

The manifestation and enlightenment of the married women's property inheritance right in modern China

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Abstract: In traditional Chinese society, women have neither the right to inherit patriarchal property nor the right of inherit property. In the Republic of China period, with the rise of the thought of equality between men and women and the promotion of women's economic and political status, the call for equal rights of inheritance between men and women became more and more fierce. Based on the in-depth study of women's property inheritance rights in modern China, this paper summarizes the problems of the implementation of women's property inheritance rights, provides specific reference for improving the modern Chinese inheritance system, and contributes to improving the modern Chinese legal system.

Keywords: Female inheritance right; Women's rights and interests; Equality between men and women

1. Introduction

In traditional Chinese society, women have neither the right to inherit patriarchal property nor the right to inherit property. With the rise of the thought of equality between men and women and the promotion of women's economic and political status, the call for equal rights of inheritance between men and women became more and more fierce. Different from the compromise legal provisions in the late Qing Dynasty and the early Republic of China, the Civil Code of Inheritance issued by the Modern Chinese government denied the traditional patriarchal inheritance and clarified the female property inheritance right in legislation, opening a new chapter of modern inheritance system in China. Through the in-depth study of women's property inheritance right during the period of Modern Chinese government, we can understand the practice of married women striving for the right of inheritance of property in modern China, which will bring certain reference for the improvement of China's modern inheritance system and contribute to the improvement of China's modern legal system.

2. The historical evolution of traditional female property inheritance right

2.1 The performance of female property inheritance from Song Dynasty to early Qing Dynasty

The law of Song Dynasty clearly divided the inheritance rights and status of different women. In "Song Xing tong", the article on "household assets" stipulates: "In a household, the estate belongs to the daughter. If the patriarch has a will before his death, there is no need for this order. A married woman can be divided into one third of the virgins, and a daughter who returns to the clan is basically equivalent to a daughter in the virgins, and the remainder of the decree resigns punishment." It can be seen that women in the Song Dynasty can be divided into Virgo, married women and returned to the Zong women, different status has different inheritance status.^[1] Professor Wang Yang put forward the specific performance: "The daughter in the house can get half of the wealth of the male"; "A widowed concubine, a virtuous woman, can inherit her deceased husband's estate." The law of the Song Dynasty stipulated women's right to inherit property in case of divorce, which was a significant progress of the female inheritance system in ancient China. By the Ming Dynasty, unlike the Song Dynasty, widows no longer had the right to inherit their deceased husband's property, and legally only had the right of temporary possession and the right to issue an heir. At the end of Ming Dynasty and the beginning of Qing Dynasty, with the deepening of feudalization, inheriting inheritances, as another development of the estate system, began to prevail. According to the law of the Qing Dynasty, "If a woman's husband dies and has no children and keeps his will, the husband shall share the inheritance. The

patriarch must choose a successor who is equivalent to Zhao Mu. The remarried person shall have the property of the husband's family, and the original makeup, and the former husband's family shall be the main one."

2.2 Provisions on female property inheritance rights in the Draft of the Civil Law of Qing Dynasty

The People's Law of the Qing Dynasty was drafted during the period of the ruling crisis of the late Qing government, when the Qing government tried to save the precarious rule of the Qing government by reforming the law and revising the law. The reform and revising the law were influenced by the controversy over the rites and laws at the end of the Qing Dynasty, and the legal circle in China was divided into two schools: the Shen school, which supported the reform and the anti-Shen school, which opposed the reform. The Qing government hired Japanese jurist Matsuoka Yoshimasa as a consultant on civil legislation. Considering that civil legislation should not only conform to the universal laws of the world, but also reflect the Chinese tradition and national conditions, he decided that the general provisions of the Civil law, creditor's rights, and fundamental rights should be responsible for the revision of the Law Office. The family and inheritance list should be placed in the hands of the Ritual School.

