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With this thought, we hereby present to you

**LEX BONA FIDE: LAW JOURNAL**

# **CHINESE INHERITANCE LAW THROUGH THE MARXIST LENS**

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## **ABSTRACT**

Chinese Inheritance Law establishes the right to inherit a property in China. The paper focuses on the functionality of Chinese Inheritance Law and lays down the various beneficiaries under it. We can see socialist features in the law as it allows for non-blood relations to inherit in certain cases and also makes room for preferential treatment of the heirs with lesser work capabilities. Thus, inheritance law is a more behaviour-based model.

Karl Marx blamed capitalism for the gap between the rich and the poor. He idealized a socialist state in which one class could not exploit another. He claims that inheritance defeats communism. The paper discusses the plan laid out by Karl Marx and the Chinese interpretation of the same. Since China is a communist country, they attempted to adopt Marx's ideology, but the changing times and economic structure of the world constricted them. Private property remains a vital part of the Chinese economy, to balance the same Courts have been given the discretion to alter the inheritance scheme to uphold socialist morality.

## **INTRODUCTION TO CHINESE INHERITANCE LAW**

The Inheritance Law of China was established in 1985 through China's Civil Code that recognizes the right to inherit property. While traditional and customary law did not give women equal rights as men in terms of property, the Chinese Inheritance Law changed that. The law lays down rules of succession with the first order of succession<sup>[1]</sup> including the spouse, parents and children and the second order<sup>[2]</sup> consisting of the brother, sister and the paternal and maternal grandparents. The Chinese Law also does not discriminate between legitimate and illegitimate children.<sup>[3]</sup>

Further, the law also provides that if the child dies before the parent then the child's legal heirs will inherit his or her part of the share through representation. The Chinese inheritance law also makes a provision for the daughters-in-law and sons-in-law of the deceased. This is called the principle of 'socialist morality' by which any widowed daughter or son-in-law who takes care and supports their in-laws will be upgraded to be a part of the first order of succession instead of inheriting their dead spouses share through representation. Following from this the successor who could have supported his descendant but does not can be deprived of his share or be given

a reduced share. Also, this principle of socialist morality extends to non-blood relations as well. As long as it can be proved that they supported them they can inherit from them. This was done in the Old Lady Qui case where the neighbor inherited instead of the deceased sister through the principle of socialist morality.

Another unique feature of Chinese Inheritance law is that it considers work capabilities. The heir who lacks work capabilities is given preferential treatment as a beneficiary of the estate. If one of the children of the deceased is unable to work then he/she will get a share larger than the other children. Due to these features overlapping with each other the Chinese Courts have a lot of discretion when it comes to the distribution of the estate as well as the order of succession because if a widowed daughter-in-law supported her in-laws while their children did not, at the time of succession she may be the sole beneficiary even if the deceased had other children with work capabilities who did not support them. Thus, the courts in China must find a balance between the principle of socialist morality and the rights of blood relations.

Chinese civil code also gives recognition to inheritance by will through which a deceased person may dispose of their properties to its legal or non-legal heirs or the state, as per his wishes. But the right to inheritance by will has several restrictions imposed on it like a will that is against the principle of socialist morality can be ruled invalid. A will by which a father allows his daughter to inherit only if she gives birth to a son after marriage will be invalid as it discriminates against women. This is not a rule prescribed by law but created by the courts to provide some natural justice when it comes to the disposal and distribution of properties amongst families. Due to these factors in the law, the courts have a great extent of discretion when it comes to deciding cases on inheritance as they must ensure that the principals of socialist morality and equality are adhered to.<sup>[4]</sup>

Courts, as noted above, must exercise great discretion and judgment while deciding inheritance law cases as they must ensure that the principles of socialist morality and equality are followed and at the same time strike a balance between the principle of socialist morality and the rights of the descendants.

The Chinese Inheritance model is a behavior-based model<sup>[5]</sup> that values the trust and relationship the descendants had with the deceased. The law recognized both misconducts against the deceased as well as exemplary conduct. Supporting the deceased is an indication of great trust and a good relationship, i.e. exemplary conduct, which creates grounds for inheriting. At the same time, any person who commits serious crimes against the deceased or goes against the lifetime wishes of the person can be disinherited due to misconduct. Courts have the discretion to either fully disinherit the said person or reduce their inheritance per their conduct. In the case of Old Lady Qi, the woman was the sole inheritor of her sister's estate but the courts only awarded her the household furnishings because she did not visit her sick and elderly sister

for more than a decade. The courts ruled that as negligence, so she did not get fully disinherited but received only a portion of her sister's property that should have been her right as her blood relation. In another case the son and daughter-in-law had driven an elderly woman to suicide by beating her, not giving her food or medical treatment. This was treated as a serious crime and therefore regarded as misconduct against the lady and the courts disinherited the son and his wife.

