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**White-collar Gender Discrimination in China:
How legal system fails to protect women's employment rights?**

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Abstract

Inherited from the traditional Confucians value, men have played a dominant role in China, and women have suffered gender discrimination in multiple surfaces including health, education, expectation of social roles, and job markets. In this paper, I focus on women's employment rights and gender discrimination at workplace in China. Despite joining international conventions and having general domestic laws against discrimination, women in China are treated unequally and less favored in the entire occupational lifecycle, including job selection, recruitment, allocation, training, promotion and benefits, firing, retirement, and pension. By examining policies and practices against white-collar women in regard to recruitment process, employment benefits, and sexual harassment, areas where the most common types of discrimination occur, I intend to identify three factors contributed to the inefficiency of the Chinese legal system in protecting female employees against gender discrimination: 1) Gendered stereotypes and social norms, 2) Inadequate legal and political regulation, and 3) Sketchy employer practices.

Table of Content

| | |
|--|--------------|
| Abstract ----- | p.g. i |
| Table of Content ----- | p.g. ii |
| Introduction ----- | p.g. 1 - 3 |
| Background ----- | p.g. 4 - 10 |
| Literature Review ----- | p.g. 10 - 15 |
| Methodology ----- | p.g. 15 - 17 |
| Findings ----- | p.g. 17 - 35 |
| • 1) Gendered stereotypes and social norms ----- | p.g. 17 - 23 |
| • 2) Inadequate legal and political regulation ----- | p.g. 23 - 30 |
| • 3) Sketchy employer practices ----- | p.g. 30 - 35 |
| Analysis ----- | p.g. 35 - 44 |
| Conclusion ----- | p.g. 44 - 46 |
| Reference ----- | p.g. 47 - 60 |

Introduction

“Males only,” “Must be under 30,” “Married with children preferred,” conditions like such are commonly found in recruitment advertisements in China (Fan 2017). According to the United Nations Working Group China Report, 13% of recruitment advertisements contain overt discrimination based on gender (UN Human Rights Council 2014). In 2009, the Centre for Women’s Law and Legal Services at Peking University surveyed 3,000 women and found that one in four women were denied a job because of their gender. 25 of those surveyed said they were forced to sign labor contracts containing clauses forbidding them to get married or become pregnant during a set period of time. More than 20% also reported that employers cut salaries of women who became pregnant or gave birth, and 11% female employees lost jobs for having a baby (South China Morning Post 2013).

According to another study carried out in 2010 by the All-China Women’s Federation (ACWF) and the National Bureau of Statistics of China, more than 90% female students surveyed believed that they had experienced gender discrimination by employers (Branigan 2014). More than 72% of women had experienced a clear perception of “not being hired or promoted because of their gender” discrimination. Over 75% believed that they were dismissed due to marriage or child birth. Meanwhile, urban Chinese women in 2010 earned 0.67 RMB for every 1 RMB men earned, and just 56% in rural areas (Steinfeld 2014). This gender pay gap in China ranks in the bottom third of the Global Gender Gap Index, or 99th out of 144 countries (The World Economic Forum 2016).

Similarly, according to an annual survey conducted by Zhaopin Limited, a leading career platform in China, 22% of the 128,500 employed Chinese women in the survey have experienced severe or

very severe discrimination when seeking employment. Surprisingly, better educated women were more likely to be discriminated when applying for jobs. About 43% women with graduate degrees felt severe or very severe discrimination, compared with only 18% of men with the same level of education. With similar qualifications, male counterparts had a better chance to get promoted and the promotion process took shorter than for female employees. Women aged 24 to 34 felt discrimination most strongly when they sought employment, and married women without children were most likely to be discriminated (Zhaopin 2017).

Moreover, female employees are often subject to sexual harassment in their working environment. At the end of 2016, a sexual harassment incident drew a lot of public attention when a female employee at China Minsheng Bank reported that she was asked by her manager to meet him in a hotel for a sexual encounter. Despite such a serious allegation, it only resulted in the manager being suspended and his third-quarter bonus being canceled, instead of a lawsuit costing the bank a huge amount of compensation (Zhang 2016). Women's Watch China released a survey result showing that 20% respondents had experienced sexual harassment at work (China.org.cn 2011), yet the actual number of incidents is way more shocking.

Despite undisguised gender discriminations in employment, there are also recessive discriminations that are hidden in different ways, in which the situation might be even worse because hidden prejudice and discrimination against women is more difficult to avoid and punish. Some young girls start to adapt to the status quo, and change their career interests into "a woman's work," such as being an office assistant instead of a doctor. Those who fail to confirm this social

stereotype risk being labeled as “leftovers.” Others choose to stay single and try hard to convince their employers into believing that career is their top priority (Steinfeld 2014).

Even though prevalent gender discrimination is practiced within workplace, China has joined international covenants against discrimination, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Labor Organization’s Discrimination Convention. Additionally, China’s constitution states that citizens have equal rights, and discrimination is explicitly prohibited by other legislations such as the Labor Law, the Employment Promotion Law, and the Law on the Protection of Women’s Rights and Interests. Instead of providing legal explanation or definition of discrimination, these clauses against discrimination, however, are more of a declaration within the law claiming equal rights should be protected and discrimination prohibited (Fan 2017). I hypothesize that government gestures are driven by political motivation to maintain harmony in regime instead of reinforcing the international human rights framework.

The underdeveloped nature of the Chinese legal system, the failure to adopt international human rights framework, and the lack of a specific set of domestic anti-discrimination law have forced women to experience various workplace injustices. This raises my research question of why workplace discrimination against women is still prevalent in Chinese society despite international and domestic legal resolutions? What factors have contributed to the efficiency or inefficiency of the Chinese legal system that is supposed to defend women’s employment rights in contemporary China?

Background

In human history, especially in Asian countries where ancient societies have adopted Confucianism patriarchy, women are considered fitting in domestic roles rather than professionals (Shen and D'Ambrosio 2016). Confucianism has played an important role in shaping a patriarchal society of China. Traditional doctrine in ancient China has oppressed women in one of the most sexist ways in human history, such as the practice of foot-binding and polygamy. In the *Analects*, Confucius says that “Only women and petty men are hard to be with. If you are close to them, they become disrespectful” (Jiang 2009).

The concept of gender in today's society is based on the core elements of Chinese cosmology -- *yin* and *yang*, standing for “female and male” or “soft and hard.” These philosophic notions, with their deeply-rooted gender implications, continue to shape contemporary Chinese thought. The social order of gender is formed on the concepts of *yin* and *yang*, which invoke that *yang*'s maleness is meant for the outside, and *yin*'s femaleness for the inside. Men are associated with superiority, motion and firmness, while women are coupled with inferior, still and gentle (Ames and Hall 1998; Shen and D'Ambrosio 2016).

Although women's social status has been greatly improved in contemporary China, women are still inferior in general and have to exercise their power mostly through men. For instance, in many rural areas today, a “good woman” is still considered someone who obeys their father, brother, and husband, which is an essential principle of Confucianism. Women are expected to do all the housework and take care of the kids, and are discouraged to have any claim in important decisions.

When there are guests visiting, women are supposed to cook for the guests but not sit with them, which is a dictum called “women do not sit at the table” (Jiang 2009).

In the World Economic Forum’s gender gap rankings, China ranks 69 out of 136 countries, following Mexico, Senegal, and Tanzania. The female employment rate has been falling. In the days of China’s planned economy era when elevating the status of women was central to the Communist Party’s manifesto, as much as 90% of women were working to confirm Chairman Mao’s “women holding up half the sky” propaganda (Steinfeld 2014). In 1992, male and female workforce participation rate stood at 87% and 86%. However, today not only are there fewer women working, but the gap between men and women’s income has widened. Between 1995 and 2007, women’s earning, as a proportion of men’s, had fallen from 84% to 74% (Kuo 2014).

