Chinese and Thai Law of Harassment in Business Establishments: A Comparative Study

Chokchai Chuateskhajorn

Department of Economics, Faculty of Business Administration and Information Technology, Rajamangala University of Technology Tawan-ok, Chakrabongse Bhuvanarth Campus, Bangkok, Thailand
Email: chokchai.chu@rmutto.ac.th (C.C.)
Manuscript received July 19, 2024; revised August 27, 2024; accepted November 4, 2024; published February 12, 2025.

***Abstract*—Harassment in business establishments can have widespread negative impacts on employees, the workplace environment, and society. Consequently, various countries, including China and Thailand, have enacted laws aimed at preventing and protecting against workplace harassment. This article seeks to assess the inclusivity of each nation's laws in safeguarding employees from workplace harassment and proposes measures for enhancing these laws where inclusion may be lacking. Documentary research and comparison were employed as the primary research methods. The study revealed a fundamental similarity in the laws of both countries, namely, that workplace harassment is narrowly defined as "sexual harassment" only. This limitation may pose several drawbacks: (a) there is a lack of criteria for identifying other forms of behavior as workplace harassment; (b) individuals may not recognize non-sexual behaviors as harassment in the workplace, potentially leading to misconduct; and (c) employees experiencing various forms of harassment may not realize or assert their rights due to the narrow definition of sexual harassment. Consequently, it is recommended that the Chinese and Thai governments should amend their legislation to broaden the scope of protection to encompass all types of harassment in the workplace.**

***Keywords*—harassment in business establishments, workplace harassment, harassment at work, sexual harassment, labor protection, Thai labor law, Chinese civil code**

I. Introduction

Over twenty years, cases regarding harassment in business establishments (as known as "workplace harassment") have occurred in many parts of the world frequently. For instance, in 2018, a Chinese famous state TV anchor, was accused by a 2014 student intern that during the internship, he kissed and groped her forcibly (The Guardian, 2022). Lately, in December 2023, a Thai female patrolling soldier was sexually harassed by a male sergeant in barracks (Thai Public Broadcasting Service, December 24, 2023). This problem is unneglectable because it leads to negative effects on not only employees but also the business they work for, such as decreases in performance, increases in bad organizational culture, and augmentation in turnover rate (Ministry of Employment and Labor, 2019). Furthermore, it contributes to different costs–namely (1) personal costs like lack of income due to leave of absence and resignation, (2) organizational costs like recruiting substituent employees, and (3) social costs like medical treatment fees for the harassed (Hoel, Sparks & Cooper, 2001)

Accordingly, the government of each nation tried to improve their laws to protect employees from harassment. To illustrate, in 2008, the Thai government amended Section 16 of the Labor Protection Act of 1998 by changing the text from *"It is forbidden for an employer or a person who is in overall charge of staff, a supervisor, or an inspector to sexually harass employees who are women or children."* to *"An employer, a chief, a supervisor, or a work inspector shall be prohibited from committing sexual abuse, harassment or nuisance against an employee"* (International Labour Organization, 2012). Also, in May 2020, China adopted Article 1010 of the Civil Code which consolidated the concept of sexual harassment under the abuse of institutional power (Du, 2021).

Therefore, this paper aims to study and compare elements of business-establishments harassment laws of both countries whether how inclusive they are, and how to advance each country's legislation to protect employees more from all kinds of harassment.

II. Literature Review

Little literature is comparatively written about the law of harassment in business establishments. Chuateskhajorn (2021 & 2022) authored an article on a comparative study of legal aspects of workplace harassment in East Asia by drawing a comparison between Chinese, Korean, and Japanese workplace harassment law and a paper comparing Korean and Thai labor law in dimensions of harassment at work. Wajahat *et al.* (2022) only studied relevant legislation on sexual harassment in the workplace in India and Pakistan. Additionally, Heymann *et al.* (2022) conducted a comparison of workplace harassment policy in 192 countries but entirely focused on sexual harassment. After all, there is no comparative study on the law of other forms of harassment in business establishments, specifically in China and Thailand. This research thus would fill this knowledge gap by choosing workplace harassment law of the two countries to study because China is the country which the government has strong commitment to fight against sexual harassment and gender discrimination in the workplace (Bird & Bird, 2024), and Thailand is one of nations having high rate of different workplace harassment reported to the Civil Rights Protection and Legal Aid Center, Office of the Attorney General (Thairath Online, 2023).

