

# **A Study of Employment Discrimination against Women in China from a Comparative Perspective**

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## 1. Introduction

Discrimination is a long existing phenomenon in the human society. It is the unfair or unequal treatment imposed to certain groups or members belonging to a unit. Gender discrimination is caused by gender differences, and it may exist in each area of the society all over the world, which handicaps the political, economic, social and cultural rights of women. The *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* gives a definition about gender discrimination, Article 1 stating that: ‘discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’<sup>1</sup> This definition has been universally acknowledged and regarded as the most authoritative definition.

Among the different aspects of gender discriminations, employment discrimination against women is a serious one, making women in adverse situations in the workplace. Early in 1958, the International Labor Organization (ILO) adopted the *Discrimination (Employment and Occupation) Convention (No.111 Convention)*, which gives an authoritative definition of employment discrimination: ‘the term discrimination includes (a) any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organizations, where such exist, and with other appropriate bodies.’<sup>2</sup> However, there are three exceptional situations: firstly, ‘any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination’<sup>3</sup>; secondly, ‘any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual

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<sup>1</sup> The Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly in 1979, Article 1

<sup>2</sup> Discrimination (Employment and Occupation) Convention (No.111 Convention), adopted by ILO in 1958, Article 1

<sup>3</sup> Ibid

concerned shall have the right to appeal to a competent body established in accordance with national practice'<sup>4</sup>; thirdly, 'special measures designed to meet the particular requirements of special protection or assistance shall not be deemed to be discrimination'<sup>5</sup>.

Even if these international conventions set obligations on States and employers to eliminate discrimination against women in workplaces, the gender discrimination is still a serious problem all over the world. In particular in China, it is difficult for women to enjoy the same rights as men in the workplace. There is no sufficient protection in either legislation or administrative measures, and the society lacks consciousness on women's equality. Nevertheless, in some western countries, due to the sophisticated legislation and effective implementation mechanisms, direct discriminations against women in workplace are not normal, although some discriminations acts in an indirect or a hidden way. Taking Norway as an example, domestic legislations on anti-discrimination have been well-established and several implementation mechanisms act complementary with each other, forming an effective legal system. Meanwhile, specific and independent institutions, the Equality and Anti-discrimination Ombud and the Tribunal, monitor and contribute to ensuring the compliance with the anti-discrimination legislations. Learning the experience of those successful regimes is a short cut for China to set up an effective anti-discrimination legal system.

This thesis is intended to focus on the employment discrimination against women in China. Firstly, the thesis will set forth the research background, including the research questions, literature review, theoretical orientations and methodology. Secondly, it will describe the current situation of employment discrimination against women in China, and analyze the reasons from the economic, social, cultural and legal aspects. Thirdly, it will analyze current anti-discrimination legislation and enforcement mechanisms in China and assess the shortcomings of them; meanwhile a typical case will be cited to show how victims can seek relief when facing discrimination in employment. Fourthly, experiences of anti-discrimination in employment from Norway will be studied, including the legislation, enforcement institutions and mechanisms, and a typical case from the Equality and Anti-discrimination Ombud and Tribunal; a general assessment of the legal system in Norway will be drawn up. At last, on the basis of analysis of shortcomings in China and experiences in Norway, the thesis will put forward systematical recommendations on protecting women's equal rights in workplace in China.

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<sup>4</sup> Discrimination (Employment and Occupation) Convention (No.111 Convention), adopted by ILO in 1958, Article 4

<sup>5</sup> Ibid, Article 5

## 2. Research Background

### 2.1 Research background

Although the social status of women in China has been significantly improved nowadays, the status of women in China is still much lower than men compared with western countries. There are various discriminations against women, especially in the employment. ‘In the last ten years the number of female employees has risen, but gender disparity and segregation have intensified.’<sup>6</sup> According to the official statistics in the Third Survey on the Social Status of Women in China, which was conducted jointly by the All-China Women’s Federation and the National Bureau of Statistics in 2011, the employment rate for women between the age of 18-64 is 71.1% while the rate for men is 87.2%, and the working income for women is lower than men, 67.3% in urban and 56.0% in rural areas respectively. This survey also showed that 10.0% women thought they had been discriminated at work while the rate for men was 4.5%. Additionally, 24.7% female graduates had encountered unequal treatment when seeking jobs.<sup>7</sup> Generally speaking, gender discrimination at work in China exhibits in the following aspects: (1) Discrimination against women in recruitment. For example, employers only recruit male candidates for some positions, or there are obvious different criteria for male and female candidates for the same jobs. (2) Discrimination in the treatment and salary, i.e. men and women receive different pay for the same work of the same value. (3) Discrimination in the promotion. (4) Sexual harassment in the workplace. (5) Limitation even prohibition on marriage, pregnancy or giving birth. (6) Segregation on the sex at work. For example, female mainly work in low-paid fields. (7) Discrimination on the retirement age and pensions. This paper will choose the first, second and seventh particulars to describe the status of women in workplace, since these three situations are the most popular and common phenomenon nowadays.

There are many reasons for such serious employment discrimination against women in China, such as historical factors, cultural relativism, economic calculations and weak legal system. ‘Even though the employment discrimination against women in China is a serious problem, it has not been recognized as such throughout society.’<sup>8</sup> The statistics of the Third Survey on the Social Status of Women in China shows that 61.6% of men and 54.8% of women hold the

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<sup>6</sup> Xinyu Wang, A Study of Current Employment Discrimination Against Women, in *Taking employment discrimination seriously: Chinese and European perspectives*, ed. Yuwen Li, and Jenny Goldschmidt (The Netherlands: Netherlands Institute of Human Rights, School of Law, Utrecht University, 2009), p113.

<sup>7</sup> *Third Survey on the Social Status of Women in China*, conducted jointly by the All-China Women’s Federation and the National Bureau of Statistics of China in 2011.

<sup>8</sup> *Supra* Note 6.



opinion that ‘men should be based in the society while women should stay in the family’.<sup>9</sup> Therefore, it is a difficult task to eliminate gender discriminations in a short term.

In the current legal system of China, although there are some provisions protecting women’s equal working rights, they are still dispersive and unsystematic. Additionally, these regulations are too abstract and general to provide effective protection for women. For example, the scope of discrimination is limited; the legal stipulations lack operational measures; relief ways of employment discrimination are not effective, and so on. In many western countries, there are relatively mature legal systems to protect the equal working rights for women. Learning the experience of such countries would help China to provide effective protection on women and enhance the status of women in the whole society.

## 2.2 Literature review

There has been much research on the women’s equal working rights, from the social, economic, cultural and legal aspects, respectively. The issue regarding to women’s working rights in China is not only a popular research topic among Chinese scholars, but also attracts scholars in other countries. A growing number of cross-national comparative studies have been conducted. Nevertheless, most of these studies concentrate on descriptions and surveys of the discrimination situation, rather than theoretical analysis and practicable recommendations. The studies on the topic of employment discrimination against women are mainly in the three following fields:

The first field is the empirical study, exploring the phenomenon of the employment discrimination against women. These studies normally investigate the situation of employment discrimination against women with the methods of surveys and interviews, some of them studying all kinds of employment discriminations, while others just concentrating in one or two forms. The formers take the representative of *The Employment Discrimination in China: Current Conditions and Anti-Discrimination Strategies*<sup>10</sup> edited by professor Cai Dingjian, a famous human rights activist in China; *Employment Discrimination in China: Legislation and Reality*<sup>11</sup> and *A Study of Gender Discrimination in the Workplace in China*<sup>12</sup>. The empirical research method was taken in these books to study all kinds of discrimination

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<sup>9</sup> Supra Note 7

<sup>10</sup> Dingjian Cai, ed., *The Employment Discrimination in China: Current Conditions and Anti-Discrimination Strategies*, (Beijing: China Social Science Press, 2007)

<sup>11</sup> Wei Zhou et. al., *Employment Discrimination in China: Legislation and Reality* (Beijing: China Law Press, 2006)

<sup>12</sup> Ying Li and Shuai Zhang, eds., *A Study of Gender Discrimination in the Workplace in China* (Beijing: China Social Science Press, 2010)

in the workplace and show detailed statistics and an overview of the reality in China. The latter takes representative of *Gender Discrimination and Job-Related Outcomes: A Cross-Cultural Comparison of Working Women in the United States and China*,<sup>13</sup> cooperated by scholars from Chinese Mainland, Hong Kong and the United States, focusing on the sexual harassment and gender evaluation; *Gender Discrimination in Job Ads: Evidence from China*<sup>14</sup>, concentrating on the discriminations in jobs recruiting; and *Globalization and Gender Wage Inequality in China*,<sup>15</sup> investigating the wage gap and highlighting the importance of globalization in encouraging female employment and reducing gender discrimination.

Second, studies on the legal system and policies. Most of these studies are conducted from a comparative perspective, collecting information from experienced countries, introducing their legal system and analyzing the practical suggestions for China. Taking the representative of *Employment Discrimination Overseas: Law and Practice*<sup>16</sup> and *Employment Discrimination: International Standards and Internal Practice*<sup>17</sup>. These two books introduced the jurisprudence and practical experience of main countries over the world. There are also quantity of essays in the journals, master thesis and doctor thesis studying the legal system of anti-discrimination on employment of different countries. However, most of these studies focus on the European Union and USA, while few studies can be found to investigate the experiences of Norway. Norway is considered as one of the most gender equal countries in the world, having relative well established legislations, social security system and special institutions handling discrimination complaints. Therefore, studying on the experience of Norway will provide a great help for China to enhance the status of women in workplace and eliminate employment discriminations against women.

Third, theoretical studies. These studies discuss the theoretical foundations for equality of women in employment from different points, such as legal, economical or feminist viewpoints, in the representative of *A Study on the Equality and Difference of the American*

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<sup>13</sup> Margaret A. Shaffer, Janice R.W. Joplin, Myrtle P. Bell and Theresa Lau and Ceyda Oguz, Gender Discrimination and Job-Related Outcomes: A Cross-Cultural Comparison of Working Women in the United States and China, *Journal of Vocational Behavior* (2000) 57: 395–427

<sup>14</sup> Peter Kuhn and Kailing Shen, Gender Discrimination in Job Ads: Evidence from China, *The Quarterly Journal of Economics* (2013) Vol.128 (1): 287–336

<sup>15</sup> Zhihong Chen, Ying Ge, Huiwen Lai and Chi Wan, Globalization and Gender Wage Inequality in China, *World Development* Vol. 44 (2013): 256–266

<sup>16</sup> Dingjian Cai and Qianfan Zhang, eds., *Employment Discrimination Overseas: Law and Practice* (Beijing: China Social Science Press, 2007)

<sup>17</sup> Weiwei Li and Lisa Stearns, eds., *Employment Discrimination: International Standards and Internal Practice*, (Beijing: China Law Press, 2006)

*Feminist Jurisprudence*<sup>18</sup> from a feminist angle, *Law from the View of Social Gender: Women and Law*<sup>19</sup> as a social science study, and *Women's Employment Rights in China: Creating Harmony for Women in the Workforce*<sup>20</sup>, studying how international influence have affected the government's policies on gender-based discrimination. No matter what kind of theories, these researches try to provide the theoretical foundation for women's equality.

There are also some studies combining more than one of the above-mentioned fields, for example *Taking Employment Discrimination Seriously: Chinese and European Perspectives*<sup>21</sup>, which not only described the situations of employment discrimination in China both in terms of law and practice but also introduced the anti-discrimination law and practice of EU as well as Netherland and Austria.

On the basis of the existing research, this thesis will focus on the legal system of anti-discrimination against women in workplace in China, combining description on employment discrimination against women and analysis of the reasons. Studying the experience of Norway is a new field, and it will make a contribution to the current comparative legal studies. Another distinguishing feature for this thesis is that regarding to the recommendations for China to establish effective protection on women's equal working rights, it will put forward systematic and sophisticated measures from legal, social, economic and cultural perspectives.

### **2.3 Theoretical orientations**

Employment discrimination against women violates two foundational human rights, i.e. equality and right to work. Equality means every human being is born equal, no matter of race, color, sex, language, religion or other status. Right to work means working opportunities of anyone who has the ability and willingness to work should be protected. Both international conventions and domestic laws have formulated these two rights.

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<sup>18</sup> Xiaonan Liu, "A Study on the Equality and Difference of the American Feminist Jurisprudence", (doctor thesis, Jilin University, 2005)

<sup>19</sup> Qiaoping Xiao, ed., *Law from the View of Social Gender: Women and Law*, (Beijing: Communication University of China Press, 2006)

<sup>20</sup> Jamie Burnett, *Women's Employment Rights in China: Creating Harmony for Women in the Workforce*, *Indiana Journal of Global Legal Studies*, 2010, Vol.17(2), 289-318

<sup>21</sup> Yuwen Li and Jenny Goldschmidt, eds., *Taking employment discrimination seriously: Chinese and European perspectives*, (The Netherlands: Netherlands Institute of Human Rights, School of Law, Utrecht University, 2009)

### 2.3.1 Gender equality

Equality and liberalism are the main foundations of a democratic society. The first article of the Universal Declaration of Human rights (UDHR) definitely argues that: ‘All human beings are born free and equal in dignity and rights.’<sup>22</sup> Equality is born with human beings and is an indispensable part of the natural rights. This natural foundation decides Equality rights being the basic human rights of humanity. Equality prohibits all kinds of discriminations without reasonable justification. The UDHR affirms the principle of prohibition of discrimination and proclaims that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex. All the members of the United Nations are legally bound to fulfil the realization of all human rights including the equality between men and women.

