Imbalanced Sex Ratio at Birth and Women’s Human Rights in China: a Rights Analysis and Comparative Implications

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ABSTRACT

Sex Ratio at Birth (SRB) is the ratio of the number of girls born to the number of boys. From the 1980s, the SRB in China has been below the normal level and has kept an overall decreasing trend till today. SRB and women’s status are closely related, it is evident that a declining SRB indicates worsening female advantages. However, most relevant studies have been male-centered and inadequate in analyzing the consequences of the abnormal SRB in China. Instead, this paper will focus on the causal relation between the skewed SRB and women’s human rights, so the existing and potential consequences which negatively affect women from the human rights perspective will be explored. Besides, the Chinese government has adopted many measures to control the distorted SRB, here the paper will try to evaluate them for improvement.

I. INTRODUCTION

From around 2006, sex ratio at birth (SRB) issues entered into Chinese people’s field of view through mass media and became a hot topic. These pieces of news usually connected SRB with men’s benefits. Take a piece of news as example, its topic is “China

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has the most distorted SRB in the world; there will be 30 million bare branches in 2020\textsuperscript{2}. This news describes the severity of SRB of China and one possible consequence: 30 million men can not get brides in 2020. What is sex ratio at birth? Most news only mentioned its impacts on men, are they true? What does sex ratio at birth mean to women? Is there any relationship between it and women’s rights? What have scholars and the Chinese government said about these issues? Those are the issues this paper seeks to explain.

In the first part, the recent trend in SRB of China will be briefly introduced; general summary on the previous studies is then involved. To have a comprehensive understanding to the consequences of the imbalanced SRB, part II provides human rights analysis on the impacts to women from gender perspective. This is followed by part III, which contains the evaluation on the legal and extra-legal measures that the Chinese government adopted to control the abnormal SRB. Finally the paper will give some suggestions in conclusion part.

1. What happened to China’s SRB?

Sex Ratio at Birth (SRB) is the ratio of the number of girls born to the number of boys\textsuperscript{3}. The natural SRB is estimated as close to 0.944\textsuperscript{4}. Even in the absence of sex selection practices, a range of "normal" SRB of from 0.934 to 0.971\textsuperscript{5} has been observed in different societies, and among different ethnic and racial groups within a given society.

\textsuperscript{2} China has the most distorted sex ratio at birth in the world; there will be 30 million bare branches in 2020, Jinghua Times, Nov. 14, 2007.

\textsuperscript{3} In China, scholars usually use ratio that male versus female. In order to centre on female, they are converted to female/male ratios in the thesis.

\textsuperscript{4} The equality benchmark of SRB is set to be 0.944 by Klasen & Wink, in Missing Women: Revisiting the Debate, 2003.

\textsuperscript{5} In some other literatures, the normal SRB ranges from 0.943 to 0.962.
The SRBs for girls to boys of Asia are always lower than those of western countries, but the problem became serious only in the recent 20 years. In China, there was a normal SRB---0.941 in the 1970s. The number, however, became 0.922 in the third China population census in 1982 and has declined gradually since: 0.894 in the fourth China population census in 1990, 0.865 in the fifth China population census in 2000 and 0.843, from 1% population sample survey in 2005. We can see from the following figure, which the overall trend of SRB is declining. The latest number, 0.837 of 2009 gotten from the China Population Yearbook verifies that the trend has not reversed.

2. SRB and Women’s Rights

In 1990, Nobel Prize winner, economist Amartya Sen famously drew attention to the fact that 100 million women are missing.\(^6\) He drew this conclusion from the bare

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statistics that in several developing countries, especially in China and India the ratio of
girls to boys is dramatically lower than the natural norm in developed countries. More
importantly, he built a connection between women’s disadvantages and the low sex ratio.
He pointed out that the low overall sex ratio (SR) represents unequal nutrition and health
care provided for women. He noted a series of combined cultural and economic factors
behind the figures. From then on, a low SR for a population has generally been diagnosed
as an indicator of bad women’s life circumstances. The population sex ratio depends on
three factors: the sex ratio at birth (SRB), differential mortality rates between the sexes at
different ages, and losses and gains through migration. Among them, the SRB has been
fairly widely recognized as a crucial factor that contributes to both the level and trend of
the overall SR. Then we can find a close relationship between SRB and women’s
advantages.

For a country without large scale immigration, SRB plays a particularly
significant role in the sex ratio problem. According to a study by Klasen and Wink, if the
SRB in the past 20 years had been the same as elsewhere in the world, in 2000 China’s
population should have included almost 40.9 million more women and girls. SRB is
clearly a major indicator of women’s status. The Global Gender Gap Report uses SRB as
a gender-related variable to measure gender inequality from 2006. A decreasing SRB
alerts us to emerging gendered-inequality.

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In my opinion there is a logical sequence between declining SRB and increasing gender inequality. By saying there is a logical sequence it suggests that no certain time sequence between them. It can not be known which one definitely happens earlier. In some cases, women’s disadvantages happen first and contribute to the decrease in SRB, while in other cases the process is reversed. But what can be confirmed is that declining SRB and women’s disadvantages contribute to each other. In the rights analysis later, we can see in China how women’s advantages started to be harmed with the downward trend in the SRB, and then how the decreasing SRB further impaired women’s rights. Besides, the decreasing SRB is not only relevant to healthy conditions and unequal nutrition as Amartya Sen mentioned, but to nearly all aspects of women’s interests. Therefore, even though controlling the SRB can not utterly solve the conundrum of gender inequality, it can help to reduce further women’s disadvantages. And measures adopted should aim to both correct SRB and improve women’s rights rather than only making effort on one or the other. Both of them should be targeted for improvement simultaneously, or one after another.

3. Previous Studies on the SRB issues

With the deterioration of the situation that the above data shows, more and more scholars have been concerned with this issue since the 1980s. Studies analyze relevant demographic structures in regional and ethnic distribution, economic districts, fertility culture, birth order and so on, to understand the main reasons that induce abnormal SRB. Such studies may also describe the consequences of this low SRB and predict the tendency in the future.
However, until today, the understanding towards the consequences of the imbalanced SRB is inadequate. Economists were concerned about this problem earlier, but their studies mainly focused on the relationship between economic factors and SRB. Demographers and sociologists usually emphasized the causal relation between the son preference culture especially traditional patriarchal culture and the distorted SRB. A few jurists and policy researchers have given some suggestions including enacting laws and adopting policies to prevent further deterioration of SRB. Most of the existing studies have neglected the gender equality perspective. They present mainly male-centered standpoints on the consequences of abnormal SRB, for instance the “marriage squeeze”.¹⁰ Most people worry about surplus males who cannot find brides and are concerned about these males’ sexual frustration, consequently bring about disadvantage to the whole society. Therefore, as a major focus of law and law reform, the implications in human rights terms will be discussed in this paper since it can help us to understand the significances of the SRB issue, raise people’s awareness and the government’s concern.

Ⅱ. THE CONSEQUENCES OF IMBALANCED SRB FROM A HUMAN RIGHTS PERSPECTIVE

From the above part, it can be found that this research focuses on the causal relations between SRB and women’s human rights. Though the consequences of abnormal SRB has already been presented by some studies, the disadvantageous impacts

¹⁰ In 2008, Zhang Weiqing said when he was interviewed on NPC: “Due to low SRB, there might be marriage squeeze phenomenon in the future along with more surplus men. See NPFPC---There Might be Marriage Squeeze in the Future, XinhuaNews, March 11, 2008; besides, some scholars point out marriage squeeze is one of the consequences of deficit of women, for example Xie Zhenming, The Reflection and Essence of Abnormal SRB in China, China Gender Equality and Women’s Development Report, 2005, at 249-257; and Li Shuzhuo, Imbalanced Sex Ratio at Birth and Comprehensive Intervention in China, 2007, UNFPA.
on women usually were neglected, or were not discussed comprehensively. So they will be strengthened through human rights analysis in this part.