Based on a more recent report of 2016, 63.3% of women were in the labor force compared to 77.9% of men (The World Bank 2017). Women earn on average 35% less than men for doing similar work, ranking in the bottom third of the Global Gender Gap Index (99th out of 144 countries). Despite relatively high labor force participation, there are few women in leadership roles. In 2013, only 3.2% of CEOs of Chinese companies were women. In 2016, women took up merely 17% of all legislators, senior officials and manager roles in China. Only 17.5% of firms have women as top managers, and women represented only 9.2% of boards of companies in China (The World Economic Forum 2016; Credit Suisse Research Institute 2016; Catalyst 2017).

China is still a patriarchal society today (Jiang 2009), and in terms of household relationships, gender hierarchy unfolds as the superiority of husbands in spousal relations. Women are expected

to be the primary caretakers at home, while a man's duty is to enter the labor market to make money and support their families (Shen and D'Ambrosio 2016). Yet this division of labor indicates that women are confined to the private sphere of the family with little or no opportunity to develop their talents and abilities in the public domain. However, with economic development and social reform in the past few decades, women have started to rethink their social roles and encountered one of the most important issues in feminist theory: reconciling family life and paid work (Song 2005).

After entering the labor market, women still face a series of problems, such as work-family imbalance, occupational segregation, and gender discrimination at employment. Due to historical reasons explained above, women generally have low-grade jobs compared to their husband's, which has made them disadvantaged both in the job market and at home. Even if the wife has a high-paid job, she may have to be the one to sacrifice it for the household, and the traditional gender order has internalized many working women in this regard (Chong and Li 2010).

For example, Mrs. Wang resigned from her marketing position at a French design company because she was pregnant and felt that it was impossible for the company to keep the empty seat waiting for her. Later she found another high-salary position at a French industrial design company, but she had to quit again because she felt upset that she had to put more time and energy into work instead of taking care of her child. While her husband and mother-in-law did not push her, the cause of her resignation came from the inner pressure generated by the traditional gender order. Mrs. Wang herself did not have a strong desire to develop a successful career and believed she should be the primary caretaker. She had internalized the gender role that dictated women to

prioritize the family, which became the top motivation for her to give up on career (Fang 2009; Chong and Li 2010).

In fact, the deeply-rooted gender norms have been blended into the Chinese business culture. The sexualized business culture, including frequent visits to leisure venues with clients, has made women professionals, even if they made to the management level, vulnerable to sexual harassment and exploitation. Women's bodies have been commodified in a sexualized market economy, which leaves businesswomen little or no sexual autonomy when it comes to business. The fact that women's sexuality is still strictly moralized presents a challenge to white-collar professional women when they attempt to maintain their sexual reputation in the highly sexualized working environment (Liu 2008).

Yuxia Zhou, 24, returned to Beijing after studying in the United States, and had trouble finding a job. "I was on a job hunting site and saw this ideal position as a marketing manager. One of the requirements was that I had to be male," Zhou said. Overt discrimination during recruitment is not uncommon. Many employers believe that roles involved travel or working overseas, such as factory-based jobs and engineering positions, demand only male applicants, because traveling to certain countries is not safe for women, and also that if a woman is older, her priorities would be more home-based, whereas the man's will still be work first (Steinfeld 2014).

To submit a job application, applicants often attach a photograph to their resumes or CVs, and the women applicants are commonly measured up to a certain level of attractiveness. There is a prevalence of job ads for certain positions with detailed appearance and height requirements for

women. Employers, including some government departments, tend to hire the tallest or the prettiest female employees to make them look good. This preference of beauty in job markets make college students believe that better looks secure better jobs, which motivates them to spend a lavish amount of money on cosmetic surgery (Steinfeld 2014).

Chen, a 28-year-old woman who has graduated from a top university overseas and worked for several years as a senior marketing analyst found it hard to secure a new job. During interviews, women are often asked upfront if they have a boyfriend or plan to get married. Chen stated that, “The interviewers would directly say to me that even if I have the desired qualifications, they would not hire me simply because they expect me to get married and have kids soon.” The Chinese central government requires companies to give female employees 14 weeks of paid maternity leave, but employers discriminate against women in part to avoid having to provide this benefit (South China Morning Post 2013).

Additionally, external structure and institution have made it difficult for female labors to take action against gender discrimination at work. Unionization is one of the most important components of civil society in claiming labor and employments rights, in which the Chinese authority has been ambiguous about. The only woman’s labor union in China is the All-China Women’s Federation (ACWF), formerly known as All-China Democratic Women’s Foundation (1949-1957) and Women’s Federation of the People’s Republic of China (1957-1978), the official state-sponsored organization representing women’s interests. Although the basic mission of the ACWF was to safeguard the rights and interests of women and promote gender equality, the organization was founded in 1949, when promoting women’s rights was part of Mao’s political

publicity to support the legitimacy of the Chinese Communist Party (CCP). The ACWF had advocated policy changes on behalf of women, and it had worked on promoting and increasing literacy rates, technical skills, employment opportunities, family welfare, poverty alleviation, and political participation of women (Cheng 2014).

The structure of the ACWF parallels that of the PRC's political administrative divisions in having national, provincial, county, township, and village levels. Each tier of the ACWF is under direct supervision of the CCP, and thus the ACWF plays the dual role of transmitting women's interests to the state and implementing state policy. Despite its self-claim, the nature of the ACWF is not an NGO, but a governmental organization to promote goals of the CCP, and therefore the mission of the party takes precedence over women's issues (Howell 2003; Cheng 2014).

For instance, Departments of Labor in major cities would consult with local ACWF branches on the formation of re-employment schemes to assist lay-off workers from state enterprises. However, the purpose of consulting was not to eliminate discriminatory practices of laying off women before men, or employers' bias against recruiting women, but to demonstrate that the ACWF had involved in training programs for women. The ACWF does not have power to make gender policy, but it can propose policy and legislative changes to the benefits of women, such the inclusion of domestic violence issues in the 2001 Marriage Law amendments and the new 2016 Law against Domestic Violence (Howell 2003).

Other women's organizations in China include Association for the Advancement of Feminism, Gender Roles Research Program, Marriage and Family Research Center, Study Centre for Women

in Social Development of China, Women's Resource Center, Women's Studies Center, and Committee for Asian Women. As their names have revealed, these women's organizations are mostly research agencies instead of functioning as NGOs. NGOs and organizations in China are required to register with the state and adhere to state supervision. They perform the tasks of providing welfare and advisory services, opportunities for exchange, advice to government, interest articulation and aggregation, research and networking, which lack the element of civil society as seen in other social organizations (Howell 2001; Howell 2003).

Literature Review

Research on women's role in the labor market, including different levels of employment, is abundant, and scholarship has demonstrated that gender discrimination in employment remains a universal and prominent issue. Brinkman and Brinkman (1997) point out that "the view that particular jobs are appropriate only for males or only females" has been perpetuated by cultures and further reinforced by existing legal systems through labor laws. Gender discrimination in employment can be traced to cultural stereotypes of women who, due to their traditional household responsibilities, are perceived as the weaker sex, less committed to their careers than men, and not tough and aggressive enough to succeed in the business world (Gregory 2003).

Post-feminist theories argue that women have achieved legal equality, and there is no further need for a feminist movement (Douglas 2002). Although it is true that women have started to be employed in predominantly male industries such as science, engineering, and technology, researchers have provided empirical evidence to prove that gender inequality in employment exists. Even in countries that ranked near the top of the GDI index, including Iceland, Australia, and

Norway, the ratio of male to female income does not exceed 0.77. The most disparate numbers range from 0.23, 0.31, and 0.31 for Egypt, Botswana, and India, respectively (Jarman et al 2012).

Employment gender inequality is not limited to unequal pay, but is also embedded in the entire occupational lifecycle, including the process of job selection, recruitment, allocation, hierarchical levels of tasks, training, promotion, firing, retirement, and pension (Forrest 2004; Wajcman 1998; Stahrenburg 2008; Durbin 2007). At each stage of the cycle, multiple factors affect the decisions being made, which often results in conditions which favors male employees (Jarman et al 2012).

