5-1-2000

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Recommended Citation
Christine M. Bulger, Fighting Gender Discrimination in the Chinese Workplace, 20 B.C. Third World L.J. 345 (2000), http://lawdigitalcommons.bc.edu/twlj/vol20/iss2/3

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FIGHTING GENDER DISCRIMINATION IN THE CHINESE WORKPLACE

Christine M. Bulger*

This Note analyzes the avenues available to Chinese women in their struggle for workplace equality. While China has enacted a number of laws that appear to afford women equal opportunity in employment, the ineffectiveness of these laws is quite apparent. There are many reasons for this, including the inherent inadequacies of many of China's statutes and of its Constitution, barriers and failures within the legal and court systems, and the traditional inferior status of women in Chinese society. However, as young Chinese citizens are becoming less dependent upon their government, they are also becoming more willing than earlier generations to challenge the inequalities and failings of the Chinese government and its legal system. This readiness of the new generation in China, coupled with the suggestions and strategies described in this Note, should serve to bring about gradual improvement for women in the Chinese workplace, and eventually in the whole of Chinese society, government, and politics.

Over the past decade, the People's Republic of China (PRC or China) has attempted to correct its history of human rights violations in the wake of increasing economic and social reform.¹ These new laws and policies have had mixed results, especially in the area of combating discrimination against women in the workplace.² Such gender discrimination has taken the form of preferences in hiring men, excessive fines based on alleged violations of family planning regulations, unfair dismissals, periodic employment plans,³ earlier re-

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* Editor in Chief, BOSTON COLLEGE THIRD WORLD LAW JOURNAL (1999–2000).


³ In 1980, China instituted a "basic national policy" of limiting each couple to one child to curtail population growth. See HRIC, supra note 1, at 294–95. The policy is enforced on a local level and it generally involves numerous restrictions on a woman's repro-
irement ages for women, wage discrepancies, and outright sexual harassment.\textsuperscript{4}

Although gender discrimination is present in employment worldwide, certain Chinese practices go beyond discrimination to the point of being violations of human rights.\textsuperscript{5} This is particularly true in the case of outright prohibitions on a woman's opportunity to work at all and employer sanctions based on infringements of family planning regulations.\textsuperscript{6} The on-going case of Sun Lili, a former banquet assistant at the Worker's Family Hotel, a state-operated enterprise (SOE or work unit) in Beijing, is a prime illustration of the gender discrimination regularly practiced by Chinese work units.\textsuperscript{7}

Sun Lili became pregnant with her first child in October, 1996, due to the failure of contraceptives that she and her husband, Zhang Zhuan, had been using.\textsuperscript{8} Although this pregnancy would be in line with China's one-child policy, Sun had not received the requisite permission of her employer's family planning office for the pregnancy prior to conceiving.\textsuperscript{9} Sun had become pregnant twice previously, also due to the failure of contraceptives, and had aborted both times because she and her husband felt they had no chance of having the pregnancies approved by Sun's work unit.\textsuperscript{10} After the second abortion, Sun's doctor told her that it would be unsafe to have any more abortions if she wanted to have children in the future.\textsuperscript{11} In response to the doctor's warning, Sun and Zhang, who stress that they accept the

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\textsuperscript{5} See HRIC, supra note 1, at 285-86.

\textsuperscript{6} See id.

\textsuperscript{7} See generally Olojede, supra note 3; Rosenthal, supra note 2.

\textsuperscript{8} See Rosenthal, supra note 2.

\textsuperscript{9} See Olojede, supra note 3; see also supra note 3.

\textsuperscript{10} See id.

\textsuperscript{11} See id.
PRC’s one-child policy, decided to go through with the pregnancy de­
spite the outcome of Sun’s requests for approval.12

While the neighborhood planning committee approved the preg­
nancy, Sun’s work unit refused permission, stating that the timing
of the pregnancy was inconvenient, and it ordered that Sun terminate
her pregnancy if she wanted to keep her position.13 Sun expected that
she would be sanctioned and anticipated a modest fine.14 However,
when Sun did not comply with her employer’s demand, she was fined
heavily: 3,100 yuan, or about $400, the equivalent to nearly a third of
her yearly wages.15 Her employer also refused to pay her or her
daughter’s medical expenses, and Sun was eventually dismissed.16

Sun and Zhang then sought to challenge the decision on the ba­
sis that the fine was excessive and in violation of the 1996 Beijing Fam­
ily Planning Regulations.17 The couple and the employer first entered
into arbitration, but the work unit’s decision was upheld.18 Sun and
Zhang then filed suit under the 1990 Administrative Litigation Law
(ALL), which provides individuals with a direct route to challenging
actions of governmental agencies in the courts.19 Sun’s case was heard
at the district and intermediate levels of the People’s Court, but both
courts ruled in her employer’s favor.20 Sun plans to further appeal the
court’s rulings with the assistance of the Center for Women’s Law
Studies and Legal Services of Beijing University.21

Sun’s case is especially significant because it is the first family
planning challenge that has progressed so far through the judicial
system.22 Usually such cases go no farther than an administrative ap­
peal.23 Although the courts have ruled against Sun, her case hopefully
will force work units to reconsider their family planning regulations

12 See id.
13 See id.
14 See Rosenthal, supra note 2.
15 See id.
16 See id.; Olojede, supra note 3.
17 See Rosenthal, supra note 2. A clause in the Beijing Family Planning Regulations
stipulates that a childless woman who gives birth without permission should be fined
200 yuan, or about $25. See id.
18 See Olojede, supra note 3.
19 See Rosenthal, supra note 2; Zhonghua Renmin Gongheguo Xingzheng Susong Fa
[Administrative Litigation Law of the P.R.C.] (Oct. 1, 1990), reported in Renmin Ribao
ALL].
20 See Olojede, supra note 3.
21 See id.
22 See id.
23 See id.
and to recognize the ways in which these policies unfairly discriminate against female employees.\textsuperscript{24}

The central government of the PRC enacted several laws during the late 1980s and the 1990s in an attempt to establish and protect the individual rights of its citizens.\textsuperscript{25} In terms of fighting gender discrimination in employment, the 1993 Constitution of the People’s Republic of China (Constitution),\textsuperscript{26} the Women Workers and Employees’ Labor Protection Regulations (Labor Protection Regulations),\textsuperscript{27} the Labor Law,\textsuperscript{28} the Law for the Protection of Women’s Rights and Interests (LPWRI),\textsuperscript{29} and the ALL all provide foundations for challenging the discriminatory actions of employers.\textsuperscript{30}

While the Constitution and national legislation mandate equal rights for men and women, the implementation of these policies, in practice, has proved ineffective in securing equal employment status for women. Chinese law emphasizes protective legislation premised on biological differences between men and women.\textsuperscript{31} Legislation provides benefits that women workers need but, ironically, also results in a preference for hiring men in the first place. Such protective legislation has its roots in traditional patriarchal and hierarchical Confucian principles that define a woman’s primary obligation as the perpetua-

\textsuperscript{24} See id.

\textsuperscript{25} See infra notes 26–29 and accompanying text.


\textsuperscript{28} The Labor Law is reported in 16 GUOWUYUAN GONGBAO [STATE COUNCIL GAZETTE] 678 (1994), translated in 7 CHINA L. & PRAC. 21 (1994)[hereinafter Labor Law].


\textsuperscript{30} Article 48 of the Constitution provides that women enjoy equal rights with men in all spheres of economic life. See Constitution, supra note 26. Article 3 of the Labor Protection Regulations prohibits work units from refusing to hire women if they have jobs suitable for women. See Labor Protection Regulations, supra note 27, at 42. Article 13 of the Labor Law states that females shall enjoy equal rights as males in employment. See Labor Law, supra note 28, at 22. Article 21 of the LPWRI ensures that women and men enjoy the same right to work. See LPWRI, supra note 29. Article 2 of the ALL allows citizens to institute proceedings in the People’s Courts when they feel that specific acts of administrative authorities have infringed their lawful interests. See ALL, supra note 19, at 37.

\textsuperscript{31} See Margaret Y.K. Woo, Biology and Equality: Challenge for Feminism in the Socialist and the Liberal State, 42 EMORY L.J. 143, 144 (1993).
tion of the family, or more specifically, producing and wisely raising a male descendent.\textsuperscript{32} As a result, while positive law states that the sexes are equal, actual practice demonstrates the continuing pervasiveness of inequality between men and women in the whole of Chinese society.\textsuperscript{33}

Successfully challenging discriminatory practices is also difficult for numerous other reasons. The scope of these laws can be very narrow, and there is simply a lack of enforcement of national law on the local level.\textsuperscript{34} Also, work unit and local government regulations often conflict, and there is debate over which law should govern.\textsuperscript{35}

The actual structure of the government also poses problems. Even if a court rules against an administrative action, it may be impossible to enforce judgments because the courts are at the same level as the local governments.\textsuperscript{36} Other difficulties arise within the court system, where judges often are poorly trained and are afraid to rule against the local governments that pay their salaries, and corruption is "firmly entrenched."\textsuperscript{37}

This Note analyzes the current methods of legal recourse available to fight workplace gender discrimination in China and the effectiveness of these laws. Part I discusses the status of women in Chinese society and then examines the types of gender discrimination that arise in employment and the rationales that employers provide for these actions. Part II describes and critiques the laws that should assist Chinese women in fighting employment discrimination and then discusses the reasons why more governmental actions are being challenged in China in the late 1990s. The barriers within China's current legal system that cause many of these challenges to fail is discussed in

\textsuperscript{32} See id. at 177–78.
\textsuperscript{33} See supra notes 30–32 and accompanying text.
\textsuperscript{37} See Clarke, supra note 35, at 57–64; Lubman, supra note 36; John Pomfret, Chinese Officials Bare Flaws of Legal System: Reports to Legislature Cite Growing Number of Corruption and Official Abuse Cases, WASH. POST, Mar. 11, 1999, at A24; Rosenthal, supra note 2.
Part III. Part IV proposes strategies for increasing the probability of success in gender discrimination in the workplace cases, which should also result in further improvement of human rights conditions in China.

I. GENDER DISCRIMINATION IN THE WORKPLACE

A. Status of Women in the Chinese Workplace

A historical overview of women's employment opportunities in China will foster a better appreciation of the current status of the female members of the Chinese workforce. Prior to 1949 when the new Communist government took control of China, women had begun working in light industry for low wages, and some women were even "sold" to factory owners and received no pay. All working women labored for long hours in unsanitary and dangerous conditions, and they shared the same status as prostitutes.

With the takeover by the Communist party in 1949, the Chinese government developed programs to bring women out of the home and into the workforce. Equal status for women in Chinese society in general was addressed by the government, which promoted the slogan that "women hold up half the sky." By 1953, the percentage of women in the urban labor force had increased from 7.5% to 11%.

