How Could Private Law Address Gender Inequality and Sexual Harassment?

Bingwan Xiong*

As opposed to the domain-specific laws against sexual harassment adopted in the U.S. or France, China has adopted a distinct approach by codifying sexual harassment in the Book on Personality Rights. Unlike earlier domain-specific legislation—particularly the Law on the Protection of Women's Rights and Interests (LPWRI)—Art. 1010 enshrines protection against sexual harassment in a foundational private law statute of general application. This shift transforms the regulation of sexual harassment from a gender-specific administrative or labor issue into a general rule of civil liability, grounded in the stand-alone Book of Personality Rights of the Civil Code. Although some challenges persist in its implementation, the Chinese experience with respect to Art. 1010 indicates that such a reform has not only helped victims of sexual harassment to seek direct redress by clarifying the objective and subjective elements of the tort, but also has had wider legal and social impacts on the formation of a more robust and coherent legal, institutional, and cultural system to combat sexual harassment.

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* © 2026 Bingwan Xiong, professor of law, National Research Center of Civil & Commercial Law, School of Law, Renmin University of China. Email: bxiong@ruc.edu.cn. Parts of this manuscript, including certain central arguments, draw on my prior co-authored publications: Bingwan Xiong, Li Chen and Hanbing Xu, "China's New Anti-Sexual Harassment Law and its Implications on the Protection of Sexual Autonomy," Feminist Legal Studies (2025), https://doi.org/10.1007/s10691-025-09566-3; and Bingwan Xiong and Li Chen, "Unravelling the Challenges in Implementing China's New Anti-Sexual Harassment Law," Human Rights Quarterly 46(4) (2024): 573–592, https://doi.org/10.1353/hrq.2024.a941747. This note discloses the overlap for transparency. I have revised the manuscript throughout and added substantial new analysis, updated materials, and further discussion for this conference and journal submission.

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I. INTRODUCTION

Different legal systems take varying approaches to sexual harassment. It is not uncommon to resort to domain-specific laws to stop harassment, as has been done in the United States and France. By comparison, Art. 1010 of China's new Civil Code (effective 2021) adopts a distinct strategy, by codifying sexual harassment in the Book on Personality Rights:

> Where sexual harassment is committed against the wishes of others by means of words, text, images or physical behavior and so forth, the victims have the right to claim against the wrongdoer for civil liability according to law.
>
> Entities such as governmental organs, enterprises and educational institutions shall take reasonable measures including prevention, acceptance of complaints, investigation and handling, to prevent and stop sexual harassment through exploiting positions or subordinate relationships and so forth. (Chen et al. 2022)

Unlike earlier domain-specific legislation—particularly the Law on the Protection of Women's Rights and Interests (LPWRI)—Art. 1010 enshrines protection against sexual harassment in a foundational private law statute of general application. This shift transforms the regulation of sexual harassment from a gender-specific administrative or labor issue into a general rule of civil liability, grounded in the stand-alone Book of Personality Rights of the Civil Code.[1] By doing so, Chinese law now conceptualizes sexual harassment as an infringement of the right to sexual autonomy, a legally protected facet of personal dignity that applies to all civil subjects irrespective of gender.

1. As to the stand-alone book on personality rights in Chinese Civil Code, see Wang, L., & Xiong, B. (2020). *Personality Rights in China's New Civil Code: A Response to Increasing Awareness of Rights in an Era of Evolving Technology*. Modern China, 47(6), 703-739. https://doi.org/10.1177/0097700420977826.

The significance of this reform goes far beyond doctrinal refinement. It reflects a profound shift in China's socio-legal consciousness about gender relations and bodily integrity, from that of patriarchal cultures in traditional China to that of more egalitarian ideology in a modern society. Art. 1010, compared with previous domain-specific laws like LPWRI, integrates this protection into the legal core of civil life, signaling that the inviolability of sexual autonomy is not merely a women's rights concern but an inherent component of human dignity within China's private law order.

It is true that sexual autonomy could be perceived by many as a natural, self-standing right justified by moral philosophy, independent from short-term changes in policies or statutes. The right of sexual autonomy has been deeply embedded into the concept of justice as widely accepted by most modern societies despite their significant differences in their socioeconomic policies. On the other hand, while you can always argue for a certain level of protection for sexual autonomy from a philosophical level, the practical level of such protection is nonetheless contingent upon the statutory provisions. Without an explicit statutory provision on sexual harassment or sexual autonomy with a high level of authority, judges have exhibited certain reluctance to exercise discretion in holding the tortfeasors liable. As commended by former UN High Commissioner for Human Rights Michelle Bachelet, Art. 1010 of the Civil Code does serve as an important legislative reform for promoting gender equality (Bachelet, 2022).

This paper summarizes three interrelated issues drawn from recent scholarly discussions and judicial experiences. First, it examines the backgrounds and implications of incorporating the anti-sexual-harassment provision into the Civil Code from a sociopolitical lens. Second, it introduces the doctrinal elements of Art. 1010, and its improvements compared with pre-Civil Code laws. Third, it explores the concrete advantages of this codified approach in enhancing the enforceability of personality rights, as well as the main challenges and solutions in its implementation. Finally, we examine the wider implications of including an article on sexual harassment in the Civil Code from a social-legal lens.

