

# ***Legal Analysis of Women's Right to Education in China and Exterritoriality: From a Comparative Perspective***

**Zhuo Chen<sup>1,a,\*</sup>**

<sup>1</sup>*Despartment of Spanish Lanuage and Literature, Beijing Institute of Technology, Liangxiang East Road, Beijing, China*

*a. 1120211345@bit.edu.cn*

*\*corresponding author*

**Abstract:** Women's right to education is an important aspect that reflects the degree of social development and whether a country is practicing the gender equality. With deeper globalization and the international community's increasing focus on gender equality, women's right to education continues to expand, and the transformative power of education to empower women is becoming much more visible. Although significant progress has been made by most countries in the world in this matter, there are still gaps because of different factors such as social culture, economic environment and law-making. As society develops, there will be new problems and challenges. The purpose of this paper is to analyze the relevant legislation in China and the US, combining the definitions of women's right to education, its interpretation and the history of the protection of related rights in both countries, to compare the similarities and differences between the two sides in protecting women's right to education, and to put forward implementable suggestions on potential challenges, so that women's legitimate right to education can be better protected.

**Keywords:** Women's right to education, Comparison of legislation, Challenges and suggestions.

## **1. Introduction**

As Fozia Shahhe says in her article, education is the most powerful tool used all over the world for training, standardizing and empowering women in order to spend a meaningful social life and enhancement of economic status as well [1].

In the seventeenth century, Mexican Sister Sor Juana, in her book *Respuesta a Sor Filotea de la Cruz*, referred to the general restriction of women's learning not only by the Church but by the whole society, expressing her own quest for knowledge and courageously fighting for women's right to be taught [2]. As she said, "What an unjust law that prevents women from learning?" (¿Qué ley tan injusta, que impide la mujer aprender?) "There can be no mistake that women were created to learn and not just to serve men." (No puede haber error en que las mujeres hayan sido creadas para aprender y no sólo para servir a los hombres [2].)

It can be seen that the unjust laws of the time prohibited education for women, while Women of the Americas, dissatisfied with women being restricted to service roles, advocated for women's right to pursue knowledge and learning. In modern times, Qiu Jin of China actively promoted women's education, advocated equality between men and women, founded schools, and argued that it was only

through education that women could achieve equal status. Similarly, Susan B. Anthony in the United States, in a situation where most institutions of higher education admitted only men, collaborated with other women's rights activists, gave public speeches and wrote, and pushed for broad educational reforms that would make women able to have equal access to education.

To a greater or lesser extent, these women have influenced the laws governing women's educational rights in every country today, whether China, the United States, or other countries. As society develops and civilization advances, women's right to education will become more widespread and will face some questions. In the case of China and the United States, what is the female right to education, and is there any historical connection between the two sides in the regulation of the female right to education?

## **2. Legal Basis of Female Right to Education**

### **2.1. Basic Concepts and Definitions**

Unfortunately, Chinese law does not clearly define the right to education. However, in legal practice and academic discussions, the "right to education" is generally considered to be the right of every citizen to enjoy, on an equal footing and within the limits of the law, the right to get educated, including the opportunity to receive education at different stages of the education process (e.g., basic, secondary education, etc.), and the resources to receive such education, such as a comprehensive range of knowledge, good teacher resources and educational facilities, fair standardized tests, etc. The core connotations of the right to education include equality of opportunity in education, the right to equitable access to educational resources, and the right to be not discriminated and to be guaranteed basic rights and interests in the educational process. In other words, regardless of ethnicity, gender, or level of affluence, all Chinese citizens are equally entitled to these legitimate elements. Especially for women, it is all women equally existing to enjoy the right to receive education.

Similarly, the federal Constitution of the United States does not explicitly provide for the right to education, but some Supreme Court precedents and interpretations indicate that education, as an important public matter of a nation, enjoys certain constitutional protections. At the same time, state constitutions and laws usually expressly provide for this right. Many state constitutions contain provisions guaranteeing citizens the right to free public education, with the specifics and scope of protection varying from state to state. As for women, although there is no specific reference to the protection of women's right to education, the laws prohibiting discrimination on the basis of sex and protecting women's rights are also applied to support women's legal access to education.

### **2.2. Background and Framework of Women's Education Right in China**

Women's education in China explored by the Communist Party went through initial development from the late Qing Dynasty and during the Republic of China, as well as the women's education policy enacted after the founding of the Communist Party of China (CPC).

