

Law and Economic Analyses in Eliminating Indirect Sex Discrimination against Women in Workplace

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Abstract

Women's equal rights to work are provided for by many widely-recognized international conventions and domestic laws of many countries. But women in workplace are still confronted with sex discrimination in many countries and regions of the world which can be divided into two types: direct sex discrimination and indirect sex discrimination. In the first part, the author introduces the concept of indirect sex discrimination, some related concepts and the necessity and significance of eliminating indirect sex discrimination. In the second part, the author introduces anti-indirect sex discrimination law of the European Union. In the third part, the author highlights the concept of "objectively justified factors" in EU law which gives rise to the question: who should be the duty holder and cost bearer of eliminating indirect sex discrimination. In the fourth part, the author shows different answers from categorical moral reasoning, utilitarianism and law and economics study to the above mentioned question. In the fifth part, the author makes tentative law and economic analyses of certain China's legal issues in the context of anti-indirect sex discrimination law. The author draws a conclusion that a moral perspective should be added into law and economic analyses of eliminating sex discrimination including indirect sex discrimination.

1. Introduction to indirect sex discrimination against women in workplace

1.1 The definition of the concept

There are no unified definitions of indirect discrimination and sex discrimination which can properly apply to all legal contexts. The *Convention on the Elimination of All Forms of Discrimination against Women* provides for a quite good definition of "discrimination against women" (hereafter referred to as "discrimination"), that is, discrimination means "any distinction, exclusion or restriction made on the basis of sex which has the "effect" or "purpose" of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."¹

Accordingly, direct sex discrimination against women means any distinction, exclusion or restriction made overtly on the basis of sex or characteristics inalienable from sex like maternity and pregnancy which has the "**purpose**" or "**intention**" of impairing or nullifying the recognition, enjoyment or exercise by women.² Take employee recruitment as an example, direct sex discrimination against women exists where both men and women candidates are qualified for a job position, but the employer says "openly" in its employment advertisements that no women are needed.

Indirect sex discrimination against women means any distinction, exclusion or restriction

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¹ See article 1 of Convention on the Elimination of All Forms of Discrimination against Women.

² Id.

made “covertly” on the basis of sex which has **the “effect” or “result”** of impairing or nullifying the recognition, enjoyment or exercise by women. The distinction, exclusion or restriction is “seemingly” neutral to both men and women, while “in effect” it would cause more disadvantages disproportionately to women. For instance, indirect sex discrimination exists where an employer does not openly say women is excluded, but in fact no women or disproportionately fewer women are employed and the employer cannot justify its conduct by grounds other than sex.

Although indirect sex discrimination against women can exist in many places, this paper only focuses on indirect sex discrimination against women in “workplace” which can be specified as sex discrimination against women in employee recruitment, employee training, payment, promotion, occupational insurance, holidays or leave, occupational pensions and so on.

1.2 The history of the concept

The term “indirect discrimination” first appeared in public international law and later it was found in American law, specifically in case *Griggs v. Duke Power Co.*,³ which was decided in 1971 and had great impacts on the formation of concept of indirect discrimination in law of EU. In Europe, the concept was first introduced into domestic law by UK and Ireland. Other member states of EU borrowed the concept of indirect discrimination from the law of EU.

In fact, “indirect discrimination” can be divided into different types such as indirect discrimination against women which is focused on by this paper, indirect discrimination against the disabled, discrimination against non-white people, and discrimination against people of different nationality, etc. In the beginning, the concept of “indirect discrimination” was created in order to deal with discrimination on grounds of other issues rather than sex and later it was used to deal with sex discrimination issues.

In the context of the European Union law, Case *Jenkins*⁴ (in 1981) and Case *Bilka*⁵ (in 1986) ruled by the European Court of Justice are two typical cases concerning indirect sex discrimination. In the beginning, there was no explicit legal definition of “indirect discrimination” in statutory law of the European Union. Later the term “indirect discrimination” appeared in *Directive 97/80/EC*⁶ (*Burden of Proof Directive*), *Directive 2000/78/EC*⁷ (*General Framework Directive*), and *Directive 2002/73/EC*⁸ (*Revised Second Equal Treatment Directive*). In *Burden of Proof Directive* and *Revised Second Equal Treatment Directive*, there are legal definitions of “direct sex discrimination” and “indirect sex discrimination”.