II. FROM SPECIALIZED PROTECTION TO A CIVIL CODE RIGHT: A PREHISTORY OF ART. 1010

One cannot put the significance of Art. 1010 in perspective without a basic understanding of the profound sociopolitical changes that took

place over the twentieth century. During this period of social and political revolution, China's socio-legal consciousness about gender relations and bodily integrity also experienced an important shift, from the patriarchal and hierarchical ethics of a rural society to the egalitarian ideology of an industrial society, particularly after the founding of the People's Republic of China (PRC) in 1949 and the rapid economic growth experienced since the 1970s.

A. Gender Equality in the Chinese Revolution

Traditional gender ideology in China was governed by Confucian patriarchy (Ruskola 1994). Under the dominant ideology of Confucianism, women were expected to be obedient and chaste under the "three obediences and four virtues" since the Han Dynasty (206 BCE to 220 CE); Unmarried women were to obey their fathers, wives their husbands, and widows their sons, with prescribed virtues of chastity, obedience, and domestic skills. These moral norms, combined with the concepts of inner and outer spheres as well as male superiority, rigorously controlled women's behavior in both family and society. For centuries it was treated as state orthodoxy: Women's loyalty and submissiveness were considered the highest female virtues. Under such an understanding, the female bodily integrity was not a personality right of the woman herself, but rather considered a subject matter of the moral code of chastity, and a property right of the husband (Yin 2026).

This picture began to change with modernization and revolution. During the Republic of China era, bans on female education and employment were lifted in many provinces. Many women worked as textile workers, clerical staff, nurses, etc, giving them a more independent source of income and social status. Change accelerated with the founding of the PRC. The Communist Party of China (CPC) policy strongly encouraged women to work independently in industry, agriculture, governmental organs, etc., under the policy of equal pay for equal work insisted upon in its reforms (CPC Central Office 1956, p.677). The state launched mass campaigns to mobilize female labor. Propaganda urged women to join the workforce and public projects; a famous slogan proclaimed, "Women can hold up half the sky." These policies greatly expanded women's economic independence. Official statistics illustrate the shift: By 1992 women accounted for roughly seventy-two percent of all women over 15 working in the economy (Ministry of Foreign Affairs 2002). In the early PRC urban women workers jumped from 0.6 million (1949) to 56 million (1992), raising women's share of total employment

from 7.5% to 38% (Ministry of Foreign Affairs 2002). In short, the revolution transformed most women from an unremunerated domestic labor pool into legally protected economic actors participating in socialist production.

Such a profound shift in economic standing also resulted in wider acceptance of gender equality ideas. The 1919 May Fourth/New Culture Movement and the Republican reform era brought Western liberal ideas (such as equality and personal freedom) into the debate. Writers like Lu Xun condemned the three obediences as a "Confucian shop" and exposed its abuse, helping to delegitimize its authority.[2] Some Republican activists campaigned for women's education, suffrage, and even divorce rights. During the 1910s-1930s, Chinese intellectuals like He-Yin Zhen and Ding Ling also engaged with international women's movements, arguing for educational and sexual emancipation. Such egalitarian ideas were further advanced and promoted by the socialist reforms since the founding of PRC in 1949. In the 1940s-50s, CPC leaders declared that women's liberation was a prerequisite for national liberation. Mao and other leaders also spoke directly against traditional customs, issuing directives to eliminate foot-binding, child betrothal, and other feudal practices that subordinated women. As a result, most traditional norms of gender inequality were dismantled.

B. The Chinese Legal Trajectory Towards Sexual Autonomy

The Chinese trajectory shows that personality rights—including the right to be free from sexual harassment—have a clear constitutional pedigree but acquire concrete legal force through private law. Unlike the German bottom-up process, in which courts developed a general personality right from discrete cases, China followed a largely top-down path.

Gender equality has been a constitutional principle since the founding of the PRC. Since its founding in 1949, the primary direction of the Chinese official policy has been to overturn the gender hierarchy

2. "Confucian Shop" is a pejorative term coined by Republican theorists to refer to the institutionalized, dogmatic Confucian ideology as distorted and weaponized by imperial rulers to systematically exploit and suppress the people. The entrenched customs and norms include the hierarchical "three bonds" that enforce absolute obedience, the repressive "female virtues" that deny women's autonomy, the irrational "filial piety" that demands blind sacrifice, the rigid formalism of ritualistic rules, and the patriarchal clan regulations that uphold feudal privileges—all of which became the target of criticism under the New Culture Movement via the rallying cry "Down with the Confucian Shop, Save Confucius" to fight autocracy upheld by ritual ethics.

rooted in feudal tradition and liberate women (Liu 2021). In 1950, China enacted its first national statute in the field, the Marriage Law, as the initial legislative effort to empower women. It confirmed women's entitlement to economic, political, family, and social rights on an equal footing with men. Such stipulations were later confirmed by Art. 96 of the 1954 Constitution, which states that "In the People's Republic of China, women enjoy equal rights with men in all aspects of political, economic, cultural, social and family life."

The idea of personal dignity or personality rights were also first introduced on the constitutional level, although at a later point. Art. 38 of the 1982 Constitution enshrined personal dignity for the first time, prohibiting "insults, defamations, or false accusations and framing citizens by any means" as a response to the frequent and severe abuses during the Cultural Revolution (Xiao 1986, p. 138). Art. 101 of the 1986 General Principles of Civil Law protected personal dignity under the right to reputation and also prohibited insults and defamations, as an implementation of the constitutional guarantee of reputation (Wang L. 2012, p. 169). At the time, while the term sexual harassment was not widely known by the public and the academia, actions of sexual harassment were mainly combated by criminal law under the crime of *liu mang* (essentially acts of hooligans and/or indecency) (He 1995).