Gender equality is one of the most important values that human beings have been pursuing. Nevertheless, discrimination against women is one of the most serious issues all over the world and the international community has tried its best to eliminate it. Both the International Convention on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulate the principle of non-discrimination and the equal right for men and women, stating that the rights set forth are applicable to all persons without distinction of any kind,<sup>23</sup> and specifically bind states parties to make sure that women and men equally enjoy all the rights stated in the Conventions. Furthermore, on 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly. From then on, the movement of eliminating discriminations against women has got the international legal basis.

The CEDAW gives the definition of discrimination against women, stating that ‘the term discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field,’<sup>24</sup> and requires States Parties to take all appropriate measures to eliminate discrimination against women. In the General Recommendation No. 25, the

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<sup>22</sup> Article 1 of the UDHR

<sup>23</sup> Article 2 of the ICCPR, and Article 2 of the ICESCR.

<sup>24</sup> Article 1 of the CEDAW

Committee on the Elimination of Discrimination against Women interpreted the framework for all of the CEDAW's substantive articles, indicating that there are three central obligations for States Parties to eliminate discrimination against women: 'Firstly, States parties' obligation is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination — committed by public authorities, the judiciary, organizations, enterprises or private individuals — in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies. Secondly, States parties' obligation is to improve the de facto position of women through concrete and effective policies and programs. Thirdly, States parties' obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.'<sup>25</sup> Furthermore, in the General Recommendation No.28, the Committee explains the core obligation of States Parties under Article 2 of the CEDAW, formulating that 'Article 2 is not limited to the prohibition of discrimination against women caused directly or indirectly by States parties, but also imposes a due diligence obligation on States parties to prevent discrimination by private actors.'<sup>26</sup>

As a state party of these international conventions, China must follow its obligations under these conventions, taking appropriate measures including legislative, administrative and judicial measures to eliminate all kinds of discriminations against women. However, the social status of women in China is far from satisfying because of historical, cultural and economic reasons. Therefore, eliminating discriminations against women is even harder and much more important for China.

### 2.3.2 Right to work

The right to work came up in the era of Capitalism when the professional labor was socialized and popularized. This right is one of the fundamental rights which can guarantee people in a good living condition. Article 6 of the ICESCR gives the foundation of the right to work: 'The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.'<sup>27</sup> Everyone no matter man or woman is endowed the right to work. Since the traditional labor division modal

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<sup>25</sup> General Recommendation No. 25, CEDAW, 2004. Para.7

<sup>26</sup> General Recommendation No. 28, CEDAW, 2010. Para.13

<sup>27</sup> Article 6 of the ICESCR

confines the role of women in the family, it is difficult for women to gain equal right to work as men. The CEDAW formulates the content of the equal right to work for women: '(a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.'<sup>28</sup> Among all these rights, right to the same employment opportunities and free choice of employment are the foundation and core content of women's working rights, and are also the premise of other working rights to be realized. Discrimination against women in employment would deprive the opportunity for women to get work payment, social security and so on, and even damage the enjoying of their life.

As a specific agency in protecting right to work in the United States system, the International Labor Organization (ILO) aims at promoting decent work for all women and men by setting labor standards, developing policies and devising programs.<sup>29</sup> 'International labor standards are legal instruments drawn up by the ILO's constituents, setting out basic principles and rights at work'<sup>30</sup>. These standards are the main resource of international labor law, including conventions which are international treaties with legal bindings on their member states, and recommendations which serve as non-binding guidelines and supplements of the conventions. ILO has adopted a large quantity of conventions from its establishment, including fundamental conventions, governance conventions and technical conventions, such as the Maternity Protection Convention (No. 3) adopted in 1919, the Equal Remuneration Convention (No. 100) adopted in 1951, the Convention concerning Discrimination in Respect of Employment and Occupation (No. 111) adopted in 1958, the Employment Promotion and

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<sup>28</sup> Article 11 of the CEDAW

<sup>29</sup> ILO, <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (visited on 14 April, 2016)

<sup>30</sup> ILO, <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (visited on 14 April, 2016)

Protection against Unemployment Convention (No. 168) adopted in 1988, etc.. Once a state ratified these conventions, it must commit itself to applying the convention into domestic law and practice and reporting its implementation at regular intervals.

## **2.4 Methodology**

### **2.4.1 Quantitative method**

Quantitative method and qualitative method are both frequently used in analyzing human rights issues. The former seeks to show differences in number between certain objects of analysis, while the latter seeks to show difference in kind. ‘In the human rights field, it is possible to count human rights violations, or to collect survey data on human rights practices from random samples of the population. Such measures of human rights can be used for statistical analysis that describes and explains the nature, extent, pattern, and causes of human rights violations.’<sup>31</sup>

The quantitative method is necessary in the research of employment discrimination against women, since statistics must be used to describe the situation and extent of discrimination, such as ‘how many women are dismissed because of pregnant, delivery or marrying?’ ‘Do women gain same salary with men in the same job?’ Survey is the main source of statistics, including questionnaires and interviews.

However, due to the large population of China, it is difficult to conduct surveys in a whole scale by oneself. An alternative method can be used instead to gain statistics, i.e. using the existing surveys conducted by the government and some institutions. The issue of women’s rights is a popular research topic in China, thus there are many surveys conducted by different institutions from different angles, such as by governmental and non-governmental institutions, in national level and from regional level, and social, economic and legal viewpoints. Among these surveys, the Chinese women’s social status survey conducted by the All-China Women’s Federation and National Bureau of Statistics is the most authoritative and comprehensive, showing a general description of women’s social status. Meanwhile, academic institutions and NGOs also conducted surveys focusing on one or several special fields in certain region, selecting random samples to reflect the whole question. All of these surveys are useful to describe and analyze the pattern, extent and reasons of gender discrimination in employment.

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<sup>31</sup> Todd Landman, *Studying Human Rights* (London and New York: Routledge, 2006), p71

#### 2.4.2 Comparative method

Comparative method is one of the important and frequently-used methods in social science, as well as in the human rights field. The Comparative method is used to compare similarities and differences across countries aiming at a series of generalizations about particular human rights problems. There are three general comparative methods available to human rights scholars: global comparisons, few-country comparisons, and single-case studies.<sup>32</sup> Since the research topic of this thesis, employment discrimination against women, is a human right issue happened in every country, it is necessary to conduct cross-country comparative studies. ‘There have been a growing number of cross-national comparative studies on women’s employment since the 1990s.’<sup>33</sup> The thesis aims to put forward an effective legal system on protecting women’s equal working rights in China, thus compare and study the experiences of those countries with comparatively well-established legal system is a good way to fulfil the aim.

This thesis will take Norway as an example, since the legislation and implementation mechanisms on protecting women’s equal working rights are both relatively mature and effective. It will comparatively study the legislation and implementation mechanisms in both China and Norway, and select typical cases to show how women victims seek remedy when encountering discrimination in employment and whether their equal working rights can be protected effectively.

In this thesis, comparative method will also be used to describe and analyze the status of women compared with men in recruitment, promotion, salary, retirement and so on. Only through comparison, the status of women in employment can be distinguished clearly.

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<sup>32</sup> Supra Note 31. p64

<sup>33</sup> Fang Lee Cooke, Women’s participation in employment in Asia: a comparative analysis of China, India, Japan and South Korea. *The International Journal of Human Resource Management*, Vol. 21, No. 12, October 2010, p2249



### 3. Current Situations of Employment Discrimination against Women in China

#### 3.1 Situations of employment discrimination against women in China

As mentioned above, women in China are still facing various discriminations, especially in the employment. In order to give a detailed analysis of the employment discrimination against women in China, this section will focus on three aspects where the gender discriminations mainly happen.

##### 3.1.1 Employment opportunities are unequal

In November 2014, Anhui University Economic Law Research Center released the *'investigation report of discrimination against women on employment'*,<sup>34</sup> based on the research data on employment discrimination against women in Hefei, Anhui province. The report showed that 96% of graduating female students and 75.5% of female job seekers believed that there were discriminations against women in employment, while 61% of the graduating female students and 29.14% of female job seekers had experienced discriminations personally in recruitment. After being recruited into the positions, there are still discriminations against women in the workplace. Nearly 19% of women believe that their salaries are lower than men who have the same jobs, and 33% of women consider that male workers have the priority in promotion even if they have the same or lower conditions as women. A survey of employment discrimination in the ten major cities in China conducted by the Constitutionalism Research Institute in China University of Political Science and Law, showed that 21% of positions had clear gender requirements, among which 13.9% were specific to men and only 7.1% to women.<sup>35</sup> Although the amount of positions definitely requiring men has decreased obviously with the adoption of the Employment Promotion Law, discriminations against women turn to act in a hidden style, rejecting women candidates in other legal excuses, which makes the victims more difficult to seek redress.

Recruiters reject women candidates mainly on the reasons that women have to leave work to give birth and raise the child, which continually affects the employer and increases the costs. Accordingly, some employers recruit women often with supplementary conditions, such as an agreement that they will not marry or become pregnant in a certain period. Statistics from a

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<sup>34</sup> Anhui University Economic Law Research Centre, Investigation report of discrimination against women in employment in 2014, [http://jjfz.ahu.edu.cn/D\\_CenterNews.aspx?id=212](http://jjfz.ahu.edu.cn/D_CenterNews.aspx?id=212) (visited on 18 April, 2016)

<sup>35</sup> The Constitutionalism Research Institute in China University of Political Science and Law, *A survey of employment discrimination in the ten major cities in China*, conducted in 2006. B1

research report on gender discrimination in the workplace in China shows that ‘1 out of 25 interviewees have been forced to sign such contracts with clauses like prohibition from marriage and pregnancy on average’.<sup>36</sup> The survey in the ten major cities reveals that the main disadvantages of women in the workplace are pregnancy, maternity leave and nursing leave.<sup>37</sup> Litigation caused by dismissal on the basis of pregnancy and giving birth accounts for a great percentage in the lawsuits regarding to labor disputes. Therefore, an effective social security system is necessary to provide sufficient security for women’s delivery and then women can be more competitive with men in the workplace.

### 3.1.2 Women and men receive different pay for the same work

‘The gender wage gap is significant and pervasive in many countries despite substantial advances in women’s education and participation in the labor market.’<sup>38</sup> ‘According to a draft report of the US Labor Department, for the same job, American males can earn 1 US dollar, whereas their female counterparts only earn 76 cents.’<sup>39</sup> Although the principle of equal work receiving equal pay was identified in the Explanations on the Clauses of Labor Law (Document No. 289, 1994) realized by the former Ministry of Labor, which states that: ‘equal work should receive equal pay means that the employers should pay equal remunerations for labors who have done the same work, exerted the same amount of work effort, and got the same work results’,<sup>40</sup> the wage gap for women and men is still obvious in China.

The statistics in the Third Survey on the Social Status of Women in China showed that there was an obvious distance on the remuneration between men and women. According to the survey, most women workers aged 18-64 worked in the low-income and middle-income fields. In the low-income fields, women workers account for 59.8% and 65.7% in the urban and rural districts respectively, while in the high-income fields, women workers only account for 30.9% and 24.4% in the urban and rural districts respectively. The data in this survey also revealed that the average annual income for women was only 67.3% and 56.0% of that for men in the urban and rural areas respectively. The average annual income for women is lower than men in all the areas, no matter of developed eastern districts, or undeveloped western areas.<sup>41</sup>

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<sup>36</sup> Supra Note 12. p217

<sup>37</sup> Supra Note 35. F12

<sup>38</sup> Supra Note 15. p256

<sup>39</sup> Supra Note 12. p226

<sup>40</sup> Ibid

<sup>41</sup> Supra Note 7

Less payment for women than men is on the basis of traditional views that the capabilities for women are lower than men and family affairs will drag in much energy of women, so that they cannot concentrate on work. Nevertheless, it should be aware that, as revealed by the latest scientific findings, women are more advantageous than men in self-awareness, emotional control, self-motivation and interpersonal skills due to their patience and resilience. Thus, women are not only as competent as men, but also are endowed with special characteristics suitable for decision-making and execution management.<sup>42</sup>

### 3.1.3 Retirement age and pensions are unequal

Different treatment in retirement age is an obvious legislative discrimination against women in China. The policy of different retirement age for women and men started from the founding of People's Republic of China, and has been reaffirmed in related regulations until now. According to the regulations issued by the State Council, the mandatory retirement age for female workers is 50 while 60 for men, and retirement age for female civil servants is 55 while 60 for male civil servants. It shows that retirement age is not only different between women and men, but also different between employees in diverse occupations.

The early retirement hinders individual development for women. The different retire age means that women's career is aborted five or ten years earlier than men's, which leads to less opportunities for training, promotion and vocational development for women than men, and further restricts women reaching a high-level administrative position. Besides, the early retirement will result in economic loss for women. On one side, income for working is normally higher than retirement pension, so women will gain less money than men in the same age. On the other hand, since retirement pensions depend on the length of service and level of positions at retirement, women retiring earlier than men will lead to lower pension. Meanwhile, some economists believe 'it is a waste of national assets to force women to retire at an age when they can still contribute to society, especially when the state invests so much in their professional development'<sup>43</sup>.