1.3 The necessity and significance of the elimination

One of the reasons why indirect sex discrimination against women appeared was that early anti-sex discrimination law only prohibited “sex discrimination” (equal with “direct sex discrimination”) that was based on discriminatory “intention”. Maybe at that time the law makers did not have the awareness of “**indirect** sex discrimination” which would lead to discriminatory “results”.

Direct sex discrimination with “intention” violates equality between men and women openly, while indirect sex discrimination violates it in a covert way which is more difficult to be discovered. But the latter is just as harmful as the former one. If the law only focuses on the discriminatory “intention” and neglects discriminatory “results”, substantive equality between men and women cannot be achieved. And women who want to earn their living by work and who have strong career aspirations will lose their dignity.

³ *Griggs v. Duke Power Co.*, 401 U.S.424 (1971).

⁴ Case 96/80, *J.P. Jenkins v. Kingsgate (Clothing Productions) Ltd.* [1981] ECR 911.

⁵ Case 170/84, *Bilka - Kaufhaus GmbH v. Karin Weber von Hartz* [1986] ECR 1607

⁶ *Directive 97/80/EC*, OJ 1998 L 14/6.

⁷ *2000/78/EC*, OJ 2000 L 303/16.

⁸ *2002/73/EC*, OJ 2002 L 269/15.

2. Anti-indirect sex discrimination law of the European Union

2.1 Introduction to the sources of law

Sources of law of the European Union concerning indirect sex discrimination against women in workplace include treaties, case law and statutory law (here we only focus on “directives”).

Treaties are the “constitutional law” of the European Union in eliminating all kinds of discrimination against women in workplace. *Treaty of Lisbon* (2009), *Charter of Fundamental Human Rights* (2007), *Treaty of Amsterdam* (1999), *Treaty on European Union - Maastricht Treaty* (1992), *Treaties of Rome - EEC (Treaty establishing the European Economic Community) and EURATOM treaties* (1957) and *Treaty establishing the European Coal and Steel Community*⁹ are fundamental treaties of EU on non-sex discrimination. Non-indirect sex discrimination law were created, implemented, and applied according to them.

In EU, the economic and political union, there is a fusion of common law system and civil law system. Sources of law include both case law and statutory law (here we focus on directives). The principle of “follow precedent” from common law system which is called “stare decisis” in Latin is applied in EU law as well.¹⁰ In case law and directives there are “objectively justified factors” which gives rise to the question: who should be the duty holder and cost bearer of eliminating indirect sex discrimination?

2.2 Case law: *Bilka*

*Bilka*¹¹ is a very typical and influential case in anti-indirect sex discrimination law of the European Union, which is about occupational pension.

2.2.1. Facts and Issues

Bilka, the employer, had a occupational pension scheme for its employees which provided that part-time employees may obtain retirement pensions only if they had worked full time for at least 15 years over a total period of 20 years. Mrs. Weber was employed by *Bilka* from 1961 to 1976. After initially working full time, she chose to work part time from 1 October 1972 until her employment came to an end. Since she had not worked full time for the minimum period of 15 years, *Bilka* refused to pay her an occupational pension under its scheme.

Mrs. Weber brought proceedings before the German labor courts challenging the legality of *Bilka*'s refusal to pay her a pension. She argued that the occupational pension scheme was contrary to the principle of equal pay for men and women laid down in Article 119 of *the Treaty establishing the European Economic Community*. She asserted that the requirement of a minimum period of full-time employment for the payment of an occupational pension placed women workers at a disadvantage, since they were more likely than their male colleagues to take part-time work so as to be able to care for their family and children.

Bilka, on the other hand, argued that it was not guilty of any breach of the principle of equal pay since there were **objectively justified economic grounds** for its decision to exclude part-time employees from the occupational pension scheme.¹² It emphasized in that regard that

⁹ See http://europa.eu/eu-law/treaties/index_en.htm, last visited April 22, 2013.

¹⁰ See Wang Chuanli, *欧洲法院的司法独立性对欧洲一体化进程的贡献* (The Contribution of Judicial Independence of European Court of Justice to Integration of Europe), Vo22. 2 Conte. L. Rev. 110, 111(2008).

¹¹ Case 170/84, *Bilka - Kaufhaus GmbH v. Karin Weber von Hartz* [1986] ECR 1607

¹² *Id.*

in comparison with the employment of part-time workers the employment of full-time workers entailed lower ancillary costs and permitted the use of staff throughout opening hours.

