

Judicial Differences of Sexual Harassment Between China and South Korea

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Abstract: This essay explores the differences in the legal treatment of online sexual harassment (OSH) in China and South Korea. China's Civil Code addresses sexual harassment by emphasizing the violation of a woman's dignity, but the legal consequences are minimal, typically resulting in fines comparable to civil disputes. In contrast, South Korea classifies sexual harassment as a crime under the Criminal Act, with punishments including imprisonment. The analysis identifies three key disparities. Firstly, China lacks a clear specification of what constitutes sexual harassment, while South Korea provides detailed definitions. Secondly, South Korea treats OSH as a severe offense on par with rape, leading to stricter enforcement and deterrence. However, in China, OSH cases are often addressed as defamation or infringement of portrait rights rather than distinct sexual crimes. Lastly, social media censorship in China hampers tracking and locating perpetrators, granting them more leeway to evade punishment, while South Korea actively prosecutes OSH as a sexual crime. Addressing these disparities, the abstract suggests placing sexual harassment in China's criminal legislation and implementing supplemental laws to support its enforcement.

Keywords: law, online sexual harassment, China, Korea

1. Introduction

Sexual harassment, conceptualized as acts of discrimination based on sexual orientation [1], has traditionally employed means that can be specified and differentiated into five categories: (1) sexist remarks or behavior, (2) solicitation of sexual activity by promise or rewards, (3) inappropriate and offensive, but sanction-free sexual advances, (4) coercion of sexual activity by threat of punishment and (5) sexual crimes and misdemeanors. However, following the prevailing of social media, means of sexual harassment have extended to the online context, taking forms beyond what legal systems have previously specified. These forms include but are not limited to sending unwanted messages targeting one's sexuality aiming to reach the effect of threat, embarrassment, or humiliation [2], sending unwanted pictures involving nudity, performing sexual acts on webcam without the consent of everyone involved or in inappropriate settings, sharing private images or videos without the consent of everyone involved, sharing private images or videos without the consent of everyone involved, or grooming children to enable their sexual abuse either online or offline [3].

Despite the increasing awareness of sexual harassment in Western countries such as the United States, United Kingdom, and European Union member nations, the spread of awareness has not yet reached China. With the overwhelming 84.02% of women in China having experiences with different

forms of sexual harassment [4], sexual harassment in China is indeed a common practice and, to some extent, even a normalized matter. In 2018 Hollywood's #Metoo movement declared the initiation of the second wave of feminism movement in China. With numerous articles published on WeChat and Weibo, some of the most popular social media platforms in China, new light was shed upon legislation on sexual harassment in China [5]. In response to this collective uprising of women, the China Communist Party (CCP) made an official declaration in its legislature in 2020. Civil Code 2020 includes Article 1010, which officially labels sexual harassment as a legal misdemeanor in the highest national laws. However, such an establishment of law does not fully guarantee the protection of vulnerable individuals, especially given the noticeable gap in the current Chinese legal system to address emerging forms of online sexual harassment.

Little to no research has been done on the legal context of online sexual harassment in China in Chinese research platforms and mass media. In 2020, a survey done in the United States showed that 38 percent of females experienced online harassment while more women experienced online sexual harassment than men. In China, the legal framework addressing online sexual harassment remains underdeveloped and is scattered across various distinct legal codes. For example, in the recent second People's Congress meeting, the spread of private videos falls under Article 246: crimes of insult, instead of falling under infringement of sexual harassment laws [6].

South Korea, on the other hand, made great reforms to their sexual harassment laws following the "Nth room incident" where they made amendments to the Network Act to strengthen penalties for distributing and possessing illegal sexual content, including child pornography. The amendment increased the maximum penalty for distributing illegal sexual content to five years in prison or a fine of up to 50 million KRW (approximately \$45,000 USD), and the amendment to the Criminal Act where the government officially declared criminalization of the non-consensual distribution of sexually explicit images or videos without the consent of the person involved, with penalties including imprisonment for up to five years or a fine of up to 30 million KRW (approximately \$27,000 USD). This presents an opportunity to improve our understanding of China's legislation and awareness of the severity of sexual harassment compared to that of other developed countries. This paper therefore investigates the differences between China's sexual harassment laws and online sexual harassment awareness to that of South Korea by researching specific case studies and codes of law to address the causation of the gap and seek possible methodologies and actions that the CCP can take to reform policies.

2. Literature Review

2.1. Importance of Studying Online Sexual Harassment (OSH)

In the context of China and South Korea, the study of OSH laws, or broadly speaking, sexual harassment laws, bases its letter of the law on the principles of dignity. Institutional sexism and gender inequality are deeply rooted in the history of these countries. Korea and China are both identified as Tier II countries in Market's Globalization of Sexual Harassment, where both countries establish workplace sexual harassment laws in order to prompt economic development and form a closer relationship with the US, UK, and other countries that are aware of the existing structural gender inequality and actively refines laws seeking to create an egalitarian workplace and society [7]. Despite both focusing on personal relationships, Market also introduces the nuance of the underlying philosophy of the approaches taken by South Korea and China to combat sexual harassment. South Korea focuses more on group loyalty and consensus, whereas China focuses on utilitarianism. Legislation on the issue of sexual harassment in the US is based its roots on feminism theories which recognize the inequality faced by women and acknowledge the vulnerability of women in cases of sexual harassment. Therefore, sexual harassment laws in the US are more gender-specific and operate

under the DEI (diversity, equity, inclusivity) framework of the American society. South Korea takes a similar approach in its Criminal Act by acknowledging how most victims of sexual harassment are women. Another set of principles, that China adopted, originates from the European Union. The EU bases its judicial philosophies on the concept of dignity. Efforts to protect a victim of sexual crimes can be justified using the principles of the protection of human dignity. China has extended above the grounds of human dignity and addressed the protection of victims of sexual crimes as protection of personality rights, which is a set of rights including integrity, freedom, and dignity that a citizen owns [8]. Under this framework, it is important to consider whether OSH falls under the grounds of sexual crimes in both countries. OSH, contrasting with traditional definitions of sexual harassment, manifests in a more nuanced way: it's happening is more discrete, perpetrators are harder to track, and the definitions of OSH are still vague. According to Vogels, 31% of Americans have experienced sexual harassment on social media, while 79% agreed that social media platforms cast little effort into addressing the issue of OSH. The anonymous nature of social media shields the perpetrators in a way that pinning them down is extremely difficult. Thus, consequential actions such as holding them legally accountable become even harder than a traditional, physical sexual harassment crime [9].

2.2. China and Korea's cyberspace and historical context of OSH

The emergence of judicial awareness of sexual harassment in China dates back to July 13th, 2019, when the first plaintiff victory was gained in a civil lawsuit of sexual harassment [10]. This prompted the 2020 civil code addition and the following 2021 draft addition of article 23 to the Women's Protection Law which specified the terms of sexual harassment to "It is strictly prohibited to go against women's wishes by sexually harassing them through means such as spoken language, text, images, or physical conduct." Article 28 also contributes to China's extended scope of protection of women's rights by prohibiting the belittlement or harm to women's personalities through the mass media or other means. It restricts the use of women's images in advertisements, logos, displays, publications, and online content without their consent unless legally permitted. This change brings the judicial awareness of sexual harassment beyond the workplace.

However, the enforcement of these codes when put into practice leads to a few problems. First, China's cyberspace is one of the largest in the world. As of 2022, there are roughly 1.07 billion netizens across mega-social media platforms such as Weibo, WeChat, Douyin, and Xiaohongshu. In an online poll conducted in 2016, 88% of women were victims of online sexual misconduct. The number of possible cases of OSH is gigantic, and some of these cases have great complexity and intricacy that require huge amounts of police resources and capital to investigate. Secondly, individuals face little consequence after committing OSH. The punishment for online sexual harassment, if enforced, is a maximum of 10 days of jail terms. In contrast, South Korea's approach to combating online sexual crimes, inspired by the notorious "Nth Room Case," illustrates the effectiveness of strict legal enforcement. This scandal, involving forced explicit content uploads by victims, prompted the South Korean government to pass revision bills for Criminal Law, the Sexual Violence Crime Act, and the Information and Communication Network Act, specifically targeting online sexual crimes. Moreover, since 2004, South Korea has mandated loud shutter sounds on smartphones to deter "molka (몰카)", a Korean word coined referring to photos or videos taken of a person without their consent in a public space. Despite such a strict law, molka still exists and prevails in Korean society, due to the unwillingness and lack of enforcement by the police [11].

3. Research Design

3.1. Methodology

This study performs a historical and archival analysis of the specific laws between the two countries to demonstrate the differences between the rule of law of these two countries and the differences of law set for specific provinces/districts in China, based on the extent that they are developed economically and politically. Historical and archival analysis has been selected for this research not only because the specific letter of the law can be considered and analyzed for its implications, but also through comprehensive research, we can interpret the underlying limitations of the legislation related to the legal consequences of online sexual harassment in these countries, and thus suggest a plausible solution implemented to mitigate any possible weaknesses of the existing legislations. This research design involves the analysis of the People's Republic of China (PRC) Civil Code, the Criminal law of the PRC, and the South Korean Criminal Act. This study aims to create a novel comparison between the code of law of China and North Korea, building on the existing knowledge of online sexual harassment in both countries individually.

3.2. Data collection and analysis

The data is coded by the specific country and province to account for China's numerous provinces, each with its own local laws. This way of categorization can give us more insight into specific legal consequences and how they are exercised, how the broad code of law manifests locally, and potential biases and limitations. Additionally, the analysis considers the specific wording of laws. Given that both China and South Korea differentiate between civil and criminal legislation, which vary in terms of punishment, actors, and the process of approaching legal consequences, it is crucial to evaluate the validity of specific codes regarding online sexual harassment.

Table 1: Comparison between China and South Korea.

Country	Rule of Law	Classification	Legal Consequences/ Accountability
China	Law of the Protection of Women's Rights and Interests of the People's Republic of China (PRC): Article 3 Code 20	China Civil Code	No legal consequences but the suspect might face different degrees of fine/other means of punishment when taken into court
China	Law of the Protection of Women's Rights and Interests of the People's Republic of China (PRC): Article 3 Code 23	China Civil Code	“Victimized women have the right to file complaints with relevant organizations and government agencies. The organizations and government agencies that receive the complaints should handle them promptly and provide a written notification of the outcome. Victimized women can report the incidents to the public security organs (police), or they can file civil lawsuits with the people's court, seeking legal remedies and holding the perpetrators accountable for their civil liabilities in accordance with the law.”

Table 1: (continued).

China	Law of the Protection of Women's Rights and Interests of the People's Republic of China (PRC): Article 3 Code 28	China Civil Code	No legal consequences but the suspect might face different degrees of fine/other means of punishment when taken into court
China	China Civil Code Article 6 Code 1033	China Civil Code	No legal consequences but the suspect might face different degrees of fine/other means of punishment when taken into court
China, Sichuan Province	Implementation Measures of the Law of the People's Republic of China on the Protection of Women's Rights and Interests in Sichuan Province Article 3 Code 23	China Civil Code	No legal consequences but the suspect might face different degrees of fine/other means of punishment when taken into court
Korea	Korea Criminal Act article 14-2	Korea Criminal Act	The level of punishment differs depending on the type of sexual offense committed. Overall, depending on the alleged crime, even if it is a sex crime, there are cases where the prosecution is suspended without being indictment lightly. Or, as a result of the summary indictment, or trial, a light sentence of a fine of 5 million won or less may be punished with a heavy punishment of 10 years or life imprisonment
Korea	Korea Criminal Act Article 13 Obscene Acts by Using Means of Communication	Korea Criminal Act	"be punished by imprisonment with labor for not more than two years or by a fine not exceeding 20 million won"
Korea	Korea Criminal Act Article 14 Taking Photographs or Videos by Using Cameras	Korea Criminal Act	"by imprisonment with labor for not more than seven years or by a fine not exceeding 50 million won."

4. Findings

First, the most noticeable difference is the specification of what constitutes sexual harassment. The Korea Criminal Act specifies what behaviors constitute sexual harassment and online sexual harassment in its Articles 13, 14, and 14-2. However, in China Civil Code and local implementations of China Civil Code, the acts that constitute sexual harassment are not specified. The emphasis in China's Civil Code is on dignity where the underlying justification for punishing sexual harassment is due to the violation (if any) of a woman's dignity but they are not harmed in a way that threatens their safety. Thus, legal consequences faced by sexual harassment criminals are insignificant as they only involve a fine but not beyond the consequences of a normal civil dispute. In comparison, in Korea, sexual harassment is considered a crime and is included in the Criminal Act.

The second fundamental difference is the punishment of OSH. In Korea, it is placed with equal weight as rape and is considered a crime where sentences such as imprisonment can be implemented. This means stricter enforcement is put in place to hold criminals accountable and also as an act of deterrence to prevent frequently occurring "molka" crimes. These differences in the letter of law lead to distinct results when implementing them in society. If a woman, in this case, wants to hold an online sexual offender responsible for their misconduct, will have to go through the court process. This means she will have to acquire a lawyer and file a lawsuit against the perpetrator, yet this process

is rarely accessible to the average citizen due to the costliness and the time-consuming nature of legal disputes in the PRC. The cost of enforcing the laws of OSH discourages many women from exercising their rights and seeking self-protection. In South Korea, notable offenses like the Nth room incident or the Burning Sun Club which involved multiple high-profile celebrities deemed that the undertone of sexual crimes is gender-biased. These hidden cameras and the exploitation that follows disproportionately target women, where roughly 80% of the victims are female [12]. Thus, it is important to include OSH in South Korea as a critical issue involving the jeopardization of vulnerable groups. On the other hand, whether OSH falls under sexual crimes in China involves more complexity. If taking the Nth room incident and the Burning Sun Club incident and placing them in Chinese society, perpetrators will more likely be held accountable for defamation and infringement of portrait rights rather than a distinct form of sexual crime. However, if taken into consideration the fact that matters like spy cameras, verbal harassment, and illegal trafficking of photos and videos infiltrate one's dignity, then such acts of OSH should and must fall under sexual crimes and should thereby be punishable by law.

Thirdly, censorship on social media makes it harder to track and locate the perpetrators and gives online sexual offenders more leeway to avoid punishments. The government censors feminist activism as a result of its cultural governance campaign that aims to spread its ideologies and pro-CCP propaganda [13]. Moreover, typically with the association of the spread of pornographic material or nudity, allegations of OSH are normally censored and rarely a topic of open discussion in the public space. In contrast, South Korea lists almost all scopes of online sexual harassment as sexual crimes and punishable by law under the South Korea Criminal Act. Article 13: Obscene Acts by Means of Communication, states that “A person who sends another person any words, sounds, writings, pictures, images, or other things that may cause a sense of sexual shame or aversion by telephone, mail, computer, or other means of communication, with intent to arouse or satisfy his/her own or the other person’s sexual urges, shall be punished by imprisonment with labor for not more than two years or by a fine not exceeding 20 million won.” Article 14: Taking Photographs or Videos by Using Camera, lists five specifications under this article that punish those who take photos or videos of one’s body, and those who distribute, make a profit, or own such videos and photos. South Korea also strictly enforces such regulations through the use of technology. Ever since 2004, South Korea has required smartphones to make large shutter sounds when taking photos and videos as an effort to fight “molka (몰카)”. Despite such a strict law, molka still exists and prevails in Korean society, due to the unwillingness and lack of enforcement by the police.

5. Conclusion

From this empirical analysis, one shared flaw of online sexual harassment laws in both China and South Korea is how they define OSH. Both countries base their judicial philosophy on the principle of dignity. They believe that an act of OSH is a violation of human dignity and thus should be a crime. As South Korea characterizes such violation as “evoking sexual shame”, China characterizes it as “demeaning or harming the dignity of women”. However, both countries failed to consider how an act of OSH is more than mere defamation that harms a woman’s dignity, but a form of sexual violence that will cast a prolonged impact on the victim’s physical and mental health, where the majority of victims who experience online sexual assault has experienced longlasting emotional dysregulation [14]. Harms of this extent should be classified as a form of violence and criminality that not only harms the victim’s dignity.

Additionally, two significant weaknesses have been identified and two consequential solutions can be imposed to solve these issues. The first would be the placement of sexual harassment in China’s legislation system as the current placement makes legal enforcement hard to carry through. Second

would be the lack of supplemental laws that are put in place to support the enforcement of sexual harassment laws. The issues that arise from the placement of sexual harassment as a crime in the civil code are reflected in the current enforcement of sexual harassment laws. When the long trial process, the difficulty in passing court disputes, and gathering evidence have discouraged many victims of OSH from standing against their perpetrators and exercising their full rights, criminality prospers due to the lack of punishment.

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