However, a quantity of people do not realize the different retirement age between women and men as gender discrimination. According to the survey in ten major cities in China, '37.9% of people thought that women should retire before men, 22.2% thought men and women should retire at the same age. 18.6% thought women should choose for themselves. 40.8% advocated

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<sup>42</sup> Supra Note 12. p228

<sup>43</sup> Supra Note 6. p117

that men and women should retire at the same time or that women should choose.<sup>44</sup> There are still many arguments on whether China should set the same retirement age for women and men. The best solution for this issue is that men and women should retire at the same age, at the same time allowing women to decide for themselves whether they wish to retire earlier than men.

### **3.2 Reasons for the employment discrimination against women in China**

Although the female employment rate increases in China, the disadvantage of female in labor market has not been changed entirely. There are numerous reasons that lead to employment discrimination against women, including economic, social, cultural, and legal reasons.

#### **3.2.1 Surplus labor force**

With the 30 years' development of marketization, labor mechanisms have experienced tremendous reform. More and more women come into the labor market as production factors waiting for companies to choose. Even though a special legislation, the Employment Promotion Law, has been enacted to promote employment, there is still a great surplus labor force in the labor market currently. Given too many candidates and oversupply of laborers, employers have more choices and then include requirements based on gender into their standards. Some economists believe 'the difficulty for women finding work and re-employed is closely linked with the contradiction of supply and demand in the labor force market.'<sup>45</sup>

#### **3.2.2 Weak social security system**

The weak social security system in China cannot provide sufficient protection to women. According to current social security system, the employers should pay for the fees of women's giving birth, so that it costs more for employers to hire women than men. Take the Maternity Insurance System as an example, on one hand, the law formulates that maternity insurance is a social insurance that is afforded by the government and employer; on the other hand, the policy of maternity insurance in Beijing is only intended for the locals. Then female workers with household registration elsewhere cannot be entitled to this welfare. Thus, the costs of child birth fell down to the employers who hire non-local female workers. Many recruiters reject female candidates in the recruitment, or dismissal female workers by various excuses without any compensation when they got pregnant.<sup>46</sup> Therefore, social protection

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<sup>44</sup> Supra Note 35. F7

<sup>45</sup> Supra Note 6. p124

<sup>46</sup> Supra Note 12. p264

system must be set up to provide sufficient security for women's delivery and then women can be competitive with men in the workplace.

### 3.2.3 Traditional prejudice on women

'Thousands of years under the feudal despotism of the Confucian code of conduct have given rise to the deep-seated traditional belief that men are superior to women.'<sup>47</sup> Also the traditional concept about the division of labor with respect to gender is that 'men's work centers around outside, while women's work centers on home'. Although modern society has been civilized highly, there are still prejudice on women's abilities and value, thinking that their productivity levels are lower than men and they lack the potential for development. Exaggeration of the negative effects of childbirth and parenting on women has intensified the disadvantages for women when competing for jobs.<sup>48</sup>

### 3.2.4 Insufficient legislation and enforcement mechanism

Although there are a certain amount of legislations including laws and regulations stipulating equal employment rights for women and men, implementation is weak and legal liability is lack. In the Concluding Comments on China's report, the CEDAW Committee considered a major weakness in China's legal system is the lack of a definition of discrimination, which may constrain the application of the full scope of the Convention's definition of discrimination.<sup>49</sup> Besides, there is no special and independent body with the function of monitoring implementation of equal employment and dealing with complaints of discrimination, like the Equal Opportunity Commission in Hong Kong, and the Equality and Anti-discrimination Ombud and the Tribunal in Norway. Although there are some bodies in every district level getting involved in these enforcement stages, these bodies are political and administrative that it is difficult for them to hold a neutral standpoint. Especially in some places where the economic development relies on certain large companies, local government is generally on the bias of these influential companies. Low costs of violations lead employers not afraid to commit discrimination against women in workplace.

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<sup>47</sup> Supra Note 6. p125

<sup>48</sup> Ibid, p124

<sup>49</sup> Committee on the Elimination of Discrimination against Women, Thirty-sixth session, Concluding comments on the Report of China, August 2006, CEDAW/C/CHN/CO/6. para 9

## **4. Anti-Discrimination Legislation and Enforcement Mechanisms in China**

### **4.1 Anti-Discrimination Legislation**

China has a number of legislations concerning women's equal employment rights, including provisions in the Constitution, a special law on women's rights, and several provisions in other national laws, administrative regulations, and local regulations. Protection of women's equal employment rights is also the international obligations under relevant international treaties that China has ratified.

#### **4.1.1 International obligations**

China ratified the CEDAW with no reservation in 1980 and ICESCR in 2001. According to requirements in the CEDAW, China submits country reports regularly, and the latest one was in 2012. In the report of 2012, it said that 'China has earnestly implemented the Beijing Declaration and Program of Action adopted at the United Nations Fourth World Conference on Women and the United Nations Millennium Development Goals.'<sup>50</sup>

Besides, China ratified the Equal Remuneration Convention (No. 100) of 1951 in 1990, the ILO Discrimination (Employment and Occupation) Convention (No. 111) of 1958 in 2006, and the ILO Occupational Safety and Health Convention (No. 155) of 1981 in 2007. All of these conventions set obligations on Chinese governments to take all appropriate measures to provide protection against gender discrimination in workplace. In order to support and promote the application of Convention No.111 in China, ILO cooperated with government and civil society to conduct a project to promote non-discrimination and equality in employment opportunity and treatment, through capacity building activities and sharing of knowledge and good practice.<sup>51</sup>

#### **4.1.2 Domestic legislations**

There is no special Anti-Discrimination Law in China, but some provisions regarding to equality and anti-discrimination are stipulated in several laws and regulations, including:

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<sup>50</sup> Committee on the Elimination of Discrimination against Women, Combined Seventh and Eighth Periodic Report of China, 20 January 2012, CEDAW/C/CHN/7-8. para 19

<sup>51</sup> ILO, Promoting Equality at Work in China, [http://www.ilo.org/beijing/what-we-do/projects/WCMS\\_143071/lang--en/index.htm](http://www.ilo.org/beijing/what-we-do/projects/WCMS_143071/lang--en/index.htm) (visited on 14 April, 2016)

(I) Constitution. Equality is the main principle of the Constitution, stating that ‘all citizens of the People’s Republic of China are equal before the law’<sup>52</sup>. The Constitution also emphasizes that ‘women enjoy equal rights with men in all spheres of life, and the state protects the rights and interests of women, applies the principle of equal pay for equal work to men and women, and trains and selects cadres from women.’<sup>53</sup> However, since the Constitution cannot be cited before the courts in China, these regulations are just on the lip.

(II) The Labor Law, a special law regulating relationships at work. Article 12 provides that labors shall not be discriminated in employment on the basis of sex, and Article 13 states that females shall enjoy equal rights as males in employment.

(III) The Law on Protection of Rights and Interests of Women, aiming at protecting women’s rights and promote the equality between men and women. There is a whole chapter regulating women’s rights relating to work, not only providing a general rule that ‘the states shall guarantee that women enjoy the same labor and social security rights as men do’<sup>54</sup>, but also stipulating specific provisions relating to recruiting, pay, promoting, pregnancy, maternity and so on. Although these provisions are comparatively sophisticated, the Law is seldom applied in courts. Thus, it does not play an important role in protecting women’s rights, just being a declarative law to some extent.

(IV) The Employment Promotion Law, definitely requires that ‘employing units should not refuse to employ women or raise recruitment standards for females by using gender as an excuse, and should not have such provisions as restrict female workers from getting married or giving birth included in the labor contract.’<sup>55</sup>

Apart from the Constitution and national laws, there are still a few other regulations relating to women’s working rights, including administrative regulations, local decree, autonomous decree and special decree. For example, the Special Rules on the Labor Protection of Female Employees was enacted by the State Council in 2012.

#### 4.1.3 Administrative policies

In order to protect women’s rights and promote women’s career development, Chinese government has adopted many administrative policy measures, taking account of the Program of Action of the United Nations Fourth World Conference on Women, the Millennium

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<sup>52</sup> Constitution of People’s Republic of China, enacted in 1982. Article 33

<sup>53</sup> Constitution of People’s Republic of China, Article 48

<sup>54</sup> The Law on Protection of Rights and Interests of Women, enacted in 1992 and amended in 2005. Article 22

<sup>55</sup> The Employment Promotion Law, enacted in 2007 and entered into force from 1 January 2008. Article 27

Development Goals and other important United Nations conference outcome documents.<sup>56</sup> The most influential administrative policy is the Outline for the Development of Chinese Women, which was started from 1995 after the World Conference on Women in Beijing and designed to guide China's gender equality. Until now, the Outline has experienced three stages: the first one was from 1995 to 2000, the second one was from 2001 to 2010, and now the third one is from 2011 to 2020. It is a national program of action aiming at promoting development on gender equality, and 'the CEDAW and its general recommendations have provided valuable input for the formulation and implementation of the Outline'.<sup>57</sup> The current Outline lists major goals and policies and measures in seven fields, and the third one is the Women and Economy, which includes eight goals containing eliminating gender discrimination in employment, and twelve concrete measures to realize these goals. In 2014, the mid-term evaluation of the implementation of the Outline was conducted by the National Bureau of Statistics. The statistics in the report shows that women's health, education, employment, social security have been improved constantly, but disparities are still significant.<sup>58</sup>

#### 4.1.4 Assessment

From those above-mentioned legislations, it can be seen that there is no special law regarding to women's equality. The Law on Protection of Rights and Interests of Women as a special law in protecting women's rights in all aspects, combining with some provisions in other laws, constitute the legal system of protecting women's working rights. Although these laws provide protection on women's rights to some extent, the protection is not sufficient and effective. First, most of these provisions relating to women's equal employment rights are declaratory and general, lacking of operation. There is no definition about the discrimination, no regulations about how to judge an action as a discrimination or not, and no words about distribution in burden of proof. Second, 'it lacks legal remedies to address discriminatory acts and legal liability of those who violate the anti-discrimination laws.'<sup>59</sup> Both of these undermine the role of law in tackling employment discrimination. Third, there are some

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<sup>56</sup> Supra Note 50. para 21

<sup>57</sup> Supra Note 50. para 29

<sup>58</sup> The National Bureau of Statistics of China, *Statistic Report of the Outline for the Development of Chinese Women*, conducted in 2014. [http://www.stats.gov.cn/TJSJ/zxfb/201511/t20151127\\_1282257.html](http://www.stats.gov.cn/TJSJ/zxfb/201511/t20151127_1282257.html) (visited on 16 April, 2016)

<sup>59</sup> Yuwen Li, *An Analysis of Employment Discrimination in China's Economic and Social Transition*, in *Taking employment discrimination seriously: Chinese and European perspectives*, eds. Yuwen Li and Jenny Goldschmidt (The Netherlands: Netherlands Institute of Human Rights, School of Law, Utrecht University, 2009), p24



discriminatory provisions in administrative regulations or local regulations, such as the different retirement age between men and women. ‘These discriminatory provisions reflected in regulations issued by the government bodies constitute legislative discrimination, which is more serious than individual employers’ discriminatory practices.’<sup>60</sup> Due to the nature of legislation, legislative discrimination would violate the right to equal employment for a large group of people, and legitimizes relevant prejudicial employment practices. Therefore, the task with top priority for an effective legal system in protection women’s right to equal employment in China is the enactment of sophisticated laws.

## **4.2 Enforcement mechanisms in providing protection on employment discrimination against women and brief assessment**

There are several enforcement mechanisms on protecting women’s equality in employment, which is not only contained in provisions of substantive laws, such as the Law on Protection of Rights and Interests of Women, the Labor Law and the Employment Promotion Law, but also stipulated in special procedural laws, for example the Law on Mediation and Arbitration of Labor Disputes and Regulations on Labor Security Supervision. The functions of these mechanisms are different, and they act supplementary to each other in providing protection on women’s rights from various aspects.

### **4.2.1 The National Working Committee on Children and Women and the All-China Women’s Federation**

The National Working Committee on Children and Women under the State Council (NWCCW) aims at implementing the basic state policy of the equality between men and women, adhering to the principle of first call for children and devoting to women and children’s survival, protection and development.<sup>61</sup> The main function of NWCCW is to coordinate and promote relevant government departments to strengthen legislation and work out measures on protection of women’s rights, implement the programs for women, and push relevant government departments to seriously implement the CEDAW,<sup>62</sup> all of which are limited to promotion and supervision, without providing remedy on women victims. Although every local government has set up its own committee on children and women, which does not have specific department responsible for the equality for women in

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<sup>60</sup> Supra Note 59. p31

<sup>61</sup> The National Working Committee on Children and Women under the State Council, <http://www.nwccw.gov.cn/html/75/n-139975.html> (visited on 15 April, 2016)

<sup>62</sup> Ibid

employment, the affairs regarding to the discrimination against women in employment cannot be treated by the committee properly.