Researchers have attempted to explain the factors which have contributed to gendered outcomes of employment. Early research focused on the historical factors that affect female employment, such as family role traditions, negative gender stereotypes, motherhood-related concerns, and demand-side discrimination (Killingsworth and Heckman 1986; Talbot 2004; Streckeisen 1991; Bergmann 1986). As has been mentioned traditional stereotypes have viewed women as weak, fragile, domestic, incapable of rational or logical thought, and less careered motivated, and thus assumes certain occupations such as “women’s jobs,” like nurse and maid. These stereotypes regularly appear on TV, Internet and at church, school, and workplace, causing actions of gender discrimination in practice (Wood 2008; Schein and Mueller 1992; Jarman et al 2012).

Later studies have examined how institutional and structural factors, including a welfare state arrangement, education systems, and social circumstances shape women’s employment patterns (Blossfeld and Hakim 1997; Sainsbury 1999; Van Der Lippe and Von Dijk 2002; Buchmann et al 2010). Kanter argues that having equal numbers of women on a particular position does not

guarantee that women are taken as seriously as men, but Kanter goes on to state that an increase in absolute numbers can help (1977). Rosener holds a different opinion by saying sex ratios are not important because numbers alone will not make a difference (1991). Some believe that by making it structural, it becomes difficult to detect the de facto factors of discrimination to blame (Thornton 1995; Bacchi 1999).

While some argue that the relationship between education and employment may have been exaggerated (Mourshed et al 2014), statistical evidence shows that at the macro level, more educated individuals had a higher employment rate than less educated individuals, and they have a higher income (SAUS, table 232; Strauss 2012; Chi and Li 2014). This partially explains gender inequality in employment (Klasen and Lamanna 2009). According to UNESCO's report of Gender Equality in Education, a majority of world's children live in countries with gender parity at primary level of education (2012). Lack of access to equal education opportunities has yielded a result in demand-side gender discrimination in the job market.

Employment rights has long been recognized in international human rights documentations and national legislation and policies. The U.K., U.S., and EU countries have implemented equal opportunity policies and rights protection legislation to target workplace discriminations based on gender, sexual orientation, ethnicity, age, disability, and religion (Rogers 2016; Williams 1981). Problems with the employment legislation and law under a human rights framework raise fundamental questions of political philosophy, such as the role of the state in promoting equality and the role of framing in getting things on the agenda (Sarkin and Koenig 2011; Toomey 2015).

Given my study's specific country setting of China, scholars have analyzed gender based employment discrimination in China with different focuses and time periods. Li and Goldschmidt (2009) identify "pregnancy, giving birth, and breastfeeding" as major causal factors of employment discrimination. Chi and Li links employment rate with age and marital status, and they found that in general, the employment rate was lower for singles regarding age and that the employment rate generally increased with age for both genders. Young single women have a higher employment rate than their male counterparts while older married women have a significantly lower employment rate than their male counterparts (Chi and Li 2014).

In Bauer et al's article, the authors argue that women's increasing participation in the workforce alone will not ensure equality between women and men nor will their participation necessarily upset the traditional "sex-gender system." Rather, a close study of women in education and the labor force in China reveals continuing or even entrenched gender stratification (Bauer 1992). Qin et al has investigated gender inequalities in job participation and wage earning among internal labor migrants in China, providing data featured in internal immigration (2016). Gao concludes that Chinese employers practice gender discrimination in recruiting employees for white-collar positions and female job applicants are more likely to encounter other forms of discrimination such as age and physical appearance requirements (2008).

Some scholars have provided thoughts on China's legal approach to employment rights of women. Jamie Burnett (2010) followed a historical perception of women in China and a trait of how international treaties, such as CEDAW and the Beijing Conference has affected Chinese women's labor rights, explaining early domestic laws and regulations as well as how new laws under China's

political goal of “achieving a socialist harmonious society” may promote women’s interests. Their research demonstrates that in 2000, men held four times as many high-ranking positions as women in business, and on average the salary of a working Chinese woman was 74% less than that of a man’s salary (Burnett 2010).

Burnett (2010) has provided rich background information on Chinese women’s historically subsidiary roles in society and early regulations that allowed visible gender discrimination at workplace in which contemporary discrimination towards female employees has rooted from. He also examines the critical laws and regulations that affects women’s labor rights, including the Chinese Constitution, the 1994 Labor Law, the Law of the PRC on Employment Contracts, and the Employment Promotion Law, pointing out the flaws within the laws despite their progressive steps ahead (Burnett 2010). With the author’s focus on the legislation analysis, this article would help my study in reviewing the relevant employment laws in China.

Timothy Webster’s article argues that given appropriate conditions, advocacy strategies, and rights at issue, victims may vindicate constitutional and statutory rights to equality in court (2011). Webster’s article takes a more concrete look at the law of employment discrimination with a particular focus on discrimination against disease carriers. Webster addresses the discrimination of the *Hukou* system, which is a structural factor embedded in every aspect of employment discrimination (Webster 2011). In *Understanding Labor and Employment Law in China*, Ronald Brown closely examines the relationship between the Employment Anti-discrimination laws and hiring and employment practices under statuses including gender, sexual harassment,

race/ethnicity, migrant workers, religious belief, disability/health, age, height, injury compensation, wages and hours, and employee benefits (2010).

Kaisi Zhang examines gender discrimination in the Chinese labor market from an economic point of view as well as in a human rights framework, explaining the meaning of women's human rights and protection of women's right to work (2015). The author also provides suggestions on improving women's labor rights protection in China, such as improving laws and regulations on women's labor rights protection, establishing specific women's rights protection bodies, enhancing legal supervision on women's labor right protection, and strengthening international cooperation to increase the level of women's labor right protection in China (Zhang 2015). Zhang addresses an important point in terms of the human rights framework, which I discuss further in later sections.

Research on gender inequality in the realm of legal profession was initiated by Cynthia Epstein's pioneering study, *Women in Law* (1981). There are also a few scholars who have studied women in legal education and careers in China, arguing that despite a steady rate of increase in the past few decades, women still face a ceiling in professional career in Chinese courts (Liu 2013; Zheng et al 2017; Liu and Wang 2009). This point of view forms one of my finding components, but these studies have not particularly explained how current gender composition in the Chinese legal system affect its ability to protect against gender discrimination at workplace, a gap my research aims to fulfil.

Methodology

Studying efficiency of the Chinese legal system in combating gender discrimination at workplace presents a few methodological challenges. First, as an ordinary master's candidate studying in the United States, I do not have access to connect legal personnel for further interpersonal interviews. Second, the Chinese authority has been reluctant to provide data or detailed information on its bureaucratic structure, and especially on gender divisions. No data on female white-collar workers ratio is available. Third, because extreme economic and gender inequality exists between urban and rural areas of China, situation of rural female employment significantly differs from that of urban women. Focusing on this urban-rural conflict would be another topic. The reason I chose to concentrate on the female white-collar group was that by 2030, 70% of China's population will live in cities (Erdenbileg 2016). Therefore, employment statistics for urban women are better indicators to track national gender equality within workplace. To overcome these obstacles, I collect second-hand information and academic resources, provide in-depth analysis of these resources, and generate a conclusion that three factors have contributed to inefficiency of the Chinese legal system.

Previous scholars in the field of gender discrimination at employment have focused on inequality under various categories including wages, retirement and pension benefits, recruitment process, and employment contracts and benefits. My study narrows the scale of discrimination down to three most prevalent discrimination types in China: recruitment process, employment benefits, and sexual harassment.

This research is built on social theories from established literature, and I apply theories to gender discrimination cases that have happened in the contemporary Chinese society, summarizing factors

contributed to the system's inefficiency. Although there exists a large amount of literature in the study of gender discrimination in employment, they rarely focus on how legal system protect its victims. Few scholars have quoted and analyzed the exact words from legal and policy documents, or used real-life cases as examples, and these studies are relatively outdated. Aiming to test the reasons of the legal system inefficiency, my research fulfills this gap by providing a social-legal perspective and gathering evidences that have occurred in the past three to five years.