From 1953 to 1957, during which the government's "First Five Year Plan" emphasized heavy industry over agriculture and light industry, urban unemployment was high and "women were encouraged to stay home and contribute to the socialist cause through their housework." Although the number of employed women increased by less than 2% during this period, "The Great Leap Forward," from 1958 to 1960, brought about a more significant increase in the percentage of working women. The government focused on the mass mobilization of the Chinese workforce to develop the economy and established facilities such as nurseries and laundries to alleviate

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38 See Woo, supra note 31, at 148.
39 See id.
40 See id.
41 See id.
42 See id.
43 See id. at 148-49.
44 See Woo, supra note 31, at 149.
45 See id.
women’s domestic responsibilities.\textsuperscript{45} By 1963, women came to represent 25% of the country’s workforce.\textsuperscript{46}

Women’s employment opportunities also increased during the “Cultural Revolution” of the 1960s and 1970s.\textsuperscript{47} During this period, the Communist Party focused on equality, and women were allowed to enter areas of employment, such as truck driving, mining, and construction, from which they previously had been excluded.\textsuperscript{48} However, the social services introduced during “The Great Leap Forward” were also being taken away during this time.\textsuperscript{49}

Since the 1950s, women with jobs classified as “permanent” have benefited from the “iron rice bowl” system.\textsuperscript{50} Under this policy, the state guaranteed every permanent worker a job at a state-determined salary, subsidized medical care, housing, education, and a retirement pension.\textsuperscript{51} However, since permanent workers had only minimal fear of being fired and government job allocation officials failed to match positions with workers’ interests, skills, and abilities, the system ended up promoting inefficiency due to insufficient work incentives.\textsuperscript{52}

Under Deng Xiaoping’s leadership, China began to move away from the “iron rice bowl” system.\textsuperscript{53} Beginning in 1979, new economic policies “revamped the nation’s centrally-planned economy by encouraging decentralization, private enterprise, and foreign investment.”\textsuperscript{54} During the 1980s, 38% of the Chinese workforce consisted of women.\textsuperscript{55} Unfortunately, this economic reform that emphasized privatization and economic efficiency has produced high unemployment, especially for women.\textsuperscript{56} Women have also increasingly been segregated to the service, textile, and food-processing industries.\textsuperscript{57} As a result of the economic reforms instituted in the 1980s, gender discrimination plagues Chinese women into 2000.

\textsuperscript{45} See id.
\textsuperscript{46} See id.
\textsuperscript{47} See id.
\textsuperscript{48} See Woo, \textit{supra} note 31, at 150.
\textsuperscript{49} See id.
\textsuperscript{50} See id.
\textsuperscript{51} See id.
\textsuperscript{52} See id. at 150–51.
\textsuperscript{53} See Woo, \textit{supra} note 31, at 151.
\textsuperscript{54} See id.
\textsuperscript{55} See id.
\textsuperscript{56} See id. at 151–52.
\textsuperscript{57} See id. at 152.
B. The Chinese Government's Characterization of Discrimination

The official PRC position on the status of women in the whole of Chinese society is that they enjoy equal political, economic, social, and cultural rights with men. A 1994 White Paper reporting on "The Situation of Chinese Women" states that women and men enjoy equal working rights, which were secured by the passage of the LPWRI in 1992. The Chinese government includes the rights to equal pay for equal work, time off, medical care, and special protection during menstruation, pregnancy, childbirth, and baby nursing periods amongst a list of many guarantees for women. The dismissal of women on the pretext of marriage, pregnancy, maternity leave, or baby nursing period is prohibited, as is the refusal to hire women in the first place or to assign them to tasks that are "not suitable for women."

The White Paper does mention some of the discrimination problems that exist. The PRC acknowledges that women are experiencing difficulty in securing employment because some work units refuse to hire women. The report then claims that the Chinese government is taking "active measures to tackle these problems." The explanations offered for income discrepancies between men and women are the "current differences in cultural and professional competence as well as occupational composition."

In a 1994 report on the implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women, the result of the

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59 "White Papers" are produced by China's Information Office of the State Council and reflect the official PRC position on a variety of issues. See Diane F. Orentlicher & Timothy A. Gelatt, Public Law, Private Actors: The Impact of Human Rights on Business Investors in China, 14 NW. J. INT'L. L. & BUS. 66, 72 (1993). The documents have been criticized as being propagandistic and biased. See id.
61 See id.
62 See id.
63 See id.
64 See id.
65 See id.
66 See Situation of Chinese Women, supra note 60.
67 See id.
Third World Conference on Women held in 1985, China also acknowledged instances of employment discrimination after recounting the many advances of Chinese women. The report stated that China is now mainly confronted with the following problems: “Some departments, regions and units, to varying degrees, still prefer men to women while enrolling students, recruiting workers or making choices of promotion. Some enterprises, especially privately-owned enterprise [sic], individual businesses and some overseas-funded firms still fail to provide proper labour protection for women workers.”

The Chinese government planned to solve these problems by publicizing and fully implementing the LPWRI and urging local levels of government to enforce the law. Relying solely on the official reports of the PRC, it would seem that the Chinese government is committed to ending employment discrimination against women.

C. Outside Observers’ Reports on Discrimination

However, non-Chinese government sources report differently. In February, 2000, the U.S. Department of State found that despite the equal rights promised by the Constitution and the LPWRI, Chinese women have continued to report discrimination, sexual harassment, unfair dismissal, demotion, and wage discrepancies in employment. Under economic reform of state-owned enterprises, a disproportionate percentage of the millions of workers laid off have been women, and female employees also have been more likely to be chosen to take pay cuts when a plant or company is in financial trouble. As unemployment rates have risen, the use of unfair hiring practices, such as discrimination on the basis of sex and age, also has increased.

The State Department report also found that employers often hire men rather than women to avoid maternity leave and child care

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69 See id.
71 See U.S. State Dep’t Report, supra note 4.
72 See id. A December, 1998, Asian Development Bank report noted that almost 70% of the 23 million workers who could lose their jobs as a result of SOE reform were women, although they constitute only 36.4% of the workforce. See id. A 1998 All-China Federation of Trade Unions report estimated that 80% of those laid off from SOEs in Heilongjiang province were women. See id.
73 See id.
expenses.\textsuperscript{74} Some employers have even lowered the mandatory retirement age for women to forty years old.\textsuperscript{75} Women’s salaries average eighty to ninety percent of men’s, and most women are employed in lower-skilled and lower-paid jobs.\textsuperscript{76}

Human Rights in China\textsuperscript{77} (HRIC) also disputed the central Chinese government’s official statements on women’s rights.\textsuperscript{78} HRIC points out that women have borne the brunt of China’s economic reform policies,\textsuperscript{79} which have included improving the efficiency of the economy through massive layoffs in SOEs which primarily targeted women.\textsuperscript{80} The HRIC also criticized the Chinese government’s 1994 report on the implementation of the Nairobi Forward-Looking Strategies.\textsuperscript{81} The group found that many figures were presented without necessary comparisons, while significant negative numbers went unexplained.\textsuperscript{82} Other statements, such as the declaration that women universally have ninety days of paid maternity leave, were untrue, as many women are not covered by such protections.\textsuperscript{83}

As examples of workplace discrimination, HRIC cited that women are the last hired and the first fired, that women increasingly work in lower-paid, less-valued jobs, and that the laws enacted to protect women in employment situations contain no enforcement mechanisms.\textsuperscript{84} The state also intrudes upon women’s reproductive freedom by telling them when they may have children and causing women to disproportionately bear the burden of population control policies.\textsuperscript{85} HRIC identified the Chinese government’s overwhelming focus on rapid economic growth as the reason for the government’s failure to address open discrimination.\textsuperscript{86}

\textsuperscript{74} See id.
\textsuperscript{75} See id. The official retirement age is 60 years for men and 55 years for women. See id.
\textsuperscript{76} See id.
\textsuperscript{77} HRIC is an international non-governmental organization that “monitors the implementation of international human rights standards in...China and carries out human rights advocacy and education among Chinese people inside and outside the country.” See Human Rights in China (visited May 17, 2000) <http://www.hrichina.org/hricinfo/about.html>.
\textsuperscript{78} See HRIC, supra note 1, at 299.
\textsuperscript{79} See id. at 285.
\textsuperscript{81} See HRIC, supra note 1, at 299.
\textsuperscript{82} See id.
\textsuperscript{83} See id.
\textsuperscript{84} See id. at 286.
\textsuperscript{85} See id.
\textsuperscript{86} See HRIC, supra note 1, at 286.
In 1996, the *China Business Review* reported that gender discrimination was cited as the main reason for the lower representation of Chinese women in high-paying jobs.\(^{87}\) Employers offered various reasons why they prefer hiring men: women do not make good leaders; male employees will resist having to report to a female boss; and women are not as "capable" as men in terms of physical strength or intellectual ability.\(^{88}\) In addition, employment agencies denied that discrimination was involved in the decision of companies to hire only men: "This is not discrimination, women really can't do these kinds of jobs."\(^{89}\)

Traditional Chinese attitudes holding that a woman's primary responsibility is to her family likely account for most forms of gender discrimination.\(^{90}\) Since most women who work full-time also shoulder the bulk of responsibility for household chores and child care, employers would rather hire, promote, and pay higher wages to men because male employees' work performances will be less affected by the demands of home and children.\(^{91}\) A section head at a government agency clearly demonstrates this discriminatory attitude:

> I don't advocate hiring women, they are too much trouble. They get married, get pregnant and have children, and after that it's an endless round of domestic responsibilities. You can't expect them to deal with any work matters at all. Anyone who is a leader doesn't wish to have too many women working under him.\(^{92}\)

**D. Discrimination in Education**

Chinese women are confronted by these discriminatory attitudes from the time they are young girls. Many parents consider spending money on educating daughters a poor investment because daughters usually leave their parents' home after marrying, and they continue to

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\(^{88}\) See *id*.

\(^{89}\) See *HRIC, supra note* 1, at 303.

\(^{90}\) See *Riley, supra note* 87.


