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Research on the Legal Dilemma of Workplace Gender Discrimination and Its Feminist Countermeasures

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Abstract

From a feminist perspective, this research delves deeply into the legal challenges and coping mechanisms related to gender discrimination in the workplace. Firstly, it highlights the shortcomings of existing laws and regulations in defining and addressing gender discrimination in the workplace. This is evident in the absence of clear guidelines for intricate issues like indirect discrimination and environmental discrimination, as well as the delayed responses to emerging forms of discrimination. Secondly, it emphasizes the importance of advocating the concept of gender equality from the perspective of system design. It proposes the necessity of reconstructing workplace culture to eliminate gender stereotypes and enhance women's professional abilities and awareness of rights protection. Finally, a countermeasure system for gender discrimination in the workplace is constructed, including strengthening and improving anti-discrimination laws and regulations, establishing an effective complaint and relief mechanism, and promoting the development of a culture of corporate social responsibility and gender equality. The research aims to provide a comprehensive and systematic solution to promote the legal construction and practice process of gender equality in the workplace in China.

Keywords

Workplace gender discrimination, legal dilemma, feminism, countermeasures

Introduction

With social progress and the popularization of the concept of gender equality, the problem of gender discrimination in the workplace has gradually attracted wide attention. However, in the actual operation, there are still many difficulties in the face of gender discrimination in the workplace, which is manifested as imperfect legislation, insufficient enforcement, and lagging relief mechanisms. This study will be based on the feminist perspective, deeply explore the legal dilemma of gender discrimination in the workplace, and put forward targeted and feasible countermeasures and suggestions.

1. The status quo and legal dilemma of gender discrimination in the workplace

1.1 The common manifestations and deep causes of gender discrimination in the workplace

Sexism in the workplace is widespread, both in various forms and in hidden forms (Chen, 2021). First, it is reflected in the recruitment and promotion process, where employers' gender-based stereotypes tend to choose or promote candidates who meet the expectations of traditional gender roles, resulting in unfair treatment of women under the

same conditions. Secondly, in terms of salary distribution, the phenomenon of different pay for the same work is particularly prominent. Even if they assume the same job responsibilities, the salary level of female employees is often lower than that of men. In addition, sexual harassment in the work environment and employment discrimination against pregnant and lactating women are also issues that cannot be ignored. A thorough analysis of the deep causes behind these phenomena includes not only the social and cultural concepts left over from history, such as the gender division of labor mode of "men lead the outside and women dominate the home", but also the potential gender bias in the modern enterprise management system, even the inability and ambiguity of laws and regulations in specific situations. In particular, driven by economic interests, companies may be more inclined to sacrifice women's rights in exchange for short-term economic benefits, which further aggravates the complexity of gender discrimination in the workplace.

1.2 The definition and identification of gender discrimination in existing laws

At the legislative level, China has clearly stipulated the zero-tolerance attitude to the Labor Law, the Law on the Protection of the Rights and Interests of Women, and other legal documents in the workplace, but in the actual implementation process, the definition and confirmation of gender discrimination still face significant difficulties. In the current legal provisions, the elaboration and explanation of such concepts as "substantial damage" and "indirect discrimination" are not sufficient and detailed, which makes it difficult to accurately detect and effectively combat some discrimination phenomena that are imperceptible and hidden. Especially in judicial practice, there are disputes over the provisions on the distribution of the burden of proof of gender discrimination, and the victims are usually required to bear the responsibility of providing sufficient evidence to prove their discrimination. This high standard of proof undoubtedly increases the practical difficulty of the victims to safeguard their own rights and interests. This situation not only hinders the realization of the fair ruling but also weakens the effective binding force and correction function of the law for gender discrimination. It is urgent to optimize and improve it by further refining relevant legal provisions, clarifying identification standards and reasonably adjusting the rules of proof.

