

# Unheard Voices of Victims of Workplace Sexual Harassment: An Empirical Investigation in China

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## ABSTRACT

Article 1010 of the Civil Code of the People's Republic of China regulates sexual harassment and provides for prevention and intervention mechanisms. However, workplace sexual harassment is still prevalent and has various negative consequences for victims, particularly for young women. Drawing on data collected from networking platforms, we conducted online surveys and interviews with victims who had experienced unwanted sexual advances or harassment in the workplace. Of the respondents, 68% had been sexually harassed and 65% remained silent. It was found that many cases of workplace sexual harassment were hidden because of the lack of appropriate laws and a culture of stigmatization. On the basis of our research, we make the following suggestions: workplace sexual harassment should be clearly defined and addressed by law; employers' liabilities should be clarified; and a supervisory mechanism should be established and implemented to prevent and curtail sexual harassment in China.

**Keywords:** Workplace sexual harassment, Chinese Civil Code, Gender inequality, Employer liability, Stigmatization.

## 1. INTRODUCTION

In December 2016, a male manager at Minsheng Bank sexually harassed a female employee and forced her to resign [1]. Several authoritative news sites, including the People's Daily, 21st Century Business Herald, Southern Metropolis Daily, CCTV News, and NetEase, reported on this issue. The perpetrator was removed from his post, and his contract was terminated after an investigation by Minsheng Bank. However, he sued Minsheng Bank, demanding the revocation of what he called a false accusation and illegal punishment, and sought financial compensation. In the end, not only did the victims not receive the compensation they deserved, but the focus of the incident was shifted from sexual harassment to a labor dispute. On August 7, 2021, a female employee of Alibaba posted on the social platform that she was molested by a client and her boss during a business trip. However, when the employer Ali first learned of the incident, the company failed to deal

with the matter in a timely and fair manner. The male boss involved in the incident was still active in the company, while the victim was pressured to either leave or withdraw the allegations. After being forced into helplessness, the female employee had to hand out flyers in Ali's cafeteria and post about the incident on the Internet to seek justice [2]. The victim's resignation and struggle to defend her rights are both infuriating; simultaneously, the prevalence of workplace sexual harassment is alarming. A survey of 2002 working women revealed that 31% of them had experienced sexual harassment at work [3]. Owing to the severity and prevalence of workplace sexual harassment, mechanisms are needed to identify, intervene, and address the problem.

Although China's media has paid attention to sexual harassment by reporting on universities and enterprises, effective investigations and remedial measures have rarely been undertaken. Simply exposing cases of workplace sexual harassment may not be an optimal

approach because most cases have concluded with the victim resigning or being fired.<sup>1</sup> Accordingly, the legal system has the greatest potential to be an effective weapon against sexual harassment in the workplace. The law has a duty to protect vulnerable groups in the work environment and can use its authority effectively to protect victims and punish perpetrators [4–6]. Moreover, laws may affect a perpetrator's behavior to a greater degree than other mechanisms, as evidenced by the deterrent value of the law in preventing crime [7,8]. Our survey showed 68% of the respondents had been sexually harassed and 65% remained silent. We need to study the confirmed circumstances of workplace sexual harassment and what caused the cases of workplace sexual harassment to be hidden; moreover, we also need to explore how lack of appropriate laws and cultures of stigmatization play a role in the prevalence of workplace sexual harassment.

The literature on sexual harassment, from the perspective of civil law, has focused on prevention and intervention measures [5,9–11]. However, most studies have consisted of discussions on theory, without empirical research. Although most have treated workplace sexual harassment as a serious social problem [9,12], there are no data to support the severity of the problem. Further, legal interpretations that explain the prevention of and penalties for sexual harassment under existing laws purely through the lens of the employer's liability are inadequate [13,14]. At the time of writing, ways to prevent and solve workplace sexual harassment from the perspectives of civil law and employer liability are popular topics among researchers [14–17]. The main points draw on the European and American experience to establish employer liability [15]. However, what might work in the free market may not necessarily work in the Chinese workplace [10].

The study of sexual harassment from the perspective of criminal law focuses on the distinction between sexual harassment, indecency, and rape [18,19]. For sexual harassment that does not constitute a crime, the relief available through civil law must be examined. Further, some studies have analyzed sexual harassment based on location, such as in universities and public places [14, 17, 20–22]. Although there is relatively

sufficient recent empirical research data on campus sexual harassment [20], empirical research on workplace sexual harassment is lacking.

In addition, most victims remain skeptical of police or employer support, and are relatively unlikely to tell their workplace administrators about their involvement in workplace sexual harassment. The reluctance of victims to seek help from police or employers signals the legal system's failure to inform people of its commitment to ensure the physical safety and emotional wellbeing of every employee [23]. It is imperative that workplaces across China take an assertive stance against sexual harassment and inform employees that the police and their employer are ready to assist them in becoming free of a harassing relationship.