Two dimensions of women’s rights around causes of abnormal SRB are concerned with here. The first dimension is rights violations which cause the distorted SRB, and the second dimension is rights violations for which the abnormal SRB is a cause.

1. Rights Violations Which Cause the Distorted SRB

Under the first category, there are totally two kinds of rights: the right to life and reproductive rights. The subjects of the right to life are girl infants who were killed by parents because of their sex, and female fetuses that were aborted only because of their sex. There are lots of controversies around whether the latter one can be the subject of rights to life. The subjects of reproductive rights are women who may be involuntarily forced to undergo sex-selective abortion (by their husbands or husbands’ family) because their fetuses are female. Reproductive rights of women relate to a series of rights: the rights to choose motherhood or abortion, protection of privacy, the right to health, family planning assistance in respect of rights, the right to life, non-discrimination and so on.

A. Women’s Right to Life

The right to life is a phrase that describes the belief that a human being has an essential right to live, particularly that a human being has the right not to be killed or deprived of their life by another human being or the state. Article 3 of the Universal Declaration of Human Rights (UDHR) stipulates: “Everyone has the right to life, liberty
and the security of person”. Article 6 (1) of International Covenant on Civil and Political Rights (ICCPR) also stipulates: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. The right to life is enshrined in UDHR and in ICCPR, making it a legally enforceable and non-derogable right in every United Nations member state. In the Chinese law, even though there is no specific term about the right to life in the Constitution, however, the Chapter IV of the Criminal Law is “Crimes of Infringing Upon the Rights of the Person and the Democratic Rights of Citizens”, among them, articles 232 and 233 stipulate the behavior that killing another person is a crime and would be punished severely. To some extent, this is acknowledges and protects to the citizen’s right to life. Besides, in the General Principles of The Civil Law of the PRC, article 98 said: “Citizens shall enjoy the rights of life and health.” From the Criminal law and the Civil Law, we can find that Chinese law protects the right to life as one of the personal rights.

In respect of the SRB issue, the deprivation of the right to life is evident in allowing a male child to live while the female child is actively or passively killed. Firstly there is violation of the right to life of female infants who die of infanticide, neglect and abandonment by their parents. These behaviors are one important cause inducing the loss of female infants. Even though the data can not be found, kinds of infanticide always exist in rural areas. Let’s have a look at a case that happened in Taijiang, Guizhou Province. In 2004, a father killed his daughter and threw the dead body into a river, and later he was arrested by the police officers. He confessed his crime and said that he killed

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his daughter only because it is a female baby\textsuperscript{12}. This father was sentenced to five years’ imprisonment according to article 232 of the Criminal Law. Doubtlessly, according to the Chinese law, the behavior of killing female infants is a violation to their right to life as well as a horrible crime.

Secondly, some scholars think in sex-selective abortion cases, a female fetus’ right to life is violated. There is no international human rights convention clearly stipulating whether fetuses are the subject of human rights. According to the Chinese law, fetuses are not the subject of rights. For example, article 9 of the General Principles of Civil Law of the PRC stipulates: “A citizen shall have the capacity for civil rights \textit{from birth to death} and shall enjoy civil rights and assume civil obligations in accordance with the law.” This article specifically excludes fetuses’ enjoyment of any civil rights. Only the Inheritance Law mentions “When dividing inheritance a proportion should be preserved for fetuses”. ICCPR article 6 (2) permits the death penalty but “only for the most serious crimes”. Article 6 (5), however, spares pregnant women: “Sentence of death…shall not be carried out on pregnant women.” Some scholars deem this as a sign to acknowledge fetuses’ right to life\textsuperscript{13}.

However, there are always debates concerning fetuses since this is related to women’s right to deal with their own body. Pro-life advocates who support fetuses’ right to life argue that human fetuses (as well as embryos and zygotes) are unborn human beings who have the same fundamental right to life as that of a human being after birth.

In China, Qu Xiangfei thinks that fetuses are the subject of human rights because it is a


\textsuperscript{13} In my opinion, this article aim to protect the right to life owned by a potential person, rather than to acknowledge the fetuses are the subject of the right to life.
continuous process from being a fetus to an infant and to an adult, so the fetus is a “person” as the beginning of a life. And he thinks many laws support his arguments, for instance the Germen Supreme Court forbids pregnant women aborting their fetuses. John. Noonan, the Prof. of Law in University of California, also holds the opinion that embryos are one of existing forms of human being from the biological and genetic perspective. Generally speaking, those identifying themselves as “right-to-life” are strongly opposed to abortion. To the contrary, many feminists deny acknowledging that fetuses have the right to life, because they do not think the fetus is a “person” and seek to preserve the women’s right to choose. If fetuses are human, then women who aborted their children would be treated as murderers. Actually, they do believe that women have the freedom to decide whether they would give birth to their babies. Nevertheless, there will be a conflict between fetus’ right to life and women’s reproductive rights. Further discussion will be involved after we know something about reproductive rights.

B. Women’s Reproductive Rights

The core of women’s reproductive rights is the right to choose motherhood or not, essentially choosing what to do with their bodies. Other reproductive rights relate to how the women are assisted in exercising this right, for instance, women's family planning rights and women’s right to health.

The right to choose motherhood contains double meanings: to choose maternity and not to choose maternity. Since giving birth to a baby is closely related to woman’s

rights to privacy, physical integrity, health and life\textsuperscript{16}, most feminists think women should have the freedom to choose motherhood. But there is no international convention to clearly empower women with the right to choose motherhood. The CEDAW Committee seems to suggest that women have the right to choose by article 31: “……When possible, legislation criminalizing abortion should be amended to remove punitive provision imposed on women who undergo abortion…”\textsuperscript{17}

In considering how violation of these reproductive rights by the distorted SRB, the first core meaning is women’s right to choose maternity. A pregnant woman (if her fetus is female) would be subject to conflicting pressures, both from the husband’s family and the state birth control policy. On the one hand, no matter whether the pregnant woman wants her girl baby to be born, if the husband knows the sex of the fetus through any available technologies, he and his family may force the wife to abort the fetus. In China, especially in rural areas, women’s family planning rights can hardly be realized. Even if the article 16 (1e) of CEDAW provides: “the same rights (between men and women) to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights…” On the other hand, the birth control policy reduces couples’ opportunity to gain a son through normal fertility. Women can not have more children if they give birth to a girl at the first time. They were allocated a limited quota, so there is no other choice except aborting for having a son. If women voluntarily choose abortion, maybe this is not a kind of violation, but in many traditional patrilineal families in China, they are not

\textsuperscript{17} CEDAW’s General Recommendation 24, Women and Health (20\textsuperscript{th} sess., 1999), U.N. Doc. A/54/38 at 5 (1999).
given such a choice. In the November and December 2001 the *Make Rural Women Know All* magazine (Nongjia’nv Baishitong) carried out a survey in Hunan, Hebei and Shanxi Provinces. The interviewees are 316 rural women, among them, 8.4 % respondents said they were beaten by their husbands because they gave birth to girl babies. Another report published by the Women’s Federation of Liaoning Province also points out many husbands force their pregnant wives to check the fetuses’ sex. If they are female, the women have to abort, or even to do odinopoeia. Otherwise, the women who have female babies would get discrimination, scolding and even beatings from their husbands and husbands’ family. Some of them are forced to give birth to more children in order to get a son. Besides, women are suffering from the physical affliction when undergoing forced abortion. Some of them may risk losing their reproductive ability or their life. These severely violate their right to health, life and physical integrity. Furthermore, mothers suffer tremendous psychological pressures and health risks while undergoing sex-selected abortions, which affect both their physical and reproductive health.