\(^{92}\) See *HRIC, supra note* 1, at 303.
receive lower wages and salaries than men.\textsuperscript{95} In addition, the Chinese government has no incentive to step in and make sure that girls and boys receive equal educational opportunities.\textsuperscript{94} With high unemployment rates and low demand for educated female workers, women’s education is viewed as being much less important than a man’s and of too high a cost.\textsuperscript{95}

Chinese women also have unequal access to higher education and training, further impeding workplace equality.\textsuperscript{96} In 1990, twice as many men as women were enrolled in post-secondary schools.\textsuperscript{97} The \textit{China Business Review} also reported that it is rumored that women must score higher than men on entrance exams to gain admission.\textsuperscript{98} Female college graduates frequently experience discrimination in job assignments and interviews, and they are often encouraged to seek jobs traditionally considered suitable for women, such as teaching.\textsuperscript{99} For example, a female university graduate interviewed for a government job and was offered the position on the condition that she agree not to marry or have children for three years; she rejected the offer.\textsuperscript{100} Another university graduate with a degree in economics decided to teach aerobics classes because only her male peers received decent job offers; she complained that she was only offered secretarial positions.\textsuperscript{101}

\textbf{E. Job Creation Programs that Favor Men}

The Coalition on Women’s Employment Rights (CWER) has criticized the job-creation programs that were enacted by the Chinese government in response to unemployment caused by economic reform.\textsuperscript{102} According to Chan Po-Ying, spokeswoman for the CWER, “[t]he Government has put forward lots of employment proposals, but none benefits women directly.”\textsuperscript{103} Most positions are tailored for

\begin{itemize}
\item[\textsuperscript{95}] See Riley, \textit{supra} note 87.
\item[\textsuperscript{94}] See Jordan, \textit{supra} note 5, at 69.
\item[\textsuperscript{96}] See id.
\item[\textsuperscript{97}] See Riley, \textit{supra} note 87.
\item[\textsuperscript{98}] See id.
\item[\textsuperscript{99}] See id.
\item[\textsuperscript{100}] See id.
\item[\textsuperscript{102}] See id.
\end{itemize}
men in the construction industry.\textsuperscript{104} Jobs that were recommended to women by employment centers tended to be along the lines of domestic helpers and usually were only temporary.\textsuperscript{105}

F. Periodic Employment

The All-China Women's Federation (ACWF)\textsuperscript{106} objected to another government proposal, "periodic employment," which would require women to stop working for several years after their marriage or the birth of a child and then be allowed to return to the workplace several years later after their children have grown up.\textsuperscript{107} The ACWF argued that such a plan violates the legal principle that men and women have equal rights to work and degrades women's social and family status.\textsuperscript{108} The Chinese government claimed that periodic employment would help relieve competition for jobs and reduce underemployment.\textsuperscript{109} The ACWF disagreed, finding that the major cause of unemployment and underemployment has been social and economic reform, not the large population of female employees.\textsuperscript{110} Forcing women to remain unemployed for long periods of time may cause financial difficulties for many families and can weaken the competitiveness of both female skilled laborers and intellectual workers, resulting in increased difficulty in securing positions when they are allowed to return to the workforce.\textsuperscript{111}

\textsuperscript{104} See id.
\textsuperscript{105} See id.
\textsuperscript{106} The ACWF is the PRC's national government-sponsored women's organization. See Tanya S.J. Selvaratnam, \textit{Backseat Driver: Steering Chinese Women's Voices Through the 1990s}, 12 J.L. & POL. 93, 109 (1995). Although the organization acts as a representative of and advocate for women, its agenda depends ultimately on current government policy. See id. As a result, the ACWF has been criticized for not representing all women effectively. See id. at 110–11; see also HRIC, supra note 1, at 305 (stating that "[a]lthough the ACWF has been able to speak out on many issues that concern women, . . . its primary function is to transmit the Party's policies to women and to mobilize them to implement those policies").
\textsuperscript{108} See Delegates Object to "Periodic Employment," supra note 3. Article 13 of the Labor Law states that females shall enjoy equal rights as males in employment. See Labor Law, art. 13, supra note 28, at 22.
\textsuperscript{109} See Delegates Object to "Periodic Employment," supra note 4.
\textsuperscript{110} See id.
\textsuperscript{111} See id.
G. Age Discrimination

The CWER also urged legislation prohibiting age discrimination.\textsuperscript{112} Job opportunities "for women are mostly in the service industry, which blatantly discriminates on the basis of age and appearance."\textsuperscript{113} For example, the job postings displayed in a reemployment center demonstrated that the positions that paid the best were reserved for young women.\textsuperscript{114} Every ad stated age requirements: "Saleswoman: less than 30," "Waitress: 18 to 25," "English-speaking secretary: less than 25."\textsuperscript{115} Middle-aged women are regularly told that they are too old, too fat, too ugly and too short for service positions such as waitress or salesperson.\textsuperscript{116}

Chinese law sanctions age discrimination in the form of earlier retirement ages, some as early as forty,\textsuperscript{117} for women than for men.\textsuperscript{118} For instance, the mandatory retirement age for female laborers is fifty while male laborers do not have to retire until age sixty.\textsuperscript{119} Certain female teachers, doctors, and scientific and technical personnel can retire at age sixty, but men in the same positions may work until age sixty-five.\textsuperscript{120} Some work units use this age differential as an excuse for not hiring women so that they can avoid making pension payments for five or ten years longer to women than men.\textsuperscript{121}


\textsuperscript{114} See id.

\textsuperscript{115} See id.

\textsuperscript{116} See id.

\textsuperscript{117} See HRIC, \textit{supra} note 1, at 304.

\textsuperscript{118} See Jordan, \textit{supra} note 4, at 61.

\textsuperscript{119} See id. at 61 & n.48 (citing Guowuyuan Guanyu Gongren Tuixiu, Tuizide Zanxing Banfa [State Council Interim Procedures Concerning Retirement or Resignation of Workers], art. 1(1) (June 3, 1978), reprinted in Zhonghua Renmin Gongheguo Falü Quanshu [Collection of the Laws of the PRC] 1393 (1990)).

\textsuperscript{120} See id. at 61 & n.50 (citing Guowuyuan Guanyu Yanchang Bufen Gugan Laoshi, Yisheng, Kejirenynuan Tuixiu Nianlingde Tongzhì [State Council Circular Extending the Retirement Age of Some Essential Teachers, Doctors, Scientists and Technicians] (Sept. 12, 1983), reprinted in Zhonghua Renmin Gongheguo Falü Quanshu [Collection of the Laws of the PRC] 1389 (1990)).

\textsuperscript{121} See id. at 61 & n.57 (citing \textit{Equal Rights to Education Should Be Guaranteed}, CHINA DAILY, Dec. 4, 1990, at 4).
ages for women have also resulted in work units failing to train or promote women because they will work for fewer years than men.122

In July, 1992, a group of nine women engineers initiated the first challenge to this type of sex discrimination.123 They formally protested to Shanghai’s women’s federation, charging their employer, the Shanghai Astronautics Bureau, with forcing them to retire based on their sex.124 The women alleged that the Astronautics Bureau violated the spirit of the LPWRI, which would go into effect on October 1, 1992, by ignoring a clause that allows female specialists to continue working past the normal retirement age of fifty-five.125 The women ranged in age from fifty-five to fifty-seven and, despite the fact that they were fully capable of continuing their research work, the Astronautics Bureau ordered them all to retire.126 The Bureau rejected the gender discrimination charge.127 The employer felt that this was a case of different interpretations of the rules and argued that the regulation cited by the female engineers only allows employers to keep women on past the age of fifty-five, but does not require them to do so.128

In a more recent retirement age discrimination case, three female engineers sued the China National Fisheries Group after it forced them to retire at age fifty-four.129 Because Personnel Ministry regulations set the retirement age for men and women with expert qualifications at sixty, the women have won two court judgments against the employer.130 However, as of April, 1998, the fisheries group had refused to reinstate the women or give them back pay.131 Guo Jianmei, executive director of the Center for Women’s Law Studies and Legal Services of Beijing University, which represents the women, is trying to enforce the decision by relentlessly pressuring the company’s president and complaining to government ministers.132

122 See id. at 61–62 & n.52 (citing Working Women, 1384 CHINA NEWS ANALYSIS 1, 3 (May 1, 1987)).
123 See Women Launch China’s First Sex Bias Challenge, Reuter Library Report, July 9, 1992, available in LEXIS, ASIAPC Library, ALLNWS File [hereinafter First Sex Bias Challenge].
124 See id.
125 See id.
126 See id.
127 See id.
128 See First Sex Bias Challenge, supra note 123.
129 See Rosenthal, supra note 2.
130 See id.
131 See id.
132 See id.
Chinese working women are suffering from serious gender discrimination that is entrenched in traditional Chinese attitudes about the role of women and is perpetuated by government-sanctioned employment discrimination. Economic reform has exacerbated gender discrimination in its attempt to attract foreign investment and compete in a capitalist economy. The Chinese government has recognized the resultant unequal treatment of women in the workplace by passing laws that should protect women’s rights. But laws and regulations enacted to protect female employees have often proven ineffective in fighting, or have even aggravated, the gender discrimination problem.

II. USE OF STATUTORY LAW TO FIGHT DISCRIMINATION

A. Constitution of the People’s Republic of China (1993)

The Constitution guarantees women “equal rights with men in all spheres of life, in political, economic, cultural, social, and family life.” Article 48 expressly “applies the principle of equal pay for equal work to men and women alike.” However, the Chinese Constitution is more a declaration of policy than actionable law, and it does not provide the same amount of protection that Western constitutions do.

Unlike Western legal tradition, rights are implemented according to current Chinese policy and are not derived from any universal theory of natural rights. Chinese constitutional rights are also granted, modified, suspended, and withdrawn for the sole purpose of implementing particular policies. Additionally, any right listed in the constitution is only a “theoretical possibility of a right,” and one must look to individual laws for actual effective government policy. One commentator explains this situation: “That the act of some governmental body may have been in violation of the Constitution is not an

133 See supra Part I.C–G.
134 See Woo, supra note 31, at 151–52.
135 See supra notes 26–30 and accompanying text.
136 See infra Part II.A–C.
137 See Constitution, art. 48, supra note 26.
138 See id.
139 See Jordan, supra note 4, at 57–58.
140 See id. at 58.
141 See id.
142 See id.
argument against the act's legal validity. The courts do not have power to base decisions on constitutional provisions, and constitutional rights are not protected except by statute.\textsuperscript{143}

Even if a given right is supported in laws or regulations, the exercise of such freedoms or rights "may not infringe upon the interests of the state, or society or of the collective..."\textsuperscript{144} Therefore, if an individual's exercise of a right conflicts with the larger objectives of the state, any alleged violation of that stated right may not be actionable.\textsuperscript{145} Under these circumstances, the current political climate dictates whether enforcement of a particular right would be subversive, immoral, unworthy or otherwise deemed inappropriate for any reason.\textsuperscript{146} In contrast to the Western interpretation of constitutional rights as legally enforceable and derived from a theory of "natural rights," the Chinese definition of rights, especially those of women, can be both highly-restricted and flexible, depending upon current government policy.\textsuperscript{147} Therefore, actions based solely on an infringement of constitutional rights theory would likely have no merit, and Chinese women must turn to other laws and regulations for redress.


1. The Labor Protection Regulations

Implemented in 1988, the Labor Protection Regulations were intended "to protect legitimate rights of female...workers, reduce and solve special difficulties encountered in labor and work...by female...workers due to their physiological characteristics, protect their health, and contribute to the building of socialist modernization."\textsuperscript{148} For instance, reduction of wages or cancellation of the labor contracts of female workers during the period of time spanning pregnancy, delivery, and breast-feeding is prohibited.\textsuperscript{149} Female workers are also guaranteed ninety days of maternity leave and time to breast-feed their children during their work shifts.\textsuperscript{150} The Labor Protection Regulations also mandate that units with a "relatively large number"
of female workers should "gradually establish health clinics, restrooms for pregnant women, breast-feeding rooms, child care centers, and kindergartens run by themselves or jointly." On the surface, the regulations seem to sincerely address the important concerns of working mothers.

