

The Jurisprudential Basis and Developments of Gender Equality Laws: Based on The Current Legislation of China and Korea

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Abstract. In recent years, in the Asia-Pacific region, more and more people have begun to pay attention to gender equality, and the conflict between the historical patriarchal concept and the gradually awakened feminism. The research object of this paper is the Asia-Pacific region. This article examines the most recent developments in gender equality legislation, using South Korea and China as examples. Topics covered include employment equality, gender issues in family law, and the rights and interests of genders other than men and women. This paper uses the methods of literature analysis, case analysis, comparative research, and historical analysis. The conclusion of this paper is that the social environment has become more equal in terms of gender, and there are more and more perfect laws to ensure gender equality. However, due to the deep-rooted backward concepts formed by historical and cultural reasons, the concrete implementation and execution of gender equality laws in the real society are hindered. There is still room for improvement.

Keywords: Gender Equality Laws; comparative research method; social issue; women's interests and rights.

1. Introduction

Gender equality is a social issue of great concern in the world, especially in the Asia-Pacific region. The history, geography, customs, culture, religion, laws, and unique circumstances of every community can all have a significant impact on attitudes toward gender equality [1]. According to feminist jurists, laws made by men tend to have strong patriarchal undertones and marginalize or neglect the unique needs of women. Women continue to be a minority in the legislative body, despite the fact that the current situation has improved and the male dominance in it has not fundamentally changed. To some extent, legislative gender assessment can highlight the drawbacks of the current situation and compensate for its flaws. The All-China Women's Federation has pushed the establishment of gender review systems for laws and policies in the majority of the provinces and cities in nation. Gender-based evaluation of local laws and regulations has progressively developed into a trend that “forces” the nation to create a legislative gender [2]. A 15-year-old boy was ostracized by teachers and classmates because he showed that he liked to do “what girls like”, and suffered from campus bullying and death. This kind of gender discrimination has led to very serious consequences and has also aroused people's attention to gender equality. But could millennia-old patriarchal ideas be changed by feminism? Can the newly awakened feminism succeed in its fight for gender equality on the basis of societies that have been dominated by patriarchy for so long in the Asia-Pacific region? Does feminism alone need a gender-equal society? The discussion and research on these issues are very meaningful to promote the development and perfection of gender equality law. This study is based on the current gender equality law and social jurisprudence basic research on the latest progress of gender equality law in China and South Korea. This study mainly compares China and South Korea in terms of gender equality law. Firstly, it clarifies the concept and definition of gender equality law, then compares the social legal basis of China and South Korea, and then compares and analyzes the current legislation of the two countries, so as to study the future development direction of gender equality law.

2. Analysis on the Legal Basis of Gender Equality

2.1. Legal Basis Concepts and Definitions

Everyone, regardless of gender, has an equal right to the full enjoyment of their human rights and the ability to take part in and profit from social, cultural, political, and economic advancement. This is known as gender equality. Gender equality indicates that men, women, and non-binary genders are equal in personality, dignity, and value, and that they have equal rights, opportunities, and responsibilities in all areas. It does not imply that various genders are generally the same. All people, regardless of gender, will be able to freely develop their skills and make their own decisions without being constrained by stereotypes, strict gender norms, and prejudices; the behavior, tendencies, and needs of various gender groups will be equally taken into consideration, valued, and supported; various gender groups will have equal access to and control over social, economic, and political resources; no one will face discrimination or bias due to their gender; and all genders will be treated with equal respect. Gender is no longer a criterion for determining an individual's worth; rather, it is a broad notion that encompasses biology, society, psychology, and other fields.

2.2. The Jurisprudential Basis of Gender Equality in China

The history of gender equality in China can be traced back to ancient times and has shown different features and progress in different periods. In China, gender equality usually refers to men and women.

The Xia Dynasty, which is the first dynasty in China, was an important period in Chinese history, marking the transition from a primitive society to a class society. During this period, the social structure and cultural concepts began to change significantly. However, the concept of gender equality was not reflected in the Xia Dynasty. Instead, the establishment of the Xia Dynasty marked the collapse of the social system of "universal equality" in the primitive society and replaced it with a slave society, in which there were obvious class divisions. This change in social structure made the concept of gender equality not applicable in the social environment at that time. It was also the period that laid the foundations of a patriarchal society in China for thousands of years to come.

