

Workplace Sexual Harassment: Legislative Comparison in Mainland of China, Macao and the US

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Abstract. Workplace sexual harassment is a critical issue nowadays, with significant variations in legal frameworks across different jurisdictions, including Mainland of China, Macao, and the US. However, existing studies often focus on single-region analyses, lacking comparative perspectives that could reveal legislative strengths and weaknesses. This lack of legislative comparison leads to certain defects in the laws of these three countries and regions. To address this gap, this study conducts a comparative legal analysis, examining the definitions, preventive measures, and redress mechanisms in the three regions through document analysis and case studies. The results indicate that the US employs a comprehensive, precedent-based system with strong punitive measures, while Mainland of China and Macao rely more on statutory laws but face enforcement challenges due to vague definitions and limited victim protections. Therefore, this research highlights the need for legislative improvements. The findings provide valuable insights for policymakers seeking to refine anti-harassment laws and promote safer workplaces globally.

Keywords: Workplace sexual harassment; Gender discrimination; Legislative contrast; Comparative analysis.

1. Introduction

Workplace sexual harassment is a worldwide serious problem about labor rights and gender equality. It not only violates the personal dignity of workers, but also poses a severe challenge to organizational efficiency and social justice. There is a survey that the majority of victims of workplace sexual harassment are women, which accounts for 94.12% [1]. As for the global perspective, the International Labour Organization (ILO) estimates that nearly one in three workers worldwide has experienced some form of workplace harassment [2]. Mainland of China is making progress in legislation of workplace sexual harassment these years. Macao is deeply influenced by the "One Country, Two Systems" policy since 1999, the legislation is integrated. The US is the forerunner of workplace sexual harassment legislation, and its laws have guiding significance and far-reaching influence on the legislation on this issue in the world.

From the perspective of judicial practice, these laws still have defects. In mainland of China, proving workplace sexual harassment is in trouble. In the judicial practice in 2010-2021 in the mainland of China, only a small percentage of cases can be found by the courts to be workplace sexual harassment [3]. In Macao, no completed relevant law systems is established yet, which is a pity. In the US, the tradition of judicial activism leads to the ambiguity of standards, which causes some misunderstandings.

Research gaps are obvious to notice, and those are what this study is going to figure out. First, without comparison, it's difficult to focus on the systemic deficiency on legislations. Making comparisons allows government to improve their laws to be better adapted to national conditions. Moreover, with the development of technology, legislation about workplace sexual harassment should follow the time and the transition of new interpersonal and labor relations, which challenges traditional laws.

Through comparing legislations about workplace sexual harassment and analyzing cases, this study will show the legislative characteristics of mainland of China, Macao and the US, as well as

suggestions for making the law more reasonable and more effective in regulating workplace sexual harassment.

2. Current Legislation

Research shows that a proportion of women from different countries and regions in the world have experienced some form of sexual harassment, and the number is usually more than 45% [4]. Making laws is one way to reduce this phenomenon, by reading the articles, the laws of different countries and regions also show different characteristics, which will show as follows.

2.1. Legislation in Mainland of China

2.1.1. Establishing Process of Law.

The mainland of China has passed a law on workplace sexual harassment promoting through three levels -- conceptual terminology, legislative rules and judicial practice [4].

The first step is conceptual terminology. Sexual harassment was originally defined as “under the background of unequal rights, those with higher social status use their power to force sexual demands on those with lower social status, so that the latter feel insecure behavior, which is a manifestation of gender discrimination” in 1999 [4]. Workplace sexual harassment is a category of sexual harassment. Then came to the second part, making laws to protect the rights and interests of women or the victims of workplace sexual harassment. From Law of the People's Republic of China on the Protection of Women's Rights and Interests to Civil Code of the People's Republic of China, and even more detailed legislation were established to protect personality rights. Therefore, as basis, these laws have laid a solid foundation for future completed law system and judicial practice.

2.1.2. Typical Law and Case.

In judicial practice, Article 23, Article 25, and Article 80 of the Law on the Protection of Women's Rights and Interests, and Article 1010 of Civil Code of the People's Republic of China are usually used.

