

Analysis of the Criteria for Identifying Sexual Harassment

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Abstract: *Article 1010 of the Civil Code establishes a basic legal framework for handling sexual harassment disputes, yet this provision merely offers a foundational definition of sexual harassment, lacking specific and highly feasible identification standards for such behaviors. This situation has led to ambiguities in the definition of sexual harassment in judicial practice, and the academic community has also exhibited extensive controversies and disagreements regarding the identification standards for sexual harassment. In view of this, to address the practical difficulties in the judicial identification of sexual harassment disputes in China, it is necessary to proceed from two levels: legislative amendment and judicial application. The Supreme People's Court should issue relevant judicial interpretations to elaborate on the subjective and objective constituent elements of sexual harassment behaviors and standardize their definitions. At the same time, it is crucial to avoid the mechanical application of general tort provisions, thereby reducing the complexity of judicial decisions and effectively safeguarding the legitimate rights and interests of victims.*

Keywords: Sexual harassment; Identification criteria; Judicial identification.

1. PROBLEM STATEMENT

From a legal history perspective, China's central legislation addressing the prevention of sexual harassment originated with the 2005 amendment to the Law on the Protection of Women's Rights and Interests (hereafter "the Women's Rights Law"), adopted at the 17th Session of the Standing Committee of the 10th National People's Congress on August 28, 2005. The revised Article 40 stipulates that "sexual harassment against women is prohibited. Victims are entitled to file complaints with their employers or relevant authorities." This provision not only affirmed the illegality of sexual harassment but also established the statutory right of victims to seek redress, marking the inception of modern anti-sexual harassment legislation in China [1]. Subsequently, the 2012 Special Regulations on Labor Protection for Female Employees, an administrative regulation promulgated by the State Council, further clarified employers' responsibilities in preventing and addressing sexual harassment. Article 11 of the Regulations mandates that "employers shall take measures to prevent and stop sexual harassment against female employees in the workplace," thereby strengthening employers' obligations to combat workplace sexual harassment and laying a firmer legal foundation for protecting women's right to freedom from such conduct. The Civil Code, enacted in 2021, significantly advanced legal protections against sexual harassment. Article 1010(1) explicitly states that individuals who engage in sexual harassment against others through language, text, images, or physical acts contrary to the victim's consent shall bear civil liability. A comparative analysis reveals that the Civil Code represents substantial progress in safeguarding women's right to freedom from sexual harassment: (1) it elevates the legal status of this right by codifying it in a foundational statute; (2) it expands the scope of application beyond the workplace to all spheres of social life; (3) it specifies the legal remedies and claims available to victims; and (4) it clarifies both subjective elements (e.g., the perpetrator's intent) and objective elements (e.g., forms and methods of harassment) constituting sexual harassment. Collectively, these legislative efforts in the Civil Code have markedly enhanced the actionability of women's right to freedom from sexual harassment, achieving the highest legislative standard in China's anti-sexual harassment framework. However, whether evaluated against normative institutional benchmarks or the practical needs of judicial adjudication, China's current legal regime for addressing sexual harassment remains deficient in terms of institutional completeness, clarity of identification standards, and operational feasibility. First, the legal characterization of sexual harassment remains ambiguous. While statutes such as the Women's Rights Law and the Civil Code outline liability subjects, subjective/objective elements, and remedies, their limited provisions fall short of meeting the demands of administrative enforcement or judicial practice, given the complex and diverse manifestations of sexual harassment in real-world contexts. For instance, terms such as "contrary to the victim's consent" and "language, text, images, or physical acts" in the Civil Code fail to precisely or comprehensively define the essential nature or external characteristics of sexual harassment. Second, existing laws inadequately account for the subjective experiences of victims. The determination of sexual harassment heavily depends on the victim's subjective perception, which varies significantly based on factors such as age, education, cultural background, marital status, and situational context.

This subjectivity complicates the identification of sexual harassment, yet current legislation lacks nuanced guidelines to address it. Third, the law insufficiently addresses the recognition of sexual harassment in power-imbalanced relationships (e.g., superior-subordinate, teacher-student dynamics). In such contexts, ambiguous boundaries often exist between sexual harassment and ostensibly benign acts, such as a superior's inappropriate remarks or a teacher's ambiguous physical gestures. Existing legal frameworks provide no clear criteria to distinguish these acts.