Therefore, based on adhering to the traditional concept, the museum copied the legislation of other countries. For the first time, the concept of "inheritance" was clearly used in the legal provisions, and the identity of female inheritors was affirmed at the legislative level for the first time. At the same time, the word "inheritance" only refers to the inheritance of property, and the inheritance of status (inheritance of ancestral property) was hidden in the list of relatives. However, if we study the relevant provisions of the Draft Law of the Qing Dynasty carefully, different conclusions can be drawn. Article 1463 of the Draft of the Civil Law of the Qing Dynasty states that "if there is a mother, if the heirs wish to divide the property, they must obtain the mother's permission. But if there is another testamentary, follow his will.", which can be seen as safeguarding the parental authority of the traditional family system. Article 1466 stipulates that the direct subordination of the decedent and the preference of the closest relatives to inherit property. The same rule applies to the descendants. The subsequent son can still inherit the property as a successor, in fact, it vaguely reflects the meaning of inheriting the patriarchal property.^[2] Article 1467 "If a woman's husband dies without a son and keeps his will, he shall inherit the inheritance that his husband should inherit and become the heir." And Article 1468: "A person without a successor to the preceding two articles shall be the inheritor in the following order: (1) husband or wife... (5) Own daughters."^[3] In fact, it is a secret traditional inheritance system, the subrogation of widowhood is accompanied by "Shou Zhi" requirements, and the inheritance of the daughter is placed last. The widow and daughter are "inheritors", not "inheritors". This way of dividing heirs is no different from the property inheritance system under the traditional patriarchal inheritance system.

3. The property inheritance right of married women

In ancient Chinese society, it is generally believed that married women are no longer members of the mother's family, so they do not enjoy the inheritance right of the mother's heritage, and only in special circumstances can they enjoy part of the inheritance right. "Song Xing tong" stipulates, "Please read it carefully, in the future, all the shops, livestock, assets, and virtues, all married women have access to a third, the rest into the official."^[4] In the Song Dynasty, if only married women in the mother's family, they could only share one third of the mother's property. In addition, the Song Xing tong also stipulated that "From now on, if the people and people of all colors die, there will be no men, and there will be no women, and those who have been married will get the assets." In the meantime, if there is a desire, filial piety is not complete, and the husband conspired to rob, the committee is strictly picketed by the chief officer, if there is this color, not to give the limit." There are a lot of restrictions on the matrimonial inheritance of the married woman. To sum up, the premise of a married woman inheriting her mother's inheritance in the Song Dynasty was that there was no male offspring, her inheritance share was also limited, and the consideration of filial piety for the heir (married woman) was also one of the standards. Yuan Dynasty on the inheritance of married women to continue the law of the Song Dynasty, "there is no other family should succeed... The household field house is divided into three rates: one point is equally divided with the woman, and the remaining two points are difficult to discuss the official property adoption to help the orphan poor..." As in the Song Dynasty, married women could only inherit one third of the share, and the rest had to be handed over to the government. Until the Ming and Qing Dynasties, the law did not reflect the relevant rights of married women. Still,

through the Ming and Qing laws limiting the right to inherit in the virgin and expanding the scope of the issue, we can see that the inheritance rights of married women in the Ming and Qing dynasties were also minimal.

4. The disputes of married women over the inheritance of their mother's family's practice

Whether married women enjoy the right of inheritance is essential in the concrete practice of female inheritance. Wuhan Ministry of Justice 17 years Jiezi No. 7 admitted that strictly distinguish the inheritance of patrimony and property inheritance, unless the decedent left a will before his death, the son can enjoy the right of inheritance before the daughter. However, the Nanjing Supreme Court put forward the opposite opinion in the 17th Jiezi No.34: only unmarried women enjoy the same property inheritance rights as the men of the family, which is a clear limit on the scope of female inheritance. 17th Jiezi No. 47 states that unmarried women have the same right to inherit their father's family property as their siblings. The married woman has obtained part of her mother's property because of marriage, so she has no right to inherit the estate. Seventeen years answer word No. 9 reply letter put forward: married women and return to the family because of the unequal status of men, so do not enjoy the right of inheritance does not violate the spirit of "equality between men and women". This is the affirmation of seventeen years solution word No. 47. The above interpretation set off strong opposition in the academic circles at that time, some scholars evaluated as: "His ownership of the property is fundamentally uncertain, and if the property is not sure, it is easy to dispute and litigation is an inevitable event, so it is better not to give the uncertain property, avoid disputes, if it is given, it will cause disputes and destroy the relationship between flesh and blood." This put a lot of pressure on the authorities, so the Judicial Yuan proposed to redefine women's property inheritance rights, requiring that women should have the same property inheritance rights as men, whether they are married or not. The Supreme Court of the National Government of Nanjing interpreted the restriction of women's right to inherit property as unmarried women, a historical reversal of legislative interpretation. The reason may be that female power is a resource that can be exploited due to the struggle between various political forces. The Resolution on the Women's Movement was conceived so that more women could participate in the revolutionary movement. Still, to avoid the use of women by the counterrevolution, the Supreme Court chose to interpret the Resolution as a compromise and restriction between law and reality, perhaps to achieve some balance between law and custom.