China's 2020 Civil Code took a pioneering step, namely creating Article 1010, which prohibits sexual harassment. However, the current language of the Civil Code is untargeted, and it fails to provide sufficient direction for constructing and implementing an effective workplace sexual harassment policy. The second section of this article outlines various legal remedies, explains why these legal remedies are insufficient, and argues why a statute specifically targeting workplace sexual harassment is needed. The empirical research sections provide the methods, processes, and results of this investigation, which reveal the seriousness and prevalence of workplace sexual harassment and the current situation, whereby victims have no specific and effective legal remedies available. Workplace sexual harassment continues to occur frequently because of deep cultural tendencies such as victim silencing and stigmatization. Examining these tendencies can encourage the government, employers, and society to establish targeted responses and adjustments. We conclude by providing suggestions for legal amendments to prevent workplace sexual harassment, aiming to guide the Chinese legislature in creating a statute that is more explanatory and, thus, a more effective weapon against such harassment.

### ***1.1. China's Legal Regulations on Sexual Harassment***

The concept of "sexual harassment" was first defined by American feminist Catharine MacKinnon in her book titled *Sexual Harassment of Working Women* [24]. She divided the diverse forms of workplace sexual harassment into two groups—quid pro quo and hostile environment sexual harassment. This classification has been adopted in the judicial practice of the United States and in the legislation and judicial practice of sexual harassment in other countries and regions globally. MacKinnon developed the theory of treating sexual harassment as sex discrimination prohibited by civil laws and laid the theoretical foundation for sexual harassment laws in many nations. Nevertheless, the

<sup>1</sup> According to news reports, a female employee was sexually harassed at work in Henan province and discovered she had HPV after quitting her job (<https://zx.sina.cn/n/2021-04-04/zx-ikmyaawa6156855.d.html>). In the Minsheng Bank case, the female victim was fired by the company. A social survey in 2016 revealed that more than half of sexual harassment victims will not speak out at all and do not know how to address workplace sexual harassment ([http://zqb.cyol.com/html/2016-12/20/nw.D110000zgqnb\\_20161220\\_2-07.htm](http://zqb.cyol.com/html/2016-12/20/nw.D110000zgqnb_20161220_2-07.htm)).

problem with gender discrimination is not that women's differences have not been positively evaluated but that power defines differences. If the legislation considers sexual harassment only as a "personal safety" issue, it may ignore the implications of sexual harassment in terms of sexual rights. Before the promulgation of the Civil Code, the concept of sexual harassment and standards for identifying it were not clearly defined under Chinese law. This resulted in great difficulties in handling and preventing such cases. Even the sexual harassment provision in the Civil Code is still based on traditional moralism, and the concept of "unwelcomeness" does not incorporate a gender perspective or account for women's willingness under a patriarchal structure.

The current Civil Code issued in 2020 is the main legal basis for China to prohibit sexual harassment. Article 1010 of the Civil Code, Paragraph 1 states: *"If against the wishes of others, sexual harassment is carried out through words, text, images, physical behavior, etc., the victim has the right to request the perpetrator to bear civil liability following the law."* Paragraph 2 stipulates that *"organizations, enterprises, schools, and other units shall take reasonable measures such as prevention, acceptance of complaints, investigation and disposal, etc., to prevent and stop the use of power, affiliation, etc., to commit sexual harassment."* According to the regulations, three core requirements must be met to constitute sexual harassment. First, it can be carried through various media such as language, text, images, and physical behavior. Examples include sending obscene text messages or pictures to a person. Second, such behavior targets a specific person. If someone says obscene things in public without directing the obscenities toward anyone in particular, it may indicate bad morals but does not constitute sexual harassment. Third, the behavior occurs without the victim's consent.

Sexual harassment is not in the interest of the victim, is perceived as unwelcome, and may be explicitly rejected. The victim may express rejection at the time, or express disgust and dislike afterward. The Civil Code requires agencies, enterprises, schools, and other organizations to take reasonable measures to prevent and stop sexual harassment on their premises.

While drafting the Civil Code, some jurists suggested that affiliation should be used as a criterion for judging sexual harassment [9]. However, this suggestion was not adopted. Affiliation refers to workplace sexual harassment, and the provisions of the Civil Code currently target sexual harassment in a broader sense, including sexual harassment in public places and of students by teachers in schools. Therefore, in the Civil Code, the regulation of workplace sexual harassment remains unclear. The current regulations governing workplace sexual harassment include the

Special Provisions on Labor Protection for Female Workers as promulgated by the State Council in 2012. Article 11 of this regulation states, *"In the workplace, employers shall prevent and stop the sexual harassment of female workers."* There are also a few special regulations in some provinces and cities.<sup>2</sup> However, there is no specific law to prevent workplace sexual harassment at the national level.

While the Civil Code appropriately includes the sexual harassment statute in its Right of Personality and allows victims of sexual harassment to request the harasser to bear civil liability, there are some administrative inadequacies in the application of the statute to workplace sexual harassment. First, victims may face obstacles in establishing that the situation is sufficiently serious to meet the requirements of the statute. A judge may be biased to dismiss it as minor harassment or the victim may be too afraid to admit their sexual interactions in court. Second, the current evidence rules for sexual harassment litigation adopt general civil evidence rules and victims may not be able to realize their claims due to insufficient evidence. Victims often have difficulty finding witnesses or evidence of sexual harassment [25], and because they may be ashamed of the nature of the sexual harassment or afraid to admit that they are in a sexual relationship, there may be barriers to litigation.

