

The Limitations and Solutions in Chinese Legislation about Sexual Harassment in Workplace Based on Analysis and Case Studies

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Abstract. In light of the burgeoning feminist movement in China, the issue of sexual harassment in the workplace has garnered significant attention both from the public and legislative bodies. This article sheds light on the shortcomings of current Chinese legislation concerning workplace sexual harassment, proposing viable solutions supported by case studies and survey data. It reveals a lack of precision in existing legal provisions and the absence of specific laws or regulations in this domain. Moreover, the detrimental aftermath experienced by victims underlines the urgency of addressing these deficiencies. The article advocates for a bilateral approach, focusing on actions to be taken by both individuals and employers. Empowering victims through heightened awareness is highlighted as a fusion for reporting and pursuing legal recourse. Concurrently, it stresses the significance for employers to make robust anti-harassment policies, furnish employee training, and institute transparent procedures for addressing complaints. Collaboration between these two fronts emerges as pivotal in effectively combating sexual harassment within the workplace.

Keywords: Sexual harassment; Workplace; Legislation.

1. Introduction

With the inexorable trend of feminist movement in China, the legislation about sexual harassment in workplace gradually gains much attention from both the public and the legislative organ. This article concentrates on the limitations of Chinese legislation about sexual harassment in workplace and feasible solutions through case studies and survey data. And the research finds that current legislation lacks accuracy in relevant provisions and specific laws or regulations in this area. Besides, the aftermath of sexual harassment which has a negative impact on victims can not be ignored. And the measures to handle these problems are divided into two sides--from the individuals and the employers. On the individual level, empowering victims through awareness can encourage reporting and seeking legal recourse. Employers, on the other hand, should implement robust anti-harassment policies, provide training to employees, and establish clear procedures for handling complaints. Collaborative efforts from both sides are essential for effectively addressing and preventing sexual harassment in the workplace.

2. Current Legislative Framework in China about Sexual Harassment in Workplace

The approach to regulating sexual harassment in China, as outlined in the Civil Code, differs from the focus on workplace protection seen in countries like the United States, United Kingdom, Canada, Australia, and Japan [1]. The articles that govern sexual harassment in workplace in China are scattered in a variety of laws and regulations. The table 1 below enumerates articles that are concerned with sexual harassment and their content.

Table 1. Articles Concerned with Sexual Harassment

Article	Content
Article 11 of the Special Regulations on Labor Protection for Female Workers	Employers have the duty to prevent sexual harassment from occurring.
Article 40, Article 57 and Article 58 of the Law of the People's Republic of China on the Protection of Women's Rights and Interests (2022 Amendment)	Sexual harassment is prohibited; The state organs have the duty to stop the infringement and give necessary help to victims.
Article 1010 of the Civil Code of the People's Republic of China	Any form of sexual harassment is forbidden ; The state organs, enterprises and employers have the duty to investigate and address related incidents.
2.1. Article 44 of Public Security Administration Punishments Law of the People's Republic of China(2012 Amendment)	Sexual harassment is forbidden and the perpetrators shall be punished.
Article 237 of Criminal Law of the People's Republic of China	Whoever molests another person by violence, coercion or other means shall be sentenced to fixed-term imprisonment.

3. The Flaws and Limitations in Chinese Legislation about Sexual Harassment in Workplace

3.1. Lack of Specific Laws and Regulations for Sexual Harassment in Workplace

Chinese laws inadequately address the prevention and control of sexual harassment in the workplace. As is mentioned before, the articles about sexual harassment are distributed in different laws and regulations. And in the current legal system, there is no specific law or regulation dedicated solely to dealing with sexual harassment in workplace. Instead, it is typically addressed within broader legal frameworks, such as labor laws, civil code, administration law and criminal law. While in the US, the courts rely upon the concrete guidelines produced by the American equal employment opportunity commission (EEOC) which is formed under the Civil Rights Act of 1964 [2]. Compared to the US laws, China's legislation about sexual harassment is still far more immature.

What's more, most of the provisions only roughly stipulate that sexual harassment is prohibited and anyone who defies them shall be burdened with liabilities. Besides, some legal norms mention employer responsibility, but do not further specify. While these laws may offer some degree of protection, they often lack the specificity and clarity which is necessary to effectively address the complexities of sexual harassment cases.