At the end of the Qing Dynasty, traditional feudal thinking held that women could not be educated. However, with the opening of the country's gates after the Opium War, the introduction of Western ideas accelerated social change, and some intellectuals who accepted advanced Western ideas began to advocate women's education. In the Hundred Days' Reform of 1898, reformist ideologues such as Kang Youwei and Liang Qichao advocated women's education and women's liberation. In 1907 the Qing government began to set up women's schools, and in 1909 it promulgated the Statute of the Women's College, which formally In 1907, the Qing government began to establish girls' schools, and in 1909 it promulgated the Statutes of the Girls' School, officially promoting girls' education, marking the first time that the government explicitly recognized women's right to education. At the

same time, women appeared among those sent abroad by the government to study, and some families with the means to support women's study abroad were also self-sufficient. Qiu Jin was one of them, who went to Japan at her own expense to study, and upon her return to China, she devoted herself to the movement in order to protect women's rights. The 1911 Xinhai Revolution overthrew the Qing Dynasty. With the advancement of the New Culture Movement and the May Fourth Movement, as well as the influence of Sun Yat-sen's ideology of emancipation and advancement of women's status, the relevant issues received widespread attention, and the number of girls' schools increased rapidly, with an expansion of their curricula. In particular, in 1922, the National Government promulgated the New Academic System, which clarified a whole-stage system of education, including primary, secondary and higher education, since that, girls' schools began to be integrated into formal education system. During this period, women's access to higher education gradually increased. In 1920, the Beijing Women's Higher Normal School, the first women's higher normal school in China was established. Subsequently, women's colleges and universities such as the Nanjing Women's College of Arts and Science and the Shanghai Women's University were established one after another, providing more opportunities for women to receive higher education.

After the founding of CPC, under the severe political situation at home and abroad, the CPC attached great importance to women's education, inspired women's ideological awareness and mobilized their revolutionary enthusiasm by carrying out women's popular education and women's cadres' education, and cultivated all sorts of women's talents for the revolution. The Second Congress of CPC focused on women's issues and formulated a programmatic document called "The Resolution on the Women's Movement", which explicitly put forward that "The lack of political, economic and educational rights is a common situation for all classes of women in the country," and soberly reveals that "only when the proletariat gains power can women be truly emancipated". In 1954, with the promulgation of the Constitution of the People's Republic of China, women the right was granted to organize themselves in the form of a fundamental national law. Following the reform and opening-up period, with the need to build a modernized country and guided by the "Strengthening the Country with Talents" strategy, the country and the leaders have paid greater attention to the development of education, especially to ensuring equal access to education for men and women. The Central Committee and the State Council released the Decision on Certain Issues Concerning Universal Primary Education in December 1980, which provided general guidelines for children's access to education, including equal access regardless of gender. In addition, the Marriage Act of 1950, the Compulsory Education Act of 1986 and the Education Act of 1995 all clearly stipulate that the State respects the right of women to equal access to education.

### **2.3. Background and Framework of Women's Education Right in the United States**

Women's right to education in the United States has progressed from being limited during the colonial period to receiving equal protection under the law.

During the colonial period and into the early nineteenth century, women's educational opportunities were very limited, due to the general perception of society that women should concentrate on family matters, and because the church had a great deal of power, so even if they were able to receive an education, most women were only able to learn about home schooling, basic reading and writing skills, and religious knowledge.

In the mid-nineteenth century, as Enlightenment thinking and the Reformation rose, more and more women fought for a wider range of educational opportunities, women's education entered its infancy, and in the later part of the century prevailed the feminist movement, which included the fight for equal access to education. In 1818, Emma Willard founded Troy Female Seminary in New York City, which was the first higher-education women's school in the US, offering a wide range of programs that advanced the development of women's education. Lots of women's colleges soon

followed, and even Oberlin College (founded in 1837), a coeducational institution of higher education, further expanded women's access to higher education. In the late 19th century, along with the rise of the feminist movement, women's voices grew louder and louder in the fight for equal access to education. The content of education expanded from traditional domestic education to include literature, science, mathematics and other subjects, and more and more institutions of higher education began to accept female students. As industrialization flourished, many occupations were in demand and women began to receive vocational training to enter professions such as teachers, nurses and secretaries. Women were also able to achieve economic independence and social status.