1.3 Challenges and difficult problems in handling gender discrimination cases in judicial practice

In judicial practice, the handling of gender discrimination cases in the workplace carries multiple challenges. First of all, the limitations of law enforcement in practice are intertwined with the lag of gender discrimination, resulting in a large number of potential discrimination behaviors that are not fully identified and taken seriously. A large number of cases with substantial rights and interests cannot effectively enter the legal relief procedure (Feng, 2022). Second, the court in such disputes faces the complex and subtle fact that problems, because gender discrimination often exists in the form of direct, imperceptible, need a thorough investigation and high-level evidence analysis to reveal its internal logic. Still, the current trial mechanism and technical means is not enough to provide sufficient support, especially in evidence collection and presumption of causality.

Furthermore, even if the court finally supports the victim, the amount of compensation is usually unsatisfactory, which not only fails to achieve the effect of deterring potential discrimination but also cannot fully cover the actual loss of the victim in the economic and spiritual aspects. In essence, this situation weakens the deterrence and compensation effectiveness of the law in curbing gender discrimination in the workplace. It highlights the realistic gap between judicial practice and the realization of gender equality. It is urgent to be improved by strengthening the implementation of regulations, improving litigation procedures, and adjusting the damage compensation system.

2. The limitations of current laws and regulations in addressing gender discrimination in the workplace

2.1 The blank and lag of the legislative level

In the legislative dimension, although our country has passed the labor law, the women's rights protection law, and related administrative regulations to build the gender discrimination of workplace legal framework, and made a series of measures to protect the labor rights and interests of women, however, in the specific judicial practice and social change, the current legal system shows a certain degree of hysteresis (Tang, 2021). From the perspective of conceptual definition, the law has relatively broad statements on gender discrimination, especially without precise and detailed operational definitions of complex forms such as indirect discrimination and environmental discrimination,

which makes it difficult to effectively identify and regulate some hidden or emerging gender discrimination phenomena in practice. Second, with the depth of the social economic structure transformation and labor relations increasingly diversified development, such as network recruitment gender selection in the process of bias, career promotion channel "glass ceiling" effect of new gender discrimination problem has not been a fully and timely legislative response, thus to adapt to the reality on the speed and breadth of a certain lag, this has become the gender equality important bottleneck to further deepen the legal system.

2.2 Dilemma and challenges of law enforcement

From the perspective of implementation, although the relevant legal system of anti-gender discrimination is supported, the actual law enforcement effect is not ideal due to various reasons. On the one hand, under the condition of limited human resources, the labor supervision department often has difficulty investigating and punishing a large number of scattered and hidden gender discrimination comprehensively and timely; on the other hand, the current law for violating gender equality is relatively small, leading some enterprises to ignore the legal provisions and continue gender discrimination after weighing the advantages and disadvantages. In addition, cumbersome law enforcement procedures and low efficiency are also a big challenge. After victims suffer discrimination, they need to go through long and complex complaint-reporting procedures to seek a fair ruling. This realistic situation undoubtedly increases the difficulty for victims to safeguard their own rights and interests.

2.3 Lack of flow and low efficiency of judicial relief channels

In terms of judicial relief, the obstacles facing gender discrimination cases in the workplace are more prominent. First of all, due to the complex fact determination and difficulty in evidence collection involved in gender discrimination cases, victims often need to bear a high burden of proof, which makes many people who suffer for their legitimate rights and interests give up the lawsuit because they cannot provide sufficient evidence, or even if they file a lawsuit. Secondly, when the court tries such cases, it is limited by the differences in professional quality and trial experience, which may lead to different judgment scales of gender discrimination and affect the judicial impartiality and authority. Moreover, even if the verdict is beneficial for the victim, the compensation amount is generally low and the implementation is difficult, and it is difficult to achieve the expected compensation and deterrence effect. Therefore, the unimpeded judicial relief channels and their inefficiency have become an important bottleneck to hinder the elimination of gender discrimination in the workplace and the realization of gender equality.