In Law of the People's Republic of China on the Protection of Women's Rights and Interests, workplace sexual harassment is first written in law. In Article 23 and Article 80, it provides a preliminary but crude definition of sexual harassment. One shortcoming is that Article 80 limited victims to women, but a small number of men had also experienced sexual harassment. This problem was solved after promulgation of the Civil Code of the People's Republic of China. In Article 1010, the law not only expanded the scope of victims to both sexes, but also introduced an important component of sexual harassment--against the will of others. In Article 25, the law gives 8 suggestions to the employing unit the measures to prevent and stop sexual harassment of women, but it is too idealistic and needs to be further adjusted according to the actual situation in real practice.

Before Civil Code of the People's Republic of China is established in 2020, the court decides the case by Law of the People's Republic of China on the Protection of Women's Rights and Interests. A landmark case is Liu v. XYZ Corporation (2018), where the court ruled in favor of the victim, marking a rare instance of legal recourse. Despite this, challenges persist, including lack of detailed guidelines and reliance on employer compliance.

In Mainland of China, the difficulty of proof will be a core problem of the victim's rights protection. The 2020 Zhou Xiaoxuan v. Zhu Jun case was a landmark sexual harassment lawsuit in China that garnered widespread attention. Zhou Xiaoxuan (known as "Xianzi"), a former intern at state broadcaster CCTV, accused prominent TV host Zhu Jun of groping her in a dressing room in 2014. She filed a civil lawsuit in 2018, but the case faced delays and procedural hurdles. In 2020, hearings reignited public debate amid China's nascent #MeToo movement. Supporters hailed Zhou's courage, while critics cited lack of direct evidence. The court dismissed the case in 2021 due to "insufficient

proof," a ruling Zhou appealed unsuccessfully. The trial highlighted challenges in China's legal system for sexual assault victims, including high evidentiary burdens and societal stigma.

2.2. Legislation in Macao

2.2.1. Establishing Process of Law.

Different from mainland of China, Macao's legislation is influenced by Portuguese civil law and international conventions for historical reasons. The first law on sexual harassment in Macao was Portuguese in 1886, Article 391 of the Penal Code and it was called "indecent assault crime." Until the localization of Macao law in 1995, the Criminal Code was amended and promulgated in 1996, abolishing the "indecent assault crime" [5].

2.2.2. Typical Law and Case.

In 2017, through amendments to the criminal code, Macao has introduced a legal provision on sexual harassment--Article 164(A): "A person who compels another person to endure physical contact of a sexual nature, or who compels another person to engage in such an act with the perpetrator or a third person in order to harass another person, whether by contact with a body part or object, shall be liable to imprisonment for up to one year, or to a fine of up to 120 days, if the penalty is not greater under other laws [6]."

The same law applies to workplace sexual harassment cases in Macao. Chan v. Hotel Grand Macao (2020) was a landmark employment discrimination and wrongful termination case in Macao SAR, China, involving a front-desk employee, Ms. Chan, who alleged gender-based harassment and retaliatory dismissal. Chan claimed her supervisor subjected her to persistent sexual comments and unwanted physical contact, which she reported to HR. Instead of addressing her complaint, the hotel demoted her and later terminated her, citing "poor performance"--a justification Chan disputed with documented positive work reviews. She filed suit under Macao's Labor Relations Law and Anti-Discrimination Guidelines, arguing violations of her rights to a safe workplace and protection from retaliation. The court ruled in Chan's favor, finding the hotel failed to investigate her harassment claims and acted in bad faith by fabricating performance issues. Key evidence included witness testimony, HR records showing no prior disciplinary actions, and internal messages corroborating her allegations. The judgment awarded Chan 18 months' salary in damages and mandated the hotel implement anti-harassment training. The case drew attention to gaps in Macao's workplace protections, particularly for low-wage hospitality workers. It also set a precedent for interpreting retaliation under Macao's labor laws, emphasizing employers' duty to act on harassment complaints impartially.