Into the twentieth century, the women's education movement in the US reached its peak, and feminist activists vigorously sought equal rights for women in all areas of living society, especially in education. During this period, more and more women entered universities to study traditionally male-dominated subjects such as science, law, and medicine. As more and more women entered the workforce, vocational training and continuing education programs were created, and they became more economically independent.

In the mid-20th century, the U.S. made significant progress toward equality in education, passing a series of legal reforms to ensure equal rights for women in the field of education. For example, the Education Equity Act (Title IX), officially passed in 1972, which expanded the areas in which women had equal access to education, was a landmark in the advancement of women's educational rights in the United States.

Today, the United States still has a wide range of protections in related areas and continues to go deeper.

It can be seen that both countries have undergone increasingly advanced and extensive historical changes in the protection of women's right to education and have emphasized protection in this area.

### **3. Current Legislation of Women's Right to Education in Both Areas**

#### **3.1. Current Legislation in China**

At present, China has numerous laws protecting women's right to education. They range from fundamental laws to specific laws.

The Constitution of PRC, China's mother law, explicitly guarantees the right to education for all citizens, including women. Article 48 of the Constitution provides that "Women enjoy the same rights to men in all aspects of political, economic, cultural, social and family life [3]." This ensures that women have equal rights with men to education.

Based on the fundamental adherence to the Constitution, other subdivided laws specifically provide for women's equal right to education in this area at different ages and levels of education.

Article 3 of China's Law on the Protection of Minors stipulates that minors shall, in spite of gender, ethnicity, race, family property status, religious beliefs, etc., enjoy equal rights in accordance with the law [4].

Article 2 of the Compulsory Education Law of the People's Republic of China provides that "Compulsory education is an education that must be received by all children and adolescents who meet the age requirements and is a public welfare undertaking that the state must guarantee [5]. This guarantees the right to education for all children and adolescents of school age, regardless of gender.

Article 9 of the Education Law provides that citizens, regardless of various factors including gender, are entitled to equal educational opportunities in accordance with the law [6].

The Vocational Education Law stipulates that citizens have the right and interest to receive vocational education in accordance with the law and that the State guarantees women's right to receive vocational education on an equal basis, and safeguards women's equal rights in vocational education.

The Law of China on the Protection of the Rights and Interests of Women, a law specifically designed to safeguard women's rights, clearly spells out women's right to education such as article 35 which stipulates that "the State guarantees that women enjoy the right to cultural education on an equal footing with men [7]. It also stipulates that women have equal rights with men in the field of education at all administrative levels and at all stages of education.

However, it can be noted that although China has legislation in the educational area and the protection of women's rights, there is no legislation that combines the two.

### **3.2. Current Legislation in the United States**

One of the most important pieces of legislation in the field of education in the United States, Title IX of the Educational Equity Act (Title IX, 1972), also known as the Education Amendments of 1972, states that it's prohibited that anyone is discriminated and his or her interests are damaged due to gender in teaching areas or education activities, the projects supported by the authority [8]. The range of this plan covers almost all education stages, like that of primary and many educational institutes financed by specific ministry.

It guarantees women's equal right to education (even during pregnancy and child-rearing) at all stages of education, including areas such as enrollment, course selection, vocational education, and physical activity, and prohibits sexual harassment and gender-based violence.

In addition, Title IV [Higher Education Act (HEA, 1965)] guarantees the right of all eligible students, including females, to equal access to educational financing and requires schools to take measures to prevent gender discrimination and ensure female's equal opportunities of getting highly educated [8]. The Affirmative Action Policies (AAP) promotes gender equality by encouraging and requiring educational institutions to consider gender factors in enrollment and employment through various legal frameworks and executive orders. There are also laws that protect women's safe access to education and privacy in the educational process, etc.

The existing laws cover all stages of education from basic education to higher education, ensuring that women are not discriminated and are able to receive education in a safe and equal environment. However, it can also be seen that the federal law is rather general, and there is no specific law that specifically protects and explains women's right to education.

### **3.3. Comparative Analysis**

There are similarities and differences between these two countries.

#### **3.3.1. Similarities**

First, both countries have made gender equality part of the law and recognized and guaranteed women's equal right to education. For example, China wrote into its constitution in 1949 that either men or women is equal in enjoying political rights. The United States, on the other hand, has established women's equal right to education mainly through the civil rights movement and legal reforms.

In addition, the penalties provided for under the laws of both countries in this area are administrative, not criminal.