3. A reexamination of gender discrimination in the workplace from a feminist perspective

3.1 Advocate the concept of gender equality from the system design level

Feminist theory advocates a thorough analysis of power relations in social structure and emphasizes the implementation of the principle of gender equality at the level of system design. For gender discrimination in the workplace, first need to conduct a comprehensive review and revision of current laws and regulations, refine the definition of gender discrimination, clearly cover direct and indirect discrimination, environmental discrimination, and other forms, and develop targeted and operational anti-discrimination clause, ensure that the law can adapt to the changing social and economic environment, effective constraint new or recessive discrimination behavior (Xiang & Sui, 2024). At the same time, we will encourage enterprises to establish a transparent, fair, and gender-biased management system in recruitment, promotion, salary distribution, and other links, and encourage the implementation of diversified human resources policies to ensure that women enjoy the same job opportunities and development space.

3.2 Rebuilding the workplace culture to eliminate gender stereotypes

As an important carrier to shape individual behaviors and concepts, the inherent gender stereotype of workplace culture often aggravates gender discrimination in the workplace. Based on the feminist perspective, we should actively promote the innovation and remodeling of workplace culture, advocate respect for multi-gender identity and roles, and eliminate the inherent bias against women's abilities and career development potential. This includes but is not limited to: the promotion of a positive image of professional women and emphasizing the contribution of women in various fields; strengthening gender equality training and education, guiding business leaders and employees to deeply understand and actively practice the concept of gender equality; and encouraging enterprises to create

a good working environment of inclusive, fair and supportive female development through public opinion supervision and social evaluation mechanisms.

3.3 Enhance women's professional ability and awareness of rights and interests protection

From the feminist perspective, enhancing women's professional ability and awareness of safeguarding rights and interests is the key means to resist gender discrimination in the workplace. To this end, we should further improve the female vocational education and training system, provide more opportunities for vocational skills improvement and leadership training, and help women accumulate strength and enhance competitiveness in their careers. At the same time, a protection mechanism to establish and improve the rights and interests of female workers, such as the establishment of special consulting service agencies, providing legal aid, psychological counseling, and career development planning services, so that female workers can receive timely and effective support when they encounter gender discrimination. In addition, more efforts should be made to popularize the knowledge of the protection of the rights and interests of female workers and encourage them to express their demands bravely and actively safeguard their rights and interests, so as to no longer be silent and patient in the face of gender discrimination in the workplace, but firmly stand up to fight against injustice and jointly promote the process of gender equality.

4. Build a feminist countermeasure system for gender discrimination in the workplace

4.1 Strengthen and improve the laws and regulations against gender discrimination in the workplace

The key to solving the problem is to build a solid defense line against workplace gender discrimination at the legal level. The first priority is for the current labor law, the women's rights protection law, and its related laws and regulations to conduct a comprehensive and thorough review and systematic revision, accurately define and elaborate the category of gender discrimination, ensure the direct discrimination, indirect discrimination and environmental discrimination and other forms, in response to the complex and hidden discrimination in the workplace. At the same time, we will strengthen the legislation, increase strict legal responsibilities and high compensation standards, significantly increase the cost of illegal violations, and effectively deter potential gender discrimination.

In addition, it is indispensable to optimize the legislative process, to advocate and promote the public to actively participate in the discussion and formulation of the draft laws, to ensure that the new regulations are closer to the actual needs, and to provide accurate and comprehensive protection for women's legitimate rights and interests in the workplace. Through this series of measures, the aim is to establish a comprehensive anti-workplace gender discrimination legal system, effectively curb discrimination and lay a strong legal foundation for achieving genuine gender equality in the workplace.