The All-China Women's Federation (ACWF) is an official organization aiming at promoting governmental policies on women, and protecting women's rights, including their rights in employment. Based on the Law on Protection of Rights and Interests of Women, when a woman's rights are infringed upon, she may file a complaint with a women's organization, mainly the Women's Federation, which shall request the relevant department or entity to investigate and deal with the case. The relevant department or entity should do so in accordance with the law and give the woman a reply.<sup>63</sup> Besides, the Women's Federation shall support the women victims who need help in litigation.<sup>64</sup> However, since ACWF is classified as a non-governmental organization, it is lack of the forcible execution power, and only supplies help in the form of recommendations, coordination, advocacy and appeals etc. Therefore, the ACWF cannot provide effective measures in protecting women's rights and promoting the equality between men and women adequately.

#### 4.2.2 The labor supervision mechanism

The Labor Administration Departments have the responsibility to supervise and inspect the implementation of labor laws, rules and regulations, and have the power to stop any acts countering to labor laws, rules and regulations and order the rectification thereof.<sup>65</sup> The State Council adopted a special regulation to regulate labor security supervision in 2004, namely the Regulation on Labor Security Supervision. This Regulation formulates the scope of labor security supervision over nine particulars. Although there is no definite expression on discrimination against women in employment, the particulars in labor contract, special protection on women, payment and working time may relate to employment discrimination against women. The Employment Promotion Law also entrusts the Labor Administrative Departments the responsibility to supervise and inspect the implementation of this law and deal with violations.<sup>66</sup> Employment discrimination against women is definitely prohibited in the Employment Promotion Law, thus it lies in the scope of labor supervision.

According to the Regulation on Labor Security Supervision, 'the labor security administration of the State Council shall be in charge of the labor security supervision work of the whole country, and the labor security administration of a local people's government at

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<sup>63</sup> The Law on Protection of Rights and Interests of Women, Article 53

<sup>64</sup> Ibid, Article 54

<sup>65</sup> The Labor Law, Article 85

<sup>66</sup> The Employment Promotion Law, Article 60

the county level or at any level above shall be in charge of the labor security supervision work within its own administrative area.<sup>67</sup> And every labor administrative department at the county level or above has established its own Labor Security Supervision Office, with full-time labor inspectors and part-time assistants, whose functions include ‘publicizing labor laws, regulations and rules, inspecting employers’ obedience of such laws, dealing with individual complaints and correcting these violating acts.’<sup>68</sup>

By the end of 2013, the number of Labor Security Supervision institutions was 3291 all over the country, with 25,000 full-time inspectors.<sup>69</sup> Nevertheless, in practice, the Labor Supervision mechanism does not provide effective redress to victims facing discrimination in workplace. Although it can be deduced that the scope of Labor Supervision should cover the employment discrimination, it is not definitely formulated in relevant laws. Thus the Labor Security Supervision Office does not take employment discrimination seriously, even worse rejecting complaints from discrimination victims.

#### 4.2.3 Mediation and arbitration of labor disputes

Laws and regulations regarding to labor relationship provide several mechanisms for women to seek redress when facing discrimination in workplace, including negotiation with employers, mediation and arbitration from certain bodies and judicial procedure in courts. According to these laws, the victims shall file an application to the labor dispute arbitration committee before he or she brings a lawsuit to the courts. There are special laws and provisions regulating the institutions and procedures of labor disputes, such as the Law on Mediation and Arbitration of Labor Disputes, adopted by the National People’s Congress in 2007, and the Provisions on the Negotiation and Mediation of Enterprise Labor Disputes, enacted by the Ministry of Human Resources and Social Security in 2011. The former formulates the scope of labor disputes over six particulars, including ‘confirmation of labor relations, labor contracts, removal and dismissal, working hours and labor protection, remuneration, and other disputes prescribed by laws and regulations.’<sup>70</sup> Although there is no definite expression on discrimination against women in employment, the particulars in labor contract, removal and dismissal, remuneration and working time may relate to employment discrimination against women. Consequently, employment discrimination against women

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<sup>67</sup> The Regulation on Labor Security Supervision, enacted in 2004. Article 3

<sup>68</sup> Ibid, Article 10

<sup>69</sup> Statistical Report on Human Resources and Social Security Development in China, 2013. [http://www.mohrss.gov.cn/SYrlzyhshbzb/zwgk/szrs/tjgb/201405/t20140529\\_131147.html](http://www.mohrss.gov.cn/SYrlzyhshbzb/zwgk/szrs/tjgb/201405/t20140529_131147.html) (visited on 16 April, 2016)

<sup>70</sup> Law on Mediation and Arbitration of Labor Disputes, entered into force from 1 May, 2008. Article 2

belongs to the labor disputes that can be deal with by negotiation, mediation or arbitration according to these laws and regulations.

(I) Negotiation. ‘Where a labor disputes arises, a labor may have a consultation with the employing unit or request the labor union or a third party to have a consultation with the employing unit in order to reach a settlement agreement.’<sup>71</sup> In other words, if a woman considers she has been discriminated in the workplace, she can negotiate with the employer by herself or ask support from the labor union or a third party and reach a friendly settlement.

(II) Mediation. ‘When a labor disputes arises, if a party does not desire a negotiation, the parties fail to settle the dispute through negotiation, or a party fails to perform a settlement agreement within the agreed time limit, any party may apply to a mediation institution for mediation.’<sup>72</sup> Currently, there are three kinds of mediation institutions: ‘labor dispute mediation committee of an enterprise, basic-level people’s mediation institutes established in accordance with the law, and other institutes with labor dispute mediation function established in towns and districts.’<sup>73</sup> According to the Provisions on the Negotiation and Mediation of Enterprise Labor Disputes, large and medium-sized enterprises should set up its labor disputes mediation committee, and small and micro-sized enterprises may establish its labor disputes mediation committee. The mediation committee of an enterprise shall comprise enterprise representatives and employee representatives, who shall be labor union members or recommended by all employees. In the mediation, the statements of facts and reasons by both parties should be fully heard and the parties shall be guided patiently by a mediator so as to help them reach an agreement. A mediation agreement shall bind and be executed by both parties. Where a mediation agreement is not reached within 15 days after a labor dispute mediation institution received the application, or one party fails to execute the mediation agreement, the other party may apply for arbitration.

(III) Arbitration. Where a labor dispute arises, the parties concerned may apply for mediation or arbitration. This means that negotiation and mediation are not necessary processes before arbitration, and victims can directly apply to a labor dispute arbitration commission for arbitration. The labor dispute arbitration commission is established by the government on the principles of reasonable layout and adaptation to the practical needs, but not level by level

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<sup>71</sup> Law on Mediation and Arbitration of Labor Disputes, Article 4

<sup>72</sup> Provisions on the Negotiation and Mediation of Enterprise Labor Disputes, enacted in 2011. Article 12

<sup>73</sup> Law on Mediation and Arbitration of Labor Disputes, Article 10

according to administrative divisions.<sup>74</sup> The commission shall comprise the representatives of the labor administrative department, representatives of labor union and representatives of enterprises, and the arbitrator should have a law background.

To apply for arbitration, an applicant shall submit a written application within one year when he or she knows or should know that its right has been violated. Compared with the time limitation of sixty days in the past, the extent of time limitation in current procedure provides involved parties more chances to seek relief of their working rights. The jurisdiction and procedure of labor dispute in arbitration is alike those in judicial procedure. After hearing and debate, the arbitral tribunal should conduct mediation before rendering an award. Where mediation fails or one party regrets before a mediation record is served, the arbitral tribunal shall timely render an award.<sup>75</sup> The mediation record and arbitral award are binding on parties, and for two types of labor disputes, i.e. a dispute over the recovery of labor remunerations, medical expenses for a work-related injury, economic indemnity, or compensation, in an amount not exceeding the 12 month local monthly minimum wage level, and a dispute over the working hours, breaks and vacations, social insurance, etc., arising from the execution of state labor standards, the arbitral award shall be final.<sup>76</sup> This practice makes the labor disputes arbitration process more efficient. A party shall execute an effective mediation record or arbitral award according to the prescribed period of time, and if not, the other party may apply for execution to the people's court according to the relevant provisions of the Civil Procedure Law.

Due to the convenience and no fees in the mediation and arbitration of labor disputes, the labor disputes mediation committee and arbitration commission have dealt with a large quantity of labor disputes, including employment discrimination against women. In 2014, the labor dispute mediation institutions and arbitration commissions all over the country handled 1,559,000 labor disputes, and concluded 1,362,000 cases. Nevertheless, until the end of 2014, there are still 36,000 cases waiting for arbitration.<sup>77</sup> Thus, the heavy burden of the caseload may be the greatest challenge to the labor dispute arbitration mechanism currently.

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<sup>74</sup> Law on Mediation and Arbitration of Labor Disputes, Article 17

<sup>75</sup> *Ibid*, Article 42

<sup>76</sup> *Ibid*, Article 47

<sup>77</sup> Statistical Report on Human Resources and Social Security Development in China, 2014.

[http://www.mohrss.gov.cn/SYrlzyhshbzb/dongtaixinwen/buneyaowen/201505/t20150528\\_162040.html](http://www.mohrss.gov.cn/SYrlzyhshbzb/dongtaixinwen/buneyaowen/201505/t20150528_162040.html) (visited on 16 April, 2016)

#### 4.2.4 Lodge a lawsuit in the People's Court

Before the adoption of the Employment Promotion Law, discriminations against women during the existence of working relations, such as discrimination in the contract, payments, and dismissal, are considered as labor disputes, which should be first dealt with by arbitration before brought to the court. In other words, for discrimination cases happened during the working relations, arbitration is the necessary process before judicial review. The other discriminations, for example discrimination occurring in the recruiting process, could only be considered as violations of human dignity, and victims can seek relief through the Civil Law.

Then there has been a great improvement in procedure for employment discrimination cases since the adoption of the Employment Promotion Law in 2008, which states that 'the worker may lodge a lawsuit to the People's Court against those who commit employment discrimination in violation of the provisions in this law'<sup>78</sup>. Employment discriminations against women formulated in this law only include two aspects: recruitment discrimination, and limitation on marriage or giving birth in the labor contract. This means that only discriminations involved in these two situations can be sued to the court directly. For other types of employment discriminations against women, however, arbitration is still the necessary process before the litigation.

However, there are still two disadvantages for victims in the litigation procedure of discrimination cases to realize the protection of their equal rights fully. One lies in the burden of proof. Since there is no special procedural regulation on labor cases, the procedure for discrimination case should be in accordance with the Civil Procedure Law, which states that 'a party should provide evidence in support of his allegation'<sup>79</sup>. Due to the weak status for employee in labor relationship, it is hard for them to provide evidence to prove the existence of discrimination. But according to the principles in the international human rights law, in discrimination cases, victims only need to provide preliminary evidence that can prove they are discriminated, and then the burden of proof shall be transferred to the employers.<sup>80</sup> The other one is the limitation on relief measures. There are very few provisions in above-mentioned labor laws and regulations regarding to relief measures for victims in discrimination cases, and only one measure is provided, i.e. compensation. Nevertheless, an effective protection system should be consisted of all necessary relief measures, such as

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<sup>78</sup> The Employment Promotion Law, Article 62

<sup>79</sup> Civil Procedure Law, enacted in 1991 and latest amended in 2012. Article 64

<sup>80</sup> Haina Lu, *National Protection on Employment Equality in China: From the viewpoint of international law* (Beijing: China Law Press, 2015), p126

stopping infringement, making apology, recovery of position, and other reasonable demands from the victim.

### **4.3 Case Study- Guo Jing V. Hangzhou Xihu District Dongfang Cooking Training School**

In order to show how employment discrimination case is handled in the court, a typical case is introduced.

#### **4.3.1 Fact of the case**

On 24 June 2014, the plaintiff named Guo Jing was looking for a job and she found an advertisement in the recruitment website recruiting two positions on Scheme Planner from the defendant Hangzhou Xihu District Dongfang Cooking Training School (Dongfang Cooking School hereinafter). The plaintiff applied for this position but did not receive any reply. Then the plaintiff made a call to the Dongfang Cooking School to ask about her application. The staff in the Dongfang Cooking School replied that the two Scheme Planner positions only needed men since they should travel a lot. The plaintiff said she had the capability for this job and hoped the school to think about her. But the defendant refused her request. The plaintiff lodged a lawsuit to the Hangzhou Xihu District People's Court.

#### **4.3.2 Core arguments**

In this case, the equality in recruitment for women and men is mainly considered. Article 3 of the Labor Law formulates the principle for women to be employed on an equal basis, and Article 27 of the Employment Promotion Law states that: 'women should enjoy equal working rights as men. When an employer recruits employees, it shall not refuse to recruit women or increase the thresholds for recruitment of women under the excuse of gender.' The core argument of this case is if the defendant requiring men for the Scheme Planner positions violates the principle of gender equality in recruitment. The court argued that considering the content of these positions mainly in scheme planning, the defendant did not prove these jobs belonging to those forbidden occupations for women regulated in law and regulation. According to the recruitment advertisement, women can totally be competent to the positions. Nevertheless, the defendant directly refused the application from the plaintiff on the basis of her gender, rather than her competence. Consequently, the behavior of the defendant infringed the equal working rights of the plaintiff, and should be considered as employment discrimination.

### 4.3.3 Judgement of the Court

According to Article 3, 12, 13 of the Labor Law, Article 3, 27, 62 of the Employment Promotion Law, and Article 22 of the Tort Law, the court considered that the defendant infringed the equal employment rights of the plaintiff and constituted employment discrimination against women. Then the plaintiff should be awarded 2000 RMB compensation for her mental damage.