In light of these issues, this paper analyzes statutory provisions and judicial cases related to sexual harassment, examines the practical challenges in identifying sexual harassment in judicial practice, and explores their root causes. Building on this analysis, the study proposes a standardized framework for defining sexual harassment in China, aiming to provide actionable guidance for judicial proceedings.

2. CHALLENGES IN JUDICIAL DETERMINATION OF SEXUAL HARASSMENT IN CHINA

Based on data retrieved from the Wolters Kluwer legal database using "sexual harassment" as a keyword for full-text searches, as of September 19, 2024, a total of 979 civil judgments related to sexual harassment disputes were identified. This dataset provides an empirical foundation for analyzing the practical challenges in judicial determinations of sexual harassment in China.

A preliminary analysis of this dataset reveals that workplace environments remain the primary setting for sexual harassment. Among the retrieved cases, 420 involved labor or employment disputes, and 118 concerned contractual or quasi-contractual disputes, totaling 538 cases (54.95%). This indicates that workplaces shaped by labor, employment, service, or economic interactions are fertile ground for sexual harassment. Additionally, 345 cases (35.24%) were classified under personality rights, marriage/family, or inheritance disputes, reflecting growing recognition of freedom from sexual harassment as integral to personal dignity, reputation, bodily autonomy, and well-being. Finally, 56 cases were categorized as tort liability disputes, signaling gradual societal acceptance of freedom from sexual harassment as a private legal right. However, the diversification of case types involving sexual harassment has introduced uncertainty in legal application during adjudication, particularly due to insufficient judicial reasoning.

A notable issue in judicial practice is the lack of rigorous legal reasoning in sexual harassment cases. Many judgments merely recite factual allegations without adequately articulating the legal rationale. For example, in *Wen Mouyi v. Zeng Mou* (Meizhou Intermediate People's Court of Guangdong Province, (2024) Yue 14 Min Zhong 654), the court listed chat records between the parties but failed to analyze critical issues such as the constitutive elements of sexual harassment or the victim's subjective experience and psychological impact. Furthermore, due to vague statutory standards for identifying sexual harassment, courts often avoid applying relevant provisions and instead rely on general tort law, undermining victims' claims. In *Zhang Jingjing v. Beijing JD Century Trade Co., Ltd.* (Tongzhou District People's Court of Beijing, (2020) Jing 0112 Min Chu 20884), the court treated the case as a general tort dispute, applying the four-element test (unlawful act, harm, causation, and fault). However, the covert and sudden nature of sexual harassment often renders plaintiffs unable to meet the burden of proof for these elements. Similarly, in *Zhang Yu v. Liu Jingliang* (Tongzhou District People's Court of Beijing, (2022) Jing 0112 Min Chu 693), the court dismissed the claim due to insufficient evidence of physical harassment (e.g., touching the waist or hands) or explicit sexual innuendo in chat records.

These cases highlight a stark disconnect between judicial outcomes and the prevalence of sexual harassment disputes. A key reason lies in courts' reliance on general tort frameworks to evaluate sexual harassment, rooted in the ambiguity of statutory criteria. First, the lack of clarity in defining the constitutive elements of sexual harassment—particularly the protected legal interests—leaves civil remedies theoretically underdeveloped [2]. This ambiguity discourages victims from pursuing litigation and forces plaintiffs to frame claims under alternative causes of action, leading to inconsistent judicial standards. For instance, sexual harassment may violate multiple rights: vulgar language infringes dignity and reputation; physical acts violate bodily integrity; stalking or voyeurism breaches privacy; and workplace harassment undermines labor rights [3]. Limiting sexual harassment claims to "general personality rights disputes" or "sexual harassment tort liability" oversimplifies these multifaceted harms, leaving victims without adequate recourse. Second, vague statutory standards lead courts to avoid substantive analysis, defaulting to general tort provisions or superficial applications of Civil Code Article 1010, while neglecting the unique characteristics of sexual harassment. Although Civil Code Articles 1165 and 1166 provide interim protections for personality rights, they inadequately address the covert, intimate, and sudden