## 2. METHODS AND DATA

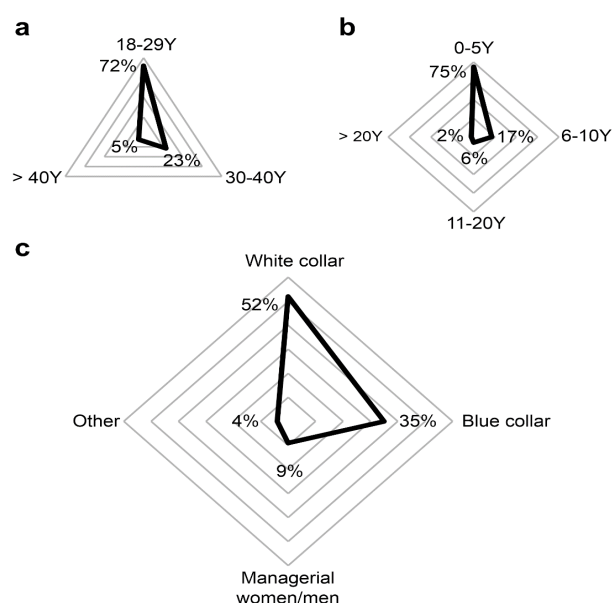
The instant study asked workplace professionals to complete an online questionnaire distributed to the general public and then participate in an in-person

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<sup>2</sup> Article 16 of the "Special Provisions on the Labor Protection of Female Employees in Hunan Province" stipulates the following: In the workplace, the employer shall prevent and stop the sexual harassment of female employees; if a female employee is sexually harassed in the workplace and reports or complains to the employer, the employer shall properly and promptly handle or transfer to relevant agencies for handling; reporting to the police or filing a lawsuit to the court, the employer shall provide support; when dealing with sexual harassment of female employees, relevant entities shall protect the privacy of female employees in accordance with the law. Article 22 of the "Shenzhen Special Economic Zone Gender Equality Promotion Regulations" stipulates that the prevention of sexual harassment in the workplace shall be an important work function of the gender equality agency, and the municipality shall stipulate gender equality. The work agency shall regularly issue guidelines on anti-sexual harassment conduct to guide state agencies and enterprises. Units, social groups, and other organizations must prevent and stop sexual harassment.

interview. The questionnaire comprised 20 questions that asked about the form(s) of sexual harassment encountered, negative impacts experienced, and countermeasures taken. The questionnaire was distributed through platforms such as WeChat and Weibo and were open for anyone to complete. The researcher obtained the participants' consent after informing them of the purpose of the study, the main content of the questionnaire, and the commitment to confidentiality. Then, the respondents could choose to "agree with the survey and continue" or "withdraw from the survey." As the survey topic was sensitive and privacy issues were involved, voluntary participation was encouraged. Participants willing to be interviewed were asked to contact the investigation team using the contact information provided with the questionnaire. All participants were informed that they were free to stop answering the questionnaire if they experienced any discomfort at any time.

Five hundred questionnaires were distributed, and 460 valid questionnaires were returned (mainly from metropolitan areas such as Beijing, Shanghai, Guangzhou, and Shenzhen). Of the respondents, 92% were women and 8% men. Approximately 70% of the respondents were aged between 18 and 29 years, 23% were aged between 30 and 40 years, and only 5% were aged above 40 years. Over 50% of the respondents were in white-collar jobs, 35% in blue-collar jobs, and 9% held managerial positions. A total of 345 people (75%) had worked for five years or fewer (overall work experience), 78 (17%) had worked for 6 to 10 years, 28 (6%) had worked for 11 to 20 years, and only 9 (2%) had worked for over 20 years. Most participants were women with limited workplace experience (Figure 1).



**Figure 1** Respondents' characteristics: (a) age distribution; (b) length of service; (c) position.

A total of 20 respondents expressed their willingness to be interviewed and contacted the investigation team. Of the 20 respondents who shared their workplace sexual harassment experiences, 16 wanted to remain anonymous. The analysis included categorizing the various types of sexual harassment and studying its impact on the respondents as well as their responses to it. This helped deepen the understanding about workplace sexual harassment.