I present the current circumstances of women's employment rights in China by gathering information from news articles, academic books and journal articles, law and policy clauses, court cases, and surveys. Furthermore, I analyze factors that affect the efficiency of the Chinese legal system in protecting against gender discrimination at workplace based on these research, and provide analysis of further implications for such relationships.

Findings

Through examining different sources, I identify three major factors that have contributed to the inefficiency of legal system in combating gender discrimination at workplace in contemporary China: 1) Gendered stereotypes and social norms, 2) Inadequate legal and political regulation, and 3) Sketchy employer practices.

Gendered Stereotypes and Social Norms

Influenced by internal or external gender orders, or both, women have lower standings in the Chinese political and legal systems. Despite a rapid increasing rate of higher education and professional training, Chinese women are still disadvantaged in various ways today. Although

more than half of law school graduates are female today, it is hard for them to make to the top decision-makers, including political leadership and court judgeship. This has rendered legal institutions in China to be highly gendered, which presents a challenge to the jurisdiction and efficiency of the Chinese legal system in protecting women's employment rights.

Over thousands of years of Confucianism influence, Chinese women were generally excluded from the formal education system. It was not until the modern era, with the development of feminism and introduction of Western liberal ideologies, did the Chinese higher education system start to embrace female enrollment and allow more women to have access to education. A large number of universities were completely inaccessible to women before 1930s, and female student enrollment rate was as low as 2% at that time. In late 1920s, law schools started to accept female students, but it was not until after 1949 had women's enrollment rate risen steadily (Liu 2013).

After 10-years of Cultural Revolution, China resumed the national university entrance examination, *Gaokao*, in 1977. Since then, the percentage of female students in higher education had grown rapidly year-by-year. In 1980, female students accounted for 23.44% of students in higher education, and the figure has increased to 50.86% in 2010, with 50.36% of female master's degree candidates and 35.68% female Ph.D. students (China Education Yearbook 2009; Liu 2013).

In history of legal profession, women had faced extensive structural and cultural barriers in both law school classrooms and law firms (Hagan and Kay 1995; Reichman and Sterling 2004; Mertz 2007), including income gaps between male and female lawyers (Reichman and Sterling 2004), differentiated chances of employment, promotion, and career development (Epstein 1995; Hagan

and Kay 1995; Gorman 2008), as well as sexual harassment at workplace (Sommerlad 2016). The long working hours and heavy workload in law firms also make them a less desirable workplace for women, who would concern for their childbearing obligation. Enforcing judicial decisions is often confrontational and it requires frequent travels, and thus it is generally considered a job for men (Zheng et al 2017).

In the early twenty-first century, feminization of the legal profession has become a worldwide phenomenon (Kay and Gorman 2008; Michelson 2013; Schultz and Shaw 2003). It happens not only in both law schools and law firms, as well as in courts (Schultz and Shaw 2003). China makes no exception in the global booming trend of legal profession, especially when the “one-child policy” has been loosening in recent years. Although Chinese law schools normally do not reveal their gender ratio of the student body, some scholars indicate that the percentage of female students in law school exceeds that of male students (Liu and Wang 2009; Liu 2013; Li 2011). At Peking University Law School, the most prestigious law school in China, women accounted 61.3% from 2000 to 2005 (Liu 2013).

But one of the reasons for this phenomenon was that it remains widely believed in China that women are not suited to study male dominated subjects such as natural sciences and engineering, but are more suited to study arts, which includes law (Chan 2003; Liu 2013). Chinese universities select students merely based on *Gaokao* scores, the national entrance examination, and female students generally perform better than male students on this exam. However, it is more difficult for female graduates to find a job than male graduates, which leaves women limited options, and a lot of them choose to continue a master’s or a Ph.D. program (Liu 2013). Difficulty for female

graduates to find a job, which involves employer's preference to hire male associates, contributes to the higher percentage of female students in higher education.

Unlike in the United States, where gender statistics of law schools and legal profession can be found on the website of the American Bar Association and the Association of American Law Schools, only a small number of Chinese universities provide biographies or gender information for their faculties. In 2012, Professor Liu of China University of Political Science and Law checked 1689 law faculty members from 26 law schools, and 504, or 29.84% were female. Professor Liu concluded that the fact that gender statistics for legal education in China are almost nonexistent was a reflection of how little attention had been paid to gender issues in the legal sector (2013).

In addition, a higher female student enrollment rate in law schools does not mean that equality has been achieved in legal studies and professions (Lian 2007). Among female law school faculties, a smaller percentage has been promoted to full-time associate professors or professors, but a majority made up the bottom ranking positions in law school. This is also partially due to the traditional social gender division that considers caring for all of the inferior family affairs the born responsibility of women (Zhang 1997).

In 2013, there were approximately 57,200 female judges, or 28.8% of all Chinese judges (National Bureau of Statistics 2015). More than half of the assistant judges are women. Many female judges have been promoted to mid-level leadership positions in Chinese courts, such as specialized division chiefs and vice-chiefs in the judiciary bureaucracy. However, it remains difficult for women to obtain the top leadership roles such as vice-president and president positions. In

Zhejiang province, one of China's most commercially prosperous provinces, only 7.6% presidents in courts are women. This shows that despite structural barriers, women have been facing a glass ceiling in judicial careers in China (Zheng et al 2017).

The CCP persists its administrative control over the Chinese courts and personnel changes inside the courts by creating two different tracks of mid-level and high-level leadership promotion. Women in general lack the necessary social capitals in the political track, which is dominated by the masculine and corrupted culture rooted in the Chinese society. In order for female judges to be promoted, they may have to wait until the male judges in high-level leadership positions resign to pursue other professions, such as lawyers, in-house counsel, or administrative positions with the Party. Zheng et al have termed this phenomenon of processual logic to gender inequality, which shapes women's structural positions in Chinese courts, as "elastic ceiling," referring that the glass ceiling for women in the judicial bureaucracy is becoming thicker, more elastic, hierarchical, and less visible (2017).

Accordingly, women also have a low representation in the Chinese political arenas, which has been an enduring problem in gender stratification. Less than one-quarter (24.2%) of all positions in China's single-house parliament are held by women, ranking 72nd out of 193 countries. By 2016, women only made up to 12% of ministerial positions in the Chinese government. No woman has ever been nominated among the nine members of China's top level of decision-making board, the Politburo Standing Committee of the Communist Party (Howell 2014; Catalyst 2017).

Moghadam and Senftova (2005) suggested that political participation and rights claiming in the formal political sphere are key indicators for women to attain empowerment at either local or national level. Women's political participation is generally measured by the percentage of women in power structures, such as the percentage of women representatives in parliament or congress (Rosen 1995). Women's low participation rate in the political arena shows that the nation's power structure is still gendered.

By implementing quotas on the number of women taking leadership roles in government branches, 86.2% of government departments at the county level offered leadership positions to women by the end of 2010, an increase of 26% compared to the figure in 2000. In 2008, female officials at different levels accounted for almost 40% of all civil servants (Wu 2012). However, this seemingly decent number of female political participation does not conceal the glass ceiling women face in politics. Despite a number of women taking government roles, only a small portion could serve as key sectors, and rare could become the heads (Wu 2012; Zeng 2014).

The number of women's political participation in China falls behind that of other countries. Only 8-11% of senior female political leaders in China were at the level of provincial governors, state ministers, or above, significantly smaller than the average of the top 50 countries by GDP, which is 26%. By the end of 2011, the percentage of women in the Standing Committee of NPCC (16%) ranked 72nd out of 188 countries (Wang and Ren 2011).

Scholars have argued that female political distribution in China forms an olive-shape, with a smaller portion of women taking both the head and grassroots positions (Howell 2006; Wu 2012;

Zeng 2014). Although a range of other factors affects women's political participation in China, traditional gender order and family responsibilities are the primary concerns (Wang and Ren 2011).