This case not only strengthened protections against gender-based harassment in Macao's tourism-driven economy, but also demonstrated the region's progressive stance, with the court awarding compensation and mandating workplace training. Macao's smaller size facilitates stricter enforcement, though public awareness remains low.

2.3. Legislation in the US

2.3.1. Establishing Process of Law.

The US was the first country to legislate against sexual harassment, which laid a solid foundation for the legislation of other countries. The original law about women's rights and interests was Title VII of the Civil Rights Act of 1964, and in 1972, Congress amended the Civil Rights Act to further protect women's rights [7]. Besides, in 1980, Equal Employment Opportunity Commission (EEOC) issued Policy Guidance on Sexual Harassment which detailed the meaning of sexual harassment. There's no denying that the Civil Rights Act of 1964 worked with the Equal Employment Opportunity Commission in promoting both sex work plays an irreplaceable role in the process of equality.

2.3.2. Typical Law and Case.

Through the origin texts of the Civil Rights Act of 1964, it's easy to notice that the US government is making legislation to protect the rights and interests of employees, male or female: "The employer shall not engage in the following activities: (1) because of the race or skin color of the individual without hiring or firing individuals for their colour, religion, gender or nationality, or for reporting discriminate against individuals in terms of pay, terms, conditions or employment privileges; or (2) because the race, color, religion, sex, or national origin of an individual to be deprived or disposed of to deprive any individual of employment or of his status as an employee restrict, segregate or classify its employees or job seekers in a way that adversely affects them those [8]."

Moreover, in Policy Guidance on Sexual Harassment, more detailed definition about workplace sexual harassment can more easily help the victims to fight for their rights and punish the batterer: "Unwelcome sexual advances, requests for sexual favor, and other sexual behavior constitute sexual harassment in the following cases: (1) explicit or implied compliance with the sexual harasser can obtain personal conditions at work; (2) The employee's compliance with sexual harassment, or refusal to sexual harassment, will affect whether the employee is hired; (3) The purpose or result of the sexual harassment is to unreasonably interfere with the employee's work performance, or to create a coercive, hostile or aggressive work environment [9]."

This landmark U.S. Supreme Court case established sexual harassment as illegal sex discrimination under Title VII of the Civil Rights Act in 1964. In 1986, Mechelle Vinson, an employee at Meritor Savings Bank, sued her supervisor, Sidney Taylor, alleging years of harassment, including coerced sexual relations under threats of job loss. Despite initial dismissal--wrongly claiming her compliance was "voluntary"--the D.C. Circuit reversed, recognizing harassment as discrimination. The Supreme Court's 6-3 ruling upheld Vinson's claims, declaring that "Quid pro quo" (employment conditioned on sexual favors) and "hostile work environment" harassment violate Title VII, therefore, employers may be liable if negligent in addressing harassment.

The 1991 Clarence Thomas Supreme Court confirmation hearings became a national controversy after law professor Anita Hill accused Thomas of sexual harassment while she worked under him at the U.S. Department of Education and EEOC in the 1980s. Hill testified before the Senate Judiciary Committee, detailing Thomas's alleged inappropriate comments and behavior. Thomas denied the allegations, calling the proceedings a "high-tech lynching." The hearings, broadcast live, sparked intense debates about gender, power, and race in America. Many criticized the all-male committee's dismissive treatment of Hill, while others saw the accusations as politically motivated. Despite the scandal, Thomas was narrowly confirmed (52-48), becoming the Court's second Black justice. The case marked a turning point in public awareness of workplace sexual harassment, later fueling the #MeToo movement.

3. Comparison

One of the methods of analysis in this study is making comparisons. By reading the articles of the law, it's easy to find some similarities and differences, advantages and disadvantages. Different countries and regions can learn from each other in some places.

3.1. Similarities

First of all, Mainland of China, Macao and the US, these three countries and regions criminalize workplace sexual harassment and emphasize employer responsibility.