### 3. RESULTS

#### 3.1. Respondents' Experiences of Workplace Sexual Harassment

Of the 460 respondents, 68% had experienced workplace sexual harassment. Among the female respondents, 304 (72%) had experienced workplace sexual harassment (Table 1). While women accounted for 97% (304/313) of the victims, 9 (24%) men had also experienced workplace sexual harassment. Some male victims clearly expressed their embarrassment over the incident. For example, one said that when a female colleague touched his body and jokingly molested him, his explicit refusal led to more serious ridicule. Even when he reported the problem, his boss told him, "Didn't you take advantage of her touching you? ... Boys need not be so careful." For a long time, men were not seen as victims of sexual harassment. However, the current civil law in China includes men within its scope, and they now have the same legal rights as women in these matters.<sup>3</sup>

**Table 1.** Sex ratio of respondents who had experienced workplace sexual harassment

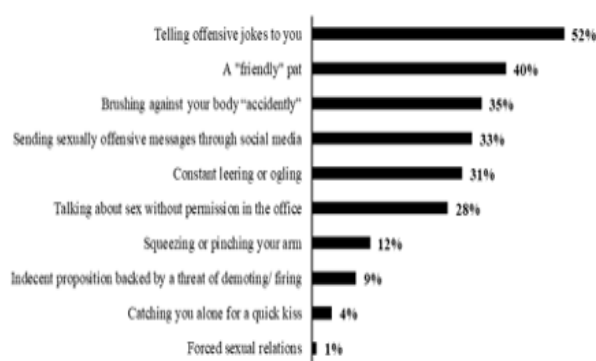
Sex	Experienced/Total	Percentage
Male	9/37	24%
Female	304/423	72%
Total	313/460	68%

<sup>3</sup> Chinese criminal law considers only women the victims of rape and defines rape as the act of forcibly having sexual intercourse with a woman by using violence, coercion, or other means against her will, or the act of deliberately having sexual intercourse with a girl under the age of 14.

Theoretically, sexual harassment is caused by workplace power dynamics,<sup>4</sup> and men and women with low economic and professional status are more vulnerable to sexual harassment than their more affluent and experienced colleagues [27–29]. The participants were primarily female newcomers in the workplace, who were receiving relatively low pay. Thus, the high rate of sexual harassment in this study is consistent with the theory of power dynamics.

### 3.2. Types of Workplace Sexual Harassment

This study adopted Mackinnon's categorization of quid pro quo and hostile environment sexual harassment (Figure 2) [24]. The most frequent type of harassment was hostile in nature. About half the harassed women had experienced behaviors such as being around sex-related discussions without their consent, told sexual jokes, or asked about their sexual experiences.



**Figure 2** Types of sexual harassment behaviors experienced by female respondents.

One interviewee shared that she had once stopped her male colleague from discussing his sexual experiences publicly in the office. However, the alleged perpetrator argued that it was "just a joke" and showed no remorse. He said, "Do not be so fussy; you are a grown girl, and it does not matter if we talk about sex." At present, Chinese law does not regulate sexual harassment that does not target a specific person. If sexual misconduct is aimed at unspecified groups, even though it may violate public order and good custom, it is not considered an offense because the victim is unspecified.

One respondent (fictitious name of Zhao) told us about her experience of "quid pro quo harassment" by a superior (fictitious name of Wang):

*In September 2017, Zhao joined M Company as a junior employee. In April 2018, the newly appointed deputy manager of the company, Wang spoke to her: "You have done a good job. You are so beautiful, and it is a pity that you are still doing rough work on the assembly line." Wang said that he would rearrange her posts. A month later, Zhao was transferred to a supervisory position and her salary increased. At work, Wang made explicit confessions to her from time to time saying things like, "I love you." This made Zhao feel rather embarrassed. Gradually, unless she had to, Zhao avoided being alone with Wang as far as possible. One night, in August 2018, Wang worked overtime in the office. He asked Zhao for sexual intercourse while he was drunk, but Zhao refused. Since then, Wang continued to trouble her at work and criticized her severely on the phone. She was often forced to work overtime. In March 2019, Wang and Zhao quarreled about work in public. The company issued a written decision on employee punishment, and asked Zhao to apologize to Wang. Zhao was suspended, but she launched an official complaint. In May, Zhao received a call from Wang, saying that she could be "reinstated in office" after meeting with him. She believed that the key reason Wang was still so arrogant was the lack of incriminating evidence of his sexual harassment. Zhao brought a recording pen to a meeting with Wang. In Wang's office, Wang harassed Zhao verbally and demanded to have sex with her. Zhao slapped him and ran out of office. The event was recorded. In August 2019, Zhao was demoted by the company. She was dissatisfied with the new position and refused to work. The company informed her that she had been fired. The day after receiving the notification, Zhao called the police and exposed Wang's sexual harassment and provided the evidence she had recorded. Wang admitted that he had sexually harassed Zhao twice. The police determined that Wang had sexually harassed Zhao and decided on administrative punishment in the form of 10 days of administrative detention. In September 2019, the company-imposed sanctions on retaining Wang for probation and officially dismissed Zhao. Zhao applied for labor arbitration. In December 2019, the Labor and Personnel Dispute Arbitration Committee ruled that M company had to compensate Zhao with over 100,000 yuan for her illegal dismissal. The company refused to accept the arbitration award and filed a lawsuit. The court held that M company had to compensate Zhao for illegal termination.*

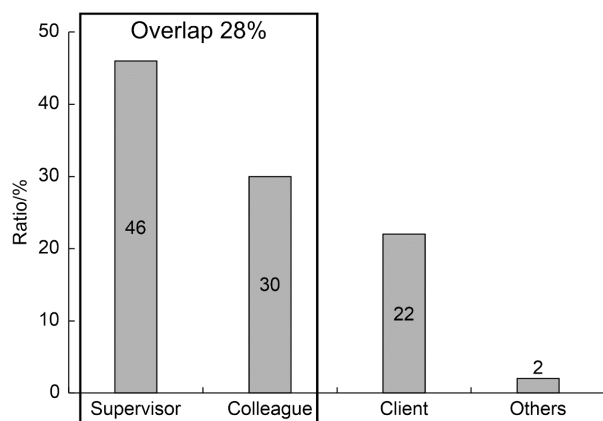
Of the 16 people who shared their workplace sexual harassment stories in this study, 10 chose to remain silent and did not ask for help. The six who did ask for help were forced to resign/change jobs because of their employer's inaction or decision to shield the perpetrator.