### 4.3.4 Assessment

This is a successful case for women facing employment discrimination who obtains redress. In practice, a large quantity of women is rejected in the recruitment process because of their gender, and most of them did not bring the case into litigation. The reason for this is that not only litigation needs much time and energy and ‘women are often unable to afford the costs of a lawyer or a court fees’<sup>81</sup>, but also the judgement could not provide effective relief. Like the judgement in this case, the plaintiff was only awarded 2000 RMB for compensation, which is lower than the money spent in the litigation. Also, the punishment is too low to stop employers committing employment discrimination.

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<sup>81</sup> Supra Note 20, p307



## 5. Experience of anti-discrimination in Employment from Norway

As mentioned above, anti-discrimination legal system in Norway consists of relatively mature legislations and effective implementation mechanisms, as well as special and independent institutions, the Equality and Anti-discrimination Ombud and the Tribunal, monitoring and ensuring the compliance with the anti-discrimination legislations.

### 5.1 Legislation

#### 5.1.1 International obligations

Norway has ratified most of the core international human rights conventions, including the Convention on the Eliminating All Forms of Discriminations against Women on 21 May, 1981 with entry into effect on 3 September of the same year, and its Optional Protocol on 5 March 2002. After a long-term public debate on the incorporation of human rights conventions into Norwegian law, ‘the CEDAW Convention and its Optional Protocol were incorporated into the Norwegian legislation of Gender Equality Act on 10 June 2005.’<sup>82</sup> Especially, ‘the Equality and Anti-discrimination Ombud is charged with monitoring that Norwegian law and administrative practice are in accordance with Norway’s obligations pursuant to the Convention.’<sup>83</sup> Finally, ‘since June 2009, the CEDAW and its Optional Protocol have been incorporated into the Norwegian Human Rights Act and given precedence when in conflict with domestic law.’<sup>84</sup>

Under Article 18 of CEDAW, Norway has submitted state reports to the Committee on the Elimination of Discrimination against Women periodically. The CEDAW convention imposes obligations on States parties to ‘take all appropriate measures to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.’<sup>85</sup> However, ‘the CEDAW has seldom been invoked before a Norwegian Court.’<sup>86</sup>

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<sup>82</sup> Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Seven periodic report of States parties, Norway, CEDAW/C/NOR/7, General 26 Mar. 2007.

<sup>83</sup> Ibid

<sup>84</sup> Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Eighth periodic report of States parties, Norway, CEDAW/C/NOR/8, General 22 Nov. 2010.

<sup>85</sup> The CEDAW, Article 5

<sup>86</sup> Supra Note 82

Besides, Norway also ratified three important ILO Conventions concerning the matter of gender equality, including No.111 Discrimination Convention and No.100 Equal Remuneration Convention on 24 September 1959, and No.156 Workers with Family Responsibilities Convention on 22 June 1982.

### 5.1.2 European Union Directives implemented in Norway

‘It is presumed that Norwegian anti-discrimination legislation is in line with the EU acquis, although the non-discrimination directives are not incorporated in the European Economic Area Agreement (EEA). Moreover, the Norway government has committed to having as high or higher standards in its anti-discrimination work as the requirements of the EU’.<sup>87</sup>

The EU non-discrimination directive 2000/43 implements the principle of equal treatment to people irrespective of racial or ethnic origin, and directive 2000/78 establishes a general framework for equal treatment in employment and occupation. The Directive 2000/43 is implemented by the Norwegian Act relating to a prohibition against discrimination on the basis of ethnicity (covering ethnicity, national origin, descent, skin color, and language), religion and belief (the Anti-Discrimination Act - ADA), and the Directive 2000/78 is implemented through Chapter 13 of the Working Environment Act (WEA) prohibition against discrimination based on political views, membership of a trade union, sexual orientation, disability or age, and in the Anti-discrimination and Accessibility Act (AAA) covering disability, as well as by the Sexual Orientation Anti-Discrimination Act (SOA). However, since ‘the EU non-discrimination directives (2000/43 and 2000/78) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated.’<sup>88</sup>

Regarding to gender equality, the EU Directive 2004/113 implements the principle of equal treatment between men and women in access to goods and services, and the Directive 2006/54 implements equal opportunities and equal treatment for men and women in terms of employment and occupation. Both of these directives are implemented through the EEA Agreement and covered in Norwegian national legislation mainly through the Gender Equality Act (GEA).<sup>89</sup>

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<sup>87</sup> Country Report Norway 2013 on measures to combat discrimination Directives 2000/43/EC and 2000/78/EC By Else Leona McClimans, European network of legal experts in the non-discrimination field. p9

<sup>88</sup> Ibid, p10

<sup>89</sup> Susanne Burri and Hanneke van Eijken, *Gender Equality Law in 33 European Countries: How are EU rules transposed into national law?* European Commission Directorate-General for Justice, February 2014. p178

What's more, in order to ensure the implementation of Directive 2002/73/EC of the European Parliament and of the Council satisfactorily, and to adhere to the principle of equal treatment for men and women regarding to employment, vocational training and promotion, and working conditions<sup>90</sup>, Norway amended the Gender Equality Act in 2005.

### 5.1.3 Domestic Anti-discrimination Legislation

Norway belongs to the Civilian legal system, and statutory provisions and case law are the main sources of law invoked in the Norwegian courts and administrative agencies. As the highest source of national law, the Norwegian Constitution has no provisions regarding discrimination. However, 'in December 2011, a Constitutional Committee forwarded a proposal for amendments in the Constitution to the Parliament to be discussed and it is passed in spring 2014. The proposal formulates non-discrimination in a very general manner.'<sup>91</sup> Besides, several provisions regarding human rights have been added in the Constitution over last decades, which also provide the foundation of anti-discrimination.

The Human Rights Act aiming at strengthening the status of human rights in Norwegian legal system incorporated three international conventions to Norwegian law, i.e. ECHR, ICESCR, ICCPR and their Protocols. 'The provisions of these conventions and protocols shall take precedence over any other legislative provisions that conflict with them.'<sup>92</sup> In other words, if other Norwegian legislation conflicts with these conventions incorporated in the Human Rights Act, the provision of these conventions will take precedence over domestic law.

The framework of Norwegian legislation on anti-discrimination contains mainly five acts, i.e. the Gender Equality Act (GEA), the Anti-Discrimination Act (ADA), the Anti-discrimination and Accessibility Act (AAA), and the Working Environment Act (WEA), and several specialized legislation (the seamen's act and housing acts). These acts were revised and aligned on 21 June 2013 on the enactment of the Sexual Orientation Anti-Discrimination Act (SOA), and entered into force on 1 January 2014.

The Gender Equality Act (GEA) came into force in 1978, and has been amended several times, most recently in 2010. It prohibits discrimination based on gender in all sectors of society, including direct and indirect differential treatment without lawful basis.

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<sup>90</sup> Supra Note 82

<sup>91</sup> Supra Note 87

<sup>92</sup> The Human Rights Act of Norway, Section 3.

The Anti-Discrimination Act (ADA) was enacted on 21 June 2013 and entered into force from 1 January 2014, replacing the Anti-Discrimination Act of 3 June 2005 No.33 relating to a prohibition against the discrimination on the basis of ethnicity and religion, etc.. The purpose of ADA is to promote equality, ensure equal opportunities and rights, and prohibit discrimination on the basis of ethnicity, religion, belief, national origin, descent, skin color and language.<sup>93</sup> It is noteworthy that the ADA applies in all sectors of society with clear exception for family life and other purely personal relationships.<sup>94</sup> Besides, ADA stipulates supplementary rules relating to employment relationships.<sup>95</sup>

The Anti-discrimination and Accessibility Act (AAA) was enacted on 21 June 2013 and entered into force from 1 January 2014, replacing the previous Act of 20 June 2008 No. 42 relating to a prohibition against discrimination on the basis of disability. The purpose of AAA is to promote equality, ensure equal opportunities and rights, and prohibit discriminations on the basis of disabilities. Similar to the ADA, the AAA applies ‘in all sectors of society with the exception of family life and other purely personal relationships.’<sup>96</sup> The AAA prohibits discrimination on the basis of disability, including actual, assumed, former or future disability, as well as to people having connections with disabled persons.<sup>97</sup> Besides, the AAA sets additional obligations to promote universal design, in order to ensure general and individual accessibility and accommodation.<sup>98</sup> A breach of these obligations is also regarded as discrimination.

The Working Environment Act (WEA) was enacted on 17 June 2005, and has amended several times, most recently on 21 June 2013. It entered into force on 1 January 2014. The WEA prohibits ‘direct and indirect discrimination on the basis of political views, membership of a trade union, sexual orientation, disability or age.’<sup>99</sup> All the aspects of employment are covered by the WEA, including appointment, relocation, promotion, working conditions, termination, recruitment, etc. Besides, the WEA also applies correspondingly to an employee who works in one-man enterprises and on a temporary basis in case of discrimination<sup>100</sup>. The

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<sup>93</sup> The Anti-Discrimination Act of Norway, section 6.

<sup>94</sup> Ibid, section 2.

<sup>95</sup> Ibid, chapter 4.

<sup>96</sup> The Anti-discrimination and Accessibility Act of Norway, section 2.

<sup>97</sup> Ibid, section 5(1).

<sup>98</sup> Ibid, chapter 3.

<sup>99</sup> The Working Environment Act of Norway, section 13-1.

<sup>100</sup> Ibid, section 13-2.

WEA applies to undertakings that engaged employees, unless otherwise explicitly provided by the Act<sup>101</sup>, i.e. section 1-2(2) and section 13-3.

The Sexual Orientation Anti-Discrimination Act (SOA) was enacted on 21 June 2013, and entered into force from 1 January 2014, aiming at ‘promoting equality irrespective of sexual orientation, gender identity and gender expression.’<sup>102</sup> The enactment of SOA means that the protection against discrimination based on gender identity in Norwegian law has been expanded from previous coverage in working life only to all the sectors of society with exception of family life and other purely personal relationships.<sup>103</sup>

Another law that must be mentioned is the Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal (The Anti-Discrimination Ombud Act), which ‘prescribes rules regarding the organization and activities of the Equality and Anti-Discrimination Ombud (the Ombud) and the Equality and Anti-discrimination Tribunal (the Tribunal).’<sup>104</sup> The Ombud and the Tribunal are special institutions being set up to assess cases of discrimination. Cases alleging discrimination can be brought before an ordinary court, the labor court or be brought before these two special institutions. The Anti-Discrimination Ombud Act also formulates the relationships for the Ombud and the Tribunal to the Labor Disputes Court.

## **5.2 Enforcement institutions and mechanisms in providing protection against discrimination**

There are mainly three institutions having the power to hear labor cases: (i) the Dispute Resolution Board (DRB); (ii) the Equality and Anti-discrimination Ombud and the Tribunal (the Ombud and the Tribunal); (iii) courts, including ordinary courts and special courts. The DRB was established by the WEA, and it deals with disputes concerning working conditions, such as working hours (section 10-2), overtime (section 10-6), entitlement to leave of absence (section 12), and preferential rights of part-time employees (section 14-3).<sup>105</sup> Since section 13 prohibition of discrimination of the WEA is not included in the scope of disputes that can be brought to the DRB, this thesis will not introduce the operation of DRB in detail. It will focus on the Ombud and the Tribunal, as well as the ordinary courts. ‘Cases alleging

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<sup>101</sup> The Working Environment Act of Norway, section 1-2(1)

<sup>102</sup> The Sexual Orientation Anti-Discrimination Act of Norway, section 1

<sup>103</sup> Ibid, section 2

<sup>104</sup> The Anti-Discrimination Ombud Act of Norway, section 1

<sup>105</sup> The Working Environment Act of Norway, section 17-2

instances of discrimination may either be brought before an ordinary court or be brought to the national machinery: the Equality Ombud and the Equality Tribunal.<sup>106</sup>

### 5.2.1 The Equality and Anti-discrimination Ombud and the Tribunal

The Equality and Anti-discrimination Ombud and the Tribunal were set up in 2006, replacing the responsibilities of the previous Gender Equality Ombud and the Gender Equality Board of Appeals. The Ombud and the Tribunal are independent public administrative agencies administratively subordinated to the King and the Ministry of Children, Equality and Social Inclusion. They are professionally independent, and neither the King nor the Ministry may give instructions or reverse the decisions of the Ombud and the Tribunal in individual cases.<sup>107</sup> The organizations and activities are regulated by a statute of the Anti-Discrimination Ombud Act, which came into force from 1 January 2006.

The responsibility of the Ombud and the Tribunal is to monitor and contribute to the implementation of the equality and anti-discrimination Acts including the GEA, ADA, AAA, WEA, and so on. Besides, the Ombud should monitor Norwegian law and administrative practice in accordance with Norway's obligations pursuant to the international conventions such as CEDAW, CERD and CRPD.<sup>108</sup> Therefore, the Ombud promotes genuine equality not only on working life but also in all the areas of society, not only in gender equality but also in ethnicity, national origin, descent, skin color, language, religion and belief.