However, many provisions restrict the work that women are allowed to perform. Article 5 bans women from engaging in underground mining or work of a high "labor intensity." During menstruation, women are not allowed "to work at high altitude, in places with low temperature, in cold water," or on other jobs with a high "labor intensity." While a woman is pregnant or breast-feeding, she cannot work on jobs "which should not be done during pregnancy" or "during the breast-feeding period."

If a female worker "legitimate[ly]" feels that these rights have been violated, she can appeal to the responsible department of her work unit or to the local labor department. The Labor Protection Regulations provide for economic compensation and allow women to appeal these administrative decisions to the people's courts, the local lower-level Chinese courts. However, the regulations lose all effect if the female is found to have violated state family planning regulations, as in Sun Lili's case. The fact that these rights are tied to China's restrictive family planning scheme is troubling. Essentially, these laws provide only contingent rights.

It has been contended that the Labor Protection Regulations may be the major legal source of discriminatory treatment of female workers. The drafters of the regulations appear to believe that the nature of women's "special characteristics" is understood, and that no description of these characteristics or the connection between these characteristics and a presumed inability to work on certain jobs is required. While men are assumed suitable for all types of work, these

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151 See id., art. 11.
152 See id., art. 5.
153 See Labor Protection Regulations, art. 6, supra note 27, at 42.
154 See id., art. 7, 10.
155 See id., art. 12 at 42.
156 See id., art. 12–13, at 43.
157 See id., art. 15.
159 See id. at 48–49.
160 See Jordan, supra note 4, at 62.
161 See id.
regulations subordinate women to a second-class status, perpetuating the traditional “Chinese belief that women are physically inferior to men.”

The regulations also promote a presumption of the intellectual inferiority of women. Female workers are not able to decide for themselves whether they want to assume certain risks in their jobs or whether they are able to work during pregnancy or menstruation. It has been argued that the “best explanation for the existence of paternalistic laws applicable only to women is the belief among many Chinese people that women are simply inferior to men and, as such, men...have a right, perhaps even a duty, to make certain decisions for women.”

In addition, the costs of all of the benefits bestowed by the regulations are imposed on the mother’s work unit, not the father’s. This supports the view that the mothers are solely responsible for taking care of their children, and it may also result in work units hiring men over women to avoid the costs of child-bearing and childcare.

The Labor Protection Regulations therefore provide a convenient excuse for employers to discriminate against women.

2. The Labor Law

On January 1, 1995, the PRC enacted the Labor Law after almost forty years of debate and revision. This law’s stated purpose is “to protect the lawful rights and interests of workers, readjust labor relationships, establish and safeguard a labor system that suits the socialist market economy and promote economic development and social advancement.” The Labor Law summarizes the basic principles already embodied in existing administrative regulations, including the Labor Protection Regulations. An important element of the Labor Law...
Law is that it explicitly covers all workers, including employees of foreign-owned businesses.\(^{173}\)

In terms of addressing gender discrimination, Article 13 of the Labor Law states that “[w]omen shall enjoy the right of employment equal to that of men.”\(^{174}\) Also, “women may not be refused employment because of their sex and recruitment standards may not be raised for women.”\(^{175}\) However, this prohibition is qualified. Standards may be raised when the nature of the job “has been determined unsuitable for women by the State.”\(^{176}\) The Labor Law further requires that “[e]qual pay shall be given for equal work.”\(^{177}\) Also provided for is “[s]pecial [p]rotection for [f]emale staff and workers,” which echoes the Labor Protection Regulations in terms of working in mines, working during pregnancy and breast-feeding, and providing for maternity leave.\(^{178}\) This situation also perpetuates the problems associated with protective legislation as discussed in regards to the Labor Protection Regulations.

Regarding the Labor Law’s direct attention to the subject of gender discrimination, Professor Hilary K. Josephs, an expert on Chinese labor law, finds that the law is consistent with official PRC efforts to remedy the problem, as envisioned by the Constitution and the LPWRI.\(^{179}\) Workers whose rights have been infringed can continue to seek remedies through administrative sanctions, as under older labor rules.\(^{180}\) There has been a subtle shift, however, toward an emphasis on civil liability for breach of contract to encourage compliance with contractual obligations between the employer and workers.\(^{181}\) It is still unclear, however, if the Labor Law will effectively improve the status of women in the workplace, since there have been only a small number of decisions on Labor Law claims from China’s highest court, the Supreme People’s Court, and none of them involved women’s issues.\(^{182}\)

\(^{173}\) See Labor Law, art. 2, supra note 28, at 21.

\(^{174}\) See id., art. 13, at 22.

\(^{175}\) Id.

\(^{176}\) See id.

\(^{177}\) Id., art. 46, at 28.


\(^{179}\) See Josephs, supra note 1, at 568 & n.42.

\(^{180}\) See Labor Law, art. 89, supra note 28, at 34.

\(^{181}\) See id., art. 89–105, at 34–36; Josephs, supra note 1, at 569.

\(^{182}\) See Spahn, supra note 80, at 272.
C. Law Protecting Women’s Rights and Interests (1992)

In April, 1992, the PRC enacted the LPWRI, which addresses women’s political, educational, cultural, employment, property, marriage, and family rights, as well as “rights of the person,” which embody rights of personal freedom, bodily integrity, dignity, honor, and reputation. The LPWRI was intended “to give concrete expression to the guarantee of gender equality contained in the Chinese Constitution and to implement China’s obligations as a party to the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW).”

Chapter IV of the LPWRI specifically addresses a woman’s right to work. Men and women enjoy the same right to work, and should be paid equally for equal labor. Women should also receive equal housing assignments and material benefits. Discrimination in promotions and evaluations is also prohibited, as is dismissal or termination of a labor contract based on marriage, pregnancy, maternity leave, or lactation.

The LPWRI also requires that work units maintain the same hiring criteria for men and women and not refuse to hire women. However, an employer can refuse to hire a woman if the position is “unfit” for females. Other protectionist legislation is provided in Article 25, which states that employers “should not assign women any work or labor that is unsuitable for them” and that “[w]omen should be given special protection during menstruation, pregnancy, ... and lactation.”


184 See Hecht, supra note 183. Article 11 of CEDAW addresses the elimination of discrimination against women in employment to ensure equal rights for men and women. See Convention on the Elimination of All Forms of Discrimination Against Women, Sept. 3, 1981, art. 11, 1249 U.N.T.S. 13, 18-19. In addition to requiring equality in hiring criteria, benefits, promotions, and training, CEDAW also provides that member countries take appropriate measures to prevent employment discrimination based on pregnancy and the taking of maternity leave and to provide special protections for pregnant women in the workforce. See id.

185 See LPWRI, ch. IV, supra note 29.

186 See id., art. 21, 23.

187 See id., art. 23.

188 See id., art. 24, 26.

189 See id., art. 22.

190 See LPWRI, art. 22, supra note 29.

191 See id., art. 25.
Professor Ann D. Jordan argues that the LPWRI “could have marked the beginning of an aggressive campaign to enforce a more egalitarian, non-sexist policy towards women, could have recognized the sexist assumptions implicitly and explicitly given expression in the law and could have proclaimed a new intolerance for sexual discrimination.” However, the Chinese government failed to go this far, reaffirming “its existing sexist policies.” Most of the LPWRI’s provisions regarding employment were drawn directly from pre-existing laws, such as the Constitution and the Labor Protection Regulations.

Another problem is that the LPWRI does not provide an independent enforcement mechanism. A victim of employment discrimination can report her situation to the relevant government department or the ACWF and request investigation of the matter, which will ultimately be dealt with by the government department. A woman can only file a lawsuit if there is a substantive and procedural basis for it in another law. Some commentators have suggested that a suit against an administrative agency that fails to act upon a woman’s request to perform its legal duty to protect her personal or property rights be filed under the ALL. As such, the LPWRI becomes more of an official statement of policy and principles “to be inculcated through education and propaganda,” rather than a new avenue for seeking redress of gender discrimination.

D. Administrative Litigation Law (1990)

1. Introduction to the ALL

The ALL, which went into effect on October 1, 1990, “establishes general principles and a procedural framework for the exercise of judicial review over administrative action.” Individual “citizens and legal persons” are now able to bring lawsuits against state administrative organs for “specific acts” that infringe upon their “lawful inter-

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192 Jordan, supra note 4, at 95.
193 See id.
194 See id. at 96; HRIC, supra note 1, at 303.
195 See LPWRI, art. 48–52, supra note 29; Hecht, supra note 184.
196 See LPWRI, art. 48, supra note 29.
197 See id., art. 52; Hecht, supra note 183.
198 See Hecht, supra note 183; see also discussion infra Part III.D.
199 See Hecht, supra note 183; HRIC, supra note 1, at 303.
200 See Potter, supra note 34, at 372.
Therefore, the ALL reflects an effort by the Chinese government to hold administrative agencies more accountable for their actions.\textsuperscript{202}

The ALL enables courts to overrule unlawful administrative decisions and to revise unfair administrative sanctions.\textsuperscript{203} The ALL is applicable in a broad range of situations\textsuperscript{204} and can go far in curbing bureaucratism and preventing abuses of power by officials who regularly disregard the limits of the power bestowed on them by controlling regulations.\textsuperscript{205} The procedural provisions of the ALL also aim to protect plaintiffs against procedural abuses by administrative authorities, acknowledging the great difference in political power between individuals and administrative organs.\textsuperscript{206} Taken together, the provisions supporting effective judicial review, the scope of parties subject to the ALL, and the procedures for the review process itself suggest that individuals "have a chance to receive fair treatment and effective redress" under the ALL.\textsuperscript{207}

2. Obstacles to Legal Redress Based on ALL Claims

a. \textit{Limited Scope of Review}

However, many difficulties remain in challenging administrative actions under the ALL. First, limits on the scope of review undermine the court's discretion to reconsider decisions of administrative organs.\textsuperscript{208} The courts are only authorized to reassess the \textit{legality} of an administrative action; whether the decision was proper is not reviewable.\textsuperscript{209} Chinese courts must also defer to the administrative agencies' interpretations of their rules.\textsuperscript{210} Since Chinese regulations often are intentionally vague and drafted to give officials wide discretion, usu-

\begin{footnotesize}
\begin{enumerate}
\item See ALL, art. 2, \textit{supra} note 19, at 37.
\item See Potter, \textit{supra} note 34, at 376.
\item See id. at 379.
\item Actionable circumstances include dissatisfaction with administrative sanctions or restrictions on personal freedom or property, an administrative authority's refusal to protect personal rights or property, failure to allocate pensions, and administrative authority demands for performance of illegal actions by the individual. See ALL, art. 11, \textit{supra} note 19, at 38–39.
\item See Potter, \textit{supra} note 34, at 380.
\item See id. at 380–381; ALL, art. 31–64, \textit{supra} note 19, at 43–52.
\item See Potter, \textit{supra} note 34, at 383.
\item See id. at 384.
\item See id.; ALL, art. 5, \textit{supra} note 19, at 37.
\item See Lubman, \textit{supra} note 36.
\end{enumerate}
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ally it will be extremely difficult to prove that any actions other than the most egregious conduct actually violate the applicable regulations.\(^{211}\) However, the courts have been able to review the legality of administrative rules when the rules at issue conflict with national law and administrative regulations.\(^{212}\) Still, courts do not have the power to strike down a regulation; they can only refuse to apply the inconsistent rule.\(^{213}\)

The courts are also limited as to the types of administrative decisions they can hear.\(^{214}\) State acts involving national defense or diplomacy, validity of administrative laws and regulations, orders of universal application, validity of personnel decisions, and specific acts subjected by law only to final administrative authority adjudication are all exempted from review under the ALL.\(^{215}\) In addition, Communist Party (Party) organizations are exempted from lawsuits under the ALL.\(^{216}\) Despite the fact that Party organizations often formulate administrative decisions, relief cannot be sought against the Party under the ALL.\(^{217}\) Thus, politics also limit judicial review of administrative conduct.\(^{218}\) Accordingly, the administrative bureaucracy remains effectively insulated from outside review and interpretation of their regulations.\(^{219}\)

b. Administrative Officials as Defendants

Even when individuals are able to bring suits against administrative organs under the ALL, the “officials are often hostile to the idea that they may end up as defendants in court.”\(^{220}\) Prior to the enactment of the ALL, only superiors and Party discipline committees could challenge lower officials’ actions.\(^{221}\) Studies have found that it was not unusual for government officials to refuse to appear in court and that “officials did not want to ‘condescend’ to go to court on an

\(^{211}\) See Potter, supra note 34, at 384.