<sup>4</sup> Every organization has a system of culture, a set of unwritten norms that members of the organization accept and understand and that guide their actions. In a workplace, individuals must evaluate the organizational culture and power distribution within the organization, including the powers of others and their own power [26].

Specifically, in three cases, the employer pacified the victim or changed the victim's position. However, the employer did not impose any punishment on the perpetrator. Only two employers dismissed the perpetrators after verifying cases of sexual harassment. In one case, the employer unilaterally terminated the labor contract with the perpetrator. However, the dissatisfied perpetrator filed a lawsuit claiming compensation for "illegal dismissal," which he lost.

### 3.3. The Relationship Between the Perpetrator and Victim of Workplace Sexual Harassment

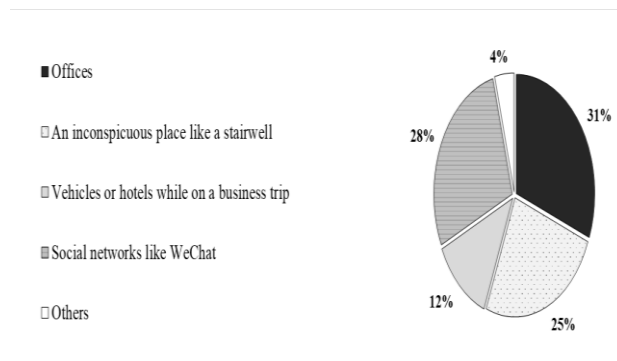
Of the 304 women who had experienced sexual harassment at work, 46% had been harassed by a supervisor, 30% by a colleague, and 28% by both (Figure 3). Most perpetrators were internal personnel, indicating the important role that employers can play in eliminating workplace sexual harassment.



**Figure 3** Relationship between female victims and perpetrators of sexual harassment (unit: number of times).

### 3.4. The Locations of Sexual Harassment

Approximately one-third of the incidents occurred in the workplace or during work-related social occasions (Figure 4). A quarter of the cases took place in inconspicuous places with fewer staff present, such as staircases and secluded water coolers. Over 10% of the cases occurred in vehicles and hotels while on business trips. This pattern makes it difficult for victims of workplace sexual harassment to seek help and gather evidence because such harassment often goes unwitnessed. Such harassment is likely to negatively affect the employees' passion for work and social interactions, which, in turn, is detrimental to their professional progress.



**Figure 4** Places where workplace sexual harassment occurs.

## 4. THE SEX OF THE PERPETRATORS AND VICTIMS

The perpetrators were men in 80% of the cases of workplace sexual harassment examined in this study (Table 2). Four men were sexually harassed by men, and three men were sexually harassed by women. Two other men were sexually harassed by both men and women.

**Table 2.** Sex ratio of perpetrators and victims of workplace sexual harassment

Sex of perpetrators	Number of perpetrators	Sex of victim	Percent age
Male	250	Female	81%
		Male	44%
Female	11	Female	3%
		Male	33%
Female & Male	52	Female	16%
		Male	23%

### 4.1. Awareness of Workplace Sexual Harassment by Sex

Of the respondents, 80% knew of the existence of workplace sexual harassment and had a basic understanding of its legal meaning. Women were generally more aware of workplace sexual harassment than were men, probably because they were the victims more often. Over 60% of the male respondents recognized physical exposure or touching as sexual harassment. They were less likely to consider sexual jokes or receiving obscene stares at parties as work-related sexual harassment. This suggests that men's perceptions of sexual harassment are relatively narrow. However, sex and sexual orientation do not determine whether a person is a perpetrator or a victim of sexual harassment, as workplace power dynamics are also involved.

## 4.2. Participants' Responses to Workplace Sexual Harassment

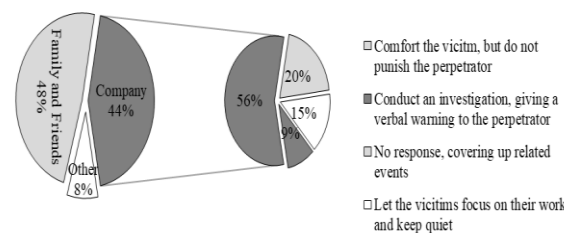
The victims' responses to workplace sexual harassment included keeping silent and seeking help from either the employer or the police.