Anyone who believes they have been exposed to discrimination can receive advice and guidance from the Ombud. If this is not successful, the Ombud can treat the matter as a complaint case.<sup>109</sup> The Ombud will investigate the complaint by requesting information from both parties, and then carry out an objective assessment and at last give an opinion about whether or not discrimination has occurred. Furthermore, 'the Ombud will seek to secure the parties' voluntary compliance with its opinion. If a voluntary arrangement cannot be reached, the Ombud may bring the case before the Tribunal.'<sup>110</sup> In most cases, 'the employers follow the Ombud's recommendation and obey her suggestion for redress in order to avoid the case

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<sup>106</sup> Else Leona McClimans, *Executive Summary of Country Report Norway 2013 on measures to combat discrimination*, p5

<sup>107</sup> The Anti-Discrimination Ombud Act of Norway, section 2 and section 5.

<sup>108</sup> Ibid, section 1.

<sup>109</sup> LDO, The Equality and anti-discrimination Ombud, <http://www.ldo.no/en/nyheiter-og-fag/om-ombudet/arbeidet-vart/> (visited on 28 March, 2016)

<sup>110</sup> The Anti-Discrimination Ombud Act of Norway, section 3.

being taken to the Tribunal or court.’<sup>111</sup> Among the cases taken before the Ombud, ‘issues related to gender equality still dominate the complaints, particularly issues regarding employment discrimination based on pregnancy.’<sup>112</sup> ‘In 2013, the Ombud received 1448 inquiries in total. Of these 187 were registered as complaint-based case work. Of these 187 cases, 15 were related to age, 41 to ethnicity, 4 to language, 68 to disability, 43 to gender, 5 to religion, 4 to sexual orientation and 7 related to other.’<sup>113</sup> As law forcer, in addition to issue opinions on complaints, the Ombud also provides advice and guidance with regard to the legislation within its mandate.

‘The statements of the Ombud are not legally binding and may not be subject of enforcement.’<sup>114</sup> As the appeal body of the Ombud, if the parties of the complaints are not satisfied with the Ombud’s decision, they may bring the cases to the Equality Tribunal. Even ‘a person who has brought the case before the Ombud without being a party’<sup>115</sup> can also bring the case to the Tribunal. Besides, ‘the Tribunal may require the Ombud to bring specific cases that have been dealt with by the Ombud before the Tribunal.’<sup>116</sup> But the third situation has never taken place. Being an independent public agency, ‘the Tribunal consists of a chairperson, a deputy chairperson, six other members, and other four deputy members, all of whom are appointed by the King for a term of four years.’<sup>117</sup> In order to keep professional, the chairperson and deputy chairperson should fulfil the requirements prescribed for judges, and most members are of legal professional.

Similar to the judicial procedure, the procedure of the Tribunal is adversarial, normally consisting of a written procedure and an oral hearing from both parties. After the hearing procedure, the Tribunal will give a statement on whether or not there has been a violation of relevant Acts, and may order an act to be stopped or remedied or other measures that are necessary to ensure the discriminations cease and to prevent repetition. Meanwhile, in order to ensure the implementation of such orders, the Tribunal may impose a coercive fine, which usually runs until the orders have been complied with. The grounds for an administrative decision should be stated by the Tribunal at the time of the decision being made. The

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<sup>111</sup> Country Report, Non-discrimination, Norway 2015. European network of legal experts in gender equality and non-discrimination. p84

<sup>112</sup> Supra Note 82. p11

<sup>113</sup> Supra Note, p86. These statistics are cited from the Equality Ombud’s annual report for 2013 (in Norwegian) at [http://www.ldo.no/globalassets/brosjyrer-handbokerrapporter/rapporter\\_analyser/2013arsrapport.pdf](http://www.ldo.no/globalassets/brosjyrer-handbokerrapporter/rapporter_analyser/2013arsrapport.pdf) (visited on 23 March, 2016)

<sup>114</sup> Supra Note 106. p6

<sup>115</sup> The Anti-Discrimination Ombud Act of Norway, section 6

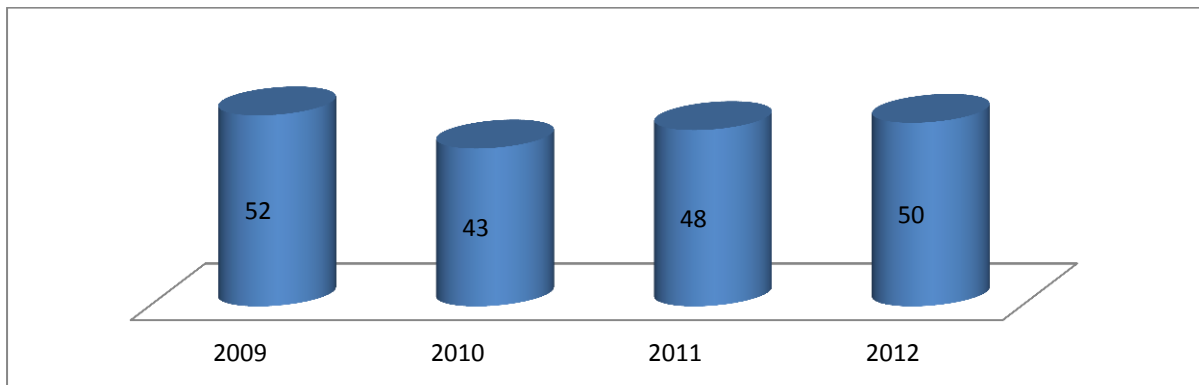
<sup>116</sup> Ibid

<sup>117</sup> Ibid

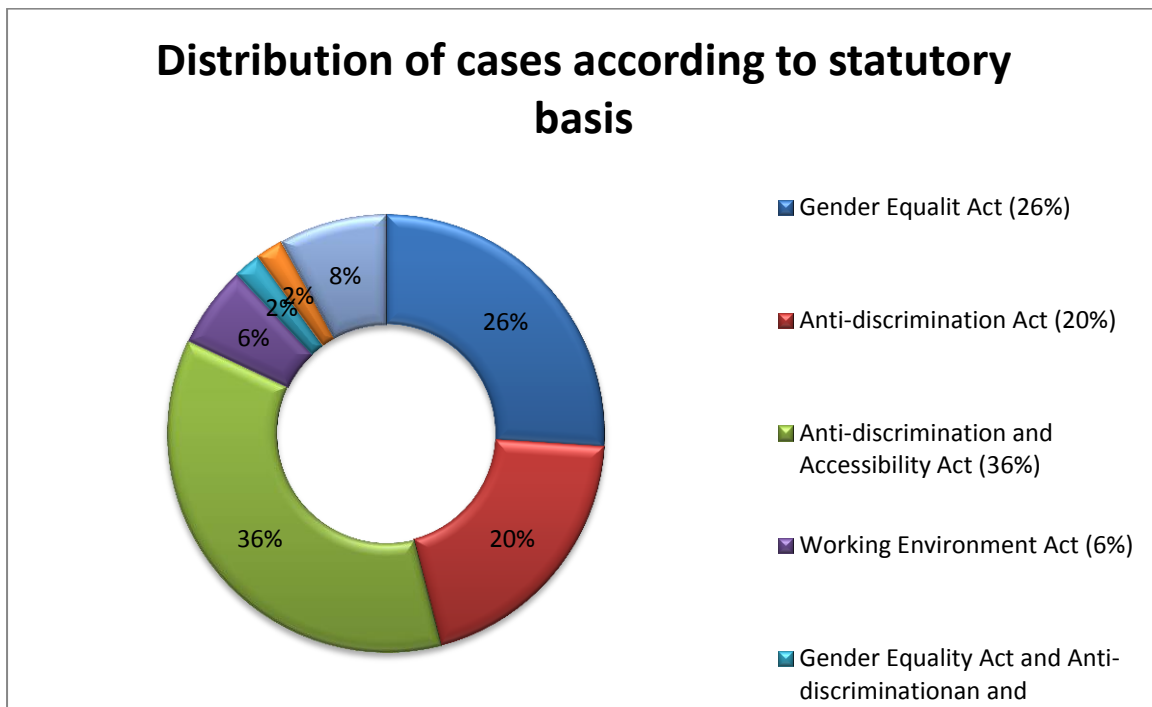
decisions of the Tribunal are legally binding and are final administrative decisions that cannot be reexamined by other administrative agencies. However, ‘the decisions can be brought before the Courts for full examination. A legal action must be brought within three months after notification of the decision from the Tribunal has been received.’<sup>118</sup>

There are several diagrams which give an overview for the work of the Tribunal.

The following diagram shows the number of cases considered by the Tribunal per year during the period 2009-2012.<sup>119</sup>



The following diagram shows the distribution of cases heard by the Tribunal in 2012, distributed according to statutory basis, in percentages.<sup>120</sup>



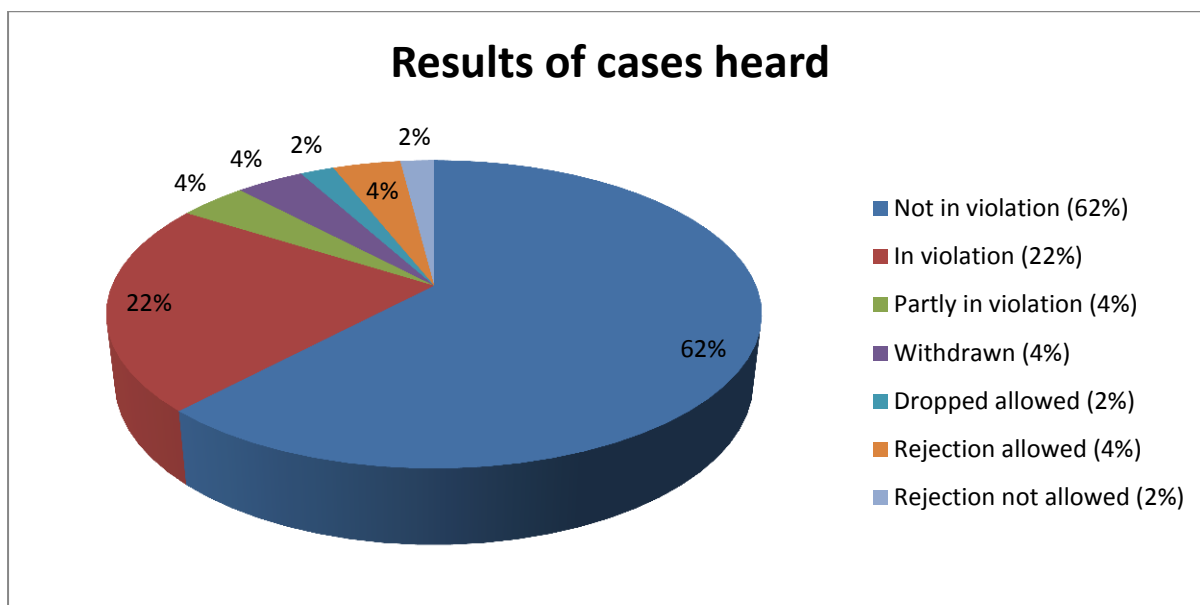
<sup>118</sup> The Equality and Anti-discrimination Tribunal, *Annual Report for 2012*, p4

<sup>119</sup> Ibid, p11

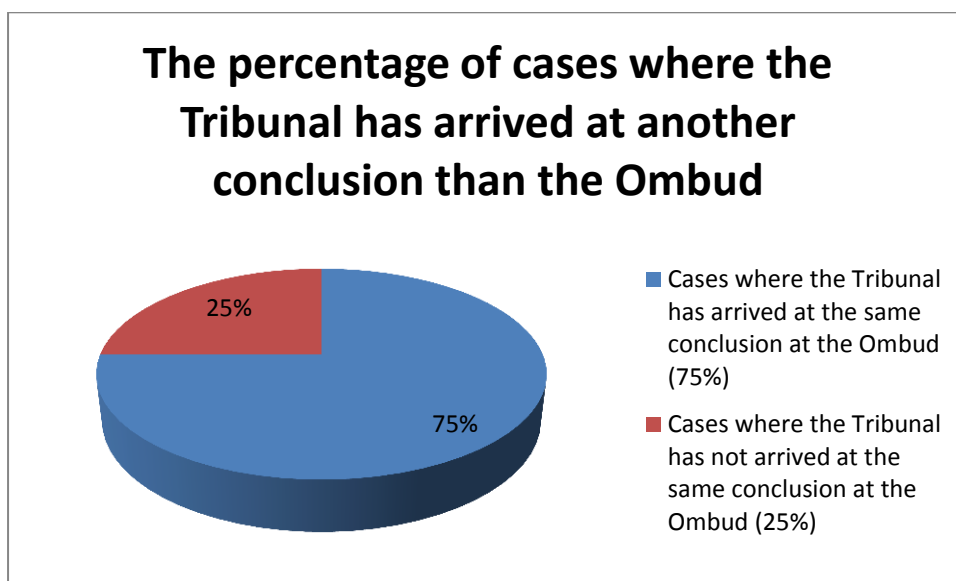
<sup>120</sup> Ibid, p12



The following diagram shows the results of cases heard in percentages.<sup>121</sup>



The diagram below shows the percentage of cases where the Tribunal has arrived at another conclusion rather than the Ombud.<sup>122</sup>



As the alternative dispute mechanisms in addressing discrimination cases outside the judicial system, the Ombud and the Tribunal are free and low-threshold complaint system. ‘More than 95% of all discrimination cases are handled by the Equality Ombud and the Tribunal.’<sup>123</sup> However, neither the Equality Ombud nor the Tribunal has the power according to the law to

<sup>121</sup> The Equality and Anti-discrimination Tribunal, *Annual Report for 2012*, p12

<sup>122</sup> Ibid, p13

<sup>123</sup> Supra Note 111, p9

award damages or financial compensation. Thus, if the party does not pay compensation voluntarily, the victim can only bring the case before the courts.

