

## Examination of the Amended Draft of Succession in Taiwan's Civil Code from the Perspective of Gender Equality

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### Abstract

The amended draft of succession in Taiwan's Civil Code was released in 2016, yet members of the Judicial and Legislative Affairs Committee of the Legislative Yuan as well as scholars and experts at public hearings pointed out that some amended items in the draft might strengthen the preference for sons over daughters in Taiwan society, and whether to amend the code should be based on a gender impact assessment. From the perspective of legal positivism, this paper analyzes the gender difference of succession in Taiwan society and assesses the influences and impacts of the draft on gender equality, so as to determine whether it is necessary to amend the code and give some opinions on the legislation.

The articles that may strengthen the preference for sons over daughters in Taiwan society in the draft are: Article 1173 change of special lifetime gifts to non-deduction and Article 1223 reduction of legal heirs' proportion of forced heirship. According to the paper, people are still influenced by the traditional concepts of "family property should not be passed to people not of the same surname" and "property should be passed to sons not daughters. Therefore, in some cases, by passing property to sons during one's life-time or by making wills, daughters are excluded from succession. The nature of the former is disposition during a person's life-time, and the decedents' freedom to dispose their property shall be respected. Thus, this paper basically agrees with the legislative direction

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of the draft. However, if the proportion of forced heirship is further reduced according to the draft, then daughters will inherit less property and their rights of succession cannot be guaranteed, deepening the preference for sons over daughters in Taiwan society and leaving women in a permanent economic disadvantage. Hence, this paper argues that the decedents' rights to dispose their property by wills shall be appropriately restricted, and it is not appropriate to amend this part at present.

**Keywords: succession, amended draft, equality of men and women, gender equality, special lifetime gift, forced heirship, waiver of succession, gender impact assessment, respect to decedents' meanings, maintenance of equality among heirs**