During the Western Zhou Dynasty, the gender relations and family structure of Chinese society were influenced by the Zhou Rites, forming a patriarchal system in which the family and the country were integrated. This system established the dominant position of men in society and the family, while women were in a subordinate position. During this period, there was a clear division of social and family roles between men and women. Men were mainly responsible for foreign affairs and public affairs, while women were mainly responsible for family and private affairs. This division was not only reflected in social roles, but also in family life, forming the so-called "men outside and women inside" model, which is still recognized and practiced by many people today. In addition, the marriage system, inheritance rules, and family structure of the Western Zhou Dynasty reflected the principle of male superiority and female inferiority, and women's status in the family and society was relatively low, lacking equal rights and opportunities. In both familial and national affairs, the father figure assumes a central role. Mencius and Yue Fei's moms, among others, are praised as excellent mothers who gave birth to outstanding men [3]. Starting from this period, women are not granted the equal rights as men in terms of social and political authority, including the rights to autonomy, politics, and parenthood. Women's rights vary depending on the husband, the father, or life stage. One must have existed for the son of a child who has not married his father but has married his husband and passes away from him. A guy defends and speaks for himself. Independent human rights are not granted to women. The state forbids women from taking part in sports restrictions due to force maintenance [4]. This idea is still shared by many people today, not only men, but also many women who have become accustomed to patriarchal oppression, and who are even more determined than men to uphold this idea and model.

Although the status of women in China's long history has been enhanced in some periods, women's rights have been guaranteed, and even a female ruler appeared in the Tang Dynasty, it was not until modern times that the concept of gender equality began to appear, and women began to truly awaken,

fight for and defend their human rights. The first law to accept gender equality in China was the Constitution of the Chinese Soviet Republic, this outline of the Constitution was adopted at the First National Congress of Chinese Workers, Peasants and Soldiers, held in Ruijin, Jiangxi Province, on November 7, 1931, marking the first law in Chinese history to embody the tenet of equality between women and men. The outline stipulates: "Workers, peasants, Red Army soldiers, and all working and laboring people and their families, regardless of gender, race, or clan, are equal before the law of the Soviet regime, and are citizens of the Soviet Republic." This provision clearly recognizes the freedom of marriage, implements various measures to protect women, and enables women to gradually gain the material basis to break free from domestic chores and participate in the political, economic, cultural, social, and family lives. The implementation of this law provides a legal basis for protecting women's rights and interests in politics, economy, culture, society, and family, and reflects the importance and support for gender equality. Since then, gender equality has been formally included in the legal field. China's gender equality legal framework is centered on the "Law of the People's Republic of China on the Protection of Women's Rights and Interests", which clarifies the basic principles of protecting women's rights and interests and the government's responsibilities. In addition, there are labor laws, marriage laws, etc., which ensure that men and women have equal rights and opportunities in the workplace, family and society, and assume corresponding responsibilities. However, Gender prejudices are likely to persist throughout time due to the cultural norms that are passed down through generations, even after the historical conditions that gave rise to them have mostly disappeared [5].

2.3. The Jurisprudential Basis of Gender Equality in Korea

Like most countries in Asia and the Pacific, South Korea has also experienced a long patriarchal society. The women's rights movement in South Korea can be traced back to the early 20th century, when South Korea was under Japanese colonial rule. South Korean women took an absolutely just position and united to oppose colonial rule and gender inequality. The main organizations were "Women's Reform Association" and "Women's Independence Association", which actively promoted women's education and improved the social status of South Korean women. After Japan's surrender in 1945, South Korea gained independence, and without the help of the women's rights movement, it may not have achieved equal pay for equal work. In the anti-dictatorship movement from 1961 to 1987, women's rights organizations became a force that could not be ignored, promoting political reform and profound changes in social awareness.

However, in the early 1990s, the feminist movement began to deviate from its original goal and even evolved into a kind of cult-like organization. During this period, the feminist movement was no longer limited to the fields of employment and family, but was influenced by capitalism and consumerism. Feminism began to be associated with consumerism, and many women morally blackmailed their partners to bear their expenses. This phenomenon has evolved into an online "gender war". Scholars claim that youth-focused online communities like Megalia and Ilbe, where a narrative of gender-based divide circulated and endured, are the origins of the cultural war. Misogyny and the "manosphere" have both grown in popularity. Founded in 2010, Ilbe has been instrumental in spreading hate speech, gender trolling, and even violent threats directed at preventing women from participating fully in society. For example, this infamous gang used phrases like "kimchi girls" and "soybean paste girls" to disparage women and portray them as excessively indulgent and self-centered. Their objective was to uphold the traditional, submissive responsibilities of women by maintaining strict gender boundaries. Together with other conservative organizations, Ilbe propagated victim narratives and frequently channeled the negative feelings of young men toward women and feminists [6].

Over time, women, on the one hand, rely on the funds provided by men and, on the other hand, constantly ridicule Korean men, leading to a backlash among Korean men. Some men who originally supported women turned to more traditional and feudal views of women, which Korean women could not tolerate, so they began to move to extremes, leading to social division and gender polarization.

This idea seems to be for the sake of women, but in fact, it puts women in the position of "ornaments" that cannot be independent and cannot create value for society. It regards women as weaklings who can only rely on men. In essence, it still regards women as accessories of men. It is not true gender equality.

3. Comparison of Current Legislation between China and Korea

3.1. Current Legislation in China

China's current gender legal system is mainly composed of the Law of the People's Republic of China on the Protection of Women's Rights. This law aims to protect gender equality and promote equal rights for men and women in politics, economy, culture, society and family. Women's legitimate rights and interests are outlined in detail in the Law of the People's Republic of China on the Protection of Women's Rights and Interests, which also advances gender equality and the holistic development of women. The law highlights that women have the same rights as men in every way and that gender equality is the fundamental national policy of the nation. The state takes the required actions to end all types of discrimination against women and safeguard their legal rights and interests.