### 5.2.2 Ordinary Court

The hierarchy of the court system in Norway consists of three levels: the District Courts, the Appeal Courts and the Supreme Court. There are 70 District Courts, whose jurisdiction lies in all matters, including civil cases, criminal cases and administrative cases, and only 6 Appeal Courts, which adjudicate appeals against judgements from the District Courts in their circuits. The Supreme Court is the appeal body for the Appeal Courts, and the judgement made by the Supreme Court is final and cannot be appealed further. All cases can be considered in two instances in Norway from 1995. 'According to the Norwegian Courts Administration, 15600 civil disputes and 62600 criminal cases were processed in the court of first instance (mainly the District Courts) in 2012. The courts of the second instance processed 1378 criminal cases and 1951 civil appeals. The Supreme Court settled 82 civil cases and 66 criminal cases in 2012.'<sup>124</sup>

Most of the civil disputes are processed by the ordinary courts, including the employment disputes. With the exception of child custody cases, the procedure of most civil cases is conducted according to the Dispute Act, which was enacted on 17 June 2005 and originated from the Civil Procedure Act 1915. In order to enhance the efficiency and reduce costs, the Dispute Act emphasizes extensive use of mediation, such as the procedure of the Conciliation Board and out-of-court mediation. The Conciliation Board is set up to hear cases before the district courts, which 'shall help the parties to achieve a simple, swift and cheap resolution of the case through conciliation or judgement.'<sup>125</sup> Discrimination cases in which the amount in dispute is less than NOK 125 000 and not both parties have been assisted by a lawyer will be heard by the Conciliation Board for the first instance. If an action fulfilling abovementioned conditions is lodged directly with the district court, the case shall be transferred to a Conciliation Board which has the jurisdiction. After the conciliation meeting, claims will be determined by the way of judgement or decision. The Conciliation Board plays an important role in processing civil disputes. 'Most civil cases are handled by the Conciliation Board, more than 250 000 cases per year.'<sup>126</sup> Rulings of the Conciliation Board

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<sup>124</sup> Statistics Norway, The courts and other dispute resolution bodies, published on 3 December 2013, [http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/domstol\\_statres](http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/domstol_statres) (visited on 23 March, 2016)

<sup>125</sup> The Disputes Act, section 6-1.

<sup>126</sup> Courts of Norway, <https://www.domstol.no> (visited on 24 March, 2016)

may be appealed to the District Court, ‘which shall make a new ruling on the merits on the issues that are subject to review.’<sup>127</sup>

### 5.2.3 The Labor Court

In the Norwegian judicial system, the ordinary courts are supplemented by special courts, such as the Labor Court, the Land Consolidation Court. Holding a unique position in the Norwegian judicial system, the Labor Court processes ‘disputes about validity, interpretation and existence of collective agreements, questions regarding breach of collective agreements, questions regarding breach of the peace obligation, and claims for damages resulting from such breaches’,<sup>128</sup> which means that only disputes relating to collective agreements can be brought before the Labor Court. Besides, the Labor Disputes Act distinct ‘disputes of interests’ and ‘disputes of rights’, and only disputes of rights can be handled by the Labor Court. Therefore, Cases complaining discrimination clauses in collective agreements will be dealt with in the Labor Court. Otherwise, jurisdiction of disputes regarding to labor relationship other than collective agreements lies in the ordinary courts. ‘No court fees are charged for labor courts cases. The judgements of Labor Courts are final and immediately enforceable in the same way as are Supreme Court judgements.’<sup>129</sup>

If a case pursuant to the provisions of the anti-discrimination Acts, which indirectly raises a question of the existence, validity or interpretation of a collective wage agreement, is brought before the Equality Tribunal, each of the parties may have this question decided by the Labor Disputes Court. And the cases before the Tribunal should be suspended until the Labor Disputes Court has finished dealing with the question.<sup>130</sup>

However, due to the risks and high costs involved in litigation, and the difficulties in obtaining free legal aid in discrimination cases, few discrimination cases are brought before courts. Especially compared with the volume cases brought before the Equality Ombud, the total number of discrimination cases brought before courts remains sparse, but a significant increase in discrimination cases brought before the lower instance courts have taken place since 2008.<sup>131</sup>

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<sup>127</sup> The Disputes Act, section 6-14(3)

<sup>128</sup> The Labor Court of Norway,

<http://www.arbeidsretten.no/index.php?module=Pagesetter&func=viewpub&tid=4&pid=15> (visited on 26 March, 2016)

<sup>129</sup> Ibid

<sup>130</sup> The Anti-Discrimination Ombud Act, Section 10

<sup>131</sup> Supra Note 111, p70

### 5.3 Case Study- Tribunal case no. 23/2008 concerning equal pay for work of equal value<sup>132</sup>

#### 5.3.1 Fact of the case

B and C were the charge nurses of two different nursing homes in Harstad Municipality, having an annual salary of NOK 367,575. D was the head of the municipality's building matters department, having an annual salary of NOK 409,000. E was the head of the municipality's surveying department, having an annual salary of NOK 408,000. F was a technical coordinator in the Water Supply and Sewerage Projects department, having an annual salary of NOK 409,000. H took over the position of technical coordination in the Water Supply and Sewerage Operations department, with an annual salary of NOK 405,000. The charge nurses' pay was set pursuant to chapter 4b of the Main Wage Agreement (HTA) with the Norwegian Association of Local and Regional Authorities, while the pay of the engineers was set exclusively through local negotiations pursuant to chapter 5 of the HTA. All of the 23 charge nurses were women, while among the 13 middle-management-level positions in the technical sector, two were women, two were vacant and the others were men.

#### 5.3.2 Legal background

For this case, section 5<sup>133</sup> and section 3<sup>134</sup> of the GEA is related. This case will use the original version of these provisions.

Section 5 relates to the equal pay for the same work:

*Women and men in the same undertaking shall receive equal pay for the same work or work of equal value, and the pay shall be fixed in the same way for women and men without regard to gender.*

*The right to equal pay for the same work or work of equal value shall apply regardless of whether such work is connected with different trades or professions or whether the pay is regulated by different collective wage agreements.*

Section 3 relates to direct discrimination and indirect discrimination:

*Direct differential treatment shall mean an act or omission that has the purpose or effect that a person is treated worse than others in the same situation, and that is due to gender.*

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<sup>132</sup> The case is cited from Cases In English, the Equality and Anti-discrimination Tribunal, <http://www.diskrimineringsnemnda.no/wips/1529714557/> (visited on 21 March, 2016)

<sup>133</sup> The content of this provision has changed into section 21 of the current version of GEA.

<sup>134</sup> The content of this provision has changed into section 5 and 6 of the current version of GEA.

*Indirect differential treatment shall mean any apparently neutral provision, condition, practice, act or omission that results in persons being put in a worse position than others, and that occurs on the basis of gender.*

### 5.3.3 Core argument

Did the differential remuneration of two specific charge nurses and four specific engineers employed by Harstad Municipality contravene section 5 of the GEA?

### 5.3.4 The Tribunal's assessments

At first, the Norwegian Union of Municipal and General Employees and Harstad contacted the Equality Ombud and requested an assessment of the issue. The Ombud gave an opinion, concluding that the Municipality contravened section 5 and section 3 of the GEA in paying the two charge nurses less than the four specified engineers. Then the Norwegian Association of Local and Regional Authorities (KS) appealed on behalf of Harstad Municipality against the Ombud's opinion. The Ombud reviewed the case but did not alter its conclusion in the case. The case was sent to the Equality Tribunal for hearing on 11 August 2008 and was dealt with at the Tribunal meeting held in Oslo on 28 October 2008.

The assessments of the Tribunal focus on two questions:

(I) Was the work of equal value? The Tribunal accepted that the real qualification requirements for the charge nurse and technical coordinator positions were the same: a three-year education at university college level. Both the positions involved professional and administrative responsibility, and no reason indicated that one of the positions involved greater responsibility than the others. The Tribunal pointed out that one of the objectives of the equal pay provision was to adjust upward professions typically chosen by women, and effectiveness considerations indicated that the same weight should be attached to responsibility for person as to responsibility for tangible assets. Therefore, the Tribunal considered that the work involved in the charge nurse positions in question was of equal value to the work involved in the technical coordinator positions in question.

(II) Were the pay differences nevertheless permitted? According to section 5, the first paragraph of the GEA, B and C were entitled to the same pay as the technical coordinators in question. However, the equal pay requirement of the GEA is not interpreted as that women and men who perform work of equal value must always receive the same payment. Accordingly, pay differences based on other objective factors are acceptable. The Tribunal concluded that the current income disparities between nurses and engineers were not based

on gender, but on other factors, therefore it did not contravene the prohibition on direct discrimination on the grounds of gender. However, apparently gender-neutral pay settlement norms that actually have the effect of putting one sex in a worse position than the other contravened the prohibition on indirect discrimination. Since in the municipality, only women occupied charge nurse positions and in the technical sector two of a total 13 positions were occupied by women while nine of them were occupied by men and two were currently vacant, the gender distribution corresponded to the gender composition could not be considered as random. Therefore, the pay differences contravened the prohibition on indirect discrimination. Nevertheless, according to section 3, the fourth paragraph, the unequal pay is permitted if it has an objective purpose that is independent of gender, and the means which is chosen is suitable, necessary and is not a disproportionate intervention in relation to the said purpose. The burden of proving that the pay differences are lawful is on the employer. In this case, the municipality had substantiated that the technical coordinators in question had developed top expertise, which was difficult for the municipality to replace. Besides, because of the strong competition in recruiting and retaining engineers, the level of ordinary engineer salaries had been pressed up. The Tribunal therefore concluded that the municipality had substantiated that the pay differences were based on impartial, objective factors that were not gender-related.

### **5.3.5 Decision of the Tribunal**

Harstad Municipality's remuneration of the charge nurses B and C and the technical coordinators to whom they compared themselves did not contravene section 5 of the Gender Equality Act (see also section 3).

Although the Tribunal did not consider the remuneration in Harstad Municipality as discrimination based on gender, the municipality had given new annual salaries offers effective from 1 May 2008 where the pay difference was being evened out, aiming at further equalization.

## **5.4 General assessment**

An overview of the legal system of anti-discrimination in Norway is given above, and it can be found that the domestic legislation on anti-discrimination is well-established and can provide strong protection on women when encountering discrimination. Additionally, the specific institutions, the Equality and Anti-discrimination Ombud and the Tribunal, can monitor and contribute to ensuring the compliance with the anti-discrimination legislations.

As independent agencies, although the Ombud and the Tribunal do not have the power to award financial compensation to victims of discrimination, ‘more than 95 percent of all the discrimination cases are handled by the Ombud and the Tribunal.’<sup>135</sup> In my opinion, the reason is that the pressure from the procedure of the Ombud and the Tribunal makes the alleged employers voluntarily take active measures to abolish different treatments. Taking the above-mentioned case as an example, even if the Tribunal did not consider the different remuneration as discrimination based on gender, the employer changed its remuneration criterion and offered same salary to employees in the equivalent positions.

In the Norwegian legal system, another effective practice in promoting gender equality in employment is that promoting equality is treated as a proactive duty for employers. The Gender Equality Act imposed on all employers the statutory duty to make active, targeted and systematic efforts to promote gender equality. The implementation of the proactive duty includes preparing an annual report (or included in the annual budgets for public agencies) ‘reporting on the actual states of affairs as regards gender equality and equality measures that have been implemented’,<sup>136</sup> ‘precluding and preventing the occurrence of harassment’<sup>137</sup>, and so on. ‘The Gender Ombud’s guidance provides examples of possible active measures which promote gender equality.’<sup>138</sup>

Although the courts are the only mechanisms that can award financial compensation to victims of discrimination, the judicial system plays a limited function in providing protection against discrimination, especially compared with the effective practice of the Ombud and the Tribunal. Because of the high litigation costs, long time consumption in the procedure and litigation risks, few discrimination cases have been brought to the courts.

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<sup>135</sup> Supra Note 111, p9

<sup>136</sup> The Gender Equality Act, section 24

<sup>137</sup> Ibid, section 25

<sup>138</sup> Ronald Craig, *Systemic Discrimination in Employment and the Promotion of Ethnic Equality*, International Studies in Human Rights, Volume 91. (Leiden/Boston: Martinus Nijhoff Publishers), p206

## **6. Recommendations for Anti-discrimination against Women in Employment in China**

Discrimination against women in the workplace limits women's career development and fulfillment of their values, further damages harmony of the society. How to reduce and further eliminate employment discrimination against women is a tough task that needs efforts from all the parties involved. To eliminate inequality in the workplace and protect workers' rights is not only a legal issue but also a systemic project involving all the stakeholders in various fields. By analyzing the shortcomings of current legislation and enforcement mechanisms, and learning the experiences from Norway's legal regime of anti-discrimination, the following recommendations are put forward for China to eliminate employment discriminations against women.