Inadequate legal and political regulation

Paid employment is a right that women around the globe have fought for. Women's restricted access to paid work was maintained essentially by patriarchal relations in the workplace as well as household (Walby 1986). In the UK and other European countries, social policies were introduced to support both men and women in achieving a better balance between work and life. These policies, include providing childcare services, the promotion of flexible working hours, and parental leave, have become common in Western countries (Bastian 1994; Fang 2009).

In China, however, the trend is different because of the state's strong intervention. From 1949 to 1979, the rate of female employment increased to over 70%, responding to the CCP's political will. For urban women in the Maoist era, employment was taken for granted as a significant component of women's life. In contrast, after 1979, the state rapidly reduced support for women employment, but it did not prevent the primary burden of family responsibility from falling on women (Wang 2003). Oftentimes women chose to sacrifice their career developments in order to maintain healthy family relationships. This also shows that the state has a substantial power in opening up or narrowing down the choices of women in terms of work and life (Fang 2009).

Today, basic women's employment rights in China, including maternity rights, pensions, and anti-discrimination based on gender, are neither adequately regulated nor completely enforced (Wang 2003). The State Council released and implemented the Provisions on Female Labor Protection

under Special Circumstances in 2012, which extended maternity leave for female employees to 14 weeks (98 days) from the previous 90 days standard, just meeting the minimum maternity leave stipulated by the International Labor Organization. However, maternity leave in China varies widely by location, and local governments can determine the term “late maternity leave” (Shira 2017).

Full wages during maternity leave are paid by the employer and the National Social Security Bureau combined, but the employer carries a larger burden (Catalyst 2017). A Chinese female employee may take a 98-day paid maternity leave beginning at her discretion 15 days prior to child delivery. If she gives birth to her first child at age 24 or older, which is regarded as “late childbirth,” then an additional “late maternity leave” of 30 days would be granted. After the abolition of the one-child policy in late 2015, many provinces have changed the term “late maternity leave” to “maternity rewards leave,” but leave days remain the same (Elsinga and Yao 2015; Shira 2017).

Mandatory retirement ages in China differ between men and women. Women in blue-collar occupations, such as factory workers, are often required to retire at age 50, and white-collar female employees, such as professionals and managers at age 55. Special categories of women, such as college professors, can work until age 60. Yet the mandatory retirement age for urban employed men is 60 (Giles 2011). Retirement at different ages between males and females goes against females’ career development and advancement opportunities, and also results in reduced pensions as well as fewer social security benefits for female retirees (Dasgupta 2015).

State regulation is equally powerful in the legal realm. Denying the concept of judicial independence, the CCP enjoys a supreme authority over the Chinese Judicial System. China's courts are designed for a scenario of misalignment, which enables the CCP to maximize its interests by supervising and engaging in the judicial decision-making process (Li 2015). Chinese courts enjoy the authority to refuse any cases they consider "political sensitive" or "inappropriate" without having to provide legal standings for the rejection.

Within the courts, supervisors from the Party would guide the judges through direct and indirect communications, instructing them to implement a "desirable" outcome. This outcome-oriented decision-making mechanism is dominantly institutionalized in all courts nationwide, which allows senior judges to influence judicial decisions of their subordinates (Li 2015). Due to the political considerations inside the courtroom, judges are reluctant to render verdicts that may be contradicting to the Party's interests. "Bad verdicts" would have repercussions for they pay or career development, because local officials, rather than Ministry of Justice, evaluate and pay the salaries of judges (Wilson 2012).

There are legal provisions in some Chinese laws addressing the problem of employment discrimination. Labor Law of the People's Republic of China was passed in 1994, and it says,

Labourers have the right to be employed on an equal basis, choose occupations, obtain remunerations for labour, take rests, have holidays and leaves, receive labour safety and sanitation protection, get training in professional skills, enjoy social insurance and welfare treatment, and submit

applications for settlement of labour disputes, and other labour rights stipulated by law (Chapter 1 Article 3, Labor Law of China).

The Employment Promotion Law of the People's Republic of China was passed in 2007 and took effect in Jan 1, 2008. The Law regulates that “no worker seeking employment shall suffer discrimination on the grounds of ethnicity, race, gender or religious belief,” and “the State shall safeguard the equality of women with men in their enjoyment of labor rights” (Chapter I Article 3; Chapter III Article 27, The Employment Promotion Law 2007).

In terms of women's rights provisions, the Law on the Protection of Women's Rights and Interests was passed in 1992, and amended in 2005. This law was formulated to “protect women's lawful rights and interests, promote the equality between men and women and allow full play to women's role in socialist modernization.” It has clauses prohibiting those who “in employing staff and workers, refuse to employ women by reason of sex or raise the employment standards for women” (Chapter 1 Article 1, 22). In particular, it states that

No unit may dismiss female employee, reduce her salary or unilaterally terminate labour contracts or service agreement because of marriage, pregnancy, maternity leave or baby- nursing. However, the termination of the contract or service agreement by the female worker is accepted (Chapter 1 Article 27, Law on the Protection of Women's Rights and Interests, LPRIW).

Although these legal provisions seem legit, the legal language is not specified in terms of employment discrimination, and the Chinese courts do not function as legal interpreters as courts

in the U.S. China lacks an anti-discrimination law, and has no specific law or legal package that forbids discriminatory practices at workplace. A Chinese studies expert, also my college advisor, Dr. Scott Wilson interviewed a Chinese attorney who complained about the existing anti-discrimination clause, saying that

Discrimination is not defined. It is written beautifully that people should not discriminate against each other in employment, but it does not stipulate what you are to do if someone discriminates against [a female employee] ... With regard to what should be done about discrimination, it just says “[Employers] should not discriminate. We think that it is great that the anti-discrimination clause is there, but we would like to have something that clarified assuming responsibility by persons” (Wilson 2012).

The Chinese labor law system is broadly inherited from the country’s planned economic system, and it has not adequately deterred and contested discrimination. This is shown by the trivial number of employment discrimination cases filed in the Chinese courts each year, while discrimination widely occur. Statistics illustrate that in more than a decade from 2000 to 2011, the total number of discrimination cases reported in China was only 92 (Zhou 2012). However, as a comparison, the Chinese courts tried 4.887 million civil cases in the year of 2011 alone (Lu 2015).

A woman who has experienced employment discrimination has three legal options: pursue mediation, pursue arbitration, or file a civil suit (Burnett 2014). The Chinese authorities have been encouraging the progress of mediation instead of civil suits, avoiding the challenge of making precedence in controversial cases (Wilson 2012). For those who wish to pursue mediation or

arbitration, they would be instructed to report the complaint to the ACWF, local women's organization, or directly to the relevant government department. The LPRIW is limited in that it fails to provide any specific sanctions or penalties, and the rewards from such suits are too minimal to cover the time and dedication spent in the litigation. Due to its many limitations, the law has been criticized for being "more of a source of slogans and less a force for political and legal actions" (Burnett 2014).

In 2017, a student at Sun Yat-sen University filed a gender discrimination complaint with the Shenzhen Human Recourses Bureau, arguing that job postings on Zhaopin, China's largest job-hunting online platform, discriminate against women. Numerous job postings on Zhaopin openly articulate with gender restrictions, "men only," yet provide no legitimate justification. An increasing number of gender discrimination cases were filed in 2016 and 2017, following previous court victory. This rise of cases has made its way to China's Supreme Court, which issued a briefing on gender discrimination (China Labour Bulletin 2017).

The Supreme Court briefing has outlined a typical case of gender discrimination encountered by female job hunters, in which a female job seeker applies for a "male only" position, and gets rejected because of her gender. The court officials also reached consensus on safeguarding "a fairer attitude" among workplaces, affirming that both individuals and groups of corporation assume civil liabilities for gender equality at employment (Wang 2016). This briefing delivers a message to employers that the judiciary branch is aware of gender discrimination practices at workplace, and is willing to make verdicts protecting employee's rights. However, the fact that the court

encourages female employees to collect evidences themselves, instead of shifting the burden of proof to employers, foreshadows actual litigation challenges for the plaintiffs.

