



Research on the China's Gender Equality the Perspective of Comparative Law

Liang Shi^(✉)

Law Faculty, Heilongjiang University, Harbin 150000, Heilongjiang, China
1377445062@qq.com

Abstract. With the blooming of the Internet, the frequency of information exchange between people has sharply increased. However, in recent years, there have been huge public opinions on certain events frequently on many network platforms and many information contents seem to be guided to the position of gender discrimination or even gender opposition consciously. This paper will focus on the hot topic of gender equality and analyze the legal system of gender equality. Finally, based on the study of comparative law between China and other countries, this paper gives some legislative suggestions for achieving gender equality in China.

Keywords: Comparative Law · Gender Equality · Internet

1 Introduction

With the development of society and economy, competition between men and women has become more and more intense. Men and women compete in various areas because of their differences. Men and women play different gender roles in society. According to traditional gender roles, males should be the primary provider for the family and be in charge of ensuring its financial stability, while women should be the household managers and be in charge of the household's day-to-day operations. Because of this traditional concept, there is still a gap between men and women in career development in today's society. What's more, the attitude and values between men and women are different. Therefore, this difference in values is also one of the reasons for the antagonism between men and women.

However, most research surveys only study the issue of equality between men and women scientifically or only put forward improvement ideas in a certain field, without paying enough attention to the whole public opinion environment, and the proposed solutions are not accurate. In order to achieve gender equality, this paper will then figure out how to effectively defend the pertinent rights and interests of women at the conclusion of legislation through the design of its legal system. The significance of this study is to give more people who are radicalized by some radical opinions a clearer perspective to calmly view the gender equality issue in China, and actually change the situation that we are dissatisfied with.

2 The Status of Women Rights in China from an International Perspective

According to Fig. 1, as an undeveloped country, China has a good performance on the percentage of women who are in the labor force. In the traditional great powers, as an undeveloped country who has the largest population, China reaches a greatly high level to enforce the labor rights of women [1].

Another data point is about the empowerment of women.

Before the analysis, in Table 1, China is a highly human-developed country; however, other four countries are very highly human-developed countries [2]. According to this table, it is clear that China has done well in providing maternity protection for women. More than 90% of women have access to maternity protection services in hospitals, and paid maternity leave lasts a long time. At the same time, the rate of domestic violence against Chinese women in married women's families is also very low, compared with developed countries.

In terms of the use of information technology, over 70% of women have their own means of Internet connection. It is worth mentioning that China has more than 63% urban population, which means that almost all urban women can use the Internet. According to the booming development of China's Internet network, a large number of young and middle-aged rural women can also access the Internet. However, it is worth noting that the rate of female officials and executives in China is very low, which has a reflection in the women's economic participation rate too.

In conclusion, Chinese women can get good protection on the field regarding their rights. However, when it comes to female officers, such as female senior managers in corporations or government officials, China clearly outperforms other countries with

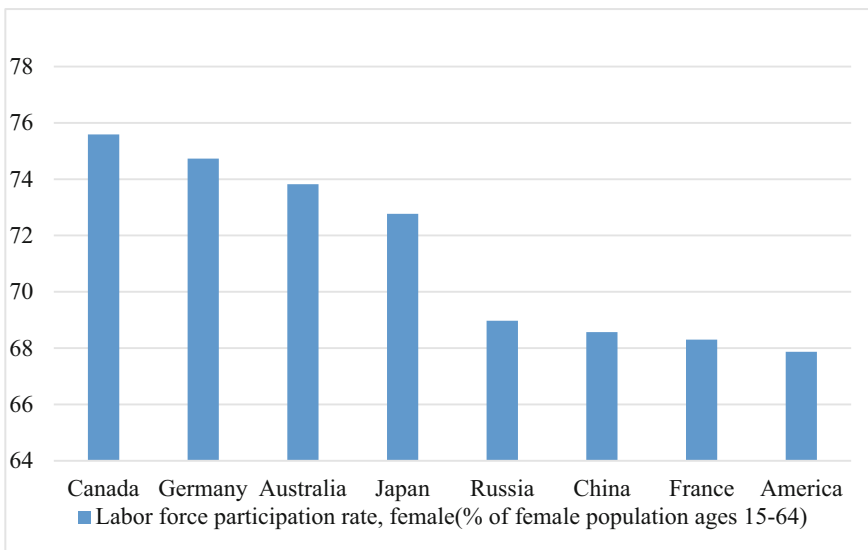


Fig. 1. Labor Force Participation Rate, Female (% of Female Population Ages 15)