### **6.1 Improve legislation and implementation mechanisms**

Employment discrimination against women is not only a social problem, but also a legal problem. An effective legal system is necessary to provide protection on women's equality. 'Only by using legislative measures to change perceptions, can public awareness of the equality of men and women be improved.'<sup>139</sup> Thus, legal system is the most important and fundamental way to protect women's equality. Considering the reality of legislation and enforcement mechanisms currently in China, it should be improved from these following aspects:

#### **6.1.1 Current legislation should be revised and legal liability should be strengthened**

As mentioned above, there are some discriminatory provisions in current legislation, which leads to discrimination in a wide scope. Even though the legislative purpose of these provisions is to provide special protection for women, they limit freedom and equality of women in workplace. 'Due to the economic development and social progress, the biological differences between men and women have gradually diminished in importance and more and more work need more intellectual capacity than physical strength.'<sup>140</sup> Thus such limitations in these provisions should be revised. First, the retirement for men and women should be set at the same age, at the same time allowing women to decide for themselves whether they wish to retire earlier than men. Second, the scope of prohibition on jobs for female workers should be adjusted according to the changeable conditions, so that women can have more working

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<sup>139</sup> Supra Note 6, p129

<sup>140</sup> Ibid



opportunities. Third, learning from the Norwegian legislation, there should be regulations requiring a specific ratio of female in some positions, especially on the management level, which will help women getting more opportunities in the promotion.

Besides, the current legislation is so abstract and general and lack of legal liability, that women cannot obtain effective redress in case of discrimination. Thus detailed legal liability should be formulated in current legislations, such as the Labor Law, the Employment Promotion Law. The legal liability should include the subjects that bear the results of violations, what kind of liability corresponding to what kind of violation, and so on.

#### 6.1.2 A special law on Anti-discrimination in employment should be enacted

Most Chinese legal scholars hold the opinion that China should enact a special law of Anti-discrimination on Employment, and continually make efforts to push the law into the National People's Congress (NPC) legislative agenda. Yisun Cao, a professor of the China University of Political Science and Law, as well as a member of National Committee of CPPCC, has proposed the legislative proposal of the Anti-discrimination in Employment during the 'Lianghui' for several years.<sup>141</sup> Professor Dingjian Cai proposed a draft of the Law on Anti-discrimination in Employment to the NPC in 2009. The draft contains six chapters with fifty-five articles, covering general provisions, measures on anti-discrimination in employment from identity, gender, disability, health and other fields, establishment of Equal Opportunity Commission, redress mechanism, legal liability and supplementary provisions.

Learning the experience from Norway, a special law on anti-discrimination in employment in China should define the term of discrimination, list the government's responsibility and employers' obligation, clarify the burden of proof and legal liability, and improve the specific procedure and redress measures in case of discrimination in the workplace. The following aspects should be contained in the law, and the draft provides a sample on these issues. (I) The law should formulate a definite definition of discrimination. The draft defines employment discrimination as 'any act of an employer involving a distinction or exclusion of labors on employment opportunity and vocational treatment, based on factors that are irrelevant to professional capacity and to the inherent objective requirements of the profession, and which has the effect of nullifying or impairing a worker's equality in employment.' It further divides employment discrimination into direct and indirect discrimination. Direct discrimination refers to the 'acts of an employer involving distinctive

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<sup>141</sup> <http://topics.caixin.com/2016-03-06/100916619.html> (visited on 20 April, 2016)

or exclusive treatment on the grounds of ethnicity, gender, identity, religion, disability, physical characteristics, health, age, status of marriage and maternity, sexual orientation and so on, which affects an employee's equality in employment.' Indirect discrimination refers to a situation in which although an employer does not commit direct discrimination as defined above, acts in such a manner will lead to an unequal adverse effect on workers.<sup>142</sup> (II) The application of this law should cover a wider scope. The draft expands the application on discrimination to the entire process of employment, from recruitment, promotion, training, working time, vocation, working environments, dismissal and retirement.<sup>143</sup> This is a great improvement compared with the Employment Promotion Law, which only applies to discrimination occurring in the recruitment and labor contract. (III) The burden of proof should be shifted from employees to employers. In other words, the employers would be charged with discrimination if the victims can prove she has been treated differently. Then the employers should provide evidence to justify the differentiated treatment. If not, they will be convicted of discrimination. This method is also adopted in the draft.<sup>144</sup> (IV) The law should stipulate definite legal liability. The draft law lists the legal liability from several aspects, not only clarifying liabilities for governments and employers, but also covering all aspects of employment, such as rules of the employers, labor contract, recruitment and the whole process of work.

### 6.1.3 Strengthen the Labor Supervision Mechanism and clearly define the legal liabilities

Although the Regulation on Labor Security Supervision has endowed the responsibility to the Labor Administration Departments to supervise and monitor the implementation of labor laws, the reality is not satisfying. One main weakness of current supervision mechanism is that it did not clearly cover the employment discrimination in its supervision scope. Therefore, in order to eliminate gender discrimination in the workplace, it is advisable to moderately expand the scope of labor supervision, empower women with the right to litigate when facing discrimination, and to add detailed legal liability to the employers who violate women's working rights. Meanwhile, the Labor Administration Departments should intensify their efforts in supervision both in active and passive ways: on one hand, supervising the

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<sup>142</sup> The Constitutionalism Research Institute of China University of Political Science and Law, Draft Law on Anti-discrimination in Employment, 2008. Article 2

<sup>143</sup> Ibid, Article 4

<sup>144</sup> Article 46 of the Draft Law on Anti-discrimination in Employment stipulates the regulation for burden of proof.

employers' behavior in labor relation initiatives; on the other hand, accepting women's complaints, investigating the employers and holding the violators accountable for their false practice. Besides, the measures of punitive compensation for discrimination should be improved, 'including the civil, administrative and criminal liability on the basis of clearly-defined compensation standards, as well as compensation for mental damage.'<sup>145</sup>

#### **6.1.4 Establish direct access to the court for discrimination**

As mentioned above, before the adoption of the Employment Promotion Law, discrimination happening in the recruiting process, could only be considered as violations of human dignity and people can only seek relief through the Civil Law, while other discriminations happened during the subsistence of labor relations must be dealt with arbitration before judicature. Even after the Employment Promotion Law had entered into force, only discriminations involved in recruitment and labor contract limiting marriage or maternity can be litigated into court directly. In order to provide effective redress for victims in discrimination, it is necessary to establish direct access to the court for all kinds of discriminations, just considering discrimination as the violation of equality and under the jurisdiction of courts.

Besides, in the long run, public interest litigation targeted to employment discrimination should be established to help victims obtain relief, which can be represented by trade unions, Women's Federations, as well as NGOs.

#### **6.2 Establish special institution on Anti-discrimination**

A special institution on anti-discrimination is necessary to reduce and eliminate gender discrimination, which has been verified in many countries, for example the Equality and Anti-discrimination Ombud and the Tribunal in Norway, the Equality Opportunity Commission in Hong Kong, the Equality Opportunity Committee in the United Kingdom, and so on. And in some countries, there is no special anti-discrimination institution but having National Human Rights Institution (NHRI), which also plays an important role in prohibiting discrimination. Nevertheless, neither a special anti-discrimination institution nor the NHRI has been set up in China, which results in a low level of protection on women's equality. The CEDAW Committee also recommended China to establish special courts and tribunals for the protection of women and children, since the Committee concerned that in the absence of provisions for effective legal remedies, women's access to justice in cases of

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<sup>145</sup> Supra Note 12. p275

discrimination remained limited, in particular in rural areas; and the Convention had never been invoked in a court of law.<sup>146</sup>

The draft law from Professor Dingjian Cai also proposed to set up Equality Opportunity Commission at three levels: the national level, the provincial level and the third level in such cities with districts. The primary functions of the first two levels include study and enact policies and guidelines on anti-discrimination in employment; investigate and evaluate situations of employment discrimination and report annually to the National People's Congress in the same level; facilitate implementation of anti-discrimination laws by administrative bodies, etc. The Equal Opportunity Commissions at both the municipalities directly under the central government and cities with districts will deal with individual complaints on employment discrimination, including investigation, mediation and making a decision, and provide legal advice to labors. In case of serious violations and when deemed necessary, the Equal Opportunity Commission can represent victims or groups in lodging the lawsuits to the court. If the parties are not satisfied with the decision of the Equal Opportunity Commission, both parties may bring the case to the court.<sup>147</sup> All of these provisions show a good prospect.

### **6.3 Provide sufficient Social Security System**

As mentioned above, the insufficient social security system, especially the maternity insurance system is the main burden for company to recruit women workers. According to the current maternity insurance system, companies afford the medical expenses for maternity and women's salary during maternity leave. In order to save expenses, many companies refused to recruit women. Therefore, 'the key to defending women's employment rights is the establishment of an effective maternity insurance system,'<sup>148</sup> transferring the burden of maternity from companies to government.

The Social Insurance Scheme in Norway provides a good example: Lump sum grants in case of maternity and adoption and child care benefits are financed by contributions from the state only; cash benefits in the case of maternity is financed by contributions from the state, employers and employees.<sup>149</sup> China should adopt the method of mixed contributions for

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<sup>146</sup> Supra Note 48, para 11

<sup>147</sup> Supra Note 142, Chapter 3

<sup>148</sup> Supra Note 6, p130

<sup>149</sup> Norwegian Ministry of Labor, *The Norwegian Social Insurance Scheme*, January 2010. [https://www.regjeringen.no/globalassets/upload/AD/publikasjoner/veiledninger\\_brosjyrer/2010/DNT\\_2010\\_eng.pdf](https://www.regjeringen.no/globalassets/upload/AD/publikasjoner/veiledninger_brosjyrer/2010/DNT_2010_eng.pdf) (visited on 21 April, 2016)

maternity, which will exempt the employers from covering the costs due to women's giving birth and encourage them to keep a gender balance of their employees. Meanwhile, studying the practice in other countries, China can endow the maternity benefits and maternity leave to both men and women, so that they can share the responsibility and costs of childbirth. In this way, it is the same for employers to recruit men or women, thus the consideration of costs for women's giving birth in rejecting women workers could decline. Besides, flexible working time and type is also a good method for women to obtain more working opportunities.

#### **6.4 Raise public awareness of gender discrimination**

Due to the deep-rooted traditional stereotypes regarding the role of women, awareness-raising measures must target the entire population, in particular men and boys, so that they could respect women much more. (I) Raising the awareness of the employers in conformity to laws, enabling them to know and abide by laws. (II) It can be seen from surveys that most of women choose to keep silent when encountering discrimination, thus the education and training on protection of their rights are necessary. Also legal remedies against discrimination should be contained into trainings and guidelines of working units, so that women know how to protect themselves in an effective and timely way when confronted with discrimination. 'Given the low educational level and employment strata, various training programs, counseling and skill training should be made accessible for female migrant workers in terms of laws, labor skills, modern civilization, and work ethics, to improve their comprehensive quality and competitiveness.'<sup>150</sup> (III) Improving the awareness of legal practitioners on women's equality, in order to ensure the implementation of related laws. The CEADW Committee also recommends that 'the international treaties relating to women's equality and related domestic legislation should be made an integral part of the legal education and training of judicial officers, including judges, lawyers and prosecutors.'<sup>151</sup> (IV) Social media should publicize the value of equality for women, impelling people more alert to discrimination and shaping their legal concept of anti-discrimination.

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<sup>150</sup> Supra Note 12. p275

<sup>151</sup> Supra Note 48. para12

## 7. Conclusion

Gender-based discrimination in employment is a world-wide problem, and the international community has made a great effort to solve it, including enacting international treaties and setting common standards. The issue of equal employment for women is not only important to women's survival and development, but also crucial for social harmony and progress. Eliminating gender discrimination and achieving gender equality is the goal of the entire international community.

Compared with the developed countries, the current situation in China for women's equality in employment is far from satisfactory. On one hand, women may face various discriminations in the workplace, for example less recruitment opportunities, sexual harassment, less remuneration for the same work, different retirement age and pension for women and men, etc. On the other hand, legislations are not sufficient and enforcement mechanisms are relatively weak to provide protection for women when facing discriminations.

In order to provide a good example for China to establish an effective anti-discrimination legal system, the experience of Norway has been introduced. Although there are still gender discriminations in workplace to some extent, status for women in Norway is comparatively higher than that in China. Norway has sophisticated anti-discrimination legislations composed by a series of Acts, and special and independent institutions the Equality and Anti-discrimination Ombud and the Tribunal, which are responsible to monitor and contribute to ensuring the compliance with the anti-discrimination legislations.

Corresponding to these disadvantages in current anti-discrimination legal system in China, and learning the experience from Norway, comprehensive recommendations are put forward, including improving legislation and implementation mechanisms, establishing special institution on anti-discrimination, providing sufficient social security system and raising public awareness of gender discrimination.

Fortunately, certain cities have taken some useful tries in protecting women's equal working rights. 'In 2012, Shenzhen adopted the Regulation on Gender Equality Promotion, which was the first local regulation regarding to promote gender equality. Also in 2012, Jiangsu Province established the Reviewing Regime on Local Regulations and Policies involving

Gender Equality to access whether these regulations and policies are legal and reasonable.’<sup>152</sup>  
All of these provide good proposals for China to improve anti-discrimination legal system on the national level.

Eradicating employment discrimination for women and further realizing the equality between men and women in China needs long-term efforts, and it is the responsibility for the whole society working together to improve and transform both the institutional systems and individual beliefs at every level.

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<sup>152</sup> Supra Note 80. p191

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