, *supra* note 51, at 53.

65. *Id.* at 139.

66. See Croll, *supra* note 30, at 119.

67. *Id.* at 120.

68. As discussed earlier, The Regulations Governing Labor Protection for Female staff and Workers provide very specific guidelines on the length of work, the intensity of work during menstruation, pregnancy and post partum periods for women employees. See Croll, *supra* note 30, at 96.

69. Regulations Governing Labor Protection of Female Staff and Workers, 1988.

70. At present exchange rate, the cost is approximately \$130 US dollars. Since the survey was conducted in 1988, it can be assumed that inflation has increased this amount.

worker could earn 10,600 Yuan more than his female counterpart if she were pregnant and involved in childbearing and caring over a period of two years.⁷¹ These numbers actually demonstrate that despite all the government subsidies, the female worker and her family bears the majority of the burden for having a child. While there is paid maternity leave in China, it is not at full salary. Although these numbers have never been verified, the benefits and rights conferred on women workers are now excuses for not hiring them. Without the government supplementing their coffers, companies have taken the position that the economic disincentives of hiring females outweigh their production. Even when employers hire women, the added costs of these benefits are used to justify paying them less than their male counterparts.⁷²

Whether Chinese women work on a farm, in a factory, or in an office, they still carry the primary responsibility of housekeeping and child care. This societal expectation in turn leads to the perception that once married, a woman will be less career-oriented. Whereas the communist system provided some support for working mothers in the form of "complete care" for children, the shift to marketization means an end to these government subsidized programs.⁷³ With the elimination of government subsidies, day care centers were one of the first things abolished by work units in order to control costs. Now women must not only enter the job market at lower wages than men, they do so without any of the previous child care support from the state. If a woman demands her lawful benefits, the private employer is likely to view the added cost as another reason to not hire or fire a woman. Efforts by Chinese women to assert their rights have met with very little success in Chinese courts.⁷⁴

Employers also have the perception that once married, a woman employee will have a child immediately. Often, they force women to

71. China Daily, 4 December, 1988.

72. It is a commonly held belief among employers and managers that women are less desirable workers because they will take advantage of the state-mandated maternity leave and take off from work for several months. This belief is undeterred by the lack of evidence for claims that firing or not hiring women has increased worker productivity. See Dusko Doder, *The Old Sexism in New China*, U.S. NEWS & WORLD REPORT, Apr. 24, 1989, at 36.

73. Working women were able to drop off infants and children at state subsidized day care centers at their work unit for the day and sometimes for an entire week. See Weil, *supra* note 4.

74. See Dele Olojede, *Chinese Woman Fights Family Planning Laws*, SAN FRANCISCO CHRON., Nov. 28, 1998, at C3.

sign contracts in which they promise not to get pregnant for a specified time.⁷⁵ If a woman breaks this contract, she is fined heavily for her pregnancy, even if it is illegal to do so under Chinese law. Ironically, the employer's assumption might be valid in China, where government policy only allows one child to every couple in most parts of the country. The one child policy increases the pressure on married couples to have an heir as soon as possible.⁷⁶ This will be especially true as the first generation born under the one child policy comes of age. The responsibility to produce a grandchild for both the husband's and the wife's family now rests solely on one couple. The couple does not have siblings who could provide the same result. As a result, a Chinese woman worker faces a conundrum: her employer wants her to refrain from becoming pregnant as long as possible and her family wants the opposite.

B. Surplus Labor

As China moves to dismantle its bloated state-owned enterprises (SOE's), scores of redundant workers are being laid off. Women are bearing a disproportionate share of the cost of this reorganization. Married women, older women and women with children are often the first to be dismissed.⁷⁷ Women account for a far greater percentage of workers labeled surplus than their actual representation in the industry.⁷⁸ At least one survey showed that of 660 enterprises that classified some workers as surplus, 64% of the surplus workers were women.⁷⁹

In the past, Chinese government controlled employment and accounted for all profits and losses of the state-owned enterprises. However, with marketization, private enterprises are no longer supplemented by the government, and the viability of a business depends on efficiency and profitability. As such, market forces have become the justification for employment discrimination against women. Often, the elimination of surplus women workers is also justified on the grounds that they can be supported by their parents and husbands, making women economically dependant on others, mostly males, again. In a country where the labor

75. See WuDunn, *supra* note 61.

76. The Chinese understanding of any policy is that it is subject to change. Therefore, to enjoy any permissive policy, the key is always to take full advantage before any change.