nature of sexual harassment [4]. Key unresolved issues include: Whether the perpetrator's intent or the victim's subjective experience governs the determination of harassment; Whether liability requires proof of property damage or severe psychological harm; How to assess "consent" in contexts of power asymmetry or miscommunication. For example, sexually suggestive remarks may constitute harassment in the workplace but be dismissed as humor in informal settings. In the absence of clear guidelines, courts excessively rely on judges' subjective discretion, resulting in inconsistent rulings, weakened legal predictability, and diminished judicial authority. Scholarly debates further reflect this ambiguity: some advocate a "reasonable person" standard [5], while others prioritize the victim's subjective experience [6]. Moreover, divergent interpretations of Civil Code Article 1010 across jurisdictions have created inconsistent precedents, failing to provide uniform standards for resolving increasingly complex cases. This unpredictability undermines victims' confidence in judicial fairness, exacerbates judges' adjudicatory burdens, and risks eroding public trust in the legal system.

3. MANIFESTATIONS OF THE UNCLEAR CRITERIA FOR IDENTIFYING SEXUAL HARASSMENT IN CHINA

3.1 Uncertainty in the Subjective Constituent Elements of Sexual Harassment

In the identification of sexual harassment, subjective elements play a crucial role, with the key lying in assessing whether the infringing act violates the will of another person. However, both in academic research and legislative practice, there are significant disagreements on how to accurately define "against the will of another person," particularly whether the focus should be on the perpetrator's subjective intent or the victim's subjective feelings. Firstly, regarding the manifestations of "against the will of another person," there are differing views in academia. Some scholars argue that even if the victim chooses to remain silent due to fear of retaliation or initially accepts but subsequently explicitly refuses, it should be considered as against their will [7]. Others advocate that even if the victim does not explicitly refuse, if the perpetrator's words and actions exceed the scope of normal social or work interactions, and the victim expresses disgust or dissatisfaction afterwards, it can also be deemed as against their will [8]. Secondly, regarding the form of the perpetrator's subjective intent, some scholars emphasize that the perpetrator must have a subjective intention of sexual harassment, including direct and indirect intention, and this intention should manifest as the pursuit of sexual physiological or psychological satisfaction, with negligent acts not falling into this category. Other scholars believe that intention should be understood as "knowingly or ought to have known that one's actions have sexual intent and are unwanted, yet still deliberately carrying them out" [5]. In legislative practice, the Civil Code focuses more on the perpetrator's subjective motives; whereas the Guidelines for the Prevention of Sexual Harassment in the Workplace (Model Text), jointly issued by six ministries and commissions, places greater emphasis on the victim's subjective discomfort, relatively downplaying the impact of the perpetrator's motives, and attempts to alleviate the victim's burden of proof and strengthen the protection of their rights by adopting the principle of no-fault liability. However, it is well-known that according to Article 116 of the Civil Code, no-fault liability for tort applies only to the torts stipulated by law—sexual harassment is not included in this list; therefore, before the Civil Code is amended, victims cannot obtain civil legal relief for sexual harassment identified based on the Guidelines for the Prevention of Sexual Harassment in the Workplace (Model Text).

3.2 Uncertainty in the Objective Constituent Elements of Sexual Harassment

Another manifestation of the unclear criteria for identifying sexual harassment in China's current laws is that relevant legislation does not define the essential characteristics of sexual harassment nor enumerate its forms in detail, making it difficult to accurately determine in judicial practice whether a certain act constitutes sexual harassment that should bear legal responsibility. Some scholars suggest enumerating and explaining the specific manifestations of sexual harassment mentioned in Article 1010 of the Civil Code, such as "verbal, written, image, and physical acts" [9]: for example, clarifying which verbal expressions constitute provocative or insulting obscenity, which written and image content has sexual implications or provocation, and which physical acts constitute unnecessary physical contact, to provide clear guidance for judicial practice. Secondly, the current legislation also lacks clear provisions on the damaging consequences of sexual harassment acts. According to the legal logic established in Article 1165 of the Civil Code, sexual harassment can only be considered a tort if it causes physical, mental, or economic damage to the victim. However, there are differing views in academia: some scholars believe that the function of the right of personality claim lies in maintaining the victim's full control over their personality interests, without the need for the act to constitute a tort as a prerequisite [10]. Others argue that as long as the victim subjectively experiences unpleasant feelings, it can constitute the damaging consequence of sexual harassment [5]. Thirdly, regarding the object of infringement in sexual harassment, due to the lack of

