

A Comparative Study on the Rights and Interests of Chinese and American Women Based on the American Abortion Case

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Abstract: In 1973, through *Roe v. Wade*, the U.S. Supreme Court established for the first time a woman constitutionally protected right to free choice to have an abortion. The decision's derivative interpretation of the Constitution's Fourteenth Amendment to due process grounded the right to abortion in the right to privacy, and the right to abortion has had constitutional provenance ever since. The decision was considered a significant victory for female rights protection; however, it remained a controversy for several decades, particularly on moral and religious spectrum. The case was overturned by the US Supreme Court 50 years later, putting a halt to the process of abortion liberalization. It means that each state in the U.S. would decide its own laws and regulations regarding abortion, which set off a worldwide debate on women's rights. This article compares the legal systems of women's rights in China and the United States through the above-mentioned case, and finds that there are many differences in the legislation and implementation of the existing laws in both countries, mainly due to the discrepancy in culture, history, religion, etc. Discussion on effectiveness and limitations of legal solutions to ethical disputes is also mentioned, law can provide a broad framework for solving ethical dilemmas, but unable to deal with every individual perspective or be detailed enough to deal with every possible scenario. In short, the law is only one of the tools in a broader ethical framework that needs to work align with the context of other social determinants.

Keywords: woman rights, abortion right, comparative law

1. Introduction

Abortion is a controversial issue in the United States legal system. In an abortion case, the United States Supreme Court held that protecting women's reproductive freedom does not mean denying the right to life of the fetus. At the same time, the United States Supreme Court also held that women have the right to make decisions about their lives during pregnancy, but for the sake of the health of the fetus, the law prohibits women from exercising this right. The most famous case concerning women's right to abortion in the United States is the "Roe v. Wade case", which is a key case involving abortion in American history. Roe is an ordinary woman who accidentally became

pregnant but was unable to have an abortion, so she filed a lawsuit, arguing that it is unreasonable for a woman to have no freedom to have an abortion. At that time, the prohibition of abortion for women was based on the 14th Amendment to the United States Constitution: "Prohibit any harm to life, body, freedom, or dignity." This means that no one can deprive others of their lives because they have suffered misfortunes. In this case, although the United States Supreme Court supported Roe's view, due to the serious phenomenon of "different judgments in the same case" in the handling of cases by the United States Supreme Court at that time, the Federal Supreme Court later ruled that even in the first three months of pregnancy, there was a right to life. Although this judgment has solved the issue of abortion, it has brought considerable trouble to the protection of women's rights and interests in the United States. In China, although abortion is not explicitly prohibited by law, it is actually prohibited in the first three months of pregnancy. However, in real life, there are still some families that may disagree on this issue.

This article will take the American abortion case as a starting point, compare the protection of women's rights and interests between China and the United States, focusing on women's abortion rights, women's equal employment, and provide reference for the protection of women's rights and interests.

2. Overview of the Protection of Women's Rights and Interests in China and the United States

2.1. Ancient China: Women's Rights and Interests in Feudal Society

In old China, with a history of more than 3000 years of patriarchal culture, women were at the bottom of society. They had no political rights, were economically dependent on their husbands, and their marriages were determined by their families. Their legal status was extremely low. From the perspective of civil law, women are incompetent. In ancient Chinese civil law, there were provisions for determining persons with capacity for conduct, but women were not included in this scope. "Women have no social or family status, they are just objects that are oppressed, enslaved, and sold.". Women have no political rights, no right to vote or stand for election, cannot be economically independent, and are deprived of their rights to education, labor, and property. Women cannot participate in political affairs and can only educate their husbands and children at home. The vast majority of women have not received education. The laws of the Ming and Qing dynasties even stipulated that husbands who beat their wives would not be punished. If the husband and wife commit the same crime, the husband will take a reduced sentence and the wife will be given an increased sentence. This kind of law, which is stricter than women and lenient than men, forces women to submit to adversity and truly become accessories of a patriarchal society [1].