This deficiency in legislation is inclined to cause a societal and juridical underestimation of the issue of workplace sexual harassment. In other words, the absence of clear legal guidelines specifically targeting sexual harassment in the workplace can contribute to a potential consensus that such behavior is not taken seriously or is considered less significant compared to other forms of workplace misconduct. Therefore the unconcerned attitude may result in a lack of awareness, complacency, or even tolerance towards instances of sexual harassment, both within organizations and in wider society.

For instance, in the context of legal disputes, workplace sexual harassment is not the focal point but rather an incidental fact. From a legal perspective, the direct focus of the claim is whether the employer unlawfully terminated the labor contract. And sexual harassment merely serves as a fusion in this regard. Thus the judge also places the determination of workplace sexual harassment facts in a subsidiary and secondary position [3]. In *Wang Aizhen v. Shenzhen Bixiang Construction Labor Service Co., Ltd., and Shenzhen Tiehan Eco-Environment Co., Ltd.*, the judge did not confirm the existence of workplace sexual harassment in the relevant factual determinations. Ultimately, the judge's ruling did not involve the determination of sexual harassment; instead, it merely confirmed that the defendant employers indeed failed to fully pay labor remuneration [4].

3.2. The Ambiguity in the Definition of Sexual Harassment

Current legislation and relevant judicial interpretations in China do not provide a precise definition for "sexual harassment," nor do they clearly outline its constitutive elements or specify the behaviors that constitute sexual harassment. There are many theories about the definition of sexual harassment in Chinese academia, and at the legislative level, the term "sexual harassment" was first introduced in the Law of the People's Republic of China on the Protection of Women's Rights and Interests in August 2005. It regards the regulation of sexual harassment as a special legal protection measure for women, but does not elaborate a definition of its scope.

Thus, what constitutes "sexual harassment" is not defined in the present laws, which leaves judges to rely on a combination of culture, social perceptions, and specific case circumstances when determining whether sexual harassment has occurred. This kind of phenomenon gives rise to a wide range of discretion and inconsistent rulings on similar cases. Some judges believe that while inappropriate ambiguous language may be condemned to a certain extent, it does not reach the level of being considered as sexual harassment. Others consider actions such as hugging or pinching the nose as harassment, constituting negligence but not rising to the extent of severe sexual harassment. It is evident that not only are judges' gender sensitivities insufficient, failing to fully consider the subjective feelings of the victims, but also some judges draw too high a line on the legality of sexual harassment, resulting in situations where interventions that should be strong are weak. Sometimes, courts even refrain from explicitly using the term "sexual harassment," instead they choose phrases like "inappropriate behavior," "violation of moral standards," or "indecent behavior" to describe the facts without directly stating "sexual harassment." For example, the People's Court of Xuhui District, Shanghai, stated in its judgment: "Wang Xilong's chat content did indeed go beyond the scope of communication with colleagues, which was inappropriate. While Hastert Company terminated the labor contract based on this, it was not inappropriate [5]."

Another example is that of verbal sexual harassment. When a sexual harassment dispute arises, the question of where the line between freedom of speech in the workplace and verbal sexual harassment shifts to the question of whether or not a particular speech is invasive. When one party argues that the speech in dispute is invasive, while the other party argues that it is not invasive and falls within their freedom of speech, it is up to the court to decide, essentially drawing the line between freedom of speech in the workplace and verbal sexual harassment in judicial practice. From most of the decisions, it can be found that the judges' understanding of the aggressiveness of a certain speech is not uniform, and its subjectivity cannot be ignored, "The application of the freedom of speech clause, if it only stays at the level of the judge's subjective judgment, will lead to the practice of the same case with different judgments, and the predictability of the judiciary is greatly reduced, so the court tries to establish an objective framework and standard for the measurement of value, which is quite meaningful. Therefore, it is meaningful for the courts to try to establish an objective framework and criteria for the measurement of value [6]."

3.3. The Underreporting and Reluctance to Pursue Legal Action:

Despite legal regulations, a significant number of women choose to endure sexual harassment silently. Surveys indicate that only a small percentage opt for litigation or reporting to authorities, while the

majority resort to enduring, resigning, or tolerating the harassment. The accurate statistics is presented in the figure below, with 54.4% of the respondents that are succumbed to the sexual harassment, 20% that choose to tolerate or resign, and 20% that call the police, while only 5.6% of them resort to litigation [7].

