

The Path of Anti-School Bullying under Rule of Law in China

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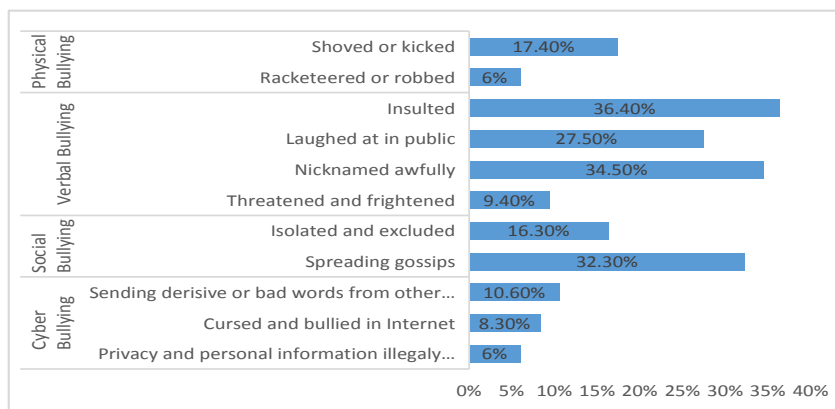
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Abstract. Anti-school bullying is a worldwide problem with great harm. The data of NSRC shows that school bullying occurs frequently in China. School bullying has serious social harmfulness, not only will it lead to high probability of deviant behaviors, but also influence the sufferers' mental health. There are many causes that lead to high occurrence of school bullying, the most significant one of which is the lack of systemic and mature laws and regulations in China. In order to prevent and control school bullying effectively, the legal system should be perfected. Concretely speaking, at least the following five aspects should paid enough attention to: Setting reasonable purpose and principles for the laws and regulations, making a clear legal definition of school bullying, establishing the school bullying prevention committee, reasonably defining the boundary of obligations and responsibilities among different parties, and perfecting legal remedy system against school bullying.

Introduction