Nevertheless, this criminal charge has long been criticized for its overly vague and broad scope, and was thus abolished and split into several independent criminal charges. The part that used to govern sexual harassment was transformed into the crime of forcible molestation, while other typical conducts including stalking and obstruction were reclassified as the crime of provoking trouble. However, such criminal approaches are insufficient to address sexual harassment issues in the new era. They fail to cover power-based harassment in the workplace and verbal sexual harassment. In addition, even if acts of forcible molestation and provoking trouble could be duly sanctioned under the Criminal Law or the Law on Penalties for Administration of Public Security, victims still lack a clear legal basis to obtain compensation or other effective remedies for their losses.

As the economic and social standing of women advances, awareness for the presence of sexual harassment in the workplace rises. As the concept of sexual harassment has been further explored, it has increasingly been acknowledged in academia that what Chinese people

call *feili* (indecent assault) and *liu mang*[3] are essentially sexual harassment, a violation against the victims' sexual autonomy and personal dignity (Zhang 2003, pp. 31, 68-69). Reports, discussions, and research of sexual harassment began to emerge during the late 1990s and early 2000s (Tang 1995). Especially since the early 2010s, incidents of sexual harassment have been frequently exposed and discussed on the Internet and have come under the spotlight. Accordingly, official and private women's rights protection organizations and concerned individuals have launched various campaigns on social media platforms to raise public awareness of the issue. The momentum of such campaigns has continued to this day, demonstrating Chinese women's firm resolve and increasing confidence in voicing their awakened awareness of rights.

The increase in the number of women revealing their experiences of unwelcome physical contact in public spaces or sexual harassment by their seniors, colleagues, and teachers on some occasions highlighted inadequacies in China's legislative efforts on sexual harassment. Before the enactment of the Civil Code, regulations regarding sexual harassment were fragmented across various pieces of legislation, including the LPWRI, Special Rules on the Labor Protection of Female Employees, and the Law on the Protection of Minors.

For instance, Articles 40 and 58 of the LPWRI (2005 Amendment) were the first provisions in state law explicitly prohibiting sexual harassment, and thus are also the core provisions invoked to remedy and sanction sexual harassment. Art. 40 states that "[s]exual harassment against women is prohibited. The victims shall be entitled to report to the entity or the relevant organs." Art. 58 further stipulates that

> Where a person, in violation of this Law, commits sexual harassment or domestic violence against a woman, and such act constitutes a violation of public security administration, the victim may request the public security organ to impose an administrative penalty on the offender in accordance with the law, and may also bring a civil action before a people's court in accordance with the law.

3. Another factor worth mentioning is the decriminalization of relatively trivial acts of harassments. The *liu mang* crime was a broad crime containing a wide variety of actions, from harassments of all kinds, to violent fights, to provoking quarrels and trouble. Thus, this crime was divided into three crimes in the later reform of criminal law of 1997, of which only molestation by force was subject to criminal punishment. Acts of molestation without force, along with other harassments like stalking, wooing, etc., are subject to administrative punishment decided and enforced by the police.

Although these provisions marked significant progress in combating sexual harassment, and symbolized a commitment to women's equal status and sexual autonomy, their shortfalls are also apparent retrospectively. To begin with, the core concept of sexual harassment was left undefined. Without a clear and operational definition of sexual harassment, courts were left to interpret cases at their discretion, resulting in a highly variable standard with a tendency to raise the threshold for establishing incidents of sexual harassment. Furthermore, Art. 58 LPWRI imposed a significant threshold for legal remedies, requiring that sexual harassment be classified as a violation of public security rules to incur any penalties. Finally, although Art. 40 acknowledged the victim's right to report to relevant organs or entities, it provided no enforceable judicial measure. The law failed to specify the exact obligations and liabilities of those responsible, making it challenging to hold anyone accountable for breaches of duty (H. Wang 2022; Wang L. 2022).

In 2018, the Supreme People's Court (SPC) of China took a significant step by formally recognizing "dispute over liability for sexual harassment" as a distinct cause of action for civil lawsuits.[4] This move provided harassed women with a clearer path to justice. Nevertheless, this newly established cause of action still lacked a clear definition of sexual harassment and did not amend the high threshold for initiating claims nor expand the scope of protection and penalties. As a result, despite the progress made, the utility of this independent cause of action remains limited for victims seeking meaningful redress in absence of a concrete basis for remedy in substantive law.

III. ART. 1010 AS AN IMPROVED ANTI-SEXUAL HARASSMENT LEGAL REGIME

Recognizing these shortcomings, Chinese legislators enacted Art. 1010 of the Civil Code to address issues of sexual harassment at the national level and potentially open a new chapter for the cause of gender equality and sexual autonomy in China. Although the illegality of sexual harassment has been made clear in the LPWRI since 2005, its constituents and consequences have never been clearly specified. Such a situation was fundamentally reformed by Art. 1010. Specifically, it clarifies the

4. *Notice by the Supreme People's Court of Adding Causes of Action in Civil Cases* (No. 344 (2018)) adds a level-three cause of action: "348.1. Dispute over tort liability in sexual harassment" after "348. Dispute over educational establishment tort liability" in Part IX Tort Liability Dispute.

definition of sexual harassment by setting out its subjective and objective elements, establishes civil liabilities for perpetrators, and mandates preventive measures by relevant entities, including governmental organs, enterprises, and educational institutions, for the first time in Chinese legal history.