2.2. Modern China: The Development of Women's Rights and Interests Protection

In the 1990s, China's social environment continued to improve, and the development of various undertakings was brought into the orbit of the rule of law, including the development of women's rights and interests. After the 1995 World Women's Conference, the legal system for safeguarding women's rights and interests in China has developed rapidly, the constitutional principle of equality between men and women has been advanced and implemented, and women's rights and interests have received widespread attention and further recognized as rights by law. China has enacted or revised laws closely related to the protection of women's rights and interests, such as the Marriage Law, the Population and Family Planning Law, and the Rural Land Contract Law [2]. At the same time, more and more legislation in favor of women has been proposed to strengthen women's marriage and family rights, affirm the social value of women's childbirth, and protect women's reproductive health rights, land contract management rights, and family property rights.

2.3. Overview of the Development of Women's Rights Protection in the United States

In the United States, women's rights are considered a constitutional right. The essence of the idea of equal rights for women in the United States is equality between men and women. States also attach importance to women's rights and interests. The constitutions of 16 states in the United States provide for equal protection. The adoption of the Equal Protection Amendment in the state constitution has encouraged the state legislature to comprehensively reform state laws to ensure that these laws are consistent with the Equal Protection Amendment. In the development of women's rights and interests in the United States, the most prominent issue is the struggle against domestic violence and abortion rights. In the 1960s and even earlier times in the United States, both family and marriage were considered to be within the realm of the individual, making it difficult to link them to politics. In order to explore the political implications of the gender differences in family and marriage, radical feminists in the women's liberation movement proposed the concept of "all personal matters have political significance", that is, in the seemingly most private fields of family and marriage, there are also political issues of power distribution. The enactment of the Violence against Women Act represents the culmination of years of women's rights advocates' struggle to legislate to address the epidemic of domestic violence. It is worth mentioning that until the adoption of the Violence against Women Act in 1994, the police authorities had adopted a non-arrest policy for domestic violence incidents. As a result, few cases of domestic violence have been prosecuted, and a large number of cases have been rejected by courts. It was not until the 1970s that the women's movement and the emergence of a series of court decisions changed the way police, prosecutors, and courts treated domestic violence. Striving for the right to abortion became the main struggle of the women's movement in the United States in the mid-19th century, and there were calls in society to reform the Abortion Act. The basic demand was that women have the right to control their own fertility and abortion. So far, the women's movement in the United States has shown a dynamic development, with women striving for their rights around the world and changing the long-standing unfair treatment of women in society.

3. Comparison of Chinese and American Legislation on the Protection of Women's Rights

With the continuous progress in the legal protection of women's rights in China and the United States in recent years, the public awareness of gender equality has been greatly strengthened, and the social status of women has been gradually improved. This section will focus on the comparison of Chinese and American laws and regulations on women's abortion and labor, which are crucial to the advancement of women's family and social status.

3.1. Comparison of Legal Regulations on Abortion between China and the United States

In 1971, the Supreme Court of the United States held that the right to abortion was a fundamental right, protected by the constitutional provisions of autonomy and privacy in the *Roe v. Wade* decision. The Supreme Court also initiatively divided the pregnancy into three stages: in the first trimester of pregnancy, since the fetus had not formed yet, the pregnant woman enjoyed the "absolute right to abortion"; in the following trimester, she enjoyed the "restricted right to abortion", which meant that the government could only regulate the abortion procedure to a certain extent, and the woman should make the abortion decision after consulting with the doctor to protect her health; in the last trimester, when the risk to the woman and fetus is greatest, the US has the right to ban abortion. This judgment shows a great deal of respect for the life of the foetus and well protects the rights and interests of women.

However, on June 24, 2022, the Supreme Court of the United States overturned *Roe v. Wade*, meaning that women's abortion rights in the United States are no longer protected by the

Constitution. According to a survey, 13 states imposed their own abortion bans as soon as the Supreme Court ruling was announced, and 26 states were poised to ban or restrict abortion [3]. This judgement has caused great turmoil and controversy in the United States and even among the international community. American women still have a long way to go in their fight for abortion rights.

In China, women have enjoyed relatively free access to abortion and related medical services since the implementation of the family planning policy, but laws restrict such rights if abortion implies improper motives, such as preference for sons [4].