On appeal the proceedings between Mrs. Weber and Bilka came before the German Federal Labor Court; that court decided to stay the proceedings and refer the following questions to the Court:

(1) May there be an infringement of Article 119 of the Treaty establishing the European Economic Community in the form of 'indirect discrimination' where a department store which employs predominantly women excludes part-time employees from benefits under its occupational pension scheme although such exclusion affects disproportionately more women than men?(2) If so: (a) Can the undertaking justify that disadvantage on the ground that its objective is to employ as few part-time workers as possible even though in the department store sector there are no reasons of commercial expediency which necessitate such a staff policy.¹³[...]

2.2.2 Judgments of the Court of Justice

The Court ruled:

*“(1) Article 119 of the Treaty establishing the European Economic Community is infringed by a department store company which excludes part-time employees from its occupational pension scheme, where that exclusion affects a far greater number of women than men, unless the undertaking shows that the exclusion is based on **objectively justified factors unrelated to any discrimination on grounds of sex**.(2) Under Article 119 a department store company may justify the adoption of a pay policy excluding part-time workers, irrespective of their sex, from its occupational pension scheme on the ground that it seeks to employ as few part-time workers as possible, where it is found that **the means chosen for achieving that objective correspond to a real need on the part of the undertaking, are appropriate with a view to achieving the objective in question and are necessary to that end.**¹⁴[...]”*

2.3 Directives

For a long time, in statutory law of the European Union, there was no clear legal definition of "indirect sex discrimination". Usually, it is the job of the Court of justice of the European Union to interpret treaties and give suggestions on indirect sex discrimination cases. *Burden of Proof Directive* gave a first definition to "indirect sex discrimination". Later, *Revised Second Equal Treatment Directive* also defined indirect sex discrimination.

2.3.1 Burden of Proof Directive

Article 2 gives definitions to "indirect discrimination": indirect discrimination shall exist where an apparently neutral provision, criterion or practice disadvantages a substantial higher proportion of the members of one sex unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to sex.¹⁵

Article 4 is about **the reversion of burden of proof** in sex discrimination (either direct or indirect) cases. In indirect sex discrimination cases concerning work issues, the employers, instead of the employees, should bear the burden of proof. This is a good way in protecting women's equal rights to work.

¹³ Id.

¹⁴ Id.

¹⁵ Directive 97/80/EC, OJ 1998 L 14/6.

2.3.2 Revised Second Equal Treatment Directive

*Revised Second Equal Treatment Directive*¹⁶ was another legal document where a definite definition of indirect sex discrimination can be found. Article 2 of the directive says “direct sex discrimination exists where one person is treated less favorably on grounds of sex than another is, has been or would be treated in a comparable situation; indirect sex discrimination exists where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.”¹⁷

This definition of indirect sex discrimination here differs from that of *Burden of Proof Directive* in that there is “a legitimate aim” in *Revised Second Equal Treatment Directive*.

3. Objectively justified factors: the exemptions

3.1 The existence

Both in case law and directives, there are some exemptions in presumed indirect sex discrimination cases which can be called “objectively justified factors”. If there are objectively justified factors, there is no indirect sex discrimination in employers’ conducts.

In *Bilka*, the court set limits to “economic grounds which may be objectively justified” by pointing out that exclusion which affected a far greater number of women than men did not constitute indirect sex discrimination if there were **objectively justified factors unrelated to any discrimination on grounds of sex**. But the means chosen for achieving that objective must correspond to a real need on the part of the undertaking, be appropriate with a view to achieving the objective in question and be necessary to that end.¹⁸

Therefore, there are four constituent elements of objectively justified factors unrelated to any discrimination on grounds of sex: first, the factors should be unrelated to any discrimination on grounds of sex; second, there is a real need; third, the means should be appropriate; fourth, the means should be necessary. The fourth element includes a principle of proportionality which is the general principle of EU law and is applied throughout the EU law.

Objectively justified factors in directives can be found in *Burden of Proof Directive* and *Revised Second Equal Treatment Directive*. It is said in Article 2 of *Burden of Proof Directive* that indirect sex discrimination shall exist...unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to sex. Objectively justified factors here focuses on appropriate and necessary means.¹⁹

It can be seen in *Revised Second Equal Treatment Directive* that indirect sex discrimination exists ... unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.²⁰ “A legitimate aim” is mentioned here which is different from the above-mentioned objectively justified factors in *Burden of Proof Directive*.