\(^{213}\) See id.

\(^{214}\) See Potter, supra note 34, at 385.

\(^{215}\) See ALL, art. 12, supra note 19, at 39.

\(^{216}\) See id., art. 25, at 42; Susan Finder, Like Throwing an Egg Against a Stone? Administrative Litigation in the People’s Republic of China, 3 J. Chinese L. 1, 18 (1989).

\(^{217}\) See Finder, supra note 216, at 18.

\(^{218}\) See Potter, supra note 34, at 385.

\(^{219}\) See id. at 385–86.

\(^{220}\) See Finder, supra note 216, at 10.

\(^{221}\) See id. at 18.
equal basis with ordinary citizens. Some officials refused to answer lawsuits or to deliver files to the court, and some have even destroyed incriminating evidence.

A 1987 survey of Shanghai government agency officials showed that many possessed deficient knowledge of administrative law. This report also found that the basis for administrative actions was often questionable. Administrative decisions had been made where there was no law on which to rely and where the available law is difficult to apply, and in other instances it was found that the law was not applied strictly. The enactment of the ALL in 1990 would not instantly solve these problems with administrative officials. In fact, this situation has only erected yet another barrier to legal redress under the ALL.

c. Willingness of Citizens to Bring Actions Under the ALL

At the time the ALL went into effect, commentators questioned whether ordinary citizens would become aware of the existence of the law. Even if individuals were informed about the ALL, there was also concern that they would refrain from filing valid claims because of the general belief that officials protect one another. Citizens were also afraid that it would be dangerous to win such a lawsuit, fearing reprisals upon winning vindication for an ALL claim.

3. Results of the Implementation of the ALL

However, it seems that these fears have not been a major stumbling block to the ALL. Some positive steps have been taken to inform Chinese citizens of their rights. In December, 1995, Beijing publisher Guangming Daily released an important booklet entitled “Chinese Citizen’s Handbook.” It aims to raise the “citizenship consciousness of readers by explaining the rights and obligations of being a citi-

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222 See id.
223 See id.
224 See id. at 18–19.
225 See Finder, supra note 216, at 19.
226 See id.
227 See id. at 10; Ann Scott Tyson, Chinese Reformer Stays the Course, CHRISTIAN SCI. MONITOR, June 4, 1990, available in LEXIS, NEWS Library, CSM File.
228 See Finder, supra note 216, at 10.
229 See id.; Tyson, supra note 227.
230 See Todd Crowell & David Hsieh, People Power: As Economic Change Erodes the State’s Authority, the Chinese are Free to Sue Companies, Elect Some Officials and Speak Out as Never Before, ASIAWEEK, Oct. 18, 1996, at 28.
The booklet, which uses a question-and-answer format and has sold six million copies as of October, 1996, "is widely seen as the first comprehensive statement by any government of China on the rights of citizens."\(^{232}\)

In addition, China's rapidly changing economic and social order has produced a new generation of Chinese citizens who have become accustomed to greater freedom in their personal lives than their parents ever had.\(^{233}\) They are not as dependent on the local government or their work units to provide them with housing, health care, and permanent employment.\(^{234}\) Sun Lili and her husband Zhang are members of this new generation.\(^{235}\) They live in an apartment provided by Zhang's father's work unit.\(^{236}\) Sun had never been a permanent employee of the Workers Family Hotel.\(^{237}\) She had been working under a series of two-year contracts that included health care, but not housing.\(^{238}\) Sun's husband acknowledges that many people are scared to challenge their work units' illegal actions because they think their employers will retaliate in some way.\(^{239}\) However, Zhang's sentiment, more typical of the younger Chinese who are less financially dependent on the government, about this situation is that "[t]here are other jobs."\(^{240}\)

Legal experts have also been more vocal about urging the Chinese government to more clearly define an "administrative act."\(^{241}\) Such a clarification by the government would aid potential plaintiffs in evaluating the validity of their claims in the wake of a surge of cases filed against administrative officials.\(^{242}\)

These efforts to inform Chinese citizens of their rights and to clarify the ALL have resulted in an ever-increasing number of cases being filed against administrative officials.\(^{243}\) At the end of the 1980s,
lawsuits filed by citizens against the Chinese government averaged about 10,000 per year.244 After the ALL went into effect in October, 1990, it took some time for the number of cases filed under the law to increase.245 In 1991, about 25,600 suits were filed against the government, and the average number of suits filed in 1992 and 1993 were approximately 27,000 per year.246 In 1993, administrative decisions were amended or dismissed about 20% of the time; almost 24% of the administrative decisions were affirmed.247 However, over 40% of the suits filed in 1993 were withdrawn by the plaintiffs.248 This high rate suggests that government officials may have been exerting pressures on citizens to drop their lawsuits,249 a concern that was predicted to deter individuals from filing in the first place.

In spite of this, the number of ALL cases filed grew to 51,370 in 1995, and an estimated 100,000 cases in 1997.250 One survey found that 39% of lawsuits brought under the ALL resulted in at least a partial victory.251 ALL cases seem to be particularly successful when challenging the actions of law enforcement officers. For example, Wang Debing, a restaurant owner in Luzho, in Sichuan Province, was jailed for fifteen days by the local police in 1996.252 Wang had been accused of spiking the food served in his restaurant with opium.253 Wang won when he sued under the ALL because the police had no evidence against him.254

In a 1994 case, Huang Jin, a businessman in Benxi, in Liaoning Province, was accused of fraud and jailed for twenty-one days.255 The police also confiscated tons of steel and 300 pairs of shoes from

244 See id.
245 On January 24, 1991, Ma Yuan, vice-president of the Supreme People’s Court said that there had not yet been a large increase in administrative cases. See Litigation Law Implementation Proceeding Smoothly, BBC Summary of World Broadcasts, Jan. 30, 1991, available in LEXIS, ASIAPC Library, BBCSWB File. The ALL also had not caused administrative organs to change their normal operating activities. See id.
246 See Pci Address, supra note 243.
248 See id.
249 See id.
250 See Rosenthal, supra note 2.
251 See id.
252 See id.
253 See id.
254 See id.
255 See Rosenthal, supra note 2.
Huang’s business.\textsuperscript{256} After Huang sued under the ALL, the court ruled that he had been illegally detained.\textsuperscript{257} The police were then ordered to return Huang’s property and pay medical expenses Huang incurred for an illness he suffered while in jail.\textsuperscript{258}

It also appears that the increased number of ALL cases has changed administrative agencies’ attitudes about pressuring individuals to drop their lawsuits. More recently, the very act of filing a claim has often resulted in the government backing down on its challenged action, amounting to an out-of-court settlement.\textsuperscript{259} For example, in November, 1991, the State Press and Publications Administration (SPPA) decided to close down the China Chengshi Publishing House (CCPH) for publishing and selling types and quantities of books that the SPPA did not find appropriate.\textsuperscript{260} The CCPH refused to close down, and eventually filed suit against the administrative agency under the ALL in the Beijing Municipal Intermediate People’s Court in February, 1992.\textsuperscript{261} By January, 1993, the SPPA reversed its decision and agreed to restore the publishing house, which in turn withdrew its suit against the administrative agency.\textsuperscript{262}

Although Sun Lili’s efforts to sue her employer under the ALL have not yet proved successful, it is important that a family planning case has gone this far through the Chinese judicial system.\textsuperscript{263} Challenges to family planning decisions usually go no farther than internal administrative review.\textsuperscript{264} Sun’s continuing appeals will bring increasing attention to the family planning regulations which unduly burden women in China. Also, while the PRC touts that its laws give special protection to women in the workplace, these regulations lose all effect if a woman’s employer decides that she has violated family planning regulations.\textsuperscript{265} Therefore, Sun Lili must challenge administrative authorities under the ALL on the argument that employer’s family planning regulations and those of the local government, Beijing, are

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\textsuperscript{256} See id.
\textsuperscript{257} See id.
\textsuperscript{258} See id.
\textsuperscript{259} See id.
\textsuperscript{261} See Banned Publishing House Sues Government Department, Agence France Presse, Apr. 9, 1992, available in LEXIS, NEWS Library, ARCNEWS File.
\textsuperscript{262} See First Major Press Legal Case, supra note 260.
\textsuperscript{263} See Olojede, supra note 3.
\textsuperscript{264} See id.
\textsuperscript{265} See Labor Protection Regulations, supra note 27, art. 15, at 43.
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inconsistent. Conflicts of SOE, local, and national laws in China, along with several other problems in the judicial system, present even more difficulties in the struggle for protection of citizens’ rights.

III. DIFFICULTIES OF SEEKING LEGAL REDRESS THROUGH THE JUDICIAL SYSTEM

A. Conflict of Laws

The ALL does not instruct the courts on how to proceed if they determine that there is a conflict between the challenged local regulations and national laws or regulations. In addition, the Constitution has no provisions that constrain the various law-making bodies from enacting conflicting laws. However, in 1985, the Supreme People’s Court’s “Notice on Strengthening Economic Adjudication” advised the lower people’s courts to report conflicts between local legislation and the Constitution, national laws or administrative regulations to the local People’s Congress and its standing committee. The notice does not provide how the court should proceed after making the report or what result should be reached. There is some disagreement over the import of “reporting” the conflict to the local legislature, but it appears that the report either simply serves to put the local People’s Congress on notice of the apparent conflict or as a request for legislative interpretation.