As to the right not to choose maternity, since bearing a baby is closely related to woman’s rights to privacy, physical integrity, health and life. Many people argue that women should have the right to choose motherhood or undergo abortion. While the debate in the West has often centered on the right to choose abortion, in China it has tended to focus on women’s right to choose birth. This argument has no difference from non-feminists, such as Qu Xiangfei. Actually, to the beginning of a life, and to the conception of human being, people’s standpoints vary from person to person, there is no

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18 Song Meiya, To Understand Silent Resistance or Endurance---the Survey Note for Rural Women who are Subject to Domestic Violence, *Chinese Women Newspaper*, Feb 15th, 2001.
universal acknowledgement. In China, according to the Chinese Civil Law, the beginning of a life is when a fetus separates from its mother and can breathe independently.

The second support to their arguments is that choosing not to be a mother would depart from women’s interests. These “feminists” think the value of women is their fertility ability. Feminists who support women’s right not to choose motherhood point out that reproductive rights is a kind of private rights. Baer thinks gender equality contains the right to choose.²⁰ No matter women have similar experiences, women’s opinions are different from each other. Because shared experiences by a group do not mean that members of this group would reach similar opinions. But we should notice one thing that advocates for right to choose would not force others to deviate from their belief. To the contrary, believers of the notion that abortion is immoral force others to do what they do not want. Therefore, building reproductive freedom does not mean this opinion must be accepted by all or most women. Besides, though Qu Xiangfei took German Supreme Court’s decision as an example to support his argument that the fetus should be treated as a person. Actually, more laws and conventions deny this opinion and empower women to have the right to abortion. In my opinion, giving birth to children is not a privilege and not only for women’s own benefits, but for all human beings’. Especially when it is a “duty” without any extra bonus in China, so the women should enjoy the right to choose birth or abortion. However, we need to notice that there is difference between abortion to not to choose motherhood and abortion to choose fetuses’ sex. In China, there is usually discrimination in the latter kind of abortion since female fetuses were aborted only

because of their sex. Here is a conflict between pregnant women’s rights and female fetuses’ rights. When the fetuses are discriminately aborted and lost their right to life. From above we could also know many women are suffering from domestic violence due to giving birth to daughters. And even if these fetuses (whose parents discriminate against daughters) are born, the prenatal discrimination has a big chance to transfer to the postnatal discrimination. There is no international convention providing a solution to this conflict, but it is clear that solely forbidding sex-selective abortion can not solve this problem. Therefore, we should think more about the one child policy and son preference culture.

2. Rights Violations for Which the Abnormal SRB is a Cause

What human rights violations have SRB already induced or will induce in the future? As to the human rights violation for which SRB is a cause, there are mainly two kinds: women’s right to freedom from violence and civil and political rights. Before the rights analysis it is important to consider the actual demographic impact of a low SRB.

In 2007, there were 37 million more males than females in China. Among the excess males are 18 million whose ages range from 0 to 15 years, constitute a ticking time bomb. The NPFPC points out that some areas with abnormal SRB had become serious disaster areas of trafficking in women and children. In some areas with abnormal SRB, there are illegal cross-border marriages, illegal cross-border trafficking in women, forced prostitution and other relevant problems. If the distorted SRB is not under good control, in 2020 the data will get worse. The following table predicts the surplus of men aged

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The National Population Development Strategic Research Report released by the Chinese government in Jan 2007 has pointed out that: “from 2005, the number of males in marriage and childbirth ages is much more than that of female causing the “squeeze of marriage” phenomenon. At this rate, by 2020, males who aged from 20 to 45 would be 30 million more than females in same age group. The report also claims that, the men with low income and social status would be difficult to find brides in 2020, and this will result in social chaos and instability which will be manifested particularly in increased violence against women.

A. Women’s right to freedom from violence

Women’s right to freedom from violence is deeply implicated by the SRB issue. Theoretical and realistic evidence support this concern. Firstly, it is evident that the marriage crunch will have its biggest impact on low income and lower educated males. Since Chinese women tend to “marry up” (hypergamy) into slightly better-off families, millions of surplus males who cannot find brides are almost all destitute men.22 They are

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liable to come from the lowest socioeconomic class, be underemployed, live a fairly nomadic or transient lifestyle with few ties to the communities in which they are working. They will generally live and socialize with other bachelors in what we call the floating population, thus spreading the problems of crime around the country. In sum, these young surplus males may be considered, relatively speaking, losers in societal competition and the source of violence against similarly placed women\textsuperscript{23}.

Paradoxically, there is a phenomenon that females with high income and social status are hard-pressed to find husbands. The statistics shows that in Beijing and Shanghai in 1990, unmarried males and females were 100 thousand, but in 2002, the number is 500 thousand, among whom females take up more than 60\%\textsuperscript{24}. Actually this is a miniature of the whole country, in urban areas. More and more women do not get married even while there is an overall surplus of males. On the one hand, these women with high income and social status or educational and economic conditions can not find “better” men to marry. In China, women are prone to marry older men with higher income and educational, economic conditions. However, the men who belong to this category usually prefer much younger girls with lower education and a willingness to marry earlier. Even among college students, a notion is very popular--- male students and some female students deem female PhDs as a “special” group. They think female PhDs are hard-pressed to find husbands due to their high educational level. Generally this group of women was labeled as “old virgins”. One point needs to be noticed is, the


\textsuperscript{24} Marriage Notion changed along with high income and education level, Women became more independent. \textit{Qingdao News Net}, Aug 15, 2003.
increasing of the number of independent women does not mean the average gap between two sexes became narrower, but means parts of women’s status enhanced. More important is that the upper level women are hard-pressed to find husbands in China---some of them staying single, while others develop an interest in foreign spouses. Compared to Chinese women, Chinese men are harder to find foreign wives, especially low income men.

The behavior of young surplus males also follows a broadly predictable pattern. Theory suggests that compared with other males in society, these unmarried men will be prone to seek satisfaction through vice and violence, to resolve their sexual frustration by illegal ways and will seek to capture resources that will allow them to compete on a more equal footing with others. These theoretical predictions are substantiated by empirical evidence so vast and so compelling. For instance, the scholars find that cross-culturally, an overwhelming percentage of violent crime is perpetrated by young, unmarried, low-status males. James Watson of Harvard University and David Ownby of the University of Montreal have both connected permanent, involuntary bachelorhood caused by low sex ratios with violence in historical China. And many other researchers link sexual crimes with unmarried males. The scale of this problem is so large then it becomes a target of organized criminal activity that preys on both men and women at the bottom. Here we should notice that the marriage status of these surplus males is not the

point. Someone may suggest that men with inability to form intimate sexual relationships or legally express their sexuality also may behave violently. I agree with it so I think the point is, due to the severe deficit in women, no matter men want to marry women or just want to form a relatively stable relationship with women, there will be millions of males who can not achieve their goals through legal ways. Therefore, they may satisfy them by illegal ways.