### 4.2.1. Staying Silent

Of the respondents who experienced sexual harassment at work, only 110 (35%) asked for help, whereas 203 did not. Effectively, 65% of those who had experienced sexual harassment at work chose to remain silent. Among these, 40% were afraid of damaging their work relationships. Workplace sexual harassment mostly occurs between superiors and subordinates. As resistance largely means destroying some part of work relationships, the victims did not report the acts of harassment. They also did not seek external help due to the lack of evidence. Workplace sexual harassment often takes place in secluded locations, making it difficult to obtain evidence, increasing the concern that a victim would not be believed or supported. If the employer helped the victim collect evidence and report the matter to the police, the probability of sexual harassment being exposed would greatly increase.

### 4.2.2. Asking the Employer for Help

Of the 110 respondents who asked for help, 44% chose to turn to their employers and/or organizations. Although employers offered solutions to victims such as a transfer to another branch, they did not punish the perpetrators. This shows that some employers effectively engaged in connivance. Over half the respondents were "dissatisfied" or "very dissatisfied" with how their employers handled the situation. Over half the victims who did not seek help from their employers believed that filing a complaint would not help (Figure 5). This shows that most employers had no mechanism in place to deal with sexual harassment, leaving no means for victims to report it. This highlights the need for employers to take a clear stance against workplace sexual harassment and deal with complaints seriously so that victims have the courage and motivation to report it when it occurs.



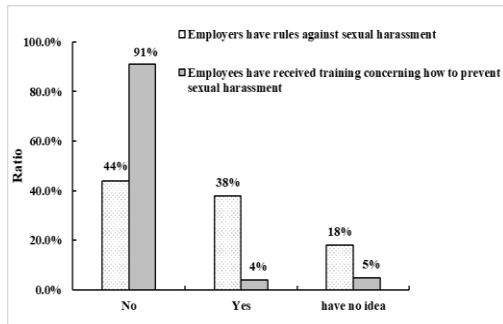
**Figure 5** Whether interviewees asked for help from the organization and the organization's response.

### 4.2.3. Reporting to the Police

Of the respondents who were sexually harassed, only nine chose to call the police. Of these, four were "very dissatisfied" with how the situation was handled and five did not share their opinion on the outcome of the police intervention. Nevertheless, most victims did not choose to call the police after being sexually harassed. This may be because of the difficulties associated with obtaining evidence of sexual harassment and a lack of confidence about how their employers would address such incidents. Victims of sexual harassment are often afraid or have few options. One measure taken by victims was to "stay away."

## 4.3. Employer Liability, Prevention, and Responsive Measures

Nearly half the respondents stated that their employers did not have any measures in place to prevent or address sexual harassment. Approximately 20% of the participants were unaware whether their company had any such regulations. Although over a third of the respondents stated that their companies had relevant regulations, 91% indicated that their employers did not conduct any training on the prevention or response to sexual harassment. Employees were not given any directions on the use of anti-harassment measures. Only 4% of the respondents noted that their employer had conducted or provided training (Figure 6).



**Figure 6** Employers' rules and training against sexual harassment.

Nearly all (94%) the respondents believed that the employer should conduct a prompt, thorough, and fair investigation after receiving a report of sexual harassment, and 92% believed that companies should protect the privacy of the complainant and guarantee non-retaliation.

## 5. DISCUSSION

The evidence shows that the prevention of workplace sexual harassment involves dealing with various challenges, including determining its occurrence, addressing the needs of the victims, and implementing employer responsibility. This section examines these issues and proposes solutions to the prevailing problems.

### 5.1. Workplace Sexual Harassment Is Unelaborated

*Women working outside the home is a manifestation of the advancement and social progress of human civilization [13], but the workplace is still dominated by men.<sup>5</sup> Powerful positions can stimulate male desire, and workplace sexual harassment is one expression of that desire [30]. In China, the proportion and degree of sexual harassment suffered by women reflect unequal power levels and resource allocation between men and women. <sup>6</sup> Women entering the workplace do not*

<sup>5</sup> According to the 2019 China Workplace Gender Disparity Report, in thirteen of the fifteen highest-paying industries of 2018 (including smelting, chemical industry, and information security), female employees accounted for less than 30% of the workforce. In the manufacturing engineering field, men accounted for more than 95% of senior management positions (<http://www.xuzhoujob.com/News/2019/1201937172046.html>).

<sup>6</sup> According to China's 2020 Survey Report on The Status of Women in The Workplace, women in the workplace are paid 17% less than men. Thirty-one percent of male workers are at the general employee

*necessarily lead to the occurrence of workplace sexual harassment. Nevertheless, the victims of workplace sexual harassment are mainly women.*

Workplace sexual harassment is rooted in and reinforces sex inequality [5]. Chinese law emphasizes the protection of the rights and interests of female workers. However, the current legal system lacks a sex perspective and ignores the limitations of formal equality. China's laws and regulations against sexual harassment contain excessive principles, programs, and slogans that lack associated legal responsibilities and accountability mechanisms [29]. For example, the law on the Protection of Women's Rights and Interests was amended in 2005 only as a matter of principle to prohibit the sexual harassment of women.<sup>7</sup> There is no stipulation on how tort liability is borne after an incident of sexual harassment.