77. See Croll, *supra* note 30, at 120.

78. See OD ASLANGBEIGI, STEVEN PRESSMAN, AND GAYLE SUMMERFIELD, *WOMEN IN THE AGE OF ECONOMIC TRANSFORMATION* 121-22 (1994).

79. See Gale Summerfield, *Effects of the Changing Employment Situation on Urban Chinese Women*, *REVIEW OF SOCIAL ECONOMY* (1994).

supply exceeds employment opportunities and the majority of the decision makers are male, supply and demand have become the faceless perpetrators of the subjugation of Chinese women.

C. Education

The Chinese are not unaware of the disparity in pay and treatment of women workers. As such, this is the beginning of a vicious cycle. Chinese families are working with declining resources and facing increasing costs of education. As they perceive the difference in earning powers between men and women, the emphasis on education has shifted to educating the males within each family.

Although compulsory education exists in China, schools are charging ever higher fees for books and "extras." Unable to bear the brunt of these price increases, children in rural areas are dropping out of school in record rates.⁸⁰ Eighty percent of these dropouts are girls.⁸¹ Furthermore, enrollment rates are not the same as attendance rates. There is evidence that sporadic attendance, drop out and non attendance rates of girls are significantly higher than their male counterparts.⁸² Up to 70% of China's illiterate and semi-literate population is female.⁸³

Women are also prevented from receiving higher education. At this level, discrimination takes the form of higher scores in entrance exams to educational institutions.⁸⁴ The higher scores limit the number of female entrants and in turn, limit the number of qualified women who are receiving more advanced education and training.⁸⁵ Once trained, they are also prevented from fully utilizing those skills due to employment discrimination.⁸⁶ The effect of these discriminatory practices in education is that half of China's population does not have the opportunity to learn the skills necessary to contribute to its economy to their maximum potential. The ability to academically excel and

80. In 1990, 4.8 million children, mostly in rural area, dropped out of school.

81. See Croll, *supra* note 30, at 96.

82. *Id.*

83. The Report of the People's Republic of China on the implementation of the Nairobi Forward-Looking Strategies of the Advancement of Women, Beijing, China 1994.

84. See Croll, *supra* note 30, at 134.

85. Only one third of the university slots are open to women. See WuDunn, *supra* note 61.

86. A woman who graduated from a well respected university with a economics degree is teaching aerobics because she could not get employment in her field. *Id.*

potentially be employed in a professional field is lost on these girls. As this cycle continues, the notion that girls should remain ignorant and are of little economic value will become a reality.

V. RAMIFICATIONS OF CAPITALISM

In addition to the bias in hiring, pay and retention, emerging forms of discrimination against women have begun to sprout out of China's experiment with marketization. Communism discouraged makeup and fashion as bourgeoisie. Men and women wore the uniform of the Mao suit and generally had simple hair cuts. The uniformity of dress promoted equality amongst women regardless of age and appearance.⁸⁷ With marketization, the notion of advertising to gain market share has become increasingly popular.⁸⁸ As companies, especially consumer oriented ones, strive for their market share, there is an increased emphasis in hiring workers who are young and attractive. It is not unusual to see ads seeking employees specifying that the applicant must be "young, female and attractive."⁸⁹ While the introduction of individualism in clothing and appearance is not necessarily an evil in itself, this has led to discrimination based on appearance of the worker by employers, even when the worker's gender and appearance are unrelated to job performance. One ad indicated that women needed to be between the age of 18 to 25 for a waitress job.⁹⁰ Chinese women must compete with each other for jobs in a way that was not necessary under the earlier communist state.⁹¹ Women in the workforce face not only bias based on gender, but also a prejudice centered on physical attractiveness. Attractive women are now considered commodities in Chinese Society.⁹²

87. Mao sought to eliminate class distinction and encourage equality though "socialist androgyny." Although this program was successful it was at the cost of personal freedoms. See Evans, *supra* note 27, at 227.