Besides the theoretical proofs, some verities have already actually emerged in China. Since the sexual services are more and more demanded along with the increasing of bare branches, these men usually get them by illegally buying wives, buying commercial sexual services from sex workers or committing sexual crimes.

a. Trafficking in Women

Trafficking in women, is a serious violation to human rights, mainly aims to illegally traffic women for sexual deprivation and labor deprivation. A number of reports have revealed young women being kidnapped or lured by job offers and sold as forced brides into distant poor areas in China. Meanwhile, men also suffer from discrimination against girls, as they suffer deprivation when the number of available spouses plummets. The CEDAW Committee thinks the adverse sex ratio may contribute to the increase in trafficking in women and girls.

In recent twenty years, the features of trafficking in women in China include:

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29 Document CEDAW/C/CHN/5-6: Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined fifth and sixth periodic report of States Parties—China*: Paragraph 31: “the Committee is concerned about the impact of the adverse sex ratio which may contribute to the increase in trafficking in women and girls.”
there are about 3,000 trafficked women registered cases in China every year; although the data keeps declining, these kinds of cases are hard to be found and few of them are reported, so the realistic data of cases are unknown and thought to be much larger; the buyers in trafficking cases usually aim to marry victims and have sons to bear family lines; other kinds of trafficking in women are inclining, including forced labor and prostitution.\(^\text{30}\) Both Yin Jianzhong (a senior officer of the Ministry of Public Security) and a research by Wang Jinling\(^\text{31}\) suggest that, Shandong, Zhejiang, Jiangsu, Guangdong and Fujian are main inflow provinces in internal trafficking; Yunnan and Guangxi are main outflow provinces in internal trafficking; but inflow provinces in cross-border trafficking; Henan is both an inflow and outflow province in internal trafficking.\(^\text{32}\) An added dimension of this, which helps explain the poor record of reporting, is the fueling of official corruption to protect this illicit trade.

Wang Jinling\(^\text{33}\) thinks that the main reason of trafficking in women is imbalanced economic development in different countries and provinces, and women usually inflow to rich areas, while outflow from poor areas. From above features we can find inflow provinces: Zhejiang, Jiangsu, Guangdong, Shandong and Fujian all have high GDP in average; outflow provinces: Yunnan and Guangxi have low GDP.\(^\text{34}\) At the same time, combining with the regional feature of SRB in China in part I, we can find actually all these provinces have abnormally low SRB. Bare branches of these areas can not get

\(^{30}\) Ministry of Public Security: the Number of Trafficking in women which aim to sexually deprivation is increasing, *Renmin Daily*, Jun 9, 2007. This is an interview in Women and Children Prevention National Forum to Yin Jianzhong, a senior officer of the Ministry of Public Security.


\(^{34}\) China Yearbook 2008.
brides in legal ways, so a market to provide wives and sexual services is formed. Bare branches in rich provinces can buy brides or sexual services from women from poorer province: Yunnan and Guangxi.

Then how about bare branches in poor provinces? After knowing something about cross-boundary trafficking in women we can find the answer. As to cross-border trafficking, incomplete statistics show that the number of cross-border trafficking in women cases is continuously increasing. Women who are trafficked from their motherland to China mainly come from Vietnam, Russia, South Korea and Burma. The aims of cross-border trafficking in women are varied, such as commercially sexual deprivation (force women to become sexual worker and so on), sell to bare branches as wives, force them to work or beg.35 A survey carried on by the Women’s Federation of Guangxi Province shows that36, during 1989-1999, about 8,000 Vietnamese women married Guangxi men, most of them were illegally trafficked to China.37 There are several hundreds women sold to Yunnan and Guangxi to become bare branches’ wives from neighbor countries of China every year.38

b. Sexual Crimes

Sexual crimes, mainly include rape and coercive indecency and insulting offences against females in Chinese law. Because the precise provincial data can hardly be found, the following data are from news reports. According to a news report in 2008,
sexual crimes were recently increasing, and the victims’ average ages were declining. \(^{39}\) And we should notice that the rate of registration of sexual crimes is very low. In 1994, Crime Prevention and Criminals’ Labor Reformation Research Institute of ministry of justice conducted a sample survey. The result shows that the rate of registration of sexual crimes is only 7.6% of the rape cases which actually happened. \(^{40}\) So we can find how many rape cases exist in real life, and the pressures the victim suffered.

Even when the results and effects may not be as serious as rape and any other sexual crimes, sexual harassment emerges in most women’s life and negatively affect women’s work and private life. In my opinion, sexual harassment is also one way that males resolve their sexual frustration illegally. In 2005, Zhengzhou Evening News and Sina.net conducted an internet survey questionnaire to investigate the sexual harassment. The number of persons who participated in the survey is 22,166. The result shows that 76.15% of them had the experienced sexual harassment. Among these people, 69.04% were subject to harassment in public buses, while 32.57% were in the office. There may be a partial truth reflected from this survey, because people who do not have the experiences might have less interest in answering the questionnaire, but Professor Zhou Zheng, who engages in social psychology research, points out this investigation data is precious and very close to the outcome of other academic research. \(^{41}\)

Therefore, scarcity of women would probably not enhance their position in society, due to the increased risk of gender-based violence against women, the rising

\(^{39}\) The Crimes against Women and Children is increasing, while the victims’ average age is decreasing, China Youth Daily, 10 March, 2008.

\(^{40}\) Guo Jian’an, Criminal Victimology, Beijing: Beijing Press, 1993, at 76.

demand for sex work and the development of trafficking networks. This represents a commoditization of women. These crimes severely threaten many kinds of women’s personal safety rights such as the right not to be subjected to violence.

**B. Women’s Civil and Political Rights**

The second category of indirect violations of women’s rights usually includes three kinds of rights: the right to education, the right to work and political rights. The consequences of this kind of human rights violations have not emerged already, but if the SRB could not be brought under effective control, the bad outcome would happen soon.

According to some sociological research, under the abnormal SRB, the marriage patterns in China will change, such as earlier female marriages, extremely high levels of divorce and remarriage among women.\(^{42}\) Even going beyond marriage itself, the reduced number of women would mean those women’s family roles---as wife, daughter-in-law or mother, would become increasingly in demand.\(^{43}\) Pressure towards early marriage may be detrimental to women’s right to education and the right to work. And lower demographic weight in democratic systems would also be translated into a weaker political voice in public decision-making under present legal background, a trend that could be reinforced by women’s lower involvement in non-domestic activities such as employment and civil life. Then women maybe constrained in the private field again and perhaps the situation will be worse than before.

Lots of words are used to elaborate what the abnormal SRB has done to women.


However, it should be noticed that the whole society is the victim in the SRB issue, women, men and society. To the society, the cumulative effect caused by these factors should not be underestimated. And the phenomenon of missing women decreases the number of births, thereby accelerating China’s ageing process, which inevitably has negative effects on economic growth, while exerting severe pressure on the country’s unsound social-security systems. The total size of the working-age population will also be affected by the reduction of population size. Finally, the phenomenon of missing girls will lead to a shortage of marriageable females, thus bringing about a likely “marriage squeeze” in China. The distorted SRB also hinders a society’s overall productivity, efficiency and economic progress, damages the general welfare, and affects the sustainable development of a country.