3.2 Arguments

To some extent, objectively justified factors determine whether there is indirect sex discrimination or not. In other words, if there are objectively justified factors, there is no indirect

¹⁶ Directive 2002/73/EC, OJ 2002 L 269/15.

¹⁷ Id.

¹⁸ See Case 170/84, *Bilka - Kaufhaus GmbH v. Karin Weber von Hartz* [1986] ECR 1607

¹⁹ See Directive 97/80/EC, OJ 1998 L 14/6.

²⁰ See Directive 2002/73/EC, OJ 2002 L 269/15.

sex discrimination. If there are more objectively justified factors, the possibility of the existence of indirect sex discrimination is smaller and vice versa. EU scholars hold different opinion on objectively justified factors. Some of them have optimistic points of views, while others have pessimistic ones.

Optimists on this issue hold the opinion that the existence of objectively justified factors is an advantage of the non-indirect sex discrimination law which makes application of the law much more flexible. This is a kind of pragmatic point of view which focuses on good social effect produced by application of the law. While indirect sex discrimination law with objectively justified factors attract people's attention to different treatment which brings about adverse effect on vulnerable groups of people, it does not prohibit all different treatment and admit the existence of reasonable different treatment under certain conditions. If properly used, it will be a valuable tool to eradicate indirect sex discrimination, to promote gender equality and safeguard other interests and values besides equality.

Pessimists on this issue believe that objectively justified factor will destroy the meaning of non-indirect sex discrimination law and make it deceptive. The purpose of the law is not to eradicate sex discrimination but to satisfy the interests of the parties involved. In fact, it cannot satisfy all the parties. For those who are looking for gender equality and justice, it is undoubtedly a heavy blow.

In the author's opinion, justified factors themselves are neither good nor bad. Whether or not anti-discrimination law can function well depends on how to interpret justified factors. If properly interpreted and applied, the law will protect women's equal rights effectively. Otherwise, the law will lose its meaning.

3.3 The question

In fact, objectively justified factors are closely related to one question: who should be the duty holder and cost bearer of eliminating sex discrimination including indirect sex discrimination? Equality right to work is an economic and social right which requires positive actions of the government. In this sense, governments should take on its obligations of fighting against sex discrimination and promoting gender equality. But the government can possibly transfer some of its obligations to the employers according to some theories such as the theory of Corporate Social Responsibility by non-discrimination law. Whether or not the government accepts objectively justified factors affect, to a large degree, how many shares of obligations and costs the government will transfer to employers.

If the government is extremely individual-oriented, it accepts objectively justified factors (the exemptions) and gives more freedom and tolerance to the employers who are suspected of sex discrimination, and the cost to the employer tends to be lower and the obligation smaller. It is based on two ideas: 1) the alleged requirements of the market are neutral and do not significantly reinforce stereotypes and prejudices that may lead to discrimination; 2) the fight against discrimination is a task belonging only to the government.²¹

If the government is extremely group-oriented, it does not accept objectively justified factors and gives less freedom and tolerance to employers who are suspected of sex discrimination, and the cost to the employer tends to be higher and the obligation larger. It is also based on two ideas: 1) employers can be required to contribute individually to the collective task of progressively eliminating discrimination because such a goal is in the interest of society as a whole²² and being the member of the community who enjoy the benefits, employers should take on their shares of obligations; 2) the alleged requirements of the market do not form a neutral context for the employer's actions, but on the contrary serve to reinforce stereotypes and prejudices that may lead to discrimination.

²¹ See Christa Tobler, *Indirect Discrimination*, Intersentia Publishing Co. (Antwerpen & Oxford), at 250 (2005).

²² *Id.*

4. Answers to the question

4.1 The European Union Law

As we see, the European Union accepts objectively justified factors in both case law and directives but sets limits to them. Possible reasons are the EU law serves as an instrument for the European Common Market and must respect the freedom of the Member States and employers to make profits. Meanwhile the fundamental principle of rule of law and equality must be respected and safeguarded as well. As a result, different values (freedom and equality) clash with each other. Interest clashes among employers, governments and the disadvantaged employees appear as well. The European Union deals with the clashes by accepting and setting limits to objectively justified factors in the interpretation and application of anti-indirect sex discrimination law. The government and employers are all duty holders and cost bearers. And the employers' shares are flexible which can be controlled by the court.