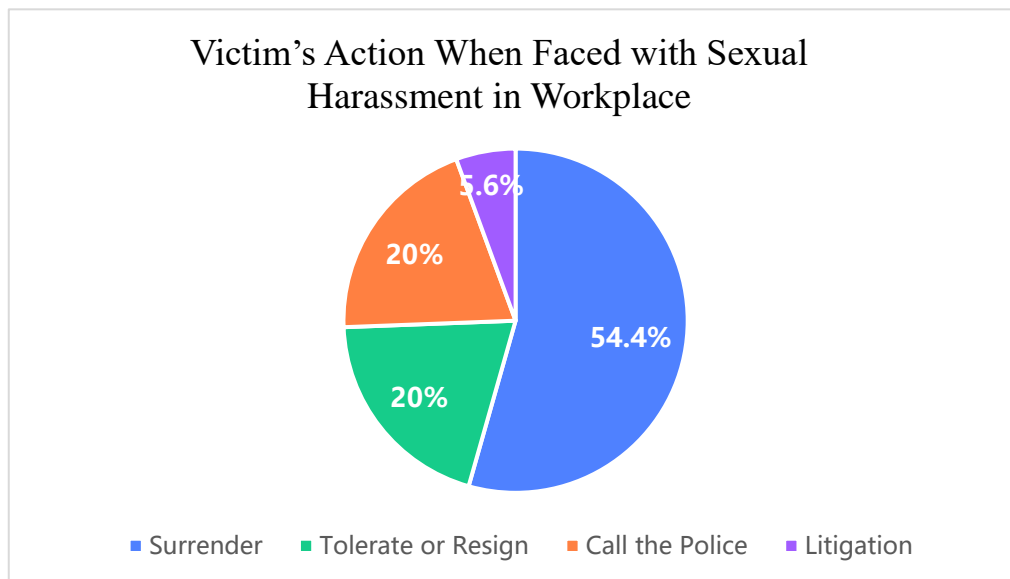


Figure 1. Victim’s Action When Faced with Sexual Harassment in Workplace

That is because in spite of the availability of legal remedies for victims of sexual harassment in China, social constraints such as the shame associated with sex often deter individuals, particularly women, from taking actions. Fearing damage to their reputation, many victims choose not to pursue legal action, especially when the perpetrators hold positions of authority in the workplace. And the reluctance potentially leads to the underutilization of judicial remedies. Another reason is that those who make genuine complaints are likely to be viewed as a potential ongoing obstacle to the smooth running of the business and identified as someone who should be fired because she filed a complaint with the employer. Survey data suggests that some bystanders feel that if they report what they perceive to be inappropriate behavior, they may be seen as part of the problem [8]. Therefore neither the victim nor the bystanders are willing to report the sexual harassment, which leaves the victims in a more helpless situation.

To handle the crunch, comprehensive strategies are necessary, including education on rights and legal options, improved support systems for victims, and measures to enhance the effectiveness and accessibility of legal recourse. Additionally, fostering a culture of accountability and zero tolerance for harassment within workplaces and society at large is crucial to creating environments where victims feel empowered to seek justice without fear of retaliation or further harm.

3.4. Negative Impacts on Career Development Despite Legal Remedies

Even when victims do pursue legal avenues and obtain compensations such as apologies or damages, the negative impact on their professional development does not necessarily dissipate. Perpetrators may face disciplinary actions, yet the adverse effects on the victim's career trajectory persist. Many individuals may get retaliation and are forced to resign. And these victims have to search for new employment opportunities, rebuild their professional networks, which disrupts their original career plans. Apart from that, many women who have experienced sexual harassment in the workplace often voluntarily choose to leave their original working environment or apply to the employers for being transferred out of their posts, all of which will greatly reduce their job stability. According to the basic principles of career development, it usually takes two to three years of working time to accumulate performance or achievements in a certain occupation, such as client resources, work experience and corresponding work skills. However, in the event of workplace sexual harassment, it

is very difficult for women to continue to engage in their work in their original work environment without any inhibitions, and the probability of their leaving their jobs increases greatly, making the direction of women's career development uncertain and their career choices unstable, and ultimately constituting a major obstacle to career development. This makes the direction of women's career development uncertain and their career choices unstable, and ultimately blocks their way to career development. These consequences represent latent damages that are difficult to address through legal means.

4. Solutions to the Limitations and Flaws in Existing Legislation

4.1. Legal Solutions to the Legislative Problems

The concept of sexual harassment in the workplace should be scientifically defined and the constituent elements of sexual harassment in the workplace should be refined. It is necessary to seek to eliminate differences and reach a consensus, so as to lay the foundation for the establishment of a social support system for the prevention and treatment of sexual harassment in society as a whole.