III. IMPLICATIONS AND SUGGESTIONS ON CHINESE DOMESTIC MEASURES ADOPTED TO CONTROL THE ABNORMAL SRB

In part I, it has been mentioned that the SRB in China started to be distorted from the 1980s. Actually as early as in 1983, a study by Wang Daoming has presented that the recently abnormal SRB would negatively affect the marriage mode and society. But the government did not take any measure until 1994; and after 2000, when the SRB issue had attracted more and more attention globally, the government started to understand the severity of the problem and admit the problem truly existed. Hence more

measures have been involved, they can be divided into two categories: ones (both laws and policies) that aim to control prenatal sex-selection and infanticide (the proximal causes of abnormal SRB); measures (both legal and extra-legal) that aim to dilute son preference in culture.

The first category includes a series of laws and regulations to prohibit prenatal sex testing and sex-selective abortion since 1994. The second kind of measure contains: new laws and statues or amendments to enhance women’s legal status; laws, policies and some strategic actions to change the mentality and culture which discriminate girls and promoting gender equality; and other extra-legal measures. However, the outcomes are not that optimistic till now. When reporting the evaluation to “Population 11th Five Year Scheme” on Jan 15, 2009, Jiang Fan, the Vice-Minister of NPFPC said: “kinds of evidences show that the decreasing tendency of SRB has start to be stopped, but the SRB is still severely distorted”. Jiang Fan said, among 28 provinces which were evaluated, SRBs in 17 provinces were increasing, 7 were declining slightly, while only 4 were obviously decreasing. However, the SRB nationwide there is still serious departure from the normal range. And even the decreasing tendency has been slow down in 2009, there is no evidence to prove it is the outcome of those measures. There might be other variables, and numerical value of SRB can not be decreasing unlimitedly. Therefore, here the paper will explore whether these measures are appropriate.

In Yi Fuxian’s research47, he points out that the Chinese government heals SRB problem by “South Korea Mode”, even the government did not elaborate that, actually

47 Yi Fuxian, A Big Country In An Empty Nest, Hong Kong: Strongwind Press, 2007, at 313.
the measures China adopted are similar to those of South Korea. South Korea had an imbalanced SRB and used a series of measures to heal this problem from 1990. The South Korea government’s measures also include first, forbid sex identification to fetus; second, enacted laws aimed to enhance women’s status: The Basic Law of Women’s Development, Law on Equally Employ Male and Female, the Law on Forbidding Gender Discrimination and Legal Aid and etc; third, constitute a Ministry of Gender Equality which is responsible for drafting and enacting laws and policies beneficial to women; fourth, carry out a series of actions, through mass media to affect parents’ attitudes in sex-selective abortion; through long-term policy orientation to eliminate gender discrimination against women, to direct people to change their perception of gender roles, values and attitudes; and through effective education and employment plan to improve women’s situation. From 2000, South Korea’s SRB was generally normal.

South Korea spent ten years on curing SRB, China also spent nearly ten years. Why does China’s SRB still keep declining? In other words, why did these measures not stop the SRB from descending? Firstly maybe just like what Li Shuzhuo said: “China’s sex ratio is severe and complex, and cannot be expected to be solved once and for all.”

Yes, China’s SRB is lower than that of South Korea, and as a big country, China’s situation is much more complicated. Moreover, changing people’s mentality, and constructing a culture without gender discrimination against women demands a long time. Finally, the measures government has adopted are inadequate and problematic. They may be analyzed from three perspectives. First, whether these measures can be put into

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one-to-one correspondence with the causes of abnormal SRB? In other word, do the measures aim to cure the causes of declining SRB? Here some experience might be found from South Korea which also has a low SRB problem. Second, whether the government adopted measures according to relevant international conventions? Finally, as to some problems both international law and Chinese domestic law can not provide solutions, is there any implications for feminist legal theory.

1. Forbidding Prenatal Sex Selection Can not Pull up the Roots

Regarding legal measures aiming to restrict prenatal sex selection, I agree with that providing sex-selective services should not be strictly forbidden and punished by criminal law.

There are the following reasons. First, sex-selective identification does not always induce abortion, and it is hard to prove the causal relation between them. Second, controlling sex-selective technologies can not solve the problem fundamentally. Technologies and tools are all used by persons. If we can not change people’s notions, only if there are needs, the service will exist. To the contrary, the outcomes of controlling sex-selective identification and abortion may dangerous, because pregnant women have to get services from private clinics and individuals who do not qualified. Third, pregnant women have the right to know the sex of the fetus, the most liberal interpretation of reproductive rights might be taken to include not only the number and timing of children, but also their sex. Reproductive freedoms and maternal empowerment are

the twin goals adopted at the Cairo conference. Though most sex selection is a kind of
discrimination against girls, if parents have not the option of aborting a fetus of an
unwanted sex under the policy restrictions, the daughters might thereafter be more
human suffering if discrimination against female fetuses were not eliminated. That is
why I said forbidding prenatal sex selection can not cure the root of the problem.

2. Gender-Equal Laws are Still Problematic

As to Laws aiming to remedy women’s inferior status, even though the
government has made a lot of efforts, there are some insufficiency and need to be
checked under the standards of International Human Rights Conventions and Feminist
legal theory perspectives. This raises once again the question of the state’s responsibility
for protecting women’s human rights, and seeking for a better approach to promote
gender equality.

A. States Parties’ Responsibilities and Legal Remedies

Feminists have shown how the distinction between private and public abuse is a
dichotomy often used to justify female subordination in the home. MacKinnon argues
that some women’s rights violations are exerted by state power, while some are from
individuals. If public power does not take action to effectively stop the violations from
private action, then the government should be deemed as the violator of women’s rights.

Though the Chinese constitution does not permit individuals to violate rights, the

52 Goodkind, Daniel, On Substituting Sex Preferences Strategies in East Asia: Does Prenatal Sex Selection Reduce
53 Bunch Charlotte, Women's Rights as Human Rights: Toward a Re-Vision of Human Rights, Human Rights
54 Mackinnon Catharine, Toward a Feminist Theory of the State, 1989, at 173.
Constitution and other low-level laws do not clearly forbid violation of some rights and provides relevant legal remedies such as punishments. We can find examples in women’s right to education and the domestic violence issue. At present the government mainly uses extra-legal measures to protect this kind of women’s rights, which lack of stability, continuity and authority. The new amendment of the Marriage Law and the Women’s Protection Law still do not provide effective legal remedies for victims. Moreover, women can not get legal remedies through litigating due to the lack of a constitutional litigation mechanism. In China, the court seldom accepts constitutional lawsuits. And until now China has no judicial review. Only the NPC and the Standing Committee of NPC have a supervisory right under the Constitution. But that is different from judicial review. In Jan 2005, Zhou Xianghua, a female laborer who worked in a bank was asked to retire when she was 55-year-old. Zhou thought she should have the right to work for 5 more years and retire at the same age as male laborers. So she sued the bank with the reason that the bank’s decision departed from the gender-equal principle in the Chinese Constitution. The court thought that the bank’s decision made according to the Labor Regulation, so it was appropriate. Finally the court did not support Zhou’s appeal.\(^55\) On Mar 7th, 2006, the Centre for Women’s Law and Legal Services of Peking University suggested the Standing Committee of the NPC to start up judicial review on the relevant legal documents\(^56\). But the suggestion was refused.\(^57\)

\(^{55}\) Regulation on Retirement age of Male and Female has been sued to Judicial Review. Legal Morning News. 16 March, 2006

\(^{56}\) Guowuyuan Guanyu Gongren Tuixiu, Tuizhide Zanxing Banfa [State Council Interim Procedures Concerning Retirement or resignation of Workers], (June 3, 1978); Guowuyuan Guanyu Anzhi Lao, Ruo, Bing, Can Ganbude Zanxing Banfa [Temporary Procedures Regarding Placement of Cadres Who are Old, Weak, Ill or Disabled] (June 3, 1978).