As discussed earlier, since behavior is the guiding force of Chinese Inheritance Law, Courts have the discretion to readjust the shares of the descendants of the deceased. Unlike any other country in China due to the behavior model, non-blood relations can inherit over blood relations. In the case of Old Lady Qi, the sister did not inherit anything but the household furnishings while everything else went to the deceased's neighbor because she had supported the old lady in her hard times and the courts recognized her supporting behavior. The neighbor had taken care of the elderly woman for two decades while her sister did not even visit the sick lady. So, the courts awarded the exemplary behavior by the neighbor by giving her the deceased's estate while at the same time reducing the sisters share for misconduct.

## **KARL MARX'S THEORY OF COMMUNISM**

Karl Marx's theory states that the position of each person in a class depends on his means of production. The bourgeoisie were the rich capitalists who owned the factors of production and the proletariat was the labor class. Due to the concentration of wealth in the hands of a few, the bourgeoisie took advantage of the proletariat. Marx was unable to fathom how such poverty could exist in the abundance of wealth. He blamed capitalism. The rich paid the workers very little wage keeping the majority of the profits for themselves creating an increasing wealth gap between the two classes, making it easier for the rich to exploit the poor.

Marx believed that no one class of people should be able to exploit the other class. Thus, he aimed towards a more social state where everyone was equal and the property was owned by the state to eliminate the capitalists from benefiting at the expense of the labor class. In this socialist state, the workers would work for themselves, not for the benefit of the capitalists and everyone would share the profits equally. He hoped that through this they could reach a classless society which did not have private property and all the factors of production were in the control of the State and the workers creating the idealist communist society.

## **THE MARXIST INHERITANCE SCHEME**

China is a communist country and referring to Karl Marx inheritance defeats communism. If the private accumulation of wealth is allowed by way of inheritance the country again shifts towards a bourgeoisie capitalist society. He thought that inheritance was an effect of capitalism

and not the cause of it. Thus, he believed that inheritance could not be abolished until the economic and social apparatus of the country had changed at large. The State had to establish its means of production and take over the labor so that inheritance would dissolve itself once these changes had been accomplished.<sup>[6]</sup> He also believed that abolishing the right of inheritance would lead to an immediate social revolution against the government.

Following from this he thus advised that the State should instead of abolishing the right, they must tolerate it while it ran its course while at the same time effectuating changes for its disposal. According to him, it would be more beneficial for the government to begin the process of its abolishment by charging higher duties for funding social emancipation and to limit the rights of testation. By focusing on economic and social change in the country the government could easily reduce the amount of property available for private disposal, abolishing inheritance.<sup>[7]</sup>

China vastly diverged from this plan laid out by Karl Marx and instead of reducing the available private property has expanded on the right to inheritance. While they focused on social and economic changes to be made in the country they also allowed or the traditional rules of succession to be followed with governmental review and amendments as and when they were needed so that they were in line with the current social and economic reforms in the country. The government to promote gender equality granted women the same rights as men on matters of inheritance and ownership of land.

An inheritance received legitimacy in China in 1950 with the advent of Marriage Law. Article 12 of the statute said that both the husband and the wife shall have the right to inherit each other's property. Parents and issues were also given mutual succession rights by Article 14 of the same statute. In 1954, the right to inheritance was formally introduced in Article 12 of the Constitution of China.

Since then, the Chinese have taken several measures to protect private property and encourage inheritance. A contractual responsibility was established through which once the citizens had paid their taxes and deposited a certain amount of output with the government they could keep the surplus as private property. The government also established insurance schemes to increase private property with the individuals, especially in the rural area.

Inheritance is now indispensable to the Chinese economy. By facilitating succession, people are motivated to work harder knowing that their efforts will benefit their family. The government also bases many policies and schemes based on the law of inheritance. By allowing succession the heirs of the deceased are provided for through his private property and require no State interference for social aid which in turn helps the State. Further, inheritance also strengthens the family as a unit and also helps the state establish socialist morality. Lastly, inheritance laws allow the Chinese to maintain a sort of friendly relations and connections to the Western

countries which will help them concerning international policies and trade, etc. in the long run.<sup>[8]</sup>

Although Marx said that there should be no private property it could not be abolished completely because in the modern economy the benefits of inheritance superseded its disadvantages.

## **CONCLUSION**

The inheritance that had begun as a temporary inconvenience in a Marxist society soon gained importance in the country. They had set out to abolish inheritance and private property but instead, succession laws have been made and private property is being encouraged to improve the standards of living and increase personal ownership. Socialist inheritance differs from bourgeoisie inheritance. While the latter focuses on increasing private wealth through means of production and the concentration of wealth in the hands of few people, in the former only means of life are passed through succession, not means of production thus, restricting the concentration of wealth and maintaining a sort of social society instead of a capitalist one even with the addition of inheritance in the schemes and policies of the country.

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