As is mentioned earlier, the current understanding and definition of sexual harassment is not uniform. Sexual harassment in the popular context includes a variety of behaviors, including sexual harassment and sexual assault in the legal sense. The meaning of sexual harassment in the legal sense is also vague. In this regard, legislation can refer to advanced legislation in Europe and the United States, jurisprudential experience and the doctrines of renowned scholars, such as the theory of Professor Catherine MacKinnon, a well-known American feminist, on sexual harassment in the workplace, which states that a second type of sexual harassment exists in the workplace. And an offensive or hostile work environment is when the behavior of a supervisor, co-worker, or customer unreasonably interferes with an individual's work or creates an intimidating and hostile workplace [9]. Arguably, this type of harassment is more prevalent in the work environment and should be prohibited. And according to the article 1010 of Civil Code and the Law of the People's Republic of China on the Protection of Women's Rights and Interests, the author asserts that sexual harassment in the workplace can be defined as sexual harassment that occurs in the workplace by taking advantage of a position of authority or subordination, by words, expressions, gestures, words, images, videos, voices, links, or any other means to cause another person to feel uncomfortable with sex-related associations. And in order to avoid controversy in judgement of the court, it is recommended that when the time is ripe, the meaning of sexual harassment in the workplace should be clearly defined in the law. In a word, the underreporting of victims calls for a social need for more comprehensive legislative protection and cultural shift empowering the victims to speak out against sexual harassment without the fear of reprisal.

4.2. Non-legal Ways to Undertake the Limitations of Legal Norms

As for individuals, there are some useful steps to help cope with sexual harassment in the workplace: (1) Tell the harasser to stop if they can do so safely; (2) Read the employer's policy and see where should the harassment; (3) Keep copies of the evidence of sexual harassment in safe place; (4) Report the sexual harassment to the employer. With this practice, the victim could minimize the harm as soon as possible.

And for the employers, there are also some feasible measures for them to prevent and deal with sexual harassment. Initially, the employers can set training programs about workplace sexual harassment. It requires them to implement comprehensive education and awareness programs within workplaces to educate individuals about sexual harassment, its consequences, and available support resources. As a result, these programs could help purge the stigma from reporting and empower victims to speak up.

Another possible means is to create safe reporting channels. They employers should establish confidential and supportive reporting channels within workplace where victims can safely report

incidents without fear of retaliation. Ensure that these channels are accessible, well-publicized, and free from bias.

Besides, it is necessary for employers to establish voluntary dispute resolution. For instance the U.S. Postal Service utilizes a voluntary dispute resolution system for discrimination and harassment complaints, offering mediation as an alternative to formal grievance processes. Accusers file complaints and may request mediation, where the accused attends an initial meeting with a mediator. Participation is voluntary for the accuser, who can opt out after the first meeting at any point of the process. The system has led to a significant decrease in formal filings over four years, with over 90% of participants satisfied with the process's impartiality and treatment, and at least 60% satisfied with the outcome [10]. From this example, we can see that voluntary dispute resolution makes it possible for the accusers to tackle the harassment at their own pace, and helps them obtain a satisfying consequence without complicated legal procedure.

Lastly, increasing the proportion of female executive in the workplace also plays an imperative role in the establishment of preventive measures. As a matter of fact, where there are more women in high position, the sexual harassment is less likely to happen. Moreover, an improvement in women's status in the company helps create a more diverse and friendly working environment to female workers.

5. Conclusion

This article meticulously examines the shortcomings within current Chinese legislation concerning workplace sexual harassment, underpinned by a rich tapestry of case studies and survey data. It highlights a lack of precision in relevant legal provisions, as well as the conspicuous absence of specific laws or regulations addressing this pervasive issue. And the article can serve as a suggestion for Chinese legislation in the field of anti-discrimination and protection of women's rights and interests. Also, it calls for concerted action from both the society and the enterprises, urging stakeholders at all levels to prioritize the eradication of sexual harassment and foster environments where dignity, respect, and equality prevail. Through collective vigilance and commitment, efforts can be made towards realizing workplaces free from the harm of harassment and discrimination.

Looking ahead, the trajectory of the feminist movement in China suggests continued momentum in advocating for robust legislation and policies to combat workplace sexual harassment. With increasing awareness and public scrutiny, there's a growing trend for legislative bodies to impose more precise and comprehensive laws addressing this issue.

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