4.2 Categorical moral reasoning

Michael J. Sandel, a famous scholar of Harvard Law School, believes there are two modes of moral reasoning: consequential moral reasoning and categorical moral reasoning. Consequential moral reasoning believes the rightness and morality of one's action depends on the consequences.²³ Categorical moral reasoning, of which the most important philosopher is the 18th century German philosopher Immanuel Kant, locates morality in certain duties and rights (in an absolute way) regardless of the consequences.²⁴

We may deduce from categorical moral reasoning that since the community recognizes the value of equality, entitle women to have equal rights to work and forbid direct sex discrimination and indirect sex discrimination, it is morally wrong and unacceptable to sacrifice women's rights and well being even in exceptional cases or for the sake of the maximization of overall benefits. And there should be no objectively "justified" economic factors.

In the case of labor contracts prohibiting sex discrimination, the employer should take on their shares of the duty and the cost, and there should be no exception. In the case of the constitution and the law providing for obligations and setting limits to transferring obligations, the government should not transfer the obligation and costs arbitrarily even for the sake of great GDP growth.

4.3 Utilitarianism

Utilitarianism (a doctrine invented by Jeremy Bentham, 18th century English political philosopher) which is a typical example of consequential moral reasoning believes that humans are dominated by pleasures which we like and pain which we dislike. The right and just thing to do individually or collectively is to maximize utility which means the overall level of happiness.²⁵ The slogan of utilitarianism is "the greatest good for the greatest number".²⁶

Utilitarianism does not distinguish between the majority and minority, men and women, strong individuals and weak individuals, the wealthy and the poor, etc. It has the potential dangers of neglecting or even infringing on the rights of the minority, the weak, the poor, the disabled, etc. in the name of increasing the overall level of the community. Also some scholars believe that utilitarianism tends to equate money with "utility" in cost-benefit analyses. And in some cases, it

²³ See Michael J. Sandel: "Justice: The Moral Side of Murder", a production of WGBH Boston, http://10.22.1.53/school_play.php?sp=20, last visited June 20, 2013.

²⁴ Id.

²⁵ Id.

²⁶ See Michael J. Sandel: "Justice: The Case for Cannibalism", a production of WGBH Boston, http://10.22.1.53/school_play.php?sp=20, last visited June 20, 2013.

is immoral.²⁷

In the context of eliminating sex discrimination, the answer of the utilitarianism to the question “who should be the duty holder and the cost bearer of eliminating sex discrimination” may be that when the utility is maximized, the best solution appears and it does not matter whether or not women are discriminated.

4.4 Law and economic analyses with a moral perspective

Some people believe the law and economic analysis is very similar to utilitarianism in terms of maximizing values and benefits. This is partly true in my opinion. Given that the social and economic resources are limited, efficiency and utility considerations are necessary. Maximization of utility is often needed. But “utility” and “values” should not be interpreted solely as “money”. “Values” of humans’ dignity, justice and social harmony must be given a high priority among all values.

What we need is law and economic analyses with a moral perspective where women’s dignity and human rights including equal right to work must be respected and safeguarded. Also, economic values (RMB or dollar) produced by women labor should not be underestimated. So the best answer to the question can be got when moral, social, and economic benefits are maximized.

So there can be objectively justified factors. But proper limits must be set in order to make the law effective. How many limits should be set depends on the degree of rule of law of a certain country. If a country has poor situations of rule of law, there should not be too many objectively justified factors, that is, more limits are needed. Otherwise, the anti-indirect sex discrimination law would be meaningless because of excessive objectively justified factors

5. Tentative law and economic analyses

Here some analyses would be made in the context of China Current situations of sex discrimination (including indirect sex discrimination), causes of the discrimination and possible solutions will be introduced.

5.1 Current situations of sex discrimination in China

Sex discrimination in China has been greatly eliminated in many fields, especially in family life, with the efforts of Chinese people and the government. China has made great progress in sex equality with the rule of law. But there is still much sex discrimination against women in workplace including direct sex discrimination and indirect sex discrimination in the recruitment of employees, payment, occupational training, promotion, etc. 70% of female college graduates thought they were discriminated because of sex in seeking a job.²⁸

Because there is no explicit prohibition of indirect sex discrimination in non-sex discrimination law of China, many employers discriminate against women covertly.²⁹ For example, employers do not openly say women candidates are not needed, but in effect no women candidate or a considerably small proportion of women are employed compared with men candidates.