Broad and vague regulations can weaken public awareness of workplace sexual harassment and thus hinder victim's chances of justice [31]. This study showed that the awareness rate of sexual harassment behaviors such as "Talking about sex without permission in the office" and "Sending sexually related messages through social media" is only one third. None of the participating employees were aware of all the sexual harassment behaviors mentioned in the questionnaire, showing that the public's understanding of sexual harassment is still limited. Although China has made some progress in combating sexual harassment, both through legal and other means, it remains insufficient. Our findings suggest that two-thirds of the victims remain silent. For victims who seek outside help, court decisions in sexual harassment cases are not effective because of the absence of relevant laws. Most victims were women just starting work who could not continue their jobs because of the harassment they faced. Many undisclosed cases ended in the victim's resignation or change of jobs. The court usually fails to calculate the loss suffered by the victim from changing jobs [6].

A law aimed at the prevention and control of workplace sexual harassment should be formulated to clearly explain the concept and all its manifestations, identification standards, and the burden of proof. It

level, while 46.3% of female workers are at this level. Nine percent of men are in senior management positions, while only 5% of women are in senior management positions ([https://qd.ifeng.com/a/20200307/12055596\\_0.shtml](https://qd.ifeng.com/a/20200307/12055596_0.shtml)).

<sup>7</sup> Article 40 stipulates: Sexual harassment of women is prohibited. The victimized woman has the right to lodge a complaint with the unit and relevant agencies.

should specify employer obligations, responsibilities, and exemptions, and perpetrators' civil liability [23].

### 5.2. Employer Liability is Unenforceable

Although the definition of sexual harassment differs across the globe, many countries have specific and/or focused regulations addressing workplace sexual harassment [23]. Strengthening employer liability is the most important aspect of anti-workplace sexual harassment mechanisms and is one of the most effective aspects of international anti-sexual harassment legislation, especially in the United States [12,15]. However, the expressions in the Civil Code fail to regulate workplace sexual harassment and generalize the subject of responsibility, which can easily result in situations where "everyone seems to be liable, but no one will bear the responsibility" [32,33].

The obligation of agencies, enterprises, and schools, as determined under Article 1010 of the Civil Code, is to create reasonable measures for the prevention of workplace sexual harassment. The acceptance, investigation, and disposal of complaints is also their responsibility, but this is not enforceable through civil law. There are no procedural safeguards to ensure enforcement [16]. An unenforceable obligation is not connected with legal liability and is more of an advocacy obligation. Although the law mandates that the employer must take necessary measures to prevent sexual harassment, there is no way to hold them liable if the employer fails to do so. The Civil Code offers no guidance on how one examines the role of these actions, especially omissions in the occurrence of damage, and whether there is a causal link between these faulty actions and the occurrence of damage. Thus, the implementation of employer liability under the Civil Code still requires more detailed regulations.

Our findings show that employers do not have relevant mechanisms to prevent and address sexual harassment, and that employees do not know whether their employers have such mechanisms. Most employees had not received training on the prevention of sexual harassment. Almost all employees believed that employers should establish an anti-sexual harassment mechanism within the organization, including providing corporate regulations on anti-workplace sexual harassment and protecting victims' privacy.

In quid pro quo harassment, the perpetrator is able to manipulate or damage the victim's actual work interests based on whether the victim meets their sexual needs. Such conduct gains support via the authority granted to the perpetrator by the employer. When the perpetrator is rejected by the victim, the former uses the authority granted by their employer to damage the work interests of the victim. Based on agency behavior rules,

employers should bear responsibility for this.<sup>8</sup> The employer is subject to strict and no-fault liability for workplace sexual harassment because of the working relationship with the perpetrator. Employers should also assume liability for hostile workplace sexual harassment because they are responsible for workplace safety and are obliged to provide employees with good working conditions and environments. The Labor and Labor Contract Laws stipulate the obligation of employers to provide workers with necessary working conditions.<sup>9</sup> The employer should be liable for fault. Judgments can be based on the degree of fault by examining the actions of the employer before and after the occurrence of sexual harassment, which include the employer's willingness to implement preventive measures against workplace sexual harassment (e.g., improving the rules and regulations, clearly mentioning the anti-sexual harassment policy in the corporate charter, clarifying the process, sending relevant regulations and relief channels to employees in a timely and effective manner, and regularly conducting legal training and education to improve the ability of employers and employees to actively respond to and prevent sexual harassment) and to follow-up after an incident (e.g., while investigating sexual harassment reports, attach great importance to the collection of relevant evidence, make necessary inquiries, view surveillance videos, suspend the duties of relevant personnel, handle related complaints and reports carefully and impartially, protect the privacy of complainants and victims, provide support for victims, and defend victims' rights).