\(^{57}\) Ibid.
Furthermore, China has no national institutions for the promotion and protection of human rights, and has no official institute to enact and supervise gender-neutral laws. Though the law endows the All-China Women’s Federation some functions to protect women’s benefits, the federation usually can not function when the public power violates women’s rights. Han Dayuan points out that “the duality of the state and society demands the multiformity of human rights institutes and mechanism. It is not allowed that some national organs or mechanisms monopolize the human rights protection process. Only can good interaction between the state and society provide an effective format for realization of human rights.”

B. Equal Treatment vs. Special Protection

Chinese laws do not embed a uniform approach or logic when promoting gender equality. In western countries, under the impetus by feminist movements, gender equality has been accepted by the people, and has been practiced by law. Different methods of achieving equality affect the realization of equality. Kate Millet said: “the basic standpoint is how to explain equality rather than whether to accept equality.” From the 1980s, western feminism started to debate the legal approach to achieve gender equality. The debates mainly focus on whether women should be provided special protection or should be treated entirely equal with men. The debates may be significant in solving practical problems in China, especially in protecting women’s political and

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59 It has similar function with Ministry of Gender Equality of South Korea.
60 We can find this from Deng Yujiao Case happened recently.
economic rights.

Nowadays many conventions and laws adopt equal treatment with a narrow exception to this principle which authorizes measures strictly necessary to protect the special condition of women. Special protection has been manifested from some articles in the International Human Rights Conventions. For example, article 4 of ICCPR, article 10 of ICESCR and so on. These articles provide special care because of women’s special physiological factors. In Chinese domestic law, an obvious example is protection to women’s “four special periods” in the Labor Regulation. Another kind of special protection is to guarantee women be free of gender discrimination under same circumstances with men, and require the government to adopt positive actions, to compensate women’s suffering from gender-based discrimination. Generally speaking, countries have achieved a common view on the first aspect of special protection, yet views vary on the second one. Liberal feminists think special treatment departures from the liberal tradition and disagree with it.

Equal treatment can not improve women’s inferior status formed in a long history. Firstly, in the political field, women were considered belong to private field, and excluded from the public field for a long time in history. Even now under the international human rights laws, states parties only have negative responsibility on protecting women’s civil and political rights. However, as a vulnerable group, women do not have an equal beginning with men, then how can women gain equality with men in the public field? So even until today, women’s proportion in organs of state power is still

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63 Four special Periods: women in “menstrual period, pregnancy, obstetrical period and nursing period”.

low. In a field monopolized by males for thousands of years, “equal competition” between men and women resulted in women’s absence. Then this absence in the public field made women’s subordination in the private field got legal support and tolerance rather than judicial relief, and further strengthened women’s inferior situation in domestic field.\(^6^4\) In South Korea in 1998, through discussion with parties, women’s groups promoted the State Congress to enact a law which stipulated that women deputies’ proportion in parliament should achieve 30%.\(^6^5\) To be contrary, the Chinese law only stipulates women deputies should take up an “appropriate proportion”. Only if more women enter into decision-making organs of state, can women’s rights and interests reflect in legislation and other decisions.\(^6^6\) So women should gain special protection in relevant laws, by clearly stipulating the proportion of women deputies, and women candidates should be given priority when there are men candidates with similar conditions.

Similarly, in some sexual crimes, equal treatment can not fully solve the problem. Since men do not have the comparative experiences of suffering from rape, sexual harassment, forced prostitution and so on,\(^6^7\) laws must specifically addresses women’s needs. And in these cases, women usually are weaker and disadvantaged. So the relevant laws and regulations should give special protection to women. For example, in rape, cases and in case of self-defense, men should have the burden of proof. Besides, the

\(^{6^4}\) See Zhou Anping, 2007, Supra note 61, at 48-49.


\(^{6^7}\) Guo Huimin, Gender and Women’s Rights---Concurrently Discuss about Gender Legal Analysis Methods, China Gender Equality and Women’s Development Report, 2008, at 32-39.
Chinese law should have a clear definition of sexual harassment. Women’s definitions for sexual harassment are usually wider than those of men, and because women usually are victims, the definition should be determined from a women’s perspective rather than men’s.

The goal of special protection is to compensate women’s for historical inequality, rather than to give women privileges. However, it also has negative effects. Many national protective measures may now be criticized because they have become anomalous or inadequate, that is, because: they have lost their original justification; they have become negative in their effect upon women or upon workers generally, both with regard to the internal adaptability of undertakings and to the global policy of prevention; they do not in practice systematically consider, assess or apply themselves to all problems involved. For instance, special protection would stereotype all women workers as potential mothers and thus undermine the gains that these women had made in the previous decade. In the job market this stereotype is obvious. Affected by this stereotype, women are marginalized into a new “atypical” form of employment. In addition, as concerns the female labors’ retirement age, recently in Beijing’s implementation planning draft to the amended Women’s Protection Law, article 23 is about “appropriately postponing senior female cadres’ and senior female intellectuals’ retirement age”. But finally this article failed to enter into the formal legislation process.

The opponents argue: this article is negative to solve the problem that young labors are

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71 E.g. special protection for “four special periods”.
72 Female labors must retire 5 years earlier than their male counterparts, is also a kind of “special protection”.
hard-pressed to find jobs; and only postponing the retirement age of these cadres and intellectuals, is unfair to other female labors. So till now, there is no improvement in this issue that relates to women’s right to work.

It can be concluded that both equal treatment and special protection have their own benefits and drawbacks. Therefore, protective legislation should in principle be consistent across sexes and across occupational areas. It may be concluded that overall legislation has done less on protecting women than maintaining gendered difference. It has a negative affect when it comes to the global policy of prevention. And many of the protective measures discussed will have to be extended to both sexes or repealed. Take above solution into practice, for example, according to Chinese law, women can get at least three months (with salary) for pregnant leave. The employers can not fire them in this period for this reason. That’s why employers avoid recruiting female. One possible solution may be giving male labors a “maternity leave” when their wives are giving birth. Similarly, my suggestions to retirement age are, first, stipulate a flexible retirement age for women, e.g. from 55 to 60 years old, women can decide when they want to retire according to their own conditions; second, shift male labors’ retirement age as earlier as female, it can be fair and release job vacancies for young people. Third, with a longer life expectancy, both sexes can extend their retirement age. Besides, Yi Fuxian argues that people who engage in population reproduction also should gain economic allotment, but the current institution only allocates to materials reproduction.\textsuperscript{73} Therefore, in my opinion, the government should give subsidy to employers who paid for their pregnant

\textsuperscript{73} Yi Fuxian, 2007, Supra note 46, at 315.
employees to take leave. Furthermore, the government should try to break the traditional
division of labor by gender, or compensate women and men who engage in full-time
housework, hence sharing women’s domestic work with men or society, and remedying
abstract legal inequality.