It could be argued in Sun Lili’s case that the dismissal and excessive fines imposed by her work unit violate a woman’s equal right to work as granted by the Constitution, LWPRI, and the Labor Law, because penalties for violating family planning regulations fall almost exclusively on mothers. However, the national Labor Protection Regulations deny special protections to women who violate the state family

266 See Rosenthal, supra note 2.
267 See Finder, supra note 216, at 25.
269 National laws are passed by the National People’s Congress or its Standing Committee. See Finder, supra note 216, at 25.
270 Administrative regulations are promulgated by the State Council. See id.
273 See Nanping, supra note 271, at 246 (arguing that the Supreme People’s Court is declaring its authority to declare invalid local laws that contravene the Constitution).
274 See Finder, supra note 216, at 26.
planning requirements.275 This could be read as a conflict between national laws, but most likely it would be interpreted simply as an explanatory refinement of the national policy on the equality of women.

This situation then leaves the conflict between two types of local administrative law in Sun Lili’s case: the work unit’s family planning rules and the Beijing municipal family planning regulations. The Beijing regulations state that a childless woman who gives birth without permission should be fined 200 yuan (about $25), but her work unit fined her 3,100 yuan (about $400).276 However, some Beijing legal experts, who agreed that the fine sounded excessive, were unsure whether it was actually illegal.277 Chinese law is unclear on whether municipal regulations prohibit work units from imposing harsher penalties.278 Usually such conflicts of law on a local level are settled through “reconciliation,” or negotiation.279 Because there is no legally prescribed method of dealing with conflict on the local level, the courts continually have difficulties about how to apply the laws in a particular case.280 Also, individual judges have full discretion in making these decisions, which can prevent citizens from receiving a fair hearing.281

Sun’s argument is based on the work unit’s disregard of the Beijing regulations and the fact that Sun had no notice of the work unit’s fines.282 Although Sun has lost at the district and intermediate levels of the People’s Court, the Center for Women’s Law Studies and Legal Services of Beijing University, which represented the three female engineers who challenged the earlier retirement age for women, plans to reopen Sun’s case.283 Stanley Lubman, a specialist in Chinese law is heartened just by the occurrence of this case: “China is filled with abuses of discretion, and the law has the potential to curb these.”284 Hopefully, Sun’s case, and others like it, will draw greater attention to the issue of conflict of laws of different levels of Chinese government and the resulting unfair consequences imposed upon all individuals.

275 See Labor Protection Regulations, art. 15, supra note 27, at 43.
276 See Rosenthal, supra note 2.
277 See id.
278 See id.
279 See Jie, supra note 268.
280 See id.
281 See id.
282 See Rosenthal, supra note 2.
283 See id.; Olojede, supra note 3.
284 See Rosenthal, supra note 2.
B. Structure of the Legal System

While the question of how to handle conflicts of law bogs down the judicial process, the structure of the Chinese legal system itself limits the ability of judicial action to improve the status of women in employment. The Chinese judicial system has the potential to provide more uniformity and consistency of enforcement than other government entities because it has formal authority to issue judgments that cut across bureaucratic and territorial boundaries. However, courts often have difficulty in enforcing their own decisions.

Commentators find that the Chinese courts are not vested with adequate authority to enforce judgments against offending administrative organs. Any authority that courts may have in enforcing decisions against administrative agencies arises from "the bureaucratic rank of individual judges." Despite the fact that the judiciary and legislature at any given level of government are supposed to possess equal authority, the chief executive of the particular legislative branch usually has a higher bureaucratic rank than the court president. As a result, "low-status" judges will not be able to order "higher-status" administrative officials to follow their decisions.

In 1998, it was found that, over the previous three years, the percentage of executed judgments was decreasing while the number of decisions that could be executed was increasing; the number of unsettled cases had also substantially increased. In response, the Supreme People's Court placed the judgment enforcement high on its agenda, urging the leaders of all people's courts to "attach great importance to the execution of court verdicts ...." Supreme People's Court President Xiao Yang also encouraged all people's courts to

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285 See Clarke, supra note 35, at 32.
286 See id. at 33; Lubman, supra note 36; Congress Hears Report on Work of Courts, Procuratorial Bodies, BBC Summary of World Broadcasts, Mar. 12, 1999, available in LEXIS, ASIAPC Library, BBCSWB File.
287 See Clarke, supra note 35, at 65–69. Stanley Lubman, a consulting professor at Stanford University Law School, explains: "Chinese courts do not have the authority, because they are on the same level, not higher than, the agencies whose acts they review." See Rosenthal, supra note 2.
288 See Clarke, supra note 35, at 66. Many judges have served as trusted leaders in the Communist Party for a number of years before being appointed. See Bing, supra note 212, at 16–17.
289 See Clarke, supra note 35, at 66.
290 See id. at 67.
292 See id.
“dare to uphold principles, firmly resist illegal interference, and exert great efforts to address the problem.”\textsuperscript{293} It remains to be seen whether these recommendations will lead to an increase in the execution of court judgments.

Local law enforcement authorities may also refuse to execute court judgments.\textsuperscript{294} Their reluctance to enforce judgments against local enterprises stems from the fear of driving away local business.\textsuperscript{295} This will obviously be a substantial hindrance to fighting employment discrimination against women. It seems unlikely that local law enforcement officials will keep after neighborhood businesses to compensate female victims of discrimination given the continuing Chinese tradition of the lower status of women.

C. Ineffectiveness of Judges

1. Lack of Independence in Decision-Making

Some of the weaknesses of the Chinese court system are due in part to the ineffectiveness of its judges. Regarding the negative court rulings in Sun’s case, Guo Jianmei of the Women’s Law Studies and Legal Services said that “[s]ome judges are afraid of making mistakes because they think family planning is national policy, and they don’t want to be on the wrong side of what they think is government policy.”\textsuperscript{296} Indeed, Ren Jianxin, the president of the Supreme People’s Court, has admitted that some judges have not heard administrative cases properly because they were afraid of adversely affecting their relationships with administrative organs.\textsuperscript{297}

This fear arises from the fact that the legislative branch of the government at all levels nominate and appoint judges and determine courts’ budgets.\textsuperscript{298} Chinese judges are also not tenured.\textsuperscript{299} Due to this control of the courts by local administrative organs, judges feel pres-

\textsuperscript{290} See id.
\textsuperscript{294} See Clarke, supra note 35, at 67.
\textsuperscript{295} See id.
\textsuperscript{296} See Olojede, supra note 3.
\textsuperscript{297} See Ren Jianxin, Supreme People’s Court Work Report, BBC Summary of World Broadcasts, Apr. 22, 1994, available in LEXIS, ASIAPC Library, BBCSWB File.
\textsuperscript{298} See Bing, supra note 212, at 17; Lubman, supra note 36.
\textsuperscript{299} See Bing, supra note 212, at 18; Lubman, supra note 36.
sure to decide cases in line with the policy of the superior government-
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tal body.300

Judges' fears are not unfounded, since retaliatory acts by adminis-
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trative organs have been widespread.301 In one incident, a court that
applied to the city construction bureau for a permit to construct a
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four-story office building was approved for only a three-story one be-
cause the court had previously quashed an unfair administrative deci-
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sion made by the construction bureau.302 These various outside
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influences on judicial decision-making, coupled with restraints on re-
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view imposed by the controlling laws, cast doubt on the existence of
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independent and impartial judicial review in China.

2. Lack of Education and Training

Furthermore, the quality of judges is also questionable since
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there are no required qualifications for being a judge.303 Many judges
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have had no formal legal training and are not familiar with adminis-
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trative issues.304 Li Daomin, chief judge in Henan province, has com-
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plained that "[t]he quality of our judges is just not high enough....
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Most haven't gone to college.... They look at the court like an iron
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rice bowl. They put their sons and daughters on the payroll and I
can't do anything about it."305

This judicial ignorance of the law is also untenable in the Chi-
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nese judicial system, which is much more inquisitorial than adversar-
ial.306 Since judges play a more controlling role in a proceeding, their
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lack of knowledge of the legal issues at hand can disadvantage all par-
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ties involved, especially individual litigants.307 Also, while some indices
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of prior decisions exist, there is no regular system of case reporting or
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method of researching case law by subject matter.308 Under circum-

300 See Lubman, supra note 36. In 1991, Huang Jie, chief of the Administrative Tribunal
301 of the Supreme People's Court in Beijing, acknowledged that "local courts, especially
courts at the basic level, are controlled by the local government to a large extent." See
302 Huang Jie on the Administrative Litigation Law, CHINESE L. & GOV'T, Fall 1991, Vol. 24, No. 3,
at 43, 44.
303 See Bing, supra note 212, at 17.
304 See id. at 17-18 (citing LIAOWANG [Outlook Weekly], No. 13, overseas edition, (Bei-
305 See id. at 16.
306 See id.; Clarke, supra note 35, at 58; Lubman, supra note 36.
307 See John Pomfret, China Aides Reveal Wave of Crime and Corruption: In Reports, Judicial
309 See Clarke, supra note 35, at 58.
310 See id.
311 See id. at 58-59 & n.253.
stances such as these, parties and lawyers are unable to predict how judges with little or no knowledge about the matters before them will rule, or to formulate persuasive arguments.\footnote{309}

The lack of legal education of judges is also reflected in written decisions that are inarticulate and unconvincing.\footnote{310} The judgments "tend to be short, imprecise, and full of political and polemical wording."\footnote{311}

In the face of all these problems, it appears that China is attempting to improve the skills of its judicial officials. In 1994, Zhu Mingshan, vice-president of the Supreme People's Court, announced that the courts would complete pre-post training for 42,000 new members in the next several years, periodically sponsor seminars to introduce and explain new laws, and hold regular training classes for judges.\footnote{312} Later, in early 1998, the Supreme People's Procuratorate and the Supreme People's Court launched a year-long attempt to root out incompetent judges and court personnel.\footnote{313} As a result, 4,200 "unqualified" judicial workers were dismissed nationwide.\footnote{314} However, Judge Li of Henan does not "think these problems will be solved by one or two campaigns."\footnote{315} Li also doubted the effect of encouraging judges and prosecutors to improve their legal training: "We get some of the officials to study law—we ask them to do it all the time—but we don't know if they learn any lessons."\footnote{316}

3. Corruption

Corruption is also widespread in the Chinese judicial system.\footnote{317} Xiao Yang, president of the Supreme People's Court, and Han Zhubin, China's chief prosecutor, "acknowledged that corruption is firmly entrenched among judges and prosecutors" at the annual meeting of the National People's Congress in March, 1999.\footnote{318}

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\item \footnote{309} See id. at 59.
\item \footnote{310} See Bing, supra note 212, at 16.
\item \footnote{311} See id.
\item \footnote{312} See Ren Jianxin Urges Improved Academic Training for Judiciary, BBC Summary of World Broadcasts, June 13, 1994, available in LEXIS, ASIAPC Library, BBCSWB File [hereinafter Ren Urges Improved Training].
\item \footnote{313} See Pomfret, supra note 37.
\item \footnote{314} See id.
\item \footnote{315} See Pomfret, supra note 305.
\item \footnote{316} See id.
\item \footnote{317} See Lubman, supra note 36; Clarke, supra note 35, at 59; Pomfret, supra note 37.
\item \footnote{318} See Pomfret, supra note 37.
\end{itemize}
During the previous year, the Supreme People's Procuratorate and the Supreme People's Court had also instituted a campaign to root out corruption.\textsuperscript{319} The resulting statistics revealed an alarming growth in corruption in the judicial system. In 1997, 1,051 judges and staff members were convicted of abuses of power; the number had more than doubled to 2,512 in 1998.\textsuperscript{320} In addition, 1,401 prosecutors and staff members were either disciplined or prosecuted in 1998.\textsuperscript{321}

The case of Li Chunxuan, a retired public bus conductor who sued the Beijing No. 1 Public Bus Company for its refusal to make early retirement payments, illustrates the judicial corruption problem.\textsuperscript{322} Li, 48, who suffered from high blood pressure and heart trouble, argued that he should be receiving payments twice as large as the bus company was paying him.\textsuperscript{323} Li has been fighting his case in the courts since 1996 with his appeal dragging on for six months with no conclusion.\textsuperscript{324} He blames corruption for his difficulties, claiming that the bus company bribed the lower court judges.\textsuperscript{325} As long as such corruption continues, it will be extremely difficult for individuals, especially women, to sue their employers for discriminatory practices.