regulations in legislative documents, there are also disagreements in academia. Some scholars believe that sexual harassment mainly violates the victim's right to their body and impairs their personal dignity [10]. Others advocate that sexual autonomy should be considered the object of infringement in sexual harassment to more comprehensively protect the victim's rights [11]. Finally, there is also controversy in academia regarding the targets of sexual harassment that are not clearly defined by law. Some view that sexual harassment should be directed at specific targets; if the perpetrator publicly discusses gender-related topics or tells vulgar jokes in public places but does not explicitly target anyone, it should not be considered sexual harassment [10]. Others argue that the targets of sexual harassment can be a specific individual or multiple individuals but not an unspecified large group of people [5].

In summary, China's current laws exhibit significant uncertainty in the criteria for identifying sexual harassment, mainly manifesting in both subjective and objective constituent elements. Subjectively, the definition of "against the will of another person" is vague, with significant disagreements in academia and legislative practice regarding the emphasis on the perpetrator's subjective intent versus the victim's subjective feelings. Objectively, the law does not clearly define the essential characteristics and specific forms of sexual harassment acts, nor does it clarify key elements such as damaging consequences, objects of infringement, and targets of action, leading to difficulties in accurately identifying sexual harassment in judicial practice. This legal uncertainty makes it challenging to enforce the civil liabilities set by the law in practical operations. For victims, legal protection often remains on paper, failing to achieve genuine rights protection, becoming a veritable "castle in the air." Therefore, improving the legal criteria for identifying sexual harassment and clarifying its subjective and objective constituent elements are of great significance for strengthening the protection of victims' rights and promoting gender equality.

4. METHODS AND APPROACHES TO IMPROVE THE STANDARDS FOR IDENTIFYING SEXUAL HARASSMENT IN CHINA

In the theoretical frameworks of natural law [12] or analytical jurisprudence [13], clarity or definiteness of law is considered a fundamental element of the rule of law. Therefore, to avoid relevant legal provisions on preventing and punishing sexual harassment from becoming "a lightless lamp and an unburning fire," measures must be taken to improve the standards for identifying sexual harassment.

4.1 Methods for Confirming Standards for Identifying Sexual Harassment

Generally speaking, in countries with codified laws, the most effective way to improve the law is through legal amendments. However, to maintain the stability and authority of the Civil Code, and to avoid frequent amendments, a feasible approach is legal interpretation. Specifically, the Supreme People's Court should issue judicial interpretations on sexual harassment to supplement the deficiencies of the Civil Code in the section on personality rights. It is recommended to formulate and promulgate relevant judicial interpretations based on Article 1010 of the Civil Code, combined with judicial trial practice. This interpretation should enumerate and define in detail the specific behavioral patterns of sexual harassment mentioned in Paragraph 1 of Article 1010 of the Civil Code, further improving the system of identification standards for sexual harassment in both subjective and objective aspects, and ensuring the clarity and operability of legal provisions. Meanwhile, Paragraph 2 of Article 1010 of the Civil Code should clearly stipulate the specific consequences for employers who fail to fulfill their corresponding legal responsibilities and clarify their reasonable obligations to prevent and stop sexual harassment, thereby strengthening employers' sense of responsibility. In addition, sexual harassment prevention and handling mechanisms should be established in the rules and regulations of employers to effectively prevent and respond to workplace sexual harassment. This aims to achieve a balance between private rights protection in tort law and workplace protection in labor law, paying attention not only to interpersonal infringement of personality rights but also to the harm caused by power oppression in specific environments, thus providing comprehensive legal protection for victims of sexual harassment in different scenarios. Considering the diversity and complexity of the manifestations of sexual harassment, it is difficult for guiding cases to comprehensively cover all types of behaviors. Individual cases have limitations in representativeness or typicality, and their ruling results have limited guiding value for similar cases. Therefore, it is inappropriate to provide a unified demonstration for judicial identification by formulating guiding cases. Therefore, when applying general tort clauses, courts should fully consider the specificity of sexual harassment cases, avoiding mechanically applying general provisions such as Article 1165 of the Civil Code. Instead, legal provisions should be flexibly applied to reduce the burden of proof for victims, increase the success rate of rights protection, and thus enhance judicial credibility.