Nowadays, more and more feminists seek for a better and more realistic way to
build gender-equal law. Mackinnon presents “distribution of power”\textsuperscript{74} which argues that
simple “equal or different treatment” would not solve the gender equality problem. The
solution should be to change the distribution of power. Men who own definitely stronger
power than women decide women’s subordination. Therefore, maybe the law should
endow women more power as well as rights. To some extent, I agree with her argument
and think that the first step is still adopting positive measures to endow women with more
political rights. As to the “equal and different” approach, Minow\textsuperscript{75} found a “dilemma of
difference” which means “neither ignoring nor highlighting gender will necessarily
translate into progress for women”. She argues that “everyone sees the world from his or
her own perspective, that in some sense, everyone is a biased observer”. Minow tries to
make people understand the multiple truths from multiple perspectives rather than unitary
and universal truth. However, law is so deeply committed to discovering objective truth
through the adversary process, it is difficult to incorporate a commitment to multiple
perspectives into existing legal doctrines.\textsuperscript{76} Therefore, only depending on law is not
enough, we need other tools, such as policies and education.

\textsuperscript{75} Minow Martha, \textit{Making All the difference: Inclusion, Exclusion and American Law} 20, 1990.
C. Other Problems in Domestic Law

Besides the problems above, there are still others that need to be clarified. First, article 2 of the amended Women’s Protection Law points out gender equality is our basic state policy. This reflects that government paid more attention to enhancing women’s status after the Beijing Conference, but there are many basic state policies, such as birth control policy, open and reform policy, rule by law and so on. Which one is the most basic state policy? For example, from Chapter III we know that more women labors were unemployed than men in economic reform from the 1980s. If there are conflicts between economic development under the “open and reform policy” and “gender equality policy”, which one is more important? Besides, birth control policy contributes much to the abnormal SRB. How to solve the conflicts if they both are basic state policies?

Second, Chinese domestic law still does not contain a definition of discrimination against women, in accordance with article 1 of CEDAW, encompassing both direct and indirect discrimination. Such a definition was not included in the Law on the Protection of Rights and Interests of Women, amended in 2005. Though the basic requirements of CEDAW are formally enacted into Chinese law, weak and enforcement and the lack of a specific legal provision in several areas may constrain the application of the full scope of CEDAW’s definition of discrimination in China. The CEDAW Committee also requires China to include a definition of discrimination against women in its domestic law, encompassing both direct and indirect discrimination, in line with article
Besides, CEDAW does not appear to have ever been directly invoked in a Chinese court of law, thus CEDAW’s enforcement in China relies on its transformation into the Chinese domestic law, and then the courts can invoke these domestic laws, such as the Women’s Protection Law discussed below. As mentioned before, the supervising power of the CEDAW Committee is not strong enough to insure compliance. Under that circumstance, if the Chinese domestic law does not fully adopt some CEDAW articles, it would be difficult to find legal support to guard women’s interests. This needs both legal education and training by judicial professionals and awareness-raising by women; government also should provide effective legal remedies which the CEDAW Committee asked for as soon as possible.

3. Extra-legal Actions Failed to Touch Patriarchal Culture

Compared to forbidding prenatal sex selection and enhancing women’s legal status, constructing a gender-neutral culture is a more feasible way to cure the roots of the problem. These indirect measures might not have an immediate impact on abnormal SRB, but they might reduce it in the long run without incurring adverse short-run consequences. Many feminists also find themselves grappling with how fundamentally to alter the way people think about difference and how to resist the cultural tendency to equate difference with inferiority. Only when law is combined with other mechanisms can social value be realized. These mechanisms include social customs, political system, policy goals and custom notion of citizens. These are the reasons why social discrimination, equal pay and

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education opportunities, abortion, domestic violence and sexual harassment did not get solved. So we can find in order to promote women’s rights, there is need for a multiple approach.

The government has already adopted a series of actions to change the son preference in rural areas, and the CEDAW Committee also noticed these efforts, but there are also many problems. I doubt that these measures touch the key of gender discrimination culture, that is, the patriarchal, patrilineal and patrilocal culture.

Firstly, the present pension institution in strategic campaign mainly compensates elders in daughter-only families, is closer to “compensation” due to already not having sons, than a motivating interest before they make decisions. Moreover, this compensation labels daughter-only families as “disadvantaged groups” which need special relief by the government. Murphy thinks that “the government’s concerted efforts specific to ‘daughters-only households’ may unwittingly attach a stigma on such families and perpetuate the perception that it is indeed a form of hardship to only have daughters”. Minow also points out that the special treatment strategies would reinforce and or recreate the stigma of being different. So a wider social security mechanism is needed in the future to provide guarantee to all elders no matter they have sons or daughters.

Through a four-year field work, Wu Zhiping, a female researcher wrote a book about rural women’s life. In the book there are many experiences and information about son preference and peasants’ reactions to policies. In 2006, she carried out the field work

in Shi village located in Northwestern Hubei Province. The SRB of the village is very low, about 0.5. In this village, women even the whole family which do not have sons would be discriminated. The most vicious curse to people is “no descendants”. The couples are under intense pressure to produce a son, with mothers losing face if they give birth to a girl instead. Men who do not obey patrilocality, that live with the wives’ family, would get discrimination by villagers. The policy that gives annual pensions to elders in daughter-only families made some effects, but many villagers still think that, having a son is much better than good policy. Sons can earn old-age pension for parents and can avoid being discriminated by others, so having sons are more realistic. Besides, the villagers did not realize the significance of a deficit of girls, when Wu asked him how to deal with deficit of brides in the future, a cadre in the village said “under the open and reform policy, if men can not get brides in China, they can find in the other countries.” In this village, women still have no actual inheritance right, and they obey this custom because daughters have no duty to support their old parents. At the end, Wu Zhiping implies the method to have sons adopted by villagers is infanticide.  

What we can find from the truth includes, first, these movements have not changed rights consciousness at the local grass-roots level. Women who are vulnerable and in need of rights protection have not recognized their entitlements and asserted their rights. Both men and women did not understand the girl infants killed by them lost the right to life. Merry points out that “human rights must become part of local legal

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consciousness in order to fulfill their emancipatory potential”\textsuperscript{82} Second, Das Gupta points out “the Care for Girls campaign does not fully tackle gender discrimination because it fails to address the fundamental patrilineal structure of the Chinese families”\textsuperscript{83} Without addressing the kinship system, gender attitudes cannot be changed simply by hanging huge banners proclaiming various egalitarian slogans.\textsuperscript{84}

The CEDAW Committee calls upon the States parties to put in place a comprehensive approach to overcoming traditional stereotypes regarding the role of women and men in society, in accordance with articles 2(f) and 5(a) of the Convention. Such an approach should include legal, policy and awareness-raising measures, involve public officials and civil society and target the entire population, in particular men and boys. It should include the use of different media, including radio, television and print, and encompass both specialized and general programs. The Committee also calls upon the States parties to evaluate the gender-sensitivity of the curriculum and textbook reform it has undertaken since 2000 and to further ensure that it explicitly addresses the principle of equality between women and men.

4. Loose the Birth Control Policy

Because of infringement to citizens’ reproductive rights, birth control policy has been criticized for years. Its contributions to the skewed SRB are also cognizant. The CEDAW Committee is concerned about “the growing disparity in the male/female sex


ratio at birth as an unintended consequence of the population policy, owing to the discriminatory tradition of son preference.\(^85\) However, the Chinese government denies the causal relation between birth control and imbalanced SRB and insists on the one-child policy. In 2006, Mr. Zhang Weiqing, director of the National Population and Family Planning Commission (NPFPC) said: “the major reason for China’s rising sex ratio is the entrenched concept that boys are better than girls.” When journalist asked does the imbalance have something to do with family planning? Mr. Zhang answered: “Yes, but there is no direct connection. China was already trying to administer the world’s largest migrating population and had no alternative but to continue to enforce family planning.\(^86\) Some scholars think that the one child policy served to perpetuate the Son preference chauvinism. The government’s attempts to curb sex-selective abortion have done nothing to challenge such beliefs.\(^87\) However, one problem is that until now China has no special institute to plan and cure SRB issues, all of the extra-legal actions generally are executed by NPFPC, which also takes charge in birth control policy.