5. Reflection on the change of female inheritance system the period of Modern China

5.1 Strengthen the cultivation and popularization of women's legal consciousness

The foundation of the "Civil Law Succession" is Western legal thought. The concept of equality between men and women may have become a world trend at that time, but it seems difficult to adapt in China, which has upheld the traditional idea of male superiority and female inferiority for thousands of years. In the legislative activities, copying Western legal provisions could not fit in with the reality of Chinese society, resulting in the effectiveness of legal provisions needing to be better played out. The idea that women in traditional society did not enjoy inheritance rights also restricted women at that time. Even if the law gave them rights, they would not actively fight for them. Many factors contributed to this situation, whether they did not understand the provisions of the law or did not dare to claim it out of fear, strangeness and fear.

On the one hand, at that time, due to economic or other reasons, the proportion of female education was low, and the number of women receiving higher education was even less. Under such social reality, it is impossible to force women to have a sense of rights or even to fight for them boldly. On the other hand, the traditional Chinese society advocates "no litigation", the idea of "taking a step back from the sea" makes people tend not to take litigation in the face of disputes. At that time, it was more difficult for women to have the courage to file a lawsuit, and they faced more criticism and pressure than men. Equality between men and women will affect the overall progress and development of the society, and achieving equality between men and women has always been the ideal social state that we pursue. The feudal idea that men are superior to women still exists in many remote and backward areas of China, and the shackles of "family concept" imprison women to defend their rights and interests. To better promote the development of women's independent status and truly implement women's property inheritance rights, it is necessary to awaken women's independent subject consciousness and proper consciousness, and strengthen the cultivation and popularization of women's legal consciousness. So

that women can learn to use the law to protect their rights and interests through understanding the law, we should increase the ways and opportunities for women to contact the law. The education of law popularization should be rooted in everyone's heart out of the book. Only in this way can the feudal concept be eradicated from its roots and gender equality be promoted.

5.2 Adhere to the legal value orientation to guide the folk concept

The authority of law means that it must be able to uphold backward folk ideas to conform to social reality. The government cannot preach the equality of men and women verbally, but after gaining the support of the majority of women, it upholds feudal ideas everywhere in legal practice. It must recognize the premise of equality before the law stipulated by the Constitution and carry out the succession system reform. The policy of male superiority should not be retained in inheritance, women should not be forced to give up their rights for the family harmony. In that case, the Constitution's stipulation of equality before the law will become empty words. In the face of the inconsistency between the legal value orientation and the folk concept, legislators should adhere to the legal value orientation to guide the change of the folk concept. They can guide the public through law popularization and legal education, provide powerful and convenient support for women's lawsuits, and truly safeguard the equality of men and women and their rights and interests. At the same time, legislators can issue targeted provisions based on typical social practice situations. For example, married women do not bear the obligation to support their parents according to traditional customs. The Inheritance Law of the People's Republic of China (promulgated in 1985) stipulates that heirs of the same order generally have an equal share in the estate distribution. Still, they can be adjusted according to whether and how much they have fulfilled the maintenance obligations. This reflects the coordination between social reality and folk customs when upholding the legal value orientation of equality between men and women. This does not violate the principle of equality between men and women, but it also considers the expression of folk customs and realizes the unity of rights and obligations.

6. Conclusions

In ancient China, the protection of women's inheritance right has always been missing, especially the inheritance rights of married women to their mother's family, which needed attention. With the popularity of gender equality and the rapid development of China's economy, relevant laws and regulations have gradually improved. It is helpful to promote the maturity of China's property inheritance system to study the practice of married women fighting for their mother's property inheritance right and get inspiration from it.

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