Firstly, the first paragraph of Art. 1010 establishes that the subjective element of sexual harassment may be satisfied when the alleged conduct is unwelcome to the victim. This determination focuses on the behavior against the claimant's true intention, regardless of whether the claimant explicitly rejected it outright. This is an important improvement for victims since it presents a lower threshold for proving sexual harassment. Prior to Article 1010, judicial identification of the unwelcome nature of sexual harassment predominantly depended on judges' subjective discretion. Under the influence of traditional Chinese norms of sexual morality, such a practice frequently imposed a heavier burden of proof on victims. Specifically, victims were required to clearly and explicitly object to the offensive conduct for such behavior to be legally recognized as harassment. In numerous scenarios where sexual harassment is pervasive, victims commonly encounter difficulties in explicitly voicing their opposition due to power imbalances between themselves and perpetrators. Consequently, victims often refrain from protesting out of fear of adverse consequences arising from resistance, thereby creating an appearance of "voluntary" compliance (Wu 2020; Huang 2020). For instance, employees subjected to workplace harassment may fear retaliation exercised under the cover of managerial power, leading them to tolerate the improper conduct or reject sexual advances only in an indirect manner. Such ambiguous reactions were frequently regarded as insufficient to establish a violation of the victim's will, thus creating substantial obstacles to the successful establishment of sexual harassment claims (Sohu 2006).

In response to these challenges, paragraph 1 of Article 1010 represents a significant improvement by abolishing the preexisting requirement that victims must explicitly express refusal. Besides, victims are no longer obligated to prove the existence of negative emotions such as anger or anxiety resulting from the harassment (Wang 2020).

Secondly, the objective element of sexual harassment was set up by enumerating its possible forms: "by means of words, text, images or physical behaviour and so forth," (Chen et al. 2022) Sexual harassment is aimed at "obtaining physical and psychological satisfaction of a sexual nature" (Huang 2020).

This definition represents a significant departure from the traditional understanding that only verbal expressions and physical acts could constitute sexual harassment. Article 1010 adopts a more flexible and reasonable formulation by substituting the term *xingdong* (action) in the consultation draft with *xingwei* (behavior). Accordingly, the prohibited forms of sexual harassment are no longer restricted to sexually motivated conduct, but extend to expressions communicated through media such as written characters and images. Such a broad classification encompasses a wide range of actionable behaviors and the courts may now accept texts or pictures containing unwelcome sexual overtones as admissible evidence in determining the existence of sexual harassment.

Thirdly, Art. 1010 establishes an ex-ante prevention mechanism, which imposes a duty on the relevant entities to prevent sexual harassment and transforms the original moral or social responsibility into a statutory obligation of these entities. This mechanism not only entitles victims to initiate civil claims against noncompliant entities but also authorizes relevant authorities to enforce the statutory duty through public interest litigation, thereby expanding the channels for enforcing the obligation against sexual harassment.

Specifically, paragraph 2 of Art. 1010 clearly identifies the entities responsible for sexual harassment prevention and specifies the details of their safety-guard duties, including government organs, enterprises, educational institutions, and other relevant entities. Compared with courts that are only capable of conducting ex-post formal litigation, these entities are in a more advantageous position to control sexual harassment risks. Considering that hierarchical relationships are prevalent in scenarios where sexual harassment often occurs, victims are usually deterred from taking direct and firm countermeasures against harassment. Therefore, it is imperative for these entities to intervene in such incidents in a timely manner upon the victim's request; meanwhile, they must establish a sound ex-ante prevention mechanism from the outset to avoid irreparable losses to victims due to delayed intervention.

Prior to the implementation of the Civil Code, some employers were sued for "having not taken any measures to forestall workplace sexual harassment or fulfilled the duty to build a safe working environment free from sexual harassment."[5] At that time, Chinese courts generally held that

5. See, e.g., Zhang Jingjing v. Beijing Jingdong Century Trading Co., Ltd., (2020) Jing 02 MinZhong No. 6633.

in the absence of explicit provisions on entities' obligations, employers could not be identified as qualified defendants.[6]

The introduction of paragraph 2 of Article 1010 has fundamentally changed this situation. It explicitly stipulates the aforementioned obligations of entities, laying a clear legal foundation for tort liability to hold employers accountable for failing to perform their safety maintenance duties. This legal shift enables courts to hold employers liable for neglecting their responsibilities of ensuring workers' safety (Zhang 2022). Consequently, entities that fail to fulfill their statutory obligations will not only lose relevant lawsuits but also face other legal sanctions and additional penalties imposed by competent regulatory authorities.

Importantly, the provision is gender-neutral: By referring only to "another person" or "victim," Art. 1010 aligns the right with general sexual autonomy rather than limiting it to women. By embedding sexual harassment within a foundational legal framework, Art. 1010 reinforces the constitutional principles of gender equality and empowers victims. Also, its inclusion in the Civil Code has provided clear pathways for seeking justice, for the victims can seek legal remedy according to the relevant provisions in the Book of Tort Liability.