On the other hand, even though China has joined international covenants against gender discrimination, such as CEDAW, the international human rights framework does not speak to domestic violation of women's employment rights in China. During Mao's era, the newly-formed Chinese government had expressed a strong mistrust of international laws, and the UN, in turn, did not recognize People's Republic of China as the legitimate government until 1971. After the UN recognition, along with economic reforms and open-door policies in 1980s, China began to embrace the Western World and become an active member of the international community (Burnett 2010).

In 1975, Chinese representatives were present at the International Women's Assembly held in Mexico City, the first international forum on women's development. Later in 1979, China continued its international participation in women's rights by becoming one of the first nations to ratify CEDAW, and for the first time admitting that the status of women's rights in China had room for improvements. In 1995, China hosted the Fourth World Conference on Women in Beijing (Beijing Conference), which shows the country's enduring dedication to promote women's rights. In 2006, China ratified the International Labor Organization (ILO) Convention on Employment and Occupational Discrimination (Burnett 2010). Signing on these international conventions on women's rights may have accelerated the establishment of national employment laws, such as the Employment Promotion Law, but unauthoritative nature of international laws and conventions

makes them difficult to enforce. I will discuss the interrelation between international conventions and China's domestic laws in Analysis section.

Sketchy Employer Practices

The United Nations Human Rights Council Working Group Report reveals discrimination practices in China based on maternity, with employers preferring to hire only women who already have children, rejecting pregnant women statutory leave, and dismissing female employees during their pregnancy (UN Human Rights Council 2014). In a 2010 survey, more than 75% respondents believed they were dismissed due to marriage or childbirth (Catalyst 2017). In 2015, China alleviated its strict family planning laws, the one-child policy. This could exacerbate gender discrimination because employers are more reluctant to hire women, based on the possibility to take maternity leave more than once (Branigan 2014).

Despite legal provisions and policies discussed above, Chinese employers have performed prevalent gender discrimination against female job seekers and employees. I argue that employers' action was encouraged by the light punishment of the Chinese legal system and its loosening nature towards rights violation.

In 2014, Ju Cao, a 23-year-old female job applicant, filed a civil lawsuit against Juren Academy, a private tutoring school because the recruiters said they could not hire her because they wanted a man. This is believed to be China's first employment gender discrimination lawsuit (Xie 2013; Branigan 2014). Cao applied for an administrative assistant position at Juren via an online recruitment. She believed she met all the posted requirements, but when she revisited the website

after not getting a response to her application, she found a new “men only” requirement. When Cao inquired about the position, Juren Academy allegedly told her that it would consider only male candidates. With legal assistance of the anti-discrimination organization Yirenping, Cao filed a gender discrimination claim before the Haidian District Court, seeking compensation of 50,000 yuan (Xie 2013).

While the District Court did not respond to her, Cao subsequently submitted a complaint with five other bodies, and eventually heard only from the Labor Inspectorate who dismissed the case. In 2013, Cao launched an administrative lawsuit at Beijing Haidian District Court, claiming that the Beijing Human Resources and Social Security Bureau had failed to fulfil its statutory duty. The District Court accepted the lawsuit but dismissed it two months later. More than 100 female college students who had experienced similar situations signed a letter to the Committee for Internal Affairs, as well as the Judicial Committee of the Beijing People’s Congress and that of the Haidian District People’s Congress, calling for the Court to accept Cao’s case. In September 2013, the Haidian District Court finally accepted Cao’s civil case against Juren Academy (Xie 2013).

During the hearing, the principal of Juren Academy admitted that it had made a mistake in attempting to recruit only men for the position, but denied the existence of intended gender discrimination. The case was settled for a 30,000 yuan (equivalent to 4300 USD) “special fund to support female equal employment opportunities and anti-gender discrimination.” Cao’s lawyer, Yizhi Huang said,

Although we have a law to ensure women enjoy the same right as men to obtain jobs in reality you can see many companies write 'women not wanted'

openly and brazenly in job adverts. It is very strange. No government department supervises it and no government department punishes them ... While Chinese law states women are entitled to equality - the basis of Cao's claim - there is no detail on officials' responsibilities or means of enforcement. In practice, authorities have done little to tackle discrimination.

Rights advocates believe that significant changes in employers' discriminatory behaviors and progress towards women's rights protection will require new sex discrimination legislation and a larger portion of employee's benefits paid by the government (Branigan 2014).

Although grassroots NGO Yirenping provided legal assistance to Cao and women's rights media platforms helped raise awareness, the chances for collective action are much more limited in China (Branigan 2014). Independent labor unions are banned in China, and other forms of NGOs are tightly controlled. Earlier this year, China implemented a new foreign NGO law, restricting regulations of foreign NGOs, especially in the human rights field, and prohibiting unregistered foreign groups from funding their local counterparts. This could effectively cut off the lifeline for many Chinese NGOs that lack domestic sources and financial support (Huang 2017).

In 2015, a court in Beijing ruled in favor of a female employee suing for gender discrimination against a state-owned enterprise. This landmark judgment established legal accountability when the defendant is a state-owned enterprise, which covers 90% of the industrial sector, or 40% of the national economy. The 25-year-old plaintiff, Ma, applied for a job as a courier with the Beijing Postal Service. She was declined because the recruitment advertisement stated that only men aged

between 18 and 45 could apply. The Beijing Postal Service claimed that it was not possible for women to carry heavy packages, and it did not have any female employee at this position. The court ruled that the rejection to Ma solely based on her gender was subject to gender discrimination, but it rejected Ma's demand for an apology from the Beijing Postal Service and only awarded her 2,000 yuan (300 US dollars) in token compensation, instead of 57,570 yuan (9,000 US dollars), which she had sought for (China Labour Bulletin 2015).

Although this case has generated a legal precedence for state-owned enterprises, which was a relatively significant step towards holding accountability, the court was still cautious to address the issue of apology and refused to grant decent compensation or damage. This shows that the courts are reluctant to encourage an increase in gender discrimination cases, which in reality stimulates enduring employer discriminatory behaviors since the cost of discrimination is so low.

Moreover, employers continue to discriminate after women enter the workplace. A survey of female conducted by a labor rights group found that almost 80% female employees in China had been sexually harassed, and 15% said the problem was so severe that they had to quit their job (Branigan 2014). As briefly mentioned in introduction, the sexual harassment case earlier this year has attracted a lot of media attention. A China Minsheng Bank manager threatened a female subordinate, Ms. Wang, to fire her unless she accepted his invitation to a hotel room. The manager explicitly addressed his layoff decision to the victim as "there are many options, and it all depends on what you decide to do," indicating that she could keep her job only by taking his sexual offer (China Labour Bulletin 2017).

Ms. Wang quit her job and posted screenshots of the sexual harassment conversation online, which evoked nationwide outrage. Facing mounting pressure from the public media. The initially reluctant bank announced that it had fired the manager and asked him to issue an apology. The bank's response demonstrates a key systemic failure in regard to workplace sexual harassment in China that the employer parts fail to provide necessary labor protections for employees. Having quit her job, Wang receives no material compensation from the bank, and even more harassments from the media storm assuming that Wang must have hinted sexually beforehand. The male assailant gets to walk away with no investigation, material damages, legal accountability, or public record of the incident (China Labor Bulletin 2017).

China's 2015 LPWRI has explicit clauses protecting women from sexual violence and even enabled women to take perpetrators to court. This law could potentially subject employers to fines and lawsuits for mistreatment. But so far, the court system in China has always fell short of delivering justice and challenged victims by putting an extremely high burden of proof on them. According to a judge from Haidian District Court, around 10 women have sued sexual assaulters in court, but only one won her case. In this context, very few female employees have triumphed in getting employers to pay compensation, and only minimal damages when they do (Zhang 2016; China Labor Bulletin 2017).