#### **3.3.2. Differences**

First of all, for historical reasons, China began to pay attention to such issues mainly at the beginning of the twentieth century, while the real legislative barriers began to be gradually realized after the foundation of New China, while in the United States there was a sprout from the start of the nineteenth



century. Therefore, the legislative protection of women's rights in the United States has been carried out earlier than in China.

Secondly, with regard to the legal system, China has enacted specialized laws on the basis of the Constitution to protect it at all stages in a detailed manner, with localities cooperating in the introduction of relevant policies and administrative regulations to encourage the further protection in this field; whereas the United States of America uses a federal law, known as Title IX, to provide protection at the overall level, and has enacted state laws downward, with each state having different laws to protect women's right to education. It is therefore evident that China has more centralized laws in this regard, while the United States has more local laws. The reason for this may be that the two countries have different national and political systems: in China, as a republic characterized by centralized power, the central government has more power than the local government, and local laws must be formulated based on the Constitution; in the US, as a federal state, each state may have its own laws, and each state has achieved autonomy, and their laws are formulated in accordance with the situation in their own states.

Thirdly, Chinese law provides for more subjects of responsibility, while the United States is mainly for schools. According to Chinese law, those who violate women's legal rights shall be ordered to make corrections in accordance with the law, and if the persons in charge and others directly responsible are State employees, they will receive corresponding punishment according to the law. And in the U.S., schools can face fines, withdrawal of funding and other penalties if they are found to have engaged in sexist behavior.

#### **4. Futural Challenges of Female Education Right Law**

Although both countries have legally established the principle of gender equality as it applies to the right to education, there are challenges to its practical implementation. For example, women's political participation in China is still insufficient; according to statistics, the proportion of women delegates to the Twentieth Party Congress was 27 per cent, which means that even though more and more women are being educated, their participation in politics is small in comparison with that of men. From this we can see that the transformation of women's right to education into the index of women's survival is still in great difficulty. In addition, the phenomenon of women doing the same job as men but receiving unequal salary is still obvious in both countries, and it is more difficult for women than men to be promoted to managerial positions. This shows that there are still difficulties in translating women's right to education into the female survival index.

There are a number of possible recommendations to address the above phenomena. Raise social awareness of gender equality through education and public campaigns to eliminate gender bias and stereotypes. Formulate and implement stricter laws and policies to ensure women's enjoyment of equal educational opportunities, including the conflict between work and salary of the two genders, maternity leave policies, etc. Reform the education system to ensure that the content of textbooks and teaching methods are not gender-biased or gender-specific, and encourage women to participate in disciplines traditionally considered "male domains" such as STEM. It will be helpful to provide women with certain resources and opportunities, including scholarships, mentorships, and career development opportunities, so that they can better achieve their educational and professional goals. Finally, the government, non-governmental or private organizations cooperate to jointly promote the development of social awareness and social forms, supporting women's education together.

#### **5. Conclusion**

Although China and the United States have different national conditions and different legal protections for women's right to education, both in terms of history and methods of protection, they

have attached increasing importance to supporting, promoting and expanding women's right to education. The definition of women's right to education and the penalties for violating women's right to education should be specified and refined, and with regard to future challenges in this area, the two countries still need to make corresponding adjustments according to their specific national conditions, put forward highly feasible policies, and expand the main subjects of protection to include minors and minority groups. As a large country, with globalization and social development, it should actively promote the attention of all countries to the issues of gender equality and women's education, and set a good example for other countries, so as to better safeguard the legitimate rights and interests of women, including the right to education, and ultimately achieve the United Nations Millennium Development Goals and build a harmonious society.

## References

- [1] Rashi Shah. (2021) *Right to Education: A Fundamental Right*. *International Journal of Law Management & Humanities*, 4,1016-1036.
- [2] Fernández de Santa Cruz y Sahagún, Manuel. (1991) *Respuesta a sor Filotea de la Cruz*. México, Distribuciones Fontamara.
- [3] Article 48 of the Constitution of the People's Republic of China.
- [4] Article 3 of China's Law on the Protection of Minors.
- [5] Article 2 of the Compulsory Education Law of the People's Republic of China.
- [6] Article 9 of the Education Law of the People's Republic of China.
- [7] Article 35 of the Law of the People's Republic of China on the Protection of the Rights and Interests of Women.
- [8] Article of U.S. Department of Education.