IV. EMPIRICAL EVIDENCE ON ART. 1010: IMPACTS, CHALLENGES, AND SOLUTIONS

A. Direct Impacts of Art. 1010

To see whether Art. 1010 has brought about any real impacts in combating sexual harassment, we have conducted a cursory search of the judicial cases involving sexual harassment since the promulgation of the Civil Code. According to retrieval results, a total of 100 judicial judgments concerning sexual harassment disputes were collected for the period from 2021 to 2025, including 17 cases in 2021, 24 in 2022, 18 in 2023, 24 in 2024, and 17 in 2025. The annual case volume remains relatively stable, which to a certain extent reflects the sustained attention paid to sexual harassment issues by both judicial practice and the general public.[7] Based on the analysis of the aforesaid judicial decisions, the major findings are set forth as follows.

6. Ibid.

7. It is worth noting that on a general level, there has been a dramatic decrease in the disclosure of judicial decisions since late 2023 across all classes of cases; thus this sample is unavoidably incomplete.

Firstly, changes in causes of action reflect the growing willingness of victims to pursue direct legal liability against infringers. The cases may be classified into two main groups. The first involves civil actions for tort liabilities against the harasser, and the other involves labor disputes where employees contest disciplinary measures taken against them—usually dismissals—for their harassing conduct. Since the enactment of Art. 1010, we can find a decline in the dominance of those labor-dispute filings: Whereas pre-Code practice saw well over 70% of such disputes filed as labor disputes, the post-Code distribution shows labor disputes accounting for roughly 35% of filings and, in more recent years, nearly 30%. By contrast, claims categorized under the tort/liability and personality-rights heads have together grown to represent approximately 55% of cases (35% under "tort liability disputes" and 20% under "personality rights disputes"), with the remaining 10% arising under other rubrics (contract, property, etc.). In practical terms, the increased proportion of tort and personality rights claims may indicate a growing plaintiff preference to treat sexual harassment as an autonomous civil wrong remedied by apology, emotional-damage compensation, and, where appropriate, ancillary economic recovery, rather than as principally a workplace disciplinary or contract-termination controversy. On a social level, such a shift suggests that claimants are increasingly willing to pursue direct civil remedies for violations of personal dignity and emotional integrity, proof of the increased awareness of their rights to sexual autonomy.

Secondly, when it comes to the provisions applied, Art. 1010 has become central to this reorientation of remedies and to judicial reasoning. Where courts have concluded that sexual harassment has occurred, the Civil Code provision is now a commonly invoked substantive basis: In the subset of cases in which harassment was found, 33 of 54 decisions (over one-half) expressly cited Art. 1010.

A further eighteen labor-dispute matters did not formally invoke the statutory text yet nonetheless reflected the normative content of Art. 1010(2) in judicial analysis. Courts in those labor cases affirmed employers' legal duties to prevent harassment, to receive and investigate complaints, and to take remedial steps; those duties were then used as the legal yardstick to assess the legitimacy of employer-initiated dismissals. *Zheng v. Honeywell Automation Control (China) Co. Ltd.*, the No. 181

Guiding Case[8] released by the Supreme People's Court in 2022, specifies guidelines for employers on handling procedures after receiving sexual harassment reports. In this case, manager Zheng neglected his obligations upon receiving Ren's report of sexual harassment, made inappropriate comments, and attempted to terminate her employment without legitimate reasons. Following internal investigation, Honeywell terminated Zheng's labor contract unilaterally. Zheng subsequently initiated labor arbitration and litigation to claim compensation for illegal dismissal, which were all dismissed. This case clarifies that managerial staff of employers shall adopt reasonable measures in response to complaints filed by employees suffering from sexual harassment. Where managers fail to take proper action, connive at harassing conduct or obstruct relevant investigations, employers are entitled to terminate labor contracts on the ground of dereliction of duty and serious violation of internal rules and regulations. People's courts shall not uphold managers' claims alleging illegal termination in such circumstances.[9]

In other words, in addition to circumstances where Art. 1010 has been directly invoked, Art. 1010 have also functioned as persuasive guidance of judicial decision-making where express textual citation is absent. The provision has also been applied in conjunction with other Civil Code provisions (for example, articles governing personality rights and tort liability)[10] and relevant sector-specific laws—most notably the LPWRI,[11] the Law on the Protection of Minors,[12] and the Labor Contract Law [13] —thereby creating a coherent legal framework for sexual harassment prevention.

Thirdly, in terms of judgments, approximately 54% of the cases were explicitly ruled to have constituted sexual harassment, while around 31% were confirmed not to involve sexual harassment. Cases settled by mutual agreement and withdrawn by parties accounted for about 7%. In other partial cases, though courts did not make a definitive finding on the

8. According to Art. 7 of SPC Provisions on Case Guidance, courts of all ranks in China are mandated to refer to the applicable precedents set forth by the guiding cases in their verdicts. Thus, SPC guiding cases serve as a de facto source of law in judicial practice.

9. See (2021) Hu 01 Min Zhong No. 2032.

10. See, e.g., Du v. Zhao, (2025) Ning 0104 Min Chu No. 8643; Zhang v. Liu, (2024) Yu 0112 Min Chu No. 38672; Fang v. He, (2024) Yue 1973 Min Chu No. 21819.

11. See, e.g., Liang v. Chongqing Mou Labor Dispatch Co Ltd, (2024) Yu 03 Min Zhong No. 1508. (The name Mou is usually used in Chinese case names to denote an anonymous litigant).