4.2 Approaches for Confirming Standards for Identifying Sexual Harassment Behaviors

4.2.1 Establishing a Subjective Element System Centered on Victims

Firstly, the criterion for "against the will of others" should be further refined. The phrase "against the will of others" encompasses two meanings: one is the victim's subjective disagreement; the other is that the behavior is objectively unwanted. In terms of the victim's subjective disagreement, there are two forms of expression: first, the harassed person explicitly expresses refusal; second, although the harassed person does not directly resist on the surface, the behavior still deviates from their true wishes. Here, it should be clarified that as long as the victim does not explicitly express consent, the perpetrator should not engage in relevant sexual harassment behaviors to avoid misinterpreting the victim's reaction as acquiescence or "playing hard to get." In 2002, the European Parliament issued the Directive 2002/73/EC on the Implementation of the Principle of Equal Treatment Between Men and Women, defining sexual harassment within the EU as "any form of unwanted conduct of a sexual nature, which can be verbal or physical, that has the purpose or effect of violating the dignity of a person, in particular when it creates an intimidating, hostile, degrading, humiliating, or offensive environment." To reduce subjectivity, we can draw lessons from the above European regulations and introduce a subjective concept with objective limitations for the subjective identification of sexual harassment, i.e., the behavior not only violates the victim's subjective wishes but is also objectively unwanted. In terms of being objectively unwanted, on the one hand, the behavior needs to be intrusive, such as violent acts, extortion, etc., which are usually strictly prohibited by law, and the victim does not need to bear the burden of proof for whether the behavior is welcome. On the other hand, if the behavior has not reached the level of intrusion, even if the other party feels offended, it should not be easily identified as sexual harassment to avoid the accused bearing unnecessary responsibility for non-intrusive behavior. Therefore, sexual harassment not only violates the legal principle of sexual autonomy but also, as a subjective element constituting sexual harassment, "against the will" combined with probing behavior also constitutes a violation of the law. Taking "violation of sexual wishes" as the subjective identification standard for sexual harassment behaviors not only reduces the burden of proof for victims but also ensures the substantive fairness of the trial process and judgment results in sexual harassment cases.

On the other hand, in the identification of sexual harassment, emphasis should be placed on the victim's subjective feelings rather than the perpetrator's subjective motives, purposes, and degrees of intention. The reasons are as follows: Firstly, from the perspective of legislative tendencies, Article 1010 of the Civil Code indicates that legislation focuses more on the objective manifestations of sexual harassment behaviors and their impact on the victim's subjective feelings rather than the perpetrator's subjective purposes, motives, and indirect or direct intention. Therefore, the judicial interpretation of sexual harassment behaviors should also be consistent with legislative tendencies, focusing on the nature of the behavior itself and its impact on the victim rather than the perpetrator's subjective state. The victim's subjective feelings should be the key factor in determining whether a behavior constitutes sexual harassment, and the perpetrator's subjective purpose and motive, as non-determinative factors, should not affect the sexual harassment nature of the behavior. Even if the perpetrator has no malice or improper purpose subjectively, if their behavior objectively causes discomfort or disgust to the victim, the behavior may still constitute sexual harassment. Secondly, considering that perpetrators in sexual harassment cases are often in a position of strength, victims may dare not resist due to fear, shame, or other reasons. If the identification of sexual harassment needs to consider the perpetrator's subjective purpose and motive, the perpetrator may use this as a defense to evade legal sanctions, which will be unfavorable for the protection of victims' rights and may encourage power abuse and gender discrimination. For example, in workplace sexual harassment cases, due to the power disparity between the perpetrator and the victim, the victim mostly chooses to endure the initial provocation or offense and may even passively comply at times. This attitude of not firmly refusing may make the perpetrator believe that the victim consents, thereby escalating to more inappropriate behavior. Therefore, the perpetrator's subjective purpose should not be considered within the scope. Finally, from the perspective of judicial practice, accurately judging the perpetrator's subjective purpose and motive poses considerable difficulty and uncertainty, which will not only increase the complexity and trial difficulty of the case but may also affect the fairness and efficiency of judicial adjudication. Therefore, from the perspective of judicial fairness and efficiency, the perpetrator's subjective purpose and motive should not be taken as the decisive factor in identifying sexual harassment.