Unfortunately there is no law in Chinese which can deal with this kind of sex discrimination. For women candidates who have high expectations of the job and have spent enormous money

²⁷ See Michael J. Sandel: “Justice: Putting a Price Tag on Life”, a production of WGBH Boston, http://10.22.1.53/school_play.php?sp=20, last visited June 19, 2013.

²⁸ See Guo Huimin, *Study on the Protection of Women’s Rights to Work*, China Social Sciences Press (Beijing), at 78 (2009).

²⁹ See Li Ying, *A Study of Gender Discrimination in the Workplace in China*, China Social Sciences Press (Beijing), at 19 (2010).

and energy on it, the result is really is really cruel. What is more frustrating is that at present the government cannot provide enough remedy for these women who suffer greatly from emotional and economic losses. The current law requires the applicants to provide evidence that they are discriminated, which is very difficult for them to get and preserve, especially in the process of employee recruitment.³⁰ If we calculate the overall losses, we will get a surprising number. This is harmful to the function of economy and society of China.

5.2 Causes of sex discrimination in workplace of China

Accordingly to a survey on the public's attribution of sex discrimination conducted by Peking University Law School, five factors are related (in descending order):

- 1) Too many job seekers, too few job vacancies (50.1%);
- 2) Too much housework for women which influences their work (45.1%);
- 3) Higher costs of employing women because of maternity insurance which is only paid by the employers;
- 4) Lack of awareness of gender equality among employers;
- 5) Women's incompetence in work.³¹

We can see from the list incompetence in work ranks bottom. Among the above reasons, I think "higher costs of employing women" is a key factor. The government shifts its obligations in maternity insurance to employers, which means employers must buy maternity insurance themselves if they employ women.

In addition, there is only parental leave for women not for men. In the parental leave employers must pay basic salary to women workers and find new workers to do their work. After those women workers are back from home, the employers must find proper work for the above mentioned "new workers" or pay them money. All this makes employers unwilling to employ women, because maximizing profits are the nature of businesses. When supply far outweighs demand in China's labor market, employers tend to employ men in order to avoid higher costs of employing women.

Adverse effects of this phenomenon to China's economy are not clear at present. But in the long run, it will endanger basic values and public welfare.

5.3 Solutions: tentative law and economic analyses

1) The government should take on some shares in maternity insurance. This will decrease the costs of employers in employing women and may make it more likely for women to be employed. Maternity is beneficial for the whole society and the disadvantages should not be imposed only on women. If the government take on more shares, it is not necessarily the overall benefits will be reduced. Some women have certain job qualifications which men do not have. Given fair treatment, women will be greatly encouraged to do beneficial contributions to the country.

2) The same parental leave should be given to men as well. If men are also given parental leave, employing men also need the extra costs that are produced in employing women. This narrows the cost gap between employing men and employing women, which will likely to

³⁰ See http://news.ifeng.com/mainland/200804/0421_17_501212_1.shtml, last visited June 20, 2013.

³¹ See Li Ying, *A Study of Gender Discrimination in the Workplace in China*, China Social Sciences Press (Beijing), at 66 (2010).

decrease sex discrimination.

3) The government should adopt a quota system for employing women and give financial subsidies to employers who employ certain number of women. It is true that part of women's time and energy is consumed in taking care of children and doing housework. But that benefits the whole society not women themselves. If women who sacrifice themselves for the family and society are discriminated in workplace, it is unfair and is against basic values of the community. So the government, which means all the tax payers, should take on the obligations together. Women should not be the victims of the development of economy.

4) Heavier punishment to the employers who discriminate against women in workplace.

5) The reversion of burden of proof in proceedings should be provided for by law so as to add the costs of employers and decrease the advantaged women workers.

...

Conclusion

Law and economic analyses are needed in eliminating sex discrimination (including indirect sex discrimination). Maximizing benefits is necessary given that resources are limited. But that "benefits" should not be interpreted only as "money". A broader view should be used. The "benefits" should include comprehensive gains: economic gains, social gains, moral gains (the gains from respecting women's dignity), etc. To sum up, a moral perspective should be added into law and economic analyses of eliminating sex discrimination including indirect sex discrimination.