12. See, e.g., Gu v. Shanghai Zimu Sports Development Co Ltd, (2022) Hu 0105 Min Chu No. 26197.

13. See, e.g., Huang v. Suzhou Mou Company, (2023) Su 0506 Min Chu No. 11669.

establishment of sexual harassment, they affirmed that the conducts infringed upon general personality rights and reputation rights, or that partial claims for compensation for mental damage were upheld.[14] Furthermore, a number of courts hold that acts taken to deter sexual harassment may constitute grounds for self-defense, thereby exempting the actor from tort liability for damages.[15]

It is noteworthy that uncertainties still exist concerning the applicable standard of proof. While some courts in current judicial practice have adopted the standard of high probability, others still impose a heavy burden of proof on victims, and particularly require strict medical evidence on the causal connection between the harassing conduct and resultant damages,[16] which could be a major reason why certain courts decline to affirm the establishment of sexual harassment.

Fourthly, in terms of liability, the primary forms of liability borne by sexual harassers include apologies (oral or written) and compensation for psychiatric damage. The amount of such compensation is generally determined discretionarily by reference to specific circumstances of the infringement, degree of fault, consequences of harm including psychological injury and social impact, as well as local economic development level, with the typical range standing between RMB 2,000 and RMB 30,000. Courts usually also uphold claims for monetary losses arising from harassment, such as medical expenses, loss of work income, and nursing costs.

As for employers, where sexual harassment is established, termination of employment contracts by employers in accordance with valid internal rules and regulations shall normally be deemed lawful, exempting employers from liability to pay economic compensation. Conversely, if an employer fails to discharge their burden of proof sufficiently, their termination act may be held unlawful, and courts tend to sustain the claimant's claims for economic compensation.

B. Challenges and Solutions of Implementing Art. 1010

While Art. 1010 of the Civil Code has brought about significant progress in directly remedying the victims of sexual harassment, it is crucial to recognize that its implementation faces real difficulties. Based

14. See, e.g., Wang v. Chen, (2022) Hei 01Min Zhong No. 4211; Foshan Guicheng Self-Study Examination Tutor Station v. Liu, (2024) Yue 0605 Min Chu No. 5367.

15. See, e.g., Zhang v. Liu, (2024) Yu 0112 Min Chu No. 38672.

16. See, e.g., Song v. Zheng, (2023) Liao 1122 Min Chu No. 3002.

on our case review, we find three technical problems when trying to prove an alleged harassment, including (1) the proof of the sexual nature of the alleged harassment, (2) the weight of specific evidence and adaptation to the standard of proof, and (3) the proof of violation of subjective wills. Such issues are relevant to the determination of the subjective and objective elements of harassment under Article 1010.

1. Proof of Sexual Nature

Sexual harassment is, by definition, an act of a sexual nature. Naturally, difficulties may arise in distinguishing sexual harassment and harassment in certain cases, especially for verbal sexual harassment, since the boundaries between sexual and nonsexual conducts are inherently blurry, and the true intentions of the actor are usually hard to reveal. For instance, intentional touching of sensitive areas like hips was regarded sexual by common sense,[17] but frequent hugging and pinching faces seem to rest on the borderline.[18] Further, verbal sexual harassment has even more blurred boundaries than physical contact, for the nature of ambiguous acts that present themselves as jokes, banter, sarcasm, mockery, or offhand comments could be difficult to determine.

From these cases, an issue arises as to which perspective the court should use to determine whether a harassing act is of a sexual nature: (a) the perpetrator's intentions, (b) the victim's feelings, or (c) objective criteria. The authors believe the first two options cannot be the sole criteria, for in some cases there is no other evidence contradicting the perpetrators' denial of sexual motivation and victims have different levels of sensitivity towards sexual matters. The same physical or verbal contact could be a joke to most people while being offensive to someone else. As such, the court should factor in objective criteria such as the level of closeness between the parties, how they interact, and common sense to distinguish general harassment from sexually offensive or disturbing conduct.

2. Proof of Harassing Behaviors

Sexual harassment often occurs behind closed doors and may involve isolated incidents. As such, direct evidence or sufficient circumstantial evidence like testimonies may not be available. Consequently, courts must address the probative force of circumstantial

17. See Bai Xianpo v. Dongguan Xinyi Glasses Manufacturing Co., Ltd, (2020) Yue 1972 Min Chu No. 1544.

18. See Shan Shouchao v. Hechuan Spring Hotel, (2016) Qiong 9029 Min Chu No. 405.

evidence, particularly statements of interested witnesses, as well as the relevant standard of proof.

As for the weight of evidence of the circumstantial evidence, Art. 90 of the SPC Provisions on Evidence in Civil Proceedings, like evidential rules in most jurisdictions, states that the testimony of a witness that has an interest in a party or the agent thereof may not be used as an independent basis for confirming a fact. In addition, testimonial evidence is generally deemed circumstantial evidence that may indirectly support some of the facts rather than proving the main facts independently. However, given the potential difficulty of obtaining evidence in sexual harassment cases, courts should not automatically dismiss the evidential capacity of the statements given by coworkers because of their vested interests in the company. If these sources corroborate with each other in proving the sexual nature of the alleged harassment, courts should give credit to the chain of evidence they form.[19]

As for the standard of proof, while the high probability test has been accepted by academics and in a number of cases, in some tribunals judges continue to demand tight causal proof—at times, an explicit medical causal nexus between alleged misconduct and psychological harm—before awarding emotional-damage compensation.[20] Due to the nature of workplace sexual harassment, courts may lower the standard of proof as has been done in some past cases. However, any lowering of the standard of proof must be within reasonable limits to avoid encouraging fraudulent claims that would wrong the innocent and erode social trust. The risk of fraudulent claims is especially sensitive in sexual harassment cases, since the power of a verdict affirming harassment is not confined to compensations and apologies. Such verdicts also possess a strong declaratory force of condemning the harasser, similar to that of a criminal conviction, since the issue of sex is still closely associated with morality in most societies. To carefully address such sensitive issue, courts should consider the amount and relevance of circumstantial evidence and find a high probability of the alleged harassment only when there is a compelling chain of evidence in absence of direct evidence.