The revised Law on the Protection of Women's Rights and Interests in 2022 stressed that medical institutions should respect women's wishes when performing medical activities related to childbearing, highlighting the respect attached to women's personality rights [5]. Meanwhile, according to Article 39 of the Population and Family Planning Law amended in 2021, detecting fetal sex for non-medical needs by ultrasound technology or other technical means and sex-selective pregnancy termination are strictly prohibited.

So what accounts for the huge difference in legal provisions on abortion between China and the United States? The root cause is a different starting point for restrictions on abortion.

To control the population growth, China has made strict family planning a fundamental state policy since 1982. While contraception is the primary method of controlling the birth rate, abortion as an adjunct is not prohibited. Restrictions on abortion rights in Chinese law are primarily aimed at addressing the country's male-female imbalance and undermining the traditional preference for sons through state regulation and control to maintain a balanced and healthy population.

In the United States, the purpose of restrictions on abortion is more political and religious. First, as a country with the largest number of religious denominations and believers in the world, abortion opponents are heavily influenced by their Christian heritage. They believe that God-given life is sacred and inviolable, so the life of the fetus should not be taken away. While pro-choice people argue that a fetus is not a real person, so the Constitution should protect the rights of the pregnant woman, not the fetus. Second, as a typically partisan country, politics has a huge impact on where the American people's viewpoint on abortion. For example, the political situation in the United States underwent important changes after the 1990s, which led to a strong momentum for anti-abortion activities advocating for the rights of fetuses. According to a 2000 Los Angeles Times survey, support for *Roe v. Wade* had fallen to 43 percent from 56 percent in 1991, and 57 percent even believed that abortion was murder.

3.2. Comparison of Legal Regulations on Women's Equal Employment in China and the United States

To address the issue of women being discriminated against in employment, discrimination codes and judgments are crucial for legal anti-discrimination protection.

U.S. law has established detailed standards of discrimination adjudication that have effectively ensured that women receive equal treatment and opportunities in the workplace with men. Under Title VII, Section 703 of the U.S. Civil Rights Act, an occupation that restricts one sex to employment or getting due remuneration will be considered to be a violation of equal employment rights, unless it has a special request of physical characteristics of a particular sex or gender authenticity for its completion [6].

China has also enacted laws to tackle the problem of gender imbalance in employment. In Article 27 of the Law on the Promotion of Employment specifically stipulates gender equality in employment: "The State guarantees that women enjoy equal right to work with men. When an employing unit recruits' personnel, except for the types of work or positions unsuitable for women as prescribed by the State, it shall not refuse to employ women on the grounds of sex or raise the

standards for the employment of women, and if, in violation of the provisions of this Law, it practices employment discrimination, the workers may bring a lawsuit before a people's court."

However, Chinese women receive far fewer employment and promotion opportunities in the workplace than men. According to a study conducted by Renmin University of China, male job seekers received 1.42 times as many interviews offers as female applicants based on resumes with the same background. What's more, the 2021 Gender Disparity Data Report on Women and Men in the Workplace, released by the Liepin Big Data Research Institute, showed that only 2.1 percent of female executives were employed in 2020 compared to 5.8 percent of men [7].

So why do some of the typical gender-based employment practices prohibited in the United States still exist in China? For one thing, Chinese anti-employment sex discrimination law places more emphasis on the adjustment of norms between workers and employers that have already formed labor relations, with little protection for workers who are still in the job-seeking phase. Second, the law is not enforceable enough, because it lacks specific legal standards for judging sex discrimination in employment [8].

U. S. law not only explicitly prohibits indirect sex discrimination by providing for compensatory and punitive damages, but also specifies the forms of sex discrimination in employment. At the same time, the court combines the trial of a sex discriminating case with the burden of proof at each stage for both the plaintiff and the defendant. The combination of legislation and justice has effectively curbed indirect discrimination in employment.

In the construction of an equal employment system for women, the experience of the United States is worth referring to.