Yi Fuxian argues the government should stop birth control policy because the fertility rate is very low and the aging of the population will be serious in the future.\(^88\) Gerrie Zhang also points out the most effective solution would be a relaxation of the policy.\(^89\) Then should birth control policy (especially one child policy) be loosened? Since this paper is not a demographic research, so it can not give a solution on concrete

\(^{85}\) CEDAW Committee, Concluding Observations: China (U.N. Doc.A/54/38/PartI), 299c.

\(^{86}\) China Firm On One-Child Regulation, The Statesman(India), April 25,2006 Tuesday


\(^{88}\) Yi Fuxian, 2007, Supra note 46, at 318.

plan. But something can be learned from Yicheng County Pilot. Yicheng County of Shanxi is an experimental place of “two children policy”. From the outcome of experiment we can find, first, almost every family in Yicheng has two children, however, the population growth was even slower than national average. Second, in Yicheng County, most families have two children, and most hoped for one boy and one girl. But one villager told the journalist by saying “there is nothing so bad about having one girl, the government gives us a good subsidy”. Third, a “one child policy” supervisor said: “It’s far easier for that policy (two children) to be carried out, it's just so hard for people to accept having only one child.” Fourth, Yicheng County has a normal SRB. A demographer says that peasants’ mentality has changed, loosening one child policy does not always mean that the population would be out of control, and without the pressure of one child policy, the SRB here is in a normal range.

IV. CONCLUSION

From the part I of the paper, it can be known that SRB is a reflection of women’s status in any society. A declining SRB will deteriorate women’s status. The goal of the study is to find legal methods to prevent the further violation toward women’s rights. In order to achieve this goal, this study focuses on legal and political measures which the government adopted, and tries to find whether they are useful.

There are following recommendations on improving the measures to stop the continuously declining trend of SRB. The first is enacting gender neutral laws. Like what

Minow has pointed out, there are multiple truths. We should notice that one difficulty is reflecting different woman’s benefits by identical law. For example, regarding women’s retirement age, when many female cadres ask for equal rights to work, some feminists reminded others: if we did not reduce women’s workload on housework, many women may suffer under the dual pressures both from work and housework. So some female laborers may prefer to retire earlier, because actually they are the persons who spend more time on their families. Then how to reflect these truths by law? In common law countries, the courts can find different aspects of a problem case by case, and construct different precedents, finally raising them to lawmaking rules. In China, the situation is different, the courts do not apply precedents in solving problems, and we can not discern women’s common needs case by case. So it needs a long way to realize substantive gender equality if merely relying on law. Here the basic step is to raise women’s awareness and then let silent women speak. The India government mobilized the whole society to take action on India’s declining SRB, the NGOs, academies and mass media all played different important roles. In China, these organs also should take on the responsibilities of raising people’s awareness and publicizing women’s appeals. That is the prerequisite to get remedies from the law and society. Moreover, the law should allow different persons to achieve different actual outcomes through law, but before that goal can be achieved Chinese courts must realize women’s common needs better. China may need other institutes, like the Ministry of Gender Equality of South Korea or national human rights institutions. However, there is a dilemma, because even if China has the above institutions, if they would be supervised and lead by the CCP, they would not
function well in supervising the lawmaking process. That is also the cause why the Chinese Women’s Federation does not really protect women’s interests in many cases. In my opinion, if the polity can not be changed, one promising way may be developing NGOs and civil society to make them stronger, and build the human rights advocacy capacity of NGOs. Actually many abroad institutes are supporting Chinese domestic NGOs to do so by providing fund and experts, but the outcomes might not optimistic in the Chinese context. Such reform would meet many restrictions from the CCP. So nowadays, solving of SRB problems mostly depends on the government. In SRB issues, since the government has realized that abnormal SRB will harm the whole society and hinder economic development, the leaders may care for enhancing women’s status in order to eliminate the above obstacles.

Second, the government should do more by using extra-legal measures to dilute male-centered culture and son preference. Firstly, these measures should pay more attention to changing women’s family status than social status. Both the social status and family status of women affects fertility culture, including fertility motivation and gender preference. Two important elements affect SRB. In my opinion, women’s family status is closer in affecting fertility culture than women’s social status. If measures are exerted directly on their family status, compare with exerting on social status, it will be more efficient and be faster. For instance, in rural areas, married couples usually live near husbands’ parents’ family, and wives’ parents would not expect their daughters take care of them since they live far from them. If the living cultures do not change, even if government gives more opportunities and higher salary to women, parents may feel
daughters cannot benefit them. And even women’s status in decision-making process in
the family is enhanced, women may still not want to have girls. So new living
arrangements and more flexible or symmetrical family solidarity is needed. At present,
both international human rights conventions and Chinese domestic law are centered on
the public field---women’s social status. In China, though the law begins to interfere in
the private sphere by forbidding domestic violence and so on, there is no legal remedy.
So until now, we mainly rely on extra-legal measures to regulate the private sphere and
dilute the male-biased culture. Therefore, I think the government should do successive
efforts on adopting any appropriate measure to construct a fertility culture that benefit
women, just like what article 5th of CEDAW provides. Secondly, diluting son preference
culture should rely on the growth and efforts of civil society. As analyzed in the last part,
on one hand, the measures carried on in rural China are mainly slogans. There is no
virtual content, no effective education to villagers to let them know the benefits of having
daughters, to know why prenatal sex selection and infanticide are violation of human
rights. There is no education to women to make them know how to protect their own
benefits and know effective remedies. On the other hand, subsidy to daughter-only
families is useful, but as the same time has a “label effect” by labeling these families as
“disadvantage group”. Promoting women’s social status is a fundamental solution, but it
needs a longer time to adopt full scale policies and laws and civil society’s participation
to achieve these obligations. The NGOs can play a more important role than the
government in affecting the culture among grass-roots society.

Lastly, gender equality and human rights education for both men and women is
crucial. Jagger points out that today the female issues can not be divided from male issues in the world, because under most circumstances, females’ lives closely connect with that of males’, no matter in public or private fields. Males and females would affect each other by their choices. In the earlier days, United Nations Commission on Human Rights (UNCHR) also paid much attention to human rights education, and presented the goals, processes and modes of human rights education. The UNCHR asked states parties to promote human rights protection through education. Therefore, the most useful measure might be positively carrying out gender education, aiming to promulgate gender equality, eliminate gender discrimination and promulgate knowledge about human rights. These kinds of education should be combined with compulsory education in primary and secondary schools, as well as extra-legal actions carried out among people. Mass media should also take up responsibilities; the media should not emphasize gender roles division and gender differences between the males and females, and should not depreciate the individuals who did not play traditional gender role. The government should educate and train relevant professionals and enact some regulations.

To be concluded, the government could eliminate gender discrimination through healing SRB problems, because women’s status and SRB are closely related, and gender equality is recognized as part of the value of “justice”. In order to achieve this goal, besides amending gender biased laws and policies, many extra-legal measures should be strengthened, such as education. The mass media and NGOs should participate in such actions.