### 5.3. Cultural Inertia: Stigmatization and Silence

In our survey, 65% of those who had experienced sexual harassment at work remained silent for two reasons. First, there was social pressure. Coupled with the pressure brought about by social stigma, the victims

<sup>8</sup> Article 34 of the Tort Liability Law of the People's Republic of China stipulates that if employees cause damage to others owing to the performance of their work tasks, the employer shall bear tort liability. However, this article does not address the connotation and extension of "due to performing work tasks." Article 9(1) of the "Interpretation on Several Issues Concerning the Application of Law in the Trial of Personal Injury Compensation Cases" issued by the Supreme People's Court states that if an employee causes damage during employment, the employer shall be liable to provide compensation.

<sup>9</sup> See Article 32 of the Labor Law of the People's Republic of China and Article 62 of the Labor Contract Law of the People's Republic of China.

were worried about secondary harm. In the six recorded cases that were reported to superiors, half the employers neither investigated the incidents nor punished the perpetrator. This caused many victims to worry that if they spoke out, other people would not believe them, and their work relationships would be damaged. Therefore, they chose to remain silent.

Second, it is difficult to obtain evidence of workplace sexual harassment. Perpetrators often violate victims in secluded spaces with no witnesses and it is difficult to provide strong evidence (e.g., audio/video). If the perpetrator simply denies the incident, it eventually comes down to the perpetrator's word against that of the victim. Our investigation showed that a third of the respondents did not seek external help owing to a lack of evidence. Even if there was a witness, they did not want to risk testifying.

Before the founding of the People's Republic of China, the long-term male-centered patriarchal system played a major role in feudal society. On the one hand, sexual harassment was seen as a romantic affair of the emperor or literati, and on the other hand, society strongly praised the beauty of female chastity [5,34]. The combination of the two has led to the cultural praise and tolerance of male romanticism and the stigma and condemnation of female coquetry. With increasing awareness of gender equality, sexual harassment incidents are being strongly condemned and reported by the media. The frequent occurrence of sexual harassment has also aroused the attention of academic circles and experts in law, sociology, psychology, and pathology, all of whom have conducted appropriate research. Finally, sexual harassment as a tort is now restricted by law.

However, changes in social conduct cannot be accomplished overnight. Cultural inertia has an influence that cannot be ignored. Speaking out is a burden for victims of a patriarchal system in which women are objectified. Exposing personal incidents of sexual harassment, for women, not only adversely affects their family, marriage, and career but also destroys their reputation. There is still a negative stereotype that victims are not blameless and must have done something to warrant sexual harassment, and in many cases, this prevents women from sharing their experience. For example, the common Chinese saying (direct translation) "flies do not bite seamless eggs" is used to justify sexual harassment.<sup>10</sup> The above reasons

prevent women from speaking out, leading to crimes that are neither seen nor dealt with. Breaking the culture of silence is the key to eliminating workplace sexual harassment. An effective means to do this is to warn potential sexual perpetrators about punishment and concurrently change the social atmosphere.

Article 995 of the Civil Code confirms the right to personality. If the right to personality is violated, a victim has the right to make the perpetrator bear civil liability. The perpetrator can be asked to stop the infringement; eliminate the threat, danger, or impact; restore the victim's reputation; and apologize to the victim. Regardless of the punishment that perpetrators will bear, it is vital to provide relief to the victims. In addition to paying economic damages, courts should require the perpetrator to bear civil liabilities, such as restoring victims' reputations and promptly apologizing openly (verbally and in writing). Protection of privacy should be a priority, and victims should be asked whether they are willing to disclose their personal information. Ensuring that the perpetrator publicly apologizes will deepen the public's awareness that "sexual harassment is the perpetrator's mistake," and this will reduce victim blaming and stigmatization. When society's awareness of sexual harassment increases, victims and supportive colleagues will have more courage to speak out, and victims will receive more social support.

## 6. CONCLUSION

Workplace sexual harassment is becoming an increasingly prominent and serious problem. Article 1010 of the Chinese Civil Code clarifies that sexual harassment can occur through either words or deeds, and stipulates that agencies, enterprises, schools, and other units create measures to prevent and prohibit all forms of sexual harassment. Therefore, it is necessary to study and clarify the current situation, nature, and preventive measures for addressing workplace sexual harassment. At present, the effects of anti-sexual harassment laws remain unsatisfactory. Employers' obligations have not been established sufficiently, and effective workplace sexual harassment prevention mechanisms need to be implemented. This study shows that most victims of workplace sexual harassment choose to remain silent and do not ask for help. Employers do not have a clear mechanism to assist harassed employees, and the law does not provide adequate relief. The interviews clearly showed that only when the victims, employers, and public authorities cooperate fully can perpetrators be punished and victims be compensated. Although the current sample size was small, the victims' silence underscores the inertia of the traditional Chinese sexual culture system. To eliminate social stigma, overall social awareness of workplace

<sup>10</sup> In 2012, the official website of the Shanghai Metro posted a microblog warning that women could be harassed for wearing sexy clothes while riding the subway in the summer ([https://www.bbc.com/zhongwen/simp/chinese\\_news/2012/06/120618\\_shanghai\\_tube](https://www.bbc.com/zhongwen/simp/chinese_news/2012/06/120618_shanghai_tube)).

sexual harassment and punishment for perpetrators need to be strengthened.

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