Men and women around the world continue to accept domestic abuse as the standard [7]. In order to combat domestic violence, China enacted the Anti-Domestic Violence Law in 2016. The law offers pertinent protective measures and relief processes with the goal of shielding women and children from domestic abuse. Protecting women's rights and interests and advancing gender equality have both benefited from the law.

In addition, there are labor law and marriage law. Labor law stipulates that women have equal rights and interests in employment, labor remuneration and vocational training, which promotes women's equality in the workplace. Marriage law clarifies the status of women in marriage and family, and ensures women's marriage and property rights.

3.2. Current Legislation in Korea

Through the Basic Law on Gender Equality and the First Basic Plan on Gender Equality Policy, the South Korean government aims to narrow the gender gap, balance family and career, respect differences and human rights. Korean women have a significant desire to safeguard their employment opportunities following marriage and childbirth. In summary, there are two powerful competing factors in Korea: the role conflict experienced by working moms and the costs associated with full-time mothers' professional opportunities [8]. Therefore, these policies specifically emphasize the rights and responsibilities of men in childcare, including policies on male single-parent family support and the use of male parental leave. The implementation of these measures reflects the importance of gender equality and family responsibilities in Korean society and aims to promote equal participation and development of both genders in the family and workplace.

At the same time, the Supreme Court of South Korea recognized the right of same-sex couples to enjoy state medical benefits, based on the recognition of the fact marriage. Although South Korea has not legalized same-sex marriage or same-sex couples, the Supreme Court, based on the formation of a community of life, believes that same-sex couples have the same right to enjoy state medical benefits as heterosexual couples. This ruling is considered to be the first recognition of same-sex fact marriage in South Korea.

In addition, South Korea has also passed a historic ruling that allows parents to determine the gender of the fetus at any time during pregnancy. This change reflects the openness of society to gender selection and the weakening of traditional ideas of male preference. This change is based on the improvement of women's social-economic status and the enhancement of gender equality awareness.

3.3. Comparative Analysis

It is evident by comparing the definitions of gender equality in China and South Korea that the former focuses mostly on equality between men and women, while the latter focuses primarily on gender equality between men and women. The definition in South Korea is more comprehensive and protects gays' rights and interests. Both China and South Korea were patriarchal societies, so they paid more attention to the protection of women's rights and interests in promoting gender equality. However, it can be seen from the current legislation of the two countries that China promotes women's status by protecting women, while South Korea guarantees women's legitimate rights and interests by treating men equally. Take the workplace as an example, article 29 of the People's Republic of China Labor Law prohibits employers from ending employee contracts while a worker is pregnant, giving birth, or nursing a kid. Article 4 of the Provisions on the Labor Protection of Female Employees states that a female employee's basic pay cannot be decreased while she is pregnant, giving birth, or nursing a child, and her employment cannot be terminated. According to Article 27 of the People's Republic of China Law on the Protection of Women's Rights and Interests, no unit may unilaterally terminate labor (employment) contracts or service agreements, lower the wages of female employees, or fire female employees for any reason, including marriage, pregnancy, maternity leave, or breastfeeding. Nonetheless, female employees have the right to end service or labor contracts. Starting from this month, Seoul City will provide 10 days of maternity leave to male employees. Seoul City will implement the "Seoul City Work and Life Balance Three Sets" including the compulsory use of spouse's maternity leave (10 days), creating a relaxed atmosphere for the use of parental leave, and the written proposal to shorten the working hours during the period of parental leave.

4. The Development Direction of Gender Equality Law in China

At present, China ignores other genders other than men and women in gender equality. In the future, relevant policies should be formulated to improve the gender equality legal system and ensure that the legitimate rights and interests of other genders are not infringed upon. Secondly, although the domestic violence law provides protection and a basis for litigation for women who are victims of domestic violence, its implementation is still flawed. After many women who are victims of family violence call the police, the police only warn and mediate, and do not effectively solve the problem of domestic violence. On the contrary, the perpetrators of domestic violence are infuriated and commit more serious violations against women, even threatening them not to call the police. Therefore, in the future, special institutions should be set up to supervise the implementation of the gender equality law to ensure that the law plays its due role.

5. Conclusion

Through research, this paper found that China already has relevant laws to protect gender equality, but its legal system is still not perfect, and there are still problems such as the lack of protection for other genders and the lack of implementation of specific policies. Therefore, in the future, we should improve the legal system of gender equality and ensure the implementation of laws. The main contribution of this paper is to find the lack of protection for the object of gender equality in China's legal system and the lack of implementation guarantee of relevant laws, which is conducive to further improving the legal system and protecting the legitimate rights and interests of vulnerable groups. The current research lacks more precise suggestions for future development. Future research should point out specific measures and methods to ensure gender equality.

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