Table 1. Human development reports about empowerment of women

		Antenatal care coverage, at least four visits	Contraceptive prevalence, any method	Intimate partner violence ever experienced	Female internet users	Female share of ministerial level positions	Female share of seats in local governments	Women with account at a financial institution or with a mobile money service provider	Mandatory paid maternity leave
		(%)	(% of married or in-union women of reproductive ages, 15–49 years)	(% of female population ages 15 and older)	(% of female population)	(% held by women)	(% held by women)	(% of female population ages 15 and older)	(days)
HDI RANK		2011–2021	2010–2020	2018	2016–2020	2021	2016–2021	2011–2021	2021
18	United Kingdom	...	...	24	94.4	23.8	35.0	99.9	42
19	Japan	96.8	...	...	95.7	27.8	28.3	98.7	90
19	Korea (Republic of)	...	...	20	87.7	10.0	14.3	98.8	98
21	United States	96.6	73.9	26	...	46.2	...	96.8	...
79	China	92.9	84.5	19	70.8	3.2	28.1	87.3	128

comparable levels of economic development. So we should concentrate on how to solve the problem about the low number of female officials or managers in China instead of just talking about how China has great gender discrimination.

3 The Legal System of Gender Equality

Gender equality is a widely recognized value which has many societal, financial and political aspects. One of the important elements is to guarantee that there are equal opportunities to hold senior management positions in the economic field between two genders.

Next, the article will analyze how to protect women's legitimate interest and benefits in legislation and improve the participation rate of female executives in enterprises according to China's current legal system.

3.1 The Current Legal System of Gender Equality

Law of the People's Republic of China on the Protection of Women's Rights and Interests. The People's Republic of China's Law on the Protection of the Rights and Interests of Women aims to uphold the legitimate rights and interests of women while advancing gender equality. The Constitution and the current state of affairs in our nation have been taken into consideration when formulating the extremely precise

and detailed regulations, which cover everything from political rights to cultural and educational rights to labor and social security rights to property rights, personal rights, marriage and family rights, etc. in order to fully realize the role that women play in the socialist modernization construction.

The Civil Code of the People's Republic of China. The Civil Code of the People's Republic of China Article 1079 and Article 1091 clearly stipulate that a woman who suffers domestic violence can choose to divorce and demand the other party to bear the civil liability for damages. Domestic violence tramples on Women's body and mind. They are expected to endure in silence, but often suffer blows again and again. Therefore, if female friends encounter domestic violence in marriage, they should bravely pick up the weapon of law and protect their legitimate rights and interests. Article 1082 of the Civil Code also gives special protection to women during certain periods of marriage by limiting the right of men to sue for divorce. The law provides: "A Male cannot start a divorce when a woman is expecting, within a year after giving birth, or within six months following a miscarriage. Until, however, the woman requests a divorce or the People's court determines that the Husband's request for divorce must be granted."

Special Provisions on Labor Protection of Female Employees. Pregnancy is a necessary process for most women. Article 7 of the Special Provisions on Labor Protection for Female Workers reflects the State's concern and care for female workers during pregnancy. The legislation stipulates that female employees are entitled to 98 days of maternity leave, including 15 days of prenatal leave; in the event of dystocia, this period is extended by 15 days; and in the event of multiple births, this period may be extended by 15 days for each subsequent child. Female workers who miscarry before 4 months of pregnancy are entitled to 15 days of maternity leave. Those who miscarry after four months of pregnancy will enjoy 42 days of maternity leave." IV. "Labor Law of the people's Republic of China" "Labor Law of the people's Republic of China" Chapter VII provides for the implementation of a special labor protection system for female workers, the main content is to prohibit the arrangement of female workers to engage in underground mines, the state provisions of grade IV physical labor intensity work, and other taboo work; and not arrange for female workers to engage in high, low, or freezing water operations or comply with state regulations during the menstrual period. The third level of physical labor strength, etc., fully considers the physical limitations of female workers to protect their competitiveness and safety in the workplace to the greatest extent possible.