The surge in public awareness of workplace harassment in China can be attributed to the #MeToo movement in 2018. In addition, there are many other cases demonstrating that harassment within Chinese workplaces constitutes gender-based violence and misconduct. For instance, a manager insisted that his subordinate watch explicit content with him. Multiple managers propositioned their female subordinates for affairs (Halegua, 2021). One woman reported that her supervisor repeatedly touched her inappropriately, while simultaneously offering her a

promotion, inviting her to his hotel room, and withholding her bonus due to her complaint (Halegua, 2021). Another female employee had photos taken of her by her manager while she was using the restroom (Halegua, 2021). One of the questions arising from this case is whether there are any specific local or national laws in China addressing workplace harassment.

Regarding the origin of Chinese law of harassment in business establishments, Hubei Province became the initial local authority to introduce a regulation including the term "sexual harassment" within the guidelines outlined in the Measures of Hubei Province regarding the Implementation of the 1994 Law of the People's Republic of China on the Protection of Women's Rights and Interests (Du, 2021).

However, in terms of the national level, the 1982 Chinese Constitution introduced the principle of gender equality, including equal rights and equal pay for men and women. Subsequently, the 1994 Labor Law and the 2007 Employment Promotion Law were enacted to prohibit discrimination against women and ensure their equal treatment. Moreover, the 2005 amendment to the Women's Protection Law emphasizes equality, prohibits discrimination, condemns sexual harassment, and grants victims the right to pursue legal action against perpetrators independently or with support from relevant government agencies or their employers. In addition to these measures, a 2012 employment-specific provision, part of the Special Regulation on the Labor Protection of Female Employees, mandates that employers must implement preventive and punitive measures against sexual harassment in the workplace. Furthermore, the amended Article 1010 of the Civil Code in 2020 imposes liability on harassers and requires employers to implement investigation and prevention measures to eradicate sexual harassment in workplaces (Halegua, 2021).

The Civil Code's Article 1010 states that *"A person who has been sexually harassed against their will by another person through oral words, written language, images, physical acts, or the like, has the right to request the actor to bear civil liability in accordance with the law.*

The state organs, enterprises, schools, and other organizations shall take reasonable precautions, accept and hear complaints, investigate and handle cases, and take other like measures to prevent and stop sexual harassment conducted by a person through taking advantage of his position and power or a superior-subordinate relationship, and the like." (Halegua 2021)

Apart from Article 1010 of the Civil Code, legislation on other forms of workplace violence is absent (Lee *et al.*, 2023). Even though some articles of the Civil Code–e.g., Article 990, 995, and 997–might tackle workplace harassment in other forms, it still be a burden of victims to request the people's court to order the perpetrator to stop the act, unlike Article 1010 which enforces organizations to take reasonable precautions, accept and hear complaints, investigate and handle cases, and take other like measures to prevent and stop sexual harassment (China Daily Information Co., 2020). Therefore, the mechanism in Article 1010 is more effective.

Moving to Thailand, when considering Thai law, specifically the Labor Protection Act of 1998 and its amendments, it is found that there is a clear provision regarding harassment in the workplace in Article 16, as stated in the introduction. The issue to consider is whether this provision specifically addresses sexual harassment only and whether it limits offenders to employers, supervisors, managers, or inspectors.

The document titled 'Labor Protection Knowledge: Practices in Labor Inspection Cases Where Labor Inspectors Encounter Wrongdoings That Must Be Reported to Investigators Without Issuing Orders,' prepared by the Labor Protection Division's Knowledge Management Working Group, was reviewed. This document explains Article 16, defining 'abuse' as behavior that exceeds proper boundaries toward others through overt disregard for customs or morality, including ridicule, insults, or harassment. It defines 'harassment' as exercising power through words or actions to intimidate or cause fear, and 'nuisance' as causing irritation, annoyance, or agitation. Additionally, examples of harassment according to Article 16 include Mr. Green, the supervisor of Miss Pink, frequently making ambiguous remarks and looking at Miss Pink inappropriately on multiple occasions. When Miss Pink submits work files to Mr. Green, he often takes the opportunity to hold her hand, which greatly displeases Miss Pink (Department of Labor Protection and Welfare, 2017). From the explanations and examples provided in the aforementioned practices, it can be seen that harassment as defined in Article 16 specifically refers to sexual harassment.