Given that the costs of openly opposing sexual harassment are so high, the majority of victims choose to bypass complications and tend not to seek media attention. Also, because the legal system provides little to non-existent punishment, the cost for employers to discriminate is lower than that of the penalty, and therefore employers would not be deterred from maximizing their

profits by exploiting employees. While legal measures are not as efficient as they supposed to be, victims would rather take non-legal actions to defend themselves. I continue to discuss the deterring function of legal systems in the following section.

Analysis

Based on intensive research, I identify three major factors, 1) gendered stereotypes and social norms, 2) inadequate legal and political regulation, and 3) sketchy employer practices, that have contributed to the systemic failure of the Chinese judiciary branch in protecting white-collar female employees against employment discriminations.

In fact, the relationship between these factors and system efficiency is not linear. These three factors closely interact with each other and together affect efficiency of the Chinese legal system, which is also true the other way around. Gendered stereotypes and social norms have discouraged women to dissolve inequality by going to courts, and the inadequate nature of the Chinese legal system has rendered the costs of discrimination so low that it has not deterred, or even encouraged employers to take advantage of employees. In turn, inefficient legal system and discriminatory employer's practices without punishment reinforce gender and social norms, which goes into a cycle of discrimination and endure to disadvantage female employees.

Traditional gender norms have prevented Chinese women from prioritizing career to family, and they are restrained to confront employment discrimination out of a fear for damaging reputation as well as future job prospects. In terms of judiciary, fewer numbers of female than male judges held chief or senior positions in courts. Despite an increasing number of female students graduating

from law schools, gender distribution is still imbalanced for top-level decision makers inside the courtroom. The entire legal system is under political supervision and a bureaucratic order with men dominating the power, which is evidenced by the trivial number of female heads. Lack of female perspectives in making legal decisions may result in less discrimination cases being accepted and heard in courts.

This is evidenced by the trivial number of employment discrimination cases filed in the Chinese courts, which in turn discourages victims to bring their cases to legal remedy. The number of employment discrimination cases is so insignificant that employment discrimination lawsuits have not been included as an independent category of civil litigation by the Chinese Supreme People's Court. So far there has been no high-profile employment discrimination cases on trial or appeal on a national or provincial level courts (Lu 2015).

As a matter of fact, the underdeveloped nature of the China's laws and its legal system have aroused distrust among citizens in bringing discrimination cases into the courtroom. The vagueness of the protection laws and the equivocal statements in clauses against discrimination impede judges from converting general anti-discrimination principles (Wilson 2012). The laws have not provided a clear definition for what constitute gender discrimination or sexual harassment, and the courts have been cautious on interpreting these terms in cases. Due to the Chinese legal culture, the state encourages non-litigious settlement of social conflict and attempts to associate disputes toward administrative resolutions. Chinese courts are not bound to follow judgments in analogous cases, but they tend to follow precedents, which in fact makes judges more reluctant to deliver verdicts (Wilson 2012; Tatlow and Forsythe 2015).

For example, in Wang's case above, she was told by the Chinese bank that she had "no evidence" to her sexual harassment claim because her evidence of the screenshot conversation was limited to an online chat platform (China Labor Bulletin 2017). The fact that the assaulting manager walked out freely with minimal damages only further disheartens potential plaintiffs from suing in courts. It is clear for victims like Wang across China that the one-sided laws and retaliatory employer practice have failed to adequately protect workers' employment rights (China Labor Bulletin 2017).

Similarly, in Cao's case, the suit was settled for \$4300, merely a basic amount for one of the biggest private tutoring academies in China. The money was labeled as a "special fund" to support employment gender equality instead of a compensation for legal liability. The respondent refused to admit that it had committed gender discrimination in violation of the laws. By phrasing it as a "special fund" and to "support equality," the respondent automatically escaped liability and made it sound as if it were fulfilling its corporate social responsibilities. Although it was remarkable and a significant step forward for having China's first case against, the scenario still leaves out a number of loopholes to be progressed.

Even though the literal legislative measures of anti-discrimination at employment in China are at least as good as those of the U.S., yet the two systems function differently. In the U.S., federal legislation (Title VII of the Civil Rights Act 1964) prohibits employers from considering certain classes in making employment decisions, including race, color, gender, religion, national origin, disability, and age, and some state statutes provide even wider protection (Lu 2015). In 2015, a

class action against a construction company in Pittsburgh, whose female employees were called names, made gender jokes and obscene gestures, was resolved by the jury awarding \$13 million in damages and pay (Silver 2015).

These terms that are under the category of anti-discrimination clauses in American laws also appear in the Chinese laws, but there is no precedence in the Chinese courts to interpret these definitions. If Wang and Cao's cases were happened in the U.S. and brought to court, they could have been awarded a few millions of dollars for damages and compensation. Because of the significant amount of compensation claims, companies in the U.S. are deterred to violate employment laws. The U.S. legal system posts the burden of liabilities on employers, who would be held responsible if they have not provided adequate protection for employees. To prevent discriminations from happening inside the company, it is common for employers to have specific anti-discrimination procedures written into their employee's handbook and supervise their employees not to commit rights violations. This is a key feature that the Chinese legal system lacks.

The Chinese government has been using political and institutional tools to downplay the Western defined concept of human rights protection. China argues, and even has it written in its national Constitution that the country protects fundamental human rights. But China's definition of "human rights" is restricted by its political resolution as well as the China specialized socialist doctrine. The state avoids addressing any human rights subjects that could raise questions of CCP ruling legitimacy. This is evidenced by the government's official statements and ambiguous legal interpretations in terms of both international and domestic statutes.

For example, the Information Office of the State Council, functioning as China's Cabinet issued a white paper on Gender Equality and Women's Development in China. The authority states that,

By accelerating the building of a socialist country under the rule of law, comprehensively promoting the rule of law and exploring socialist mechanisms, safeguarding women's rights and interests, China has put in place a legal system for protecting women's rights and interests and promoting gender equality that is based on the Constitution, takes the Law on the Protection of Rights and Interests of Women as the core and encompasses various specific state laws and regulations, local regulations and government rules and regulations (State Council 2015).

Here, everything is preconditioned by the ultimate goal of "building a socialist country," in other words, maintaining stability and harmony in society, and rule of law is accompanied with "exploring socialist mechanisms." Although the government has claimed that it places a legal system to protect women's rights, the statement is rather saying than acting. If the state authority truly wished to prioritize women's rights protection, it would not have taken merely 92 discrimination cases in more than a decade, compared to almost 5 million civil case. Given its exclusive power in changing the employment spectrum as it did in increasing women's work participation rate during Mao's era, the CCP would put sufficient efforts in tackling gender discrimination within workplace only if it helps legitimize the party ruling.

On the other hand, although China has joined multiple international women's rights conventions, such as CEDAW, I would argue that the reason behind this was that the CCP intended to justify

its legitimate rule by demonstrating its openness to adopt the international norms, rather than protecting domestic women's rights. By becoming a signatory of CEDAW, a convention the U.S. has not ratified, China is showing to the international community that it cares for women's rights, alleviating its infamous records of human rights violation. But it has not implemented functional discrimination codes into its domestic statutes. The state gesture is rather political in nature, and therefore fails to adopt the principles in practice.

In theory, all citizens' rights are protected under the Labor Law and LPWRI, but not all discriminatory activities at workplaces are punishable under legal provisions (China Labor Bulletin 2017). Employers do not hold legal liability to protect, or fail to protect employees' rights. A lawyer at a Beijing firm who specialized in civil affairs litigation suggested that regulations against discrimination should be written into employee handbooks to provide a means to file complaints, and the authorities should set up departments to oversee workplace harassment and to implement the regulations (Zhang 2016). Instead, under current circumstances, speaking up often leads to real and material damages for employees, including forced resignation, dismissal, retaliatory harassment and even physical dangers. Without structural changes to the legal system in terms of workplace protection and heavier penalties for employers who break the law, employers would continue to shirk their legal responsibilities and discriminate with impunity (China Labor Bulletin 2017).