4. The Role of Law in Resolving Social Conflicts

It is true that law is an effective mechanism for measuring whether an act is moral or not, and the legitimacy of existing written law is reflected in its adherence to the ethical values agreed upon in modern human society. As Fuller said, "human is subject to law and law to reason," The relationship between law and morality is progressive, and the hand of law can be used to judge whether an individual's behavior is just and moral. The clarity and authority of the law also make it a socially dependent form of dispute resolution. Firstly, the law is universal and compulsory, so it can ensure that people's behavior is in line with the public interest and social norms, thus solving some social and ethical problems brought about by individual behavior [9]. For example, in the case of abortion, the decision of *Roe v. Wade* (410 U.S. 113 [1973]) established the right to abortion, protected women's bodily rights, and eradicated the demand for illegal abortions from the source, thus preserving public health and welfare. Secondly, laws can regulate human behavior and make people behave according to certain social rules and procedures. Human society pursues stability and certainty, and the normative nature of law can ensure justice and fairness, thus promoting the harmonious and stable development of society. In *Roe v. Wade*, the staged model adopted by the court stipulated the time and manner of abortion and required doctors and hospitals to follow certain procedures and standards to ensure the safety and legality of the abortion process [10].

However, the law also faces some limitations when addressing ethical issues in society. First, the law cannot truly "solve" all social conflicts, especially those involving individual beliefs and personal rights. For example, the issue of abortion, although can be defined by the law, the core conflict still exists: can a fetus be considered a living being? How can people make choices when faced with conflicts between the rights of the fetus and the woman? These issues cannot be resolved by the law with an optimal solution. Secondly, the law is always balanced by other social factors, such as religion, politics, and race, which can influence it. The *Roe v. Wade* case demonstrated that legal decisions could have a significant impact on society, but it also showed that these decisions can be challenged and overturned. In addition, the law reflects universal moral values and social

norms, providing a broad framework for resolving ethical dilemmas, but it cannot address every situation or consider every individual's belief system. The law is merely a tool within a broader ethical framework, including personal values, social norms, and cultural traditions. To truly address ethical dilemmas, we must engage in broader social dialogue, including various perspectives, and recognize the complexity of the issues involved. Lastly, the formulation and implementation of laws also requires balancing various social relations and values. It is necessary to pursue not only the ultimate core goal of law, namely "fairness and justice", but also attempt to seek the most adequate settlement of conflict by weighing contradictory interests. Therefore, contemporary law in the society may not be the absolute best, but they are basically the most suitable for the development of the society at present.

5. Conclusions

This article aims to explore the existing laws and their problems regarding the protection of women's rights in China and the United States through a comparison of the two countries' laws. Through a comparison of the laws of China and the United States, it can be found that there is a great gap in the protection of women's rights between the two countries. The United States has relatively mature protection measures, including basic legal documents such as the Equal Rights Amendment (Pub. L. No. 92-318, 86 Stat. 1523 [1972]) and the Civil Rights Act (Pub. L. No. 88-352, 78 Stat. 241 [1964]), as well as a series of legal provisions specifically for women's rights. In contrast, China's laws protect women's rights to a lesser extent, and discrimination and unfair treatment towards women in areas such as employment are still widespread. Although the Constitution of the People's Republic of China stipulates gender equality, differences still exist in practice. Regarding the right to abortion, the United States has withdrawn constitutional support for this right and devolved decision-making power to the states, where they can set their own abortion policies. Modern China has a unified national law, and generally speaking, women can have abortions as long as it is not beyond the stipulated time (six months of pregnancy) or for reasons such as the sex of the fetus. However, with the impact of the relaxation of the childbirth policy in recent years, it is not ruled out that there may be a possibility of increasing legal restrictions on abortion in the future.

In summary, there are many differences between China and the United States in the protection of women's rights, mainly due to differences in culture, history, religion, and other factors. The legal protection measures in the United States are relatively more complete, but there are still many controversies and challenges in their actual implementation. China's laws on the protection of women's rights need to be strengthened in terms of legislation and implementation and should focus more on practical effects to promote the realization of women's rights. In future development, both countries should learn from each other and jointly explore how to better protect women's rights, promote the protection of women's rights, and contribute to the global cause of gender equality.

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