Labor Law of the People's Republic of China. A specific labor protection system for female employees must be in place, according to Chapter VII of the People's Republic of China's Labor Law. The main points are that it is against the law to arrange for female employees to work in underground mining, Grade IV physical labor, or any other work that ought to be taboo, and that female employees shall not be arranged to work in high altitude, low temperature, cold water, or with Grade III physical labor intensity, etc., while they are menstruating. It gives careful consideration to the physical constraints of female employees and goes a long way toward ensuring their competitiveness and safety at work.

3.2 How to Improve the Legal System to Protect the Gender Equality

According to statistics, in Germany, in 2014, the representation of female shareholders on the board of supervisors of 160 Dax, MDAX, SDAX and Tec Dax listed companies was 18.9%, and only 5.8% of the members of the board of directors were female, and only 5 companies had female chairmen of the board of supervisors [3]. In order to solve this problem, Germany enacted “the Fixed Sex Ratio of Corporation Law” to realize the gender equality idea in the jurisdiction [4].

The gender imbalance among senior managers of Chinese listed companies has long been a problem. In 2015, the average proportion of female executives in Chinese listed companies was 18% [5]. In 2019, women accounted for 12% of the directors of Shenzhen listed companies [6]. Should the problem be allowed to grow, or corrected through state intervention? A basic consensus is that market regulation is dominant, state intervention is limited by market failures, and once the market is fixed, the state must withdraw from intervention [7]. In fact, in the Outline for the Development of Chinese Women (2011–2020) issued by the State Council in 2011, one of the goals was to gradually increase the proportion of women on the boards of directors, supervisory boards, and management teams of enterprises, which is a typical administrative intervention. Compared with administrative intervention, legislative intervention is more standardized. Because the legislative process is tightly controlled, its legitimacy is more secure and its costs are higher. If it is possible for our country to achieve this goal through legislative means in the future, on the premise of fully recognizing the difference between our legal systems, the legislative thinking of the Law of Equality of Men and Women in Germany can be useful for our country.

From the perspective of the Constitution, the following is stated in Article 48 of the People’s Republic of China Constitution: “In the People’s Republic of China, women and men have equal rights in all spheres of familial, political, economic, cultural, and social life. The state upholds the rights and interests of women, upholds the principle of equal pay for equal labor, and recruits and trains female cadres.” The aim of increasing female representation is therefore justified. However, support for specific market participants tends to increase the burden or disadvantage of other market participants. On the one hand, investors’ management rights as shareholders are limited; on the other hand, male candidates may be at a relative competitive disadvantage. Therefore, when formulating specific intervention policies, it is necessary to reasonably predict the possible impact of intervention on different market players, compare the possible negative impact and positive effect, and find the best balance point. At the level of the company law, the characteristics of the company law should be fully respected and utilized to ensure the freedom of corporate decision-making to the maximum extent. First of all, on the selection of the adjustment object, different from Germany to adjust according to the company size, our country has the tradition of adjusting the company according to the ownership. According to Article 44, Paragraph 2 of Article 51, Paragraph 1 and paragraph 2 of Article 67 of the Company Law of the People’s Republic of China, the board of directors of the company invested by the state-owned investment entity shall include the staff and staff directors, and the board of supervisors of all companies shall include the staff and staff supervisors.

According to this idea, it is a reference scheme to set the proportion of women in listed companies with state holding or equity participation reaching a certain proportion. Secondly, in terms of adjusting the establishment of organs, it should be noted that our board of supervisors does not have the right to personnel of the board of directors, and the articles of association cannot stipulate that the board of supervisors has the right to approve specific decisions of the board of directors.

4 Conclusion

So far, this paper has discussed the solution based on the phenomenon of online male-female antagonism, analyzed the current status of gender discrimination in China through the data, and finally analyzed the current legal system in China and how to achieve gender equality by legislation. It is worth mentioning that gender equality is not a political issue but a social issue, as French scholar Pierre Bourdieu said, the construction of gender temperament is oppressive to both two genders, and the mechanism of social oppression lies in the strengthening of the opposition of gender temperament. Gender discrimination is not only a shackle for women, but also for men. Men and women should work together to combat gender stereotypes that result from social attributes. As for the path to equality in China, it is difficult to change the fixed gender employment caused by the huge population size in China in the short term. In the future, we can start from education, reducing the deepening of gender stereotype education, and at the same time legislate in the field of online speech, so as to effectively publicize the correct gender concept in public opinion.

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