4.2.2 Establishing a Multi-faceted System of Objective Elements

Firstly, the manifestation of sexual harassment should be identified based on the nature and mode of conduct. Compared to other objective elements, manifestation is the primary and core element in determining sexual

harassment. Without this condition, other factors become meaningless. Specifically, in terms of nature, sexual harassment is an offensive civil tort. The "offensiveness" here specifically refers to the "sexual" relevance contained in the act, i.e., the perpetrator violates the dignity of others by engaging in conduct that includes sexual suggestions or threats. In defining "sex," a broad concept should be adopted, requiring that sexual harassment at least possess characteristics of gender discrimination, and the sexual assault nature of the conduct is not a necessary condition. Specifically, as long as the content of the conduct involves "sex" and infringes upon the dignity of others, it constitutes sexual harassment. This includes but is not limited to direct expressions of sex-related content and also covers hostile attitudes displayed when sexual conduct has not occurred. Narrowly defining "sex" as sexual humiliation will fail to comprehensively cover forms of sexual harassment that cause severe psychological and mental harm to victims, thereby making it difficult to fully protect them. For example, in the case of "Hang Minyan v. Ma Lin and Others, Dispute over Other Personality Rights" [see Shanghai Hongkou District People's Court (2015) Hong Min Yi (Min) Chu Zi No. 3187 Civil Judgment], the defendant commented that the plaintiff "stands like a beauty, sits neatly, walks gracefully, but I don't know how she sleeps." The people's court held after hearing that, although the defendant's remarks were indeed inappropriate, since the remarks did not directly involve sexual content, they did not constitute sexual harassment under legal definitions. Additionally, regarding the definition of the civil tort nature of sexual harassment behavior, given that differences in judges' understanding of the term "sex" may lead to inconsistencies in judicial determination standards, thereby affecting the impartiality of cases and public trust in judicial impartiality, the broad concept of sexual harassment in China's legal system also covers more serious sexual offenses such as rape, forced indecency, and insulting women. These acts, due to their greater harmfulness, are classified as sexual offenses and subject to severe sanctions under criminal law. Meanwhile, considering the differences between China and European and American countries in legislative systems and legal traditions, particularly that China does not belong to a case law system where judicial precedents do not have formal legal effect, defining the nature of sexual harassment behavior as a civil tort aligns with the current domestic legal environment and is the correct direction for future explorations of the essence of sexual harassment. In terms of conduct modes, sexual harassment can be implemented through various media, including but not limited to language, written information, and physical actions. In judicial practice, whether a certain act constitutes sexual harassment should be determined based on the objective circumstances at the time of the act, rather than solely relying on the subjective feelings of the parties involved. In judicial practice, the characteristics of sexual harassment can be defined in a general sense based on existing provisions of the Civil Code: first, the content is sexually suggestive or related, covering both direct sexually provocative remarks such as vulgar jokes and indirectly gender-related words and actions, all falling within the scope of regulation, ensuring the precision and breadth of legal application [15]; second, it is not accepted by the person subjected to the conduct, meaning the offensive sexual behavior impairs the dignity of others, causing mental harm, and the identification of specific conduct requires a comprehensive judgment based on the impact of the conduct on the victim after its implementation; third, it harms the harmonious work environment of others, creating a coercive and tense work atmosphere for the victim.