For the purpose of generating a more comprehensive understanding, I compare the case of Hong Kong in terms of the three aspects discussed above. First, Hong Kong shared certain cultural traditions with mainland China in history, especially when it comes to gender issues. Under the

Chinese patriarchy social structure, men took the dominating positions and women played supporting familial roles. Similar to mainland China, women in Hong Kong also faced the pressure to maintain a professional career while performing as a good wife and mother (Blundy 2016).

However, there remained colonial legacies adopted during one hundred years of British colonialization from 1898 to 1997. Contemporary Hong Kong culture is a mixture of Chinese traditions and Western values, which has enabled Hong Kong women's social status to be significantly improved. In the past few decades, women in Hong Kong have become more independent, monetarily autonomous, and career-orientated. Terms such as "superwomen" and "female strong person" have been used to positively describe modern Hong Kong female young professions, who are also seen as role models by girls in school (Lee 2003).

At the government level, the Hong Kong administration has taken different measures and passed laws to specify discriminatory factors, including race, sex, family status, and disability, as illegal considerations at employment. According to the Sex Discrimination Ordinance, which was signed into law in 1995, all Hong Kong employers are prohibited to discriminate against employees based on their gender, marital status, or pregnancy. The Ordinance includes protection clauses to cover both men and women, and it precisely defines discrimination as if "on the ground of [his or] her sex, [an individual] is treated less favorably than he or she would the opposite sex" (Sex Discrimination Ordinance 1995).

The Equal Opportunities Commission (EOC) is set up to enforce the laws, which are designed to grant Hong Kong people equal rights and treatment at employment. An individual who has

experienced discrimination, harassment, or violence despite anti-discrimination laws can issue a complaint with the EOC, and the EOC is required to investigate the complaint and take further steps including providing legal assistance if needed (We As One, EOC).

A fundamental difference between the political and legal mechanism in Mainland China and Hong Kong is that Hong Kong enjoys judiciary independence. Under the principle of “One country, two systems”, Hong Kong has its own legal system, which is based on British common law and codified with local legislation. Hong Kong also has an active civil society, despite recent PRC interference, which allows NGOs and institutions to run checks and balance on government regulations. Courts in Hong Kong are free to make legal decisions based on the laws instead of taking political concern into account. This feature of judiciary independence in Hong Kong has made the legal system more sufficient in protecting victims of gender discrimination.

For example, an Indonesian domestic worker won a sexual discrimination case against her former employer after claiming she had been forced to take a pregnancy test by her employer. District Court Judge wrote in his judgement that, “whether a female employee is pregnant is a private matter about which the employer has no right to know,” and by asking her to undergo a pregnancy test, her employer subjected her to “less favorable treatment” based on her gender. Even through the employee herself wanted to know the result, the judge believed that her compliance, albeit voluntary, could have been the result of her subservient character and ignorance of her legal rights. Moreover, this case reaffirms the legal principle that the absence of a subjective intention or motive to discriminate would not prevent an act from being discriminatory against an employee (Lau 2017).

The argument of “less favorable treatment” resembles that of Title VII of the Civil Rights Act of 1964, and the EOC functions similarly as the Equal Employment Opportunity Commission (EEOC) in the U.S. The statute provides a clear legal guideline for judges to interpret the law in specific cases, and the judges do not need to worry about their salaries being assessed to their judiciary decisions. Meanwhile, the Court further protects gender discrimination victims by waiving the excuses of plaintiff being voluntary and the absence of discriminatory intention, shifting the burden of proof to employers and urging them to improve their inner anti-discrimination protection mechanism.

If the domestic worker’s case occurred in Mainland China, it would hardly have made a case to courts. The working class, especially disorganized domestic workers, are largely underrepresented in society, and worker’s unionization is strictly prohibited. The courts are reluctant to establish judiciary precedence or legal definition for statuses such as “less favorable treatment” to avoid obligation to take on more discrimination cases. Verdicts are less likely to place the burden of proof on employers, given that a majority of enterprises in China is still state-owned. Judiciary ruling in Mainland China is rather arbitrary, depending on the ongoing political dynamics and any proceeding impact that the result would have yielded.

Furthermore, given a combination of British legal system and an established legal culture in Hong Kong, employers are less likely to overtly discriminate employees. Employers’ activity is deterred and guided by the legal consensus in society, in which ordinary people, including both employers and employees, believe in the principle of justice and a checked legal system that brings it along.

For the purpose of a comparative case study, I have analyzed the case of Hong Kong in lights of three factors, including gendered stereotypes and social norms, inadequate legal and political regulation, and sketchy employer practices. One could identify an interrelated dynamic among the three factors as well as their influence on efficiency of Hong Kong's legal system in combating gender discrimination at workplace. Hong Kong shares certain traditional gender norms with Chinese culture, yet it embraces Western liberalism which encourages women to become professionals. The Western influence on Hong Kong society also forms a liberal legal culture that allows judiciary independence to operate. Arguably, Hong Kong scores higher on all of the three spectrums than that of Mainland China, and has resulted in a more efficient legal system to protect against gender discrimination at workplace.

Conclusion

Ms. Li, a 25-year-old employee at China Everbright Bank was denied promotion to a male colleague who had joined with her. Her boss said to her, "It's good that you girls take your work seriously, but you should be focusing on finding a boyfriend, getting married, having a kid." Li quit, and nothing happened to her employer (Tatlow and Forsythe 2015).

Case like such is not uncommon in China today, where gender discrimination within workplace is prevalent. Women are disadvantaged in the entire occupational lifecycle, including recruitment, promotion and benefits, firing, retirement, and pension, and these discrimination cases are most likely to remain undiscovered or unresolved. China has joined international women's rights conventions such as CEDAW, and it has domestic laws with specific clauses forbidding employers

to discriminate workers based on gender. This paper has explained why discrimination is still so prevalent that 80% of female employees have experienced gender discrimination at workplace and why are the laws not efficient in combating employment discrimination in China.

Through intensive research, I have identified three major factors that contribute to inefficiency of the legal system in protecting employment rights of women in China: 1) gendered stereotypes and social norms, 2) inadequate legal and political regulation, and 3) sketchy employer practices. Traditional gender norms have prevented Chinese women from pursuing professional careers and encouraged them to focus on family life. This has resulted in a smaller representative of female population inside the courtroom as well as in the cabinet, especially for top level positions and decision makers. A lack of female perspective in justice makes gender discrimination cases against women less likely to be heard and tried, which in turn discourages female victims to stand out and use legal tools to defend their rights.

By cracking down grassroots domestic NGOs and restricting foreign NGO's access to China, the Chinese authorities have been downplaying influence of the international human rights framework. Despite ratification to CEDAW, China has not demonstrated its real devotion to fight against gender discrimination. It is written into the national statutes that all citizens have equal labor rights and no unit shall discriminate, but the legal definition of discrimination is not provided, leaving no standing to sue in court. Due to the underdeveloped nature of the Chinese legal system, even if discrimination cases were accepted, it would likely to yield only settlements with minimal damages.

Since President Xi Jinping has taken office in 2013, there are few signs that that CCP intends to change its authoritarian stance. Under the leadership of President Xi, who will remain in power until at least 2022 and possibly beyond, China's perspective for civil rights and fundamental human rights remains pessimistic. Freedom of expression and media, already severely restricted through censorship and punishments, were hit even harder in the past two years. Xi requires state media outlets to pledge absolute loyalty to the party, and authorities have shut down blogs associated with "sensitive issues," including LGBT rights advocates (Human Rights Watch 2016). The government's increasing cracking down on media press and civil society further prevents the formation of liberalism and legal culture in contemporary Chinese society.

As a result, the legal system fails to deter employers for discrimination by deriving merely light or no punishment. Employers would continue to exploit benefits of female employees, because the cost is extremely low. China has maintained a top-down approach in terms of political decisions and national policies, which keeps minimal the impact of civil society and international community on domestic politics. Without significant progress and changes being made to the current legal system as well as public gendered ideology, employment gender discrimination is unlikely to be eliminated at any time soon.

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