4.2 Establish an effective gender discrimination complaint and relief mechanism

Building an efficient and convenient gender discrimination complaint and relief mechanism is the core link to ensure fair adjudication and effective protection of rights and interests. First of all, a functional agency or department should be set up to deal with gender discrimination cases in the workplace, providing a comprehensive and integrated service platform, covering the whole process of services such as consultation and consultation, mediation, arbitration ruling, and litigation guidance, and the complaint process should be simplified and optimized, so as to significantly reduce the difficulty and cost of safeguarding the rights of victims. At the same time, a diversified dispute resolution mechanism has been established and improved, making full use of the professional strength of the labor dispute mediation committee, the social influence of the women's federation, and the legal aid resources of public interest lawyers, so as to provide timely and strong legal support for women suffering from gender discrimination (Zhang, 2023).

In addition, strengthen social supervision, intensify public exposure of gender discrimination cases, through the media and public opinion guidance, form a strong public supervision pressure, encourage enterprises and the whole society to consciously abide by the gender discrimination laws and regulations, actively create a gender discrimination, respect and safeguard the rights of gender equality good atmosphere. Such mechanism construction can not only effectively curb the occurrence of gender discrimination in the workplace, but also fundamentally promote the in-depth popularization and practical implementation of the concept of gender equality in the whole society.

4.3 Promote the construction of a corporate social responsibility and gender equality culture

On the road of promoting the practice of gender equality, enterprises are encouraged to actively assume the social

responsibility of eliminating gender discrimination in the workplace, and internalize it into a key part of corporate core values and strategic planning. Enterprises are encouraged to adopt fair, transparent, and gender-biased policy orientation in human resource management practice, and ensure that the principle of gender equality is fully reflected and implemented in all aspects, from recruitment, training, and promotion to compensation and benefits. At the same time, by deeply integrating gender equality education into the corporate culture training system, and regularly holding gender equality seminars, special lectures, and other activities, all employees can improve their understanding level of the concept of gender equality and the ability to respect the multi-gender culture.

More importantly, the government should play an active role in promoting it, formulating and implementing a series of incentive policies and measures, such as providing tax incentives, honors and other substantive awards, so as to stimulate enterprises to actively fulfill the corporate social responsibility of gender equality. This move aims to form a virtuous cycle mechanism to guide enterprises to pay attention to social value creation while pursuing economic benefits, and jointly build a good social environment that opposes gender discrimination and supports gender equality, so as to realize substantial progress and long-term development of gender equality in the workplace.

5. Conclusion

Solving the problem of gender discrimination in the workplace is not only related to the realization of legal justice but also the key to promoting social justice and progress. Through in-depth analysis and improvement of the existing laws and regulations, establishing and perfecting the effective complaint relief mechanism, and actively promoting the development of corporate social responsibility and gender equality culture, a comprehensive and three-dimensional anti-workplace gender discrimination countermeasure system can be constructed. This process requires the joint efforts of the government, enterprises, and individuals to continue to eliminate gender bias and enhance women's professional status, so as to truly practice the concept of gender equality in practice, and jointly create an inclusive, fair, and diversified modern workplace environment.

References

Chen Yongzhen. (2021). Discussion on the Protection of Female Employees' Labor Rights and Interests. *Legal Exposition* (05), 174-175.

Feng Shuaishuai & Liang Xiaoyan. (2022). Research on Workplace Gender Discrimination: A Perspective of Gender Differences in Employment Costs. *Hubei Social Sciences*, (02), 49-56.

Tang Fang. (2021). Defining Employment Gender Discrimination Against Women and the Legislative Improvement Related to the "Women's Rights and Interests Protection Law". *Journal of China Women's University*, (06), 32-39.

Xiang Yan & Sui Xinhong. (2024). Pathways to Improve the Labor Inspection Mechanism for Employment Gender Discrimination. *Journal of South-Central University for Nationalities (Humanities and Social Sciences Edition)*, (02), 115-123+186.

Zhang Linghan. (2021). Gender Inequality in Employment on Sharing Economy Platforms and Legal Responses. *Journal of Soochow University (Philosophy and Social Sciences Edition)*, (01), 84-94.