Secondly, regarding the targets of sexual harassment behavior. The targets of sexual harassment are notably nonspecific, potentially targeting individuals or small groups or affecting a wide and unspecified public. The "others" in Article 1010 of the Civil Code, which states "conducting sexual harassment towards others," should be broadly interpreted to cover all individuals and groups other than the perpetrator. The establishment of sexual harassment does not require explicitly targeting a specific victim; as long as the conduct causes any individual to feel threatened by sexual violation or discomfort, it constitutes sexual harassment. This definition highlights the broad impact and nondiscriminatory nature of environmental sexual harassment. Particularly noteworthy is that sexual harassment directed at nonspecific targets is often overlooked, but its potential gender discrimination effects cannot be ignored. Such sexual harassment can be subdivided into two situations: first, although the sexual harassment does not explicitly target a specific individual, its words or images clearly aim at female or male groups, and it can be proven that the conduct constitutes gender-based discrimination by comparing the fact that the opposite gender has not suffered similar treatment, thereby being identified as sexual harassment; second, although the conduct targets nonspecific individuals and the content has no obvious gender specificity, sufficient evidence is still required to prove that the conduct has had a disproportionately significant impact on that gender group [16].

Thirdly, regarding the consequences of sexual harassment behavior. The author believes that in the process of determining sexual harassment, whether it causes direct harm to the victim should not be the sole or primary criterion for determining whether the conduct constitutes sexual harassment. If mental harm or economic loss is solely considered as a judgment factor, it will inevitably overlook the illegal nature inherent in sexual harassment behavior and the multidimensional harm it causes to victims [17]. This is because the impact of sexual harassment extends beyond mental and economic aspects, also including profound effects on victims' self-esteem,

interpersonal relationships, and work performance. For example, sexual harassment often causes severe psychological trauma to victims, such as ongoing adverse reactions like inner turmoil, insomnia, and nightmares. If these psychological shadows are not overcome in a timely manner, they will have long-term impacts on victims' work, family, physical health, and marital relationships, even leading to separations or divorces. Furthermore, negative impacts such as reputational damage, psychological trauma, and work impediments may persist for years, and victims' resignation often lags behind case processing by many years. In the workplace, sexual harassment not only violates victims' personality rights but also impairs their work interests, such as resulting in decreased work efficiency and reduced economic income. Perpetrators with higher positions or greater power may further harm victims' economic interests by means such as salary reductions or dismissals. In judicial practice, although these negative impacts should be considered when awarding damages, their far-reaching and complex impacts are difficult to accurately measure using current standards. Excessive judgment standards may not only increase the psychological and financial burdens on victims, leading some to choose silence or abandon their rights due to concerns that their rights may not be fully protected. At the same time, this may also send the wrong signal to society that legal intervention and sanctions are only worthwhile when sexual harassment causes obvious economic or mental harm, a tendency that may weaken comprehensive governance of sexual harassment and reduce overall effectiveness in combating it. Thus, encouraging sexual harassment in workplaces, schools, and other settings. Therefore, in considering sexual harassment behavior, multiple factors should be taken into account to avoid excessively high judgment standards. If the mental harm suffered by the victim has a clear causal relationship with the perpetrator's conduct in terms of temporal closeness and relevance, it should be considered an important criterion for judgment. For example, in the case of "Song X v. Zheng Y, Liability Dispute for Damage Caused by Sexual Harassment" [see Liaoning Panshan County People's Court (2023) Liao 1122 Min Chu No. 3002 Civil Judgment], the plaintiff started work on August 8, 2023, and reported to a local police station on August 10, 2023. The plaintiff was diagnosed with acute stress reaction, severe anxiety, severe depression, and post-traumatic stress disorder. The plaintiff alleged that on August 9, 2023, the defendant, when the office was empty, trapped the plaintiff on a seat where she could not hide, expressed affection for the plaintiff, and attempted to hug her while making inappropriate requests. After the plaintiff refused, the defendant verbally harassed her for over 20 minutes. However, since the plaintiff only provided relevant audio evidence, the court found that the two only engaged in a dialogue about family responsibilities, types of men they liked, and social interactions, without any statements from the defendant suggesting sexual suggestions, provocations, or violence towards the plaintiff, and no physical contact occurred between them. Therefore, the court found that the defendant did not constitute sexual harassment. In this case, although the court held that the conversation did not directly involve sexual suggestions or violence and no physical contact occurred, considering the plaintiff's acute stress reaction, severe anxiety, and other mental harm caused by the defendant's conduct, the court should have more comprehensively assessed the illegal nature of the sexual harassment behavior and its multidimensional harm to the victim.