Moreover, it is important to note that the gender of the victim of workplace sexual harassment is not restricted. Whether it is between the same sex or the opposite sex, as long as there is a behavior in accordance with the above laws in the above countries and regions, it can constitute sexual harassment, or workplace sexual harassment.

3.2. Differences

Although legislations have points in common, but there are still some differences between them. Due to political, economic, cultural, historical and other multiple factors, the laws in Mainland of China, Macao and the US have obvious differences. In this study, we focus on three aspects-- definitions, enforcement and cultural factors about workplace sexual harassment in differences between these three countries and regions.

3.2.1. Differences in Definitions.

In the US, according to the Rights Act and Policy Guidance on Sexual Harassment, sexual harassment requires the following elements to be met. First is Quid Pro Quo. The victim is asked to accept sexually suggestive behavior in exchange for employment benefits (e.g., promotion, raise) or punishment (e.g., dismissal, demotion). For example, the boss threatened to "fire you if you don't date." Second is Hostile Work Environment. Sexually related speech, behavior, or visual material (e.g., pornographic jokes, inappropriate touching) creates a "serious or pervasive" offensive environment that affects work performance or mental health. For example, a colleague sends explicit text messages over a long period of time.

In the legislation in Mainland of China and Macao, the key point is whether the act of sexual harassment is against the real will of the person concerned or whether it is coerced. Chinese law does not emphasize the quid pro quo and hostile work environment, nor does it explicitly require the conduct to be "serious or widespread"; in judicial practice, more emphasis is placed on physical behavior and direct evidence explicitly listed by law.

3.2.2. Differences in Enforcement.

In the US law, they created a institution named the US Equal Employment Opportunity Commission (EEOC) to ensure the further implementation of the Civil Rights Act. Besides, the EEOC is a critical agency in promoting fair and inclusive workplaces across the US. If you have experienced sexual harassment in the workplace in the US, you can reach out to the EEOC for help in investigating, mediating, and prosecuting related cases.

However, In either Mainland of China or Macao, there is no law that provides for a special agency for gender equality at work. Trade unions and women's federations are more common in China and regulate sexual harassment cases, especially in workplace sexual harassment and sexual harassment in public. This may cause accountability mechanism is not perfect, because this organizations can't give help like prosecuting. They have limited functions and powers.

There are also differences in the clarity of employers' responsibilities. Compared with the United States, the burden of proof of employers in China is lighter, and the consequences of relief measures such as apology, civil compensation and administrative penalties are lighter, which rarely attract employers' attention. This may cause a situation in China that many victims are difficult to fight for their rights or they believes that income is out of proportion to expenditure -- time and money are spent but their rights are still missing. On the other hand, it Rehabilitate wronged employers, which can lead us to further thinking.

3.2.3. Differences in Cultural Factors.

American society is highly sensitive to the issue of sexual harassment, and victims will bravely speak out about their experiences and boldly use the weapons of law and public opinion to defend their rights and interests. At the same time, because of the continuous amendment of EEOC and legislation, the United States has a relatively perfect reporting mechanism, and the difficulty of victims' rights protection is relatively low.

However, in Chinese society, under the influence of traditional habits, concepts and public opinion, Chinese people will think that sexual harassment is a moral issue and it is a shame to be sexually harassed, so Chinese victims will choose to swallow their pride. At the same time, because China's legal definition is relatively new, there are still many imperfections in the legislation, the punishment

for perpetrators is relatively light, and workplace sexual harassment is mostly reflected in the internal solution of enterprises. There are few precedents.

4. Conclusion

In a word, workplace sexual harassment is a serious problem, many countries and regions are making laws to stop it from happening, but through comparison, the advantages and disadvantages of different legislations can be found. This study reveals that while Mainland China, Macao, and the USA share common goals in combating workplace sexual harassment, their legislative approaches differ significantly. The USA's detailed laws and enforcement mechanisms set a benchmark, whereas China and Macao face cultural and structural challenges. Future reforms should focus on clarifying definitions, enhancing victim support, and promoting cross-regional learning. Strengthening international cooperation and public awareness campaigns will be critical to achieving gender equality in workplaces globally.

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