19. See, e.g., Zheng Peifei v. Nanning Municipal Land and Resource Archives, (2016) Gui 0103 Min Chu No. 382.

20. See, e.g., Song v. Zheng, (2023) Liao 1122 Min Chu No. 3002.

3. Proof of Violation of Subjective Will

Sexual harassment is prohibited for its sexual nature insofar as it is unwelcome or, as defined in Art. 1010, "against the wishes of others." Without this element, sexual harassment would become a loaded term, leading to the belief that desire *per se* is harassment, and a mere discussion on matters relating to sex may amount to sexual harassment. Naturally, the violation of will must be objectively proven.

Where there is resistance, refusal, criticism, or disapproval on the victim's part, it is relatively easy to establish a violation of the victim's subjective will. For example, if the surveillance video record captures the victim's attempts to escape the harassers' clutches, the court can easily confirm that the sexual advances were unwanted.[21]

However, more complicated cases typically entail a power dynamic or quid pro quo between the individuals involved. Here, victims may remain silent or pretend to be compliant even if the sexual advance is against their will. This may involve the perpetrator exploiting a position of authority to psychologically pressure the victim into complying with sexual requests. Similarly, harassment can conflate the victim's will with their intent to secure some benefits. This can obscure the victim's actual state of mind. To address these complex cases, Chinese scholars have preliminarily explored a dichotomy of power versus non-power-based harassment and an inversed burden of proof for specific facts for the former. While the general "who claims, who proves" doctrine is applicable in principle, a power dynamic may warrant reversing the onus of proof for the subjective element when a harassing act of a sexual nature is already proven. In a superior-subordinate relationship, victims of harassment may be hesitant to speak out or resist. This could lead to coerced compliance to avoid possible retaliation.

V. MOVING FORWARD: WIDER IMPLICATIONS OF THE ART. 1010 REFORM

The significance of this reform goes far beyond doctrinal refinement. To begin with, it marks a pivotal shift in the recognition of sexual harassment as a fundamental issue in people's lives, by codifying the remedy of sexual harassment in the Civil Code, widely regarded by lawmakers and scholars as a "fundamental law" with "constitutional significance" due to its basic nature and comprehensive scope (Huang Z.

21. See, e.g., XX v. Zhangjiagang Ensk Precision Machinery Co., Ltd., (2018) Su 05 Min Zhong No. 7907.

2023). Unlike previous legislation, which was often domain-specific and assumed women were the sole victims, Art. 1010 applies universally to all civil subjects, regardless of gender, age, or context. In particular, it "does not distinguish between genders, ages, and thus males, females, adults and minors can become the victims of sexual harassment" (Huang W. 2021). The reference to "another person" or "victim," rather than "woman," eliminates the stereotype that only women could fall victim to sexual harassment. This further aligns Art. 1010 with its intended purpose of protecting individual sexual autonomy, rather than merely focusing on women's sexual autonomy.

Furthermore, Art. 1010 has become a catalyst for the development of a more inclusive legal framework for protecting vulnerable groups against sexual harassment and spurred improvements in anti-sexual harassment legislation at various levels. Open-textured stipulation (H. Wang 2022; Wang L. 2022) and the apparent commitment to protecting women's personal and personality rights (Lu 2022) were matched by the systematic revisions of relevant laws. The LPWRI updated its sexual harassment definition, while the Law on the Protection of Minors added new obligations for schools to protect minors against sexual harassment. Art. 25 of the LPWRI now further stipulates that employers shall take measures to prevent and stop sexual harassment against women by formulating rules and regulations prohibiting sexual harassment, and by conducting education and training activities on preventing and stopping sexual harassment. At the same time, the revised Art. 77 of the LPWRI states that procuratorates have the right to file civil actions in the public interest against organizations that fail to take reasonable measures to prevent and stop sexual harassment. Following central-level changes, local authorities have also amended implementing regulations.[22] This evolving legislative landscape demonstrates a growing recognition of the need to comprehensively address sexual harassment, balancing the protection of vulnerable groups with fostering harmonious social interactions. In the foreseeable future, the impact of Art. 1010 is likely to permeate throughout the relevant legal regime and further drive the

22. Of thirty-one provincial-level administrative districts, eleven amended their local regulations on the protection of minors, introducing sexual harassment provisions. Seven regions added provisions without specific definitions, while four adopted non-exhaustive lists defining sexual harassment. For adult protection, some provinces and municipalities have revised existing ordinances (e.g., Liaoning, Sichuan, and Shanghai) or introduced new legislations and definitions that align with the Civil Code. Others, such as Heilongjiang, have broadened protection by adjusting elements like the burden of proof or the requirement for subjective intent, reflecting an intent to make sexual harassment easier to establish and expand protection.

ongoing efforts to improve China's overall anti-sexual harassment legal regime.