\section*{IV. Strategies to Increase the Success of Challenges to Gender Discrimination in Employment}

Challenging gender discrimination in the workplace involves many intertwined issues, and it will take a long time to change centuries of tradition and belief in China.\textsuperscript{326} There will likely never be a Chinese society in which women and men share completely equal status; indeed, formal equality has its own downsides in its failure to protect important women's concerns.\textsuperscript{327}

\begin{thebibliography}{99}
\bibitem{319} See id.
\bibitem{320} See id.
\bibitem{321} See id.
\bibitem{323} See id.
\bibitem{324} See id.
\bibitem{325} See id.
\bibitem{326} See supra Parts II--III.
\bibitem{327} See generally Cynthia Grant Bowman & Elizabeth M. Schneider, \textit{Feminist Legal Theory, Feminist Law Making, and the Legal Profession}, 67 \textit{FORDHAM L. REV.} 249 (1998) (discussing how formal equality theory allowed women to gain access to the legal profession, but does not address problems such as women's continuing role as primary caretakers of children, women receiving lower salaries than men in similar legal positions, and women being forced to take on the characteristics and lifestyles associated with men in order to succeed as lawyers); Mary Becker, \textit{The Sixties Shift to Formal Equality and the Courts: An Argument for
The strategies proposed in this section are not intended to provide a simple solution for as complicated a problem as gender discrimination. Rather, they point out specific problems in fighting workplace gender discrimination in society as a whole and in the legal system, and they also suggest methods of easing and perhaps correcting those difficulties. Many of these strategies should be applied in the United States and other countries worldwide, as well as in China, to elevate women’s status in society. It is also significant that several of the ideas embodied in these tactics are already elements of law and policy or have been urged by Chinese leaders. However, lack of enforcement and implementation, as well as reluctance to societal change, has resulted in the failure of many well-meaning attempts at improving women’s status in China.

A. Education

1. Changing Attitudes About the Role of Women

Ideally, education and consciousness raising would change the traditional Chinese perception of the inferiority of women to men, leading to equality of men and women without the need for legal intervention. Realistically, of course, this will not be the case, as we can see here in the United States, where women are continually confronted with gender discrimination in numerous forms and situations despite all of the efforts that have gone into improving the status of women.

However, education is still as key to fighting gender discrimination in Chinese society as it is in any other country. Chen Muhua, vice-chairwoman of the National People’s Congress (NPC) Standing Committee and president of the ACWF, stressed that it is vital that male officials be made aware that women’s problems “are not only the

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528 See supra Part II.A-C; Supreme Court President Urges Courts to Uphold Verdicts, supra note 291; Ren Urges Improved Training, supra note 312.

529 See supra Parts I.C-G, II.A-C.

problems of individuals, but of the whole of society." HRIC has recommended that the government "encourage the formation of more grassroots initiatives on women's rights." Chen also urged women's organizations and activists to forward their suggestions to the NPC Standing Committee and the AWCF.

The "Program for Chinese Women's Development (1995–2000)," the result of the United Nations Fourth World Conference on Women held in Beijing in 1995, sets out an extensive list of actions that should be taken in China to "guide and enhance the development of Chinese women's undertakings." Of particular importance in fighting employment discrimination are the directives that call for all members of Chinese society to strive to "form civilized habits that respect and protect women" and for women's federations to "improve in representing and safeguarding women's rights and interests." However, as a whole, the program seems to emphasize that women take action to improve their own individual conditions. While this can only help women, it is not enough, because there are still so many other structural and societal barriers to improving women's opportunities. Deeply embedded stereotypes about women's work and intellectual abilities and role in society must also change.

2. Improving Women's Educational Opportunities

Traditional Chinese attitudes about the value of educating daughters must also change to reflect the same importance as that placed on educating sons. The argument that it is too expensive to educate girls when there is a lack of job opportunities is circular; if women were better educated, they would be more competitive with men. If women were regarded as having greater potential than simply serving as the producers of children, preferably sons, and caretakers

332 HRIC, supra note 1, at 306.
333 See Problems Still Remain, supra note 331.
335 See id.
336 See generally id.
337 See supra Parts I.C–G, II.A–C.
338 See Jordan, supra note 4, at 69.
339 See Riley, supra note 87.
of the household, the broader value of educating daughters would be more readily apparent.

B. The Constitution and Statutory Law

1. Awareness of Laws

While increasing numbers of plaintiffs have challenged administrative organs’ actions under the ALL, there seem to be fairly few filings of workplace gender discrimination claims. The only cases directly addressing gender discrimination are the earlier retirement age cases which have been based on illegal actions of SOEs that illegally attempted to force women into early retirement. If the Labor Protection Regulations, the Labor Law, and the LPWRI were better publicized and explained, more awareness of women’s rights and gender discrimination challenges would result. Increased awareness can also lead to citizens questioning the government about inadequacies of laws that are ineffective in practice. However, the problem of lack of enforcement mechanisms under the LPWRI remains.

2. Enforcement Mechanisms

Since the LPWRI does not establish any new private cause of action, any suit to protect a woman’s rights must be based on another law. If the Chinese government sincerely wishes to take positive steps in protecting women’s rights, a new private cause of action for violations of the LPWRI should be built into the law. Otherwise, without a basis in other law, a woman who feels that rights protected by the LPWRI have been violated has no real course of challenging the actions besides complaining to the relevant administrative agency or to the ACWF, which often proves futile.

540 See discussion supra Part II.D.3.
541 See discussion supra Part I.F.1.
542 See id.
543 See Hecht, supra note 183.
544 See id.
545 See Hecht, supra note 183; HRIC, supra note 1, at 304.
546 See Hecht, supra note 183.
3. Contingency of Rights

While the government touts its Labor Protection Regulations as important strides in protecting female employees, all of this "protection" can be denied if the work unit decides that the woman involved has violated its family planning regulations. This is especially troubling because the family planning policy is widely viewed as a human rights violation outside of China. Piling a denial of employment rights on top of a human rights violation should be viewed as intolerable, but it is likely often used as an excuse to deny the rights of or to punish female workers.

Even assuming there is no human rights violation in the family planning policy, more consideration should be given to extenuating circumstances. In Sun Lili's case, she was in danger of not being able to have any more children if she had another abortion. She and her husband had been using contraceptives, but the method had failed. Most significantly, this was her first child, which is allowed by the national family planning policy. The bare fact that she had failed to get permission for the pregnancy resulted in Sun's dismissal, denial of health care benefits, and a fine equal to one-third of her yearly salary. This should seem entirely unreasonable to the average person, but since it is not explicitly illegal, the decision has stood.

Women also disproportionately bear the punishment of violating the family planning regulations. Women are forced to get abortions, be sterilized, and use contraceptives, as well as be denied benefits, fired, and fined, while the men who impregnated them are not affected. Perhaps if Chinese law also held these men responsible, more attention would be given to the violations of human rights that are inflicted by the family planning policy because of the punitive effect on men.

548 See Labor Protection Regulations, art. 15 supra note 27, at 43.
550 See Olojede, supra note 3.
551 See Rosenthal, supra note 2.
552 See Olojede, supra note 3; Rosenthal, supra note 2.
553 See Olojede, supra note 3; Rosenthal, supra note 2.
554 See Olojede, supra note 3; Rosenthal, supra note 2.
555 See HRIC, supra note 1, at 286.
556 See id.
4. Actionable Constitutional Rights

Since a cause of action cannot be based on a right enumerated in the Constitution, Chinese constitutional rights are more policy than actual enforceable law. An article in the *Beijing Review* in 1995 criticized the United States for censuring China for its treatment of women. The article first discussed the United States' history of unequal treatment; it then went on to enumerate the many rights granted to women by the Chinese Constitution, basically arguing that the status of women in China is far superior to and better protected than that of American women. Because the rights guaranteed by the Chinese Constitution are unenforceable on their own, the article simply functions as another piece of government propaganda. For these rights to be truly liberating for women, the PRC must allow causes of action based on enumerated constitutional guarantees.

5. Gender Bias of Laws

The Labor Protection Regulations and the Labor Law both have provisions that masquerade as special protections for women, but actually perpetuate "[c]enturies of gender stereotyping based upon classifying certain attributes as male, and therefore positive, and other attributes as female, and therefore negative..." One expert in Chinese law, Ann D. Jordan, argues that eliminating biases and sexist assumptions in laws should help in dispelling gender stereotypes: "China must be encouraged to create a truly non-sexist equal legal environment in which equality of opportunity and treatment are the norm and discrimination is permitted only when necessary to effectuate equality..."

C. The Legal System

Officials in the Chinese government have acknowledged many of the problems that plague their legal system. They have encouraged the leaders of the courts and administrative organs to take steps that

557 See Jordan, supra note 4, at 58.
559 See generally id.
560 See Jordan, supra note 4, at 104.
561 See id.
562 See, e.g., Supreme Court President Urges Courts to Uphold Verdicts, supra note 291; Ren, supra note 297; Pomfret, supra note 305.
should lead to significant improvements in the government.\textsuperscript{365} However, some of these steps seem to have fallen short of being commands to the lower-level officials, and many local leaders and judges are content to maintain the status quo that protects their actions and financially rewards them for their illegal or unethical activities.\textsuperscript{364} The following strategies, if effectively implemented, should aid in reforming the Chinese legal system.

1. Strengthening the Authority of Courts

One major restraint on the authority of the courts is its limited ability to review the decisions of administrative organs.\textsuperscript{365} For example, the ALL only allows judges to decide the legality of a particular administrative action; its validity or reasonableness is not reviewable.\textsuperscript{366} A judge must also defer to the administrative organ’s own interpretations of its regulations, which will obviously be favorable to the agency.\textsuperscript{367} To remedy this, the PRC should allow a wider scope of review in particular circumstances, especially in the context of the ALL and similar laws which are intended to correct inappropriate administrative actions.\textsuperscript{368}

Because the administrative and judicial systems are on the same level, courts also often have difficulty in enforcing judgments upon offending administrative organs.\textsuperscript{369} Whether or not a decision is enforced is often based upon a particular judge’s individual power and status.\textsuperscript{370} The PRC must change this situation and give courts the authority to bind administrative agencies by their decisions.