Furthermore, the environment in which sexual harassment occurs is a crucial factor in its determination. When examining sexual harassment, a comprehensive assessment should be conducted based on the specific context in which the behavior takes place. Sexual harassment can be latent in any environment, and sexual harassment in public places, due to its overt nature, often attracts more attention and facilitates the collection of evidence, thereby reducing the difficulty in proving both subjective and objective elements. In contrast, sexual harassment in private spaces may lead to difficulties in identification due to the concealed nature of the environment, such as the absence of surveillance equipment or a lack of witnesses, posing greater challenges in evidence collection. Especially in certain special environments, such as workplaces, schools, and hospitals, multiple factors including internal power structures, gender ratios, and organizational cultures can profoundly influence the occurrence and subsequent identification of sexual harassment. In such environments, due to the arduousness of evidence collection, sexual harassment may be even more difficult to ascertain. Therefore, during the identification process, greater attention should be paid to the subjective feelings of the victim, and a comprehensive judgment should be made in conjunction with other factors to ensure the accuracy and fairness of the determination.

Lastly, the issue of the subject identity in sexual harassment behaviors needs to be addressed. The author believes that when defining this subject element, it only needs to meet the basic condition of being a natural person, and other factors, such as gender, occupation, and intimate relationship with the victim, should not constitute decisive criteria for identifying sexual harassment behaviors. Firstly, the principle of gender neutrality should be upheld, meaning that neither the perpetrator nor the victim should be restricted by gender. In other words, sexual harassment behaviors, whether committed by a male against a female, a female against a male, or between individuals of the same sex, can potentially be subject to legal sanctions and regulations. Secondly, although the professional identity of the perpetrator may affect the severity of the behavior—for instance, a teacher or supervisor using their authority to sexually harass a student or subordinate, which can have more severe societal

impacts—it should not serve as a direct criterion for determining whether sexual harassment has occurred. As for the disciplinary measures taken by relevant units against such behaviors, they do not fall within the scope of discussion for identifying sexual harassment behaviors. Lastly, the intimate relationship between the perpetrator and the victim should not influence the identification of sexual harassment. Even if there is a close identity relationship between the perpetrator and the victim, such as a romantic partnership, marital relationship, or kinship, the behavior should still be deemed as sexual harassment if it meets the constituent elements of sexual harassment.

5. CONCLUSION

Sexual harassment, as a behavior that infringes upon individual rights and causes severe damage to social morality, has become a pressing social issue due to its frequent occurrence and the difficulties encountered in judicial determination. Through a review of the existing legal framework and case analysis of judicial practice, it becomes clear that although laws and regulations such as the Civil Code lay an important foundation for defining and punishing sexual harassment, there are still many ambiguities and controversies regarding the criteria for identifying sexual harassment behaviors in practical operations. Therefore, in the author's view, it is necessary to focus on clarifying the criteria for identifying sexual harassment behaviors from both legislative and judicial perspectives. On the one hand, during future amendments to the Civil Code, it is essential to refine the subjective and objective criteria for identifying sexual harassment behaviors through supplements or improvements to Article 1010. On the other hand, before the revision of the Civil Code, judicial authorities should issue corresponding judicial interpretations to provide clear and operable criteria for identification in judicial practice.

The issue of sexual harassment is not only concerned with the protection of individual rights but also serves as an important indicator of social civilization and progress. A just and safe social environment should not tolerate any form of sexual harassment. Therefore, improving the criteria for identifying sexual harassment and ensuring the accurate application and effective enforcement of the law are of great significance for maintaining social justice and promoting gender equality.

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