Moreover, Art. 1010 of China's Civil Code has emerged as a potent force in addressing sexual harassment, reshaping the legal landscape, and providing a more specific framework for judges, leading to more consistent and equitable judgments across various local courts. Prior to its enactment, judges relied on various general legal sources, such as the Tort Liability Law and the General Principles of Civil Law, which often led to inconsistent interpretations and applications. Now, with sexual harassment tort liability legally established within the Civil Code, judges have a fundamental framework for recognizing and protecting individuals' rights to sexual autonomy. This shift towards a more standardized approach is likely to lead to more consistent and equitable judgments across various local courts.[23] Building on this new legal framework established by Art. 1010, along with subsequent updates to other national and local laws and regulations, there has been a significant shift in the landscape of sexual harassment cases in China. This top-down legal approach has influenced judicial decision-making and increased organizational accountability. Over the years, there has been a prominent increase in tort and labor disputes related to sexual harassment, evident in the growing number of relevant cases published annually.[24] This increase in case numbers reflects not only greater legal clarity but also heightened awareness among victims about their rights and the avenues available for seeking justice. Notably, there has been a decrease in lawsuits where employees directly sue their employers for failing to fulfil their duty to protect and prevent sexual harassment. This reduction may indicate a rather hopeful trend in which employers have become more acutely aware of their legal responsibilities and the potential consequences of neglecting them, and have thus established robust anti-sexual harassment policies, not just to avoid legal repercussions, but also to mitigate reputational risks associated with such incidents.

Last but not least, Art. 1010 of China's Civil Code represents a potentially transformative step toward addressing sexual harassment,

23. One of the most significant impacts of Art. 1010 has been in the realm of verbal sexual harassment. Prior to its enactment, only one case involving verbal sexual harassment was recorded. However, since 2020, six cases have been documented in which courts have substantiated claims of verbal sexual harassment. This marked shift can be attributed to Art. 1010's explicit recognition that sexual harassment can occur verbally, providing clearer legal grounds for victims to pursue justice. This expansion of the legal definition has opened new avenues for victims to seek redress and has broadened the scope of behaviors that can be legally challenged.

24. Such a trend can be seen from the figures listed *supra* subsection IV.A.

heralding a systematic reform of civic awareness, by fostering and disseminating anti-sexual harassment ideals among the populace. Importantly, Art. 1010 is expected to further the transition from patriarchal gender customs to modern ones in Chinese society, enabling people to internalize the principles of gender equality and human dignity. To borrow the words of the leading scholars in China, it is the telos of China's Civil Code to "help people develop their moral compass through its normative appeal" (quoting Prof. Zhao Wanyi in Zhuang, 2022). The workplace context serves as a primary arena for raising civic awareness through Art. 1010(2). With the reinforcement of the duty to prevent harassment, the high economic and non-economic costs of noncompliance have shown early results in incentivizing employers to take precautions against and intervene in the harassment in a timely manner. This is evidenced through the increasing formulation of detailed internal rules and regulations, as well as a noticeable uptick in training programs designed to educate employees about their rights and appropriate workplace behavior. By compelling employers to take responsibility for creating safe work environments, Art. 1010 fosters a culture of respect and equality that extends beyond mere legal compliance, effectively reducing the need for litigation through prevention.

VI. CONCLUDING REMARKS

Granted, sexual harassment has been widely regarded as correlated with power dynamics, both on a societal and a case-by-case level: Those in power may force the victims to acquiesce to unwelcome conducts of a sexual nature. Thus, it may look as if the role of private law is limited in combating sexual harassment, since private law in principle does not presuppose any power dynamics between its subjects. However, the right of sexual autonomy, as a well-recognized type of personality right, has been deeply embedded into the concept of justice as widely accepted by most modern societies despite the significant differences in their socioeconomic policies. Neither the right of sexual autonomy nor the tort of sexual harassment is necessarily predicated on the existence of a power dynamic. Thus, civil law may serve as a core instrument in safeguarding sexual autonomy, by clarifying the fundamental definition of sexual harassment and the duty to prevent. Building on such a foundation, domain-specific laws including labor law and gender equality law could form a more coherent and powerful legal structure against sexual harassment.

In this regard, China's experience on Art. 1010 of the Civil Code shows that private law could have an active role in combating sexual harassment and restoring gender equality. It tackles gender inequality by affirming every person's sexual autonomy in private law. By moving harassment protection into the core civil rights regime, it not only broadens the law's reach but also reframes harassment as a general civic wrong, rather than a policy-driven issue. The hope is that over time this framing will shift societal attitudes, making unwanted sexual conduct subject to both legal sanction and public disapproval. We have found that in judicial practice, the inclusion of Art. 1010 in the Civil Code, the core legislation in China's private law with "constitutional significance," has elevated victims' willingness to seek direct redress against the harassers, and significantly improved the certainty and consistency of the rulings by clarifying the core elements of the tort. At the same time, the law's ultimate impact will depend on addressing concrete challenges of proof and enforcement. As courts gain experience with Art. 1010, they will need to balance rigor with sensitivity: using objective criteria to define harassment, accepting credible circumstantial evidence, and recognizing the coercive dynamics in workplaces. With these measures, private law can more fully realize the goal of gender equality and the protection of personal dignity that Art. 1010 embodies.