88. A survey of 1,197 television commercials for two days each month from August 1 to December 31, 1991 showed that 33.7% were gender biased, showing women as helpless without men, insatiable shoppers and constantly worrying about their hair and makeup. Of 957 characters, 54% were female and of those, 87% were young attractive females. See Xiong Lei, *China-Media: T.V. Ads Depict Women as Helpless and Weak*, Interpress Service, April 29, 1997.

89. See WuDunn, *supra* note 61, at 5.

90. See Jennifer Lin, *Women Suffering High Unemployment in China*, THE NEWS AND OBSERVER, Mar. 24, 1998, at A6.

91. Mao and the CCP considered make-up and attention to physical appearance as evils of a bourgeois society. See *Id.*

92. For example, at the opening banquet of the Met For als Exchange, 50 attractive, seductively dressed women were brought in to dance with the guests. See WuDunn, *supra* note 61.

Along with marketization, crimes against women are now on the rise. Abductions for prostitution and other forms of enslavement are among the many violations of rights women suffer under Mao's constitutional reforms. China's one-child policy coupled with its cultural bias toward males has refueled infanticide of females.⁹³ The resulting disproportion in marriageable females has, in turn led to the abduction and sale of women.⁹⁴ As China's economy booms, women from rural areas, lured by the prospect of better job opportunities in the cities, migrate away from their families. They leave their families in part to alleviate a burden and in hopes of economic independence. They are the easiest targets for abduction into prostitution or forced marriage. Even when they obtain work, it is often at substandard wages because these women are not aware of their rights as employees. Since there is always another new worker ready to replace them, the women seldom complain of poor working conditions or other forms of exploitation. The legal system is also poorly equipped to enforce their rights. The workers' paradise envisioned by Marx is far from the reality in China.

VI. CONCLUSION

While the overall impact of China's economic experiment has been positive for the country as a whole and for the urban Chinese in particular, its impact on Chinese women is anomalous. Since 50 years of communism with all of its demands for equality was insufficient to

93. Through the advent of technology and the pressures of China's one child policy, a new form of infanticide has been created. Now that families can determine the sex of the fetus, female fetuses are being aborted so that families can have male children. Hospitals in Shanghai deliver, on average, 125 male babies to every 100 female babies. As in feudal China, the reasons behind infanticide are economic. Men make more than women so families believe that wealth accumulation and ensuring economic stability during old age are better served through the birth of boys. If only one child is allowed, for some Chinese families, the need to "carry on the family name," is also an important factor. Although Chinese women do not change their last name to that of her husband's, the children (or in most cases, the child), carry the father's name. See Dusko Doder, *supra* note 75. As technology allows predetermination of the child's sex prior to insemination, it will be interesting to observe China's birth statistics.

94. Given the shortage of women of marriageable age, there has been an increase in the number of women abducted for sale into marriage and prostitution. As an example of the openness and acceptance of these crimes, one report indicates that women were lined up against a wall with prices written on them. Local villagers see nothing wrong with the sale of women or feel that the husband should not be penalized if he has already paid for a wife. See Evans, *supra* note 27, at 168-74.

eradicate discrimination and centuries old prejudices, the new marketization policy has served to rekindle these prejudices. Many advances made during the early years of communism have been negated by the introduction of a market-driven economy. Women are being deprived of their constitutional right to equality simply because market forces view them as more costly workers. In turn, education is being diverted away from girls. With lesser education, women will become less desirable workers and less likely to occupy higher paid positions. Added to the mix is the increase in crimes and resurgence of exploitation of women in other areas. Chinese women must wonder if this experiment is at their expense. The government has done little to study the ramifications of China's flirtation with marketization, specifically the long term effects of economically marginalizing women. As China forges ahead, it can scarcely afford to ignore the widespread unemployment among women, exploitation, and the whole spectrum of social dysfunction that comes with moving from a communist to a market economic system. At this stage in China's development, most women are not receiving their share of the benefits from China's new economic policies, and yet they must continue to hold up more than half the sky.