However, administrative officials probably will not easily accept such action. Therefore, the national government will need to accompany any new national policy with incentives for administrative officials to comply as well as a concentration on cooperation between all levels and departments of the government in developing a fairer and more effective legal system. Supreme People’s Court President

\textsuperscript{365} See, e.g., Supreme Court President Urges Courts to Uphold Verdicts, supra note 291; Ren, supra note 297; Pomfret, supra note 305.
\textsuperscript{366} See Lubman, supra note 36; Pomfret, supra note 37.
\textsuperscript{367} See supra Part II.D.2.a.
\textsuperscript{368} See id.
\textsuperscript{369} See id.
\textsuperscript{370} See ALL, supra note 19.
\textsuperscript{371} See Clarke, supra note 19, at 33.
\textsuperscript{372} See id. at 66–67.
Xiao Yang has already asked the various judicial departments to institute these measures:

[C]onstant efforts must be made to institutionalize and standardize the execution of court verdicts. We must tighten coordination with relevant departments through establishing stable coordination mechanisms, do our best to create an external environment that can facilitate the execution of court verdicts. In particular, we must strive to obtain the support and understanding of party committees and governments at all levels. People's courts across the country must intensify their efforts in supervising the execution of court verdicts.\(^{371}\)

2. Formulation of Policies to Solve Conflicts of Law

The conflict of laws problem in a case like Sun Lili's is complicated because the conflict is between concurrent local governing bodies, the local municipal government and the work unit.\(^{372}\) There is no constitutional or national provision on handling conflicts of law.\(^{373}\) When conflicts between national and local law arise, they can be reported to the local People’s Congress for interpretation, but no final judgment on which law should govern will be issued.\(^{374}\) Therefore, when conflicts arise between local governing entities, and there is not even a hierarchical difference between the two departments, it will be even more difficult to decide which law should govern. Accordingly, the national government should formulate a controlling policy on determining which law should govern at all levels of government to aid judges in deciding such cases.

3. Allowing Judges Independence in Interpreting Regulations

Two major problems complicate independent judicial action: judges must defer to administrative organ interpretation of their own regulations, and there are often outside pressures, such as the local government that pays the salary of the judge or angry defendant administrative officials, that influence judges' decisions beyond the boundaries of the facts of a given case.\(^{375}\) It would be easy to say that

\(^{371}\) See Supreme Court President Urges Courts to Uphold Verdicts, supra note 291.
\(^{372}\) See Rosenthal, supra note 2.
\(^{373}\) See Finder, supra note 216, at 25–26; Jie, supra note 268.
\(^{374}\) See Finder, supra note 216, at 25–26.
\(^{375}\) See Ren, supra note 297; Lubman, supra note 36; Olojede, supra note 3.
the PRC should allow judges to use their own judgment in interpreting administrative regulations, but it likely would be unworkable if ordered as national law; such action would probably function like the many other Chinese laws that frame intents or policies, but are nonetheless unenforceable.576

It is also difficult to deal with the outside pressures on judicial decision-making. Granting tenure to judges may help if a particular judge does not have to worry about being dismissed for an unpopular decision.577 Taking control of payment of salaries and judicial appointments from the local levels of government and turning it over to the provincial or national levels of the court system may also curb this problem.578

The above methods should be carefully implemented to make the judicial process fairer for individual citizens. Any course of action taken at this time should support Supreme People’s Court President Xiao Yang in his recommendations to the people’s courts: “Judicial departments must actively proceed with their reforms so that there will be institutions that can ensure people’s courts’ independent, impartial, and unhampered adjudication.”579

C. The Judiciary

1. Qualifications

The fact that many Chinese judges have little or no legal training seems rather shocking.580 More intensive training of judges began in the mid-1980s and has been moderately successful in elevating the quality of the judiciary.581 In 1994, the Supreme People’s Court continued to stress “the need to step up efforts” to improve academic training.582 Five years later, Chief Judge Li of Henan still bemoaned the lack of education that plagues the judiciary, and the fact that 4,200 “unqualified” judicial workers recently had been dismissed.583

576 See Jordan, supra note 4, at 58 (arguing that the Constitution provides only a “theoretical possibility of a right” and one must look to individual laws for actual effective government policy); Hecht, supra note 183 (arguing that the LPWRI does not provide any enforcement mechanisms).
577 See Bing, supra note 212, at 18.
578 See Bing, supra note 212, at 17; Lubman, supra note 36.
579 See Supreme Court President Urges Courts to Uphold Verdicts, supra note 291.
580 See discussion supra Part III.C.2.
581 See Bing, supra note 212, at 16; Ren Urges Improved Training, supra note 312.
582 See Ren Urges Improved Training, supra note 312.
583 See Pomfret, supra note 37.
While the Chinese judiciary is taking positive steps to acknowledge the inadequacies of some of its judges and to urge increased training, more drastic measures should be taken to further improve the quality of judges. Required qualifications, such as a law degree and substantial post-schooling experience, should be formulated. Incumbent judges who do not meet these qualifications should be required to participate in legal training courses and seminars. However, as Chief Judge Li complained, judges who feel that they should not have to study law cannot be forced to learn any lessons even if they are required to attend training sessions. Therefore, it may take the eventual retirement of such judges and replacement with fully qualified candidates to attain a high quality Chinese judiciary.

2. Corruption

As corruption grows in the Chinese judiciary, the Supreme People's Court needs to continue its efforts in exposing corruption. Also, a greater sense of moral uprightness and the need for impartial and fair decision-making must be instilled in all judges in an attempt to prevent corrupt actions from occurring in the first place. However, this may be very difficult since corruption is so extensive.

Given this situation, it is imperative that heavy penalties be imposed on judges convicted of engaging in acts of corruption as a deterrent to other judges. China has also been engaged in an anti-corruption campaign to rid the government of far-reaching corruption. This has resulted in numerous convictions with punishments of lengthy prison terms and even death sentences. While I do not suggest so drastic a measure as a death sentence for a corruption con-

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584 See Ren Urges Improved Training, supra note 312; Pomfret, supra note 37.
585 See Pomfret, supra note 305.
586 See Lubman, supra note 36; Pomfret, supra note 37.
587 See Clarke, supra note 35, at 59; Hutzler, supra note 322; Lubman, supra note 36; Pomfret, supra note 37.
589 See Huge Corruption Cases, supra note 388; Official Receives Five-Year Sentence, supra note 388.
viction, the Chinese government should focus just as much attention on fighting corruption in the judiciary.

3. Female Judges

Better promotion of female role models would lead to an overall improvement of women’s status, in terms of having more female opinions involved in shaping Chinese government and society, encouraging women to pursue an education, and demonstrating that women have the ability to lead the country just as well as men. Very few women have attained leadership positions in Chinese government and business, due both to the traditional belief in the inferiority of women and their primary role as household caretakers and to their relative lack of education in comparison to men. The Chinese government, press, and women’s federations should strive to emphasize the advances and accomplishments of women and profile women who have attained high-level positions. They should also endeavor to portray women who have achieved professional success in a positive light, not as women who have ignored their traditional role as the subservient wife and mother.

Steps have been taken in this direction, especially by the ACWF. For example, the Supreme People’s Court and the ACWF recognized China’s “Ten Outstanding Women Judges” in February, 1999. One of the judges, Zhu Xiaomei, “was once blamed for ‘dis­trusting the party committee’ by overturning a verdict affirmed by a county party chief.” Not only does this commendation highlight the important professional achievements of women, but it demonstrates how women judges have the power to influence and challenge the Chinese political system. This example can draw more women into higher education, the legal system, and eventually the judiciary. In turn, women can gain a more powerful role in elevating the status of women, recognizing instances of gender discrimination, and remedying these injustices in the Chinese workplace.

390 See discussion supra Part I.C.
392 See id.
393 See id.
394 See id.
395 Only 2,800 of the 180,000 elected judges in China are women. See id.
D. Costs Associated with Employing Women

The Labor Law and the Labor Protection Regulations, which were intended to protect women in the employment sphere, have caused many employers to prefer hiring men over women because of the costs associated with providing women with maternity leave, break periods, special work schedules, and the like.\textsuperscript{396} Some cities or other administrative units have created insurance systems to cover pregnancy.\textsuperscript{397} While narrow-minded employers still will be frustrated with making other accommodations for women, these insurance programs can at least soften the financial blow of the Labor Law and the Labor Protection Regulations requirements. Another method of dealing with this problem is to impose a flat tax on all employees, male and female, which not only financially provides for pregnancy, but also acknowledges the responsibility of both women and men to support the country's children.\textsuperscript{398}

CONCLUSION

In some ways, it seems hypocritical to criticize China for its gender discrimination in the sphere of unemployment while similar unfair practices against women continue in the United States.\textsuperscript{399} However, the fact that the discrimination in China is openly tolerated by the government and even sanctioned by law without adequate opportunity to challenge the actions makes the Chinese situation much more unjust and intolerable.

It is important to realize that the traditional Chinese conception of "human rights," the elevation of the importance of society as a whole over the rights of the individual, differs from that of the Western belief in the existence of certain inalienable rights of the individual.\textsuperscript{400} As a result, the goal of gender equality has been subordinated to "greater" national interests in class equality and economic development.\textsuperscript{401} For example, Chinese women were called to join the workforce during the Cultural Revolution of the 1960s and early

\textsuperscript{396} See HRIC, \textit{supra} note 1, at 303; Palmer, \textit{supra} note 168, at 453.
\textsuperscript{397} See HRIC, \textit{supra} note 1, at 304.
\textsuperscript{398} See \textit{id.} at 304.
\textsuperscript{399} See generally Zernike, \textit{supra} note 330; Sixel, \textit{supra} note 330; Lawsuit Alleges Sex Bias at UC Lab, \textit{supra} note 350.
\textsuperscript{401} See \textit{Woo, supra} note 31, at 161.
1970s to meet a demand for labor that men could not satisfy.\textsuperscript{402} However, since economic reforms were declared by the PRC in 1979, women have been urged to return to the home to allow men to take the decreased number of available jobs.\textsuperscript{403} Accordingly, gender discrimination has been allowed to persist with little challenge or protest.

However, economic reforms and greater influence of Western ideas about the rights of women have recently led a new generation of Chinese to seek out justice through social reform and legal redress.\textsuperscript{404} Younger Chinese citizens are becoming less dependent on the government than their parents were, and they are therefore more willing to challenge the discriminatory actions and beliefs of employers and the government.\textsuperscript{405} Hopefully, this pressure will force the government to meaningfully implement and enforce the strategies discussed above and to instill a stronger sense of morality and responsibility on the citizenry and its officials. While this social and legal change will require much time, effort, and conflict, and it is likely that gender discrimination in the workplace will never be eradicated, the situation of female employees in China can be significantly improved. Sun Lili's case should play a vital role in this transformation, since her challenge has internationally publicized the injustice of employment discrimination, the family planning policy, and obstacles to redress within the legal system of China.\textsuperscript{406}