The Thai labor law textbooks were also reviewed as follows.

1. "Labor Law: Second Lectures" by Professor Kasemsan Wilawan (2013), a former senior judge at the Central Labor Court. He explained Article 16 stating that the purpose of this provision is to protect employees from harassment, intimidation, or sexual misconduct, which is derived from the concept of sexual harassment in the laws of European and American countries. The individuals prohibited from violating this provision include those in positions of authority who exert control, influence, or impose penalties on employees, namely:

(a) Employers, including actual employers, representatives, proxy employers, and persons engaged in recruiting labor.

(b) Chieves, including individuals at all levels within an organization who perform supervisory duties, even if they do not hold formal supervisory positions.

(c) Managers, referring to individuals responsible for overseeing the work performed by employees, regardless of their level or whether their role is temporary or permanent.

(d) Inspectors, referring to individuals tasked with inspecting the work performed by employees, regardless of their level or whether their role is temporary or permanent.

It is emphasized that harassment, intimidation, or misconduct 'must involve sexual conduct' to cause dissatisfaction or discomfort, whether through physical actions, verbal communication, body language, or any other forms of expression, regardless of the consent of the individual committing the act.

2. "Legal Explanations on Labor Protection" by Professor Sudasiri Wasawong, former professor, and Dr. Panthip Pruksacholavit, assistant professor at the Faculty of Law, Chulalongkorn University (2014), explains Article 16, stating that its objective is to protect employees from being

subjected to excesses, harassment, or sexual harassment, whether through written communication, gestures, verbal statements, telephone calls, etc., regardless of the gender or age of the employee. This is an additional provision to the original regulation which specifically prohibited sexual harassment.

3. "Labor Law for Human Resource Management" by Khruaklin (2018), a special appellate judge, explains Article 16, stating that this provision aims to protect against sexual misconduct, rooted in the authoritative power of employers and those delegated by employers, such as supervisors, managers, etc., over employees. They may misuse their power to induce sexual satisfaction from employees, causing distress that adversely affects both the employees' work and the employer's business. Sexual harassment must involve two elements:

(a) It must involve actions by employers and those delegated by employers towards employees of all genders and ages, such as managers sexually harassing subordinates or supervisors sexually harassing juniors. However, if the perpetrator holds a lower, equal, or higher position than the victim, it does not qualify as sexual harassment under this provision.

(b) Actions by employers and those delegated by employers towards employees "must have a sexual basis," such as touching breasts or buttocks. However, if the physical contact lacks a sexual basis, such as a Western-style handshake when greeting new foreign workers, it does not qualify as sexual harassment under this provision.

The scope of actions under this provision includes "excesses," "intimidation," or "causing distress," all of which must have a sexual basis. It does not include situations where employees engage in sexual relationships with employers willingly out of love or for mutual benefits, such as asking employers to help settle debts.

From all three Thai labor law textbooks, we can see that Article 16 of the Labor Protection Act of 1988 only refers to sexual harassment.

The following judgments related to Article 16 of the Labor Protection Act of 1988 were also studied.

Supreme Court Decision No. 1372/2545 ruled that the superior used their authority to pressure female probationary employees and job applicants into going out with them at night, under threat of not passing probation or delaying job start times, indicating sexual misconduct. This behavior violates moral norms and employment regulations, intimidating and demotivating subordinates, and constitutes a violation of Article 16 of the Labor Protection Act of 1988 (The Supreme Court of Thailand, 2002).

Supreme Court Decision No. 8379/2550 ruled that the plaintiff, originally an employee of Company S, was transferred to Employer 1 with consent on September 16, 2000. Employer 2, a board member of Employer 1 and the plaintiff's superior since September 1995, coerced the plaintiff into a sexual relationship. Fearing workplace repercussions, the plaintiff resigned on June 7, 2001, and filed a claim seeking damages for sexual misconduct. The plaintiff alleged that Employer 2's actions violated Article 16 of the Labor Protection Act of 1998 and breached the employment contract, making both Employer 1 and Employer 2 liable (The Supreme Court of Thailand, 2007).

Supreme Court Decision No. 1059/2560 ruled that Miss Suthinee's decision to drink with her employer at a dimly lit pub does not imply her consent to sexual misconduct. The employer inappropriately touched her leg, waist, and neck, despite her clear non-consent and self-defense. This behavior, including the employer's comment "Fell in love with my little one," constitutes sexual harassment and misconduct, violating Article 16 of the Labor Protection Act of 1988 (The Supreme Court of Thailand, 2017).

From all three verdicts, they affirm that Article 16 of the Labor Protection Act of 1988 must be applied to cases of sexual harassment in workplace only.

Apart from Article 16, the Labor Protection Act of 1998 does not yet have any provisions covering other forms of harassment in the workplace (Chuateskhajorn, 2021). Although employees might protect their rights through other legislation such as Civil and Criminal Code, they must file their case to the court by themselves, unlike the Labor Protection Act of 1998 having labor inspectors to inspect business establishments and lodge workplace harassment complaints to inquiry officials (Department of Labor Protection and Welfare, 2017). The mechanism in Article 16 of the Labor Protection Act of 1998 is thus more efficient.

III. Materials and Methods

This article utilizes documentary research, acknowledged as a scientific research approach (Ahmed, 2010). It gathers information from various sources like academic journals, legislation, legal textbooks, legal documents, judgments, research papers, online news, and trustworthy websites. Then, before engaging in the discussion, a comparison was conducted, utilizing a common research method with a distinctive characteristic that has long been prevalent in social science research (Azarian, 2011). This was done to distinguish the data from all two countries.

IV. Result and Discussion

From Article 1010 of the Civil Code of China and its history before becoming the current article, we observe that workplace harassment in China is narrowly defined as "sexual harassment." Additionally, the perpetrator can be either an employer or an employee, and the behavior must involve leveraging a position of power or relationship.

Similarly, when considering the documentary interpretation of the Working Group on Knowledge Management in Labor Protection of the Labor Protection Division of Thailand, the Thai labor protection law, all three Thai labor law textbooks, and all three judgments of the Supreme Court of Thailand, it is found that Section 16 of the Thai Labor Protection Act of 1998 stipulates that harassment in the workplace is only restricted to "sexual harassment." Also, this act stipulates that only employers, supervisors, managers, or inspectors are held accountable for violations.

To be clearer, the comparison of both countries' laws of harassment in business establishments is demonstrated in Table 1.

Table 1. The comparison between Chinese and Thai law of harassment in business establishments

Aspect	China	Thailand
Perpetrator	A person (employer or employee)	Only employers, supervisors, managers, or inspectors
Action	(1) Sexual harassment (2) Conducted through taking the advantage of his position and power or a superior-subordinate relationship	(1) Engaging in sexual misconduct, or (2) Sexually harassing, or (3) Creating a sexually hostile or offensive environment
Victim	Other employees	Employees

Nevertheless, the fact that the laws of both countries stipulate that workplace harassment refers only to sexual harassment may lead to several adverse effects, as follows:

(1) There are no criteria to consider other types of behavior as workplace harassment, making it difficult to establish guidelines when other forms of harassment occur in business establishments.

(2) The general public may understand workplace harassment as solely sexual harassment, while other behaviors could also constitute workplace harassment. When people are unaware that other actions could be considered workplace harassment, they might engage in non-sexual harassment in the workplace, assuming it's not harassment. For example, gossiping about colleagues behind their backs, superiors asking employees to run personal errands, using language that embarrasses employees in front of others, bullying, pressuring employees to attend social events without consent, etc. These behaviors may have other consequences such as affecting the work environment or organizational commitment.

(3) Employees who experience other types of harassment in the workplace may not be aware of or safeguard their rights because they do not perceive it as sexual harassment. Thus, they may tolerate or refrain from complaining to superiors or government officials because they believe that superiors or government officials will not take action to help them since it is not sexual harassment. This may result in adverse effects on harassed employees, such as increased stress, depression, or physical and mental health problems (Chuateskhajorn, 2021).

Compared to another country, the Republic of Korea, Section 76-2 of the Labor Standard Act, which was revised on January 15, 2019, and has been enforced since July 16, 2019, determines workplace harassment by stating that *"No employer or employee shall cause physical or mental suffering to other employees or deteriorate the work environment beyond the appropriate scope of work by taking advantage of superiority in rank, relationship, etc. in the workplace (hereinafter referred to as "workplace harassment")."* (Ministry of Employment and Labor, 2019). Therefore, there could be various types of harassment in business establishments in Korea such as:

A. Unreasonably rejecting an employee's performance or competence at work,

B. Unjustly discriminating in terms of salary, promotions, training, supervision, vacation time, or other treatment,

C. Assigning difficult or unusual tasks not specified in the employment contract and avoided by other employees to specific individuals, or assigning minimal work,

D. Illogically excluding employees from access to essential work-related information or decision-making processes,

E. Inappropriately pressuring an employee not to take sick leave, days off, or utilize organizational welfare,

F. Persistently and continuously tasking an employee with the employer's personal matters,

G. Coercively forcing an employee to switch teams or resign from the company,

H. Spreading rumors about an employee's personal life,

I. Physically tormenting an employee,

J. Using curses or verbal threats,

K. humiliating an employee in front of others or through online platforms,

L. Compelling an employee to smoke, drink, or attend company events against their will,

M. Punishing or harassing an employee,

N. Failing to provide necessary work equipment (phone, computer, etc.) to an employee, or restricting access to the internet or intranet (Ministry of Employment and Labor, 2019).

V. Conclusion

Many countries try to tackle harassment in business establishments by enacting or improving the laws against this wrongdoing, including China and Thailand. The laws of the two countries share the key similarity which is that the action of workplace harassment must be "sexual harassment" only. This might bring about certain disadvantages. For example, (1) there are no standards to evaluate other forms of behavior as workplace harassment; (2) people might not be aware that other acts could be harassment in business establishments, they might commit sexually unrelated harassment in the workplace because they think that it is not harassment; and (3) employees who encounter different forms of harassment at work might not recognize or protect their rights because they do not identify it as sexual harassment.

Accordingly, the Chinese and Thai government should amend their legislation to be more inclusive and cover all types of harassment in business establishments like Section 76-2 of the Korean Labor Standard Act. The author suggests that if China and Thailand adopt this recommendation, Chinese and Thai employees will receive better protection from various forms of workplace harassment. However, during the amendment process, the Chinese and Thai labor protection authorities should distribute a workplace harassment prevention guideline to diverse organizations and assign government officials to educate employees on recognizing and preventing different types of harassment in business establishments, understanding their rights, and effectively addressing such situations when they arise. By taking these steps, the author anticipates that most business establishments in both countries can ultimately achieve a workplace environment free from harassment.

Conflict of Interest

The author declares no conflict of interest.

Acknowledgment

The author wishes to thank a librarian of the KDI School of Public Policy and Management, Sejong City, Republic of Korea for assisting the author in searching for the English version of the Korean Labor Standard Act. Without her assistance, this study might not have been successful.

References

Ahmed, J. U. 2010. Documentary research method: New dimensions. ***Indus Journal of Management & Social Sciences,*** 4(1): 1–14.

Azarian, R. 2011. Potentials and limitations of comparative method in social science. ***International Journal of Humanities and Social Science,*** 1(4): 113–125.

Bird & Bird. 2024. ***Enhanced PRC legal protections for women in the workplace.*** Available: https://www.twobirds.com/en/insights/2024/china/frontline-asia-pacific-employment-law-update-china

China Daily Information Co. 2020. ***Civil Code of the People's Republic of China.*** Available: https://regional.chinadaily.com.cn/pdf/CivilCodeofthePeople'sRepublicofChina.pdf

Chuateskhajorn, C. 2021. Workplace harassment: A comparative study of Korean and Thai labor law. ***Journal of Korean Association of Thai Studies,*** 28(2): 325–351.

Chuateskhajorn, C. 2022. Comparative study of legal aspects of workplace harassment in East Asia: China, Korea, and Japan. ***Proceedings of the 12th trans-pacific international conference:*** 33–46.

Department of Labor Protection and Welfare. 2017. ***The body of knowledge on labor protection, guidelines for conducting labor inspections, in cases where labor inspectors find wrongdoing that must be reported for grievances to the investigating officers without issuing orders.*** Available: https://protection.labour.go.th/2018/images/KM/60.pdf

Du, G. 2021, July 21. ***"Sexual harassment" in China's legislation.*** Available: https://www.chinajusticeobserver.com/a/sexual-harassment-in-china-s-legislation?fbclid=IwAR2zFwKDIKkKANClRlxOpmo_GGno_EzNggDp19_Tvr2Wu0OlIXiyiyrU1a4

Feng, Z., & Wong, T. 2021, September 27. ***Xianzi: The #MeToo icon China is trying to silence.*** Available: https://www.bbc.com/news/world-asia-china-58629102

Halegua, A. 2021. ***Workplace gender-based violence and harassment in China: Harmonizing domestic law and practice with international standards.*** New York: U.S.-Asia Law Institute, New York University School of Law.

Heymann, J., Moreno, G., Raub, A., & Sprague, A. 2022. Progress towards ending sexual harassment at work? A comparison of sexual harassment policy in 192 countries. ***Journal of Comparative Policy Analysis: Research and Practice,*** 25(2): 172–193.

Hoel, H., Sparks, K., & Cooper, C.L. 2001. ***The cost of violence/stress at work and the benefits of a violence/stress-free working environment.*** Geneva: International Labour Organization.

International Labour Organization. 2012***. Labor Protection Act, B.E. 2541 (1988).*** Available: https://www.ilo.org/dyn/travail/docs/1015/Labor%20Protection%20Act%201998%20with%202008%20amendments.pdf

Khruaklin, P. 2018. ***Labor law for human resource management.*** Bangkok: Nititham Publisher.

Lee, H., Gao, D., & Xu, C. 2023. Criminal litigation of workplace violence in Chinese hospitals and legal effort to deescalate crimes. ***INQUIRY: The Journal of Health Care Organization, Provision, and Financing,*** 60: 1–14.

Ministry of Employment and Labor. 2019. ***Manual for determining, preventing, and responding to workplace harassment.*** Seoul: Korea Labor Foundation.

Thai Public Broadcasting Service. 2023, December 24. ***Army punishes "Sergeant Major" for invading the house of a female ranger for harassment.*** Available: https://www.thaipbs.or.th/news/content/335233

Thairath Online. 2023, December 6. ***"Have a reputation...don't you maintain it?" the line between insulting and harassing in the workplace.*** Available: https://www.thairath.co.th/scoop/theissue/2745783

The Guardian. 2022, August 10. ***Woman at centre of China #MeToo case vows not to give up after appeal rejected.*** Available: https://www.theguardian.com/world/2022/aug/10/chinese-court-rejects-sexual-harassment-case-appeal-zhou-xiaoxuan-metoo

The Supreme Court of Thailand. 2002. ***Supreme court decision No. 1372/2545.*** Available: http://deka.supremecourt.or.th

The Supreme Court of Thailand. 2007. ***Supreme court decision No. 8379/2550.*** Available: http://deka.supremecourt.or.th

The Supreme Court of Thailand. 2017. ***Supreme court decision No. 1059/2560.*** Available: http://deka.supremecourt.or.th

Wajahat J., Ali, R., & Jan, M. A. 2022. Sexual harassment in the workplace: a proportional examination of relevant legislation, with comparisons to two major Asian countries: India and Pakistan. ***Pakistan Journal of Social Research,*** 4(3): 10–16.

Wasawong, S., & Pruksacholavit, P. 2014. **Legal explanations on labor protection** (10th ed.). Bangkok: Nitibannakan Publisher.

Wilawan, K. 2013. Labor law: Second lecture. In Prasert Siangsutthiwong (Ed.), ***Compilation of lectures, semester one, academic year 2556, volume 1.*** Bangkok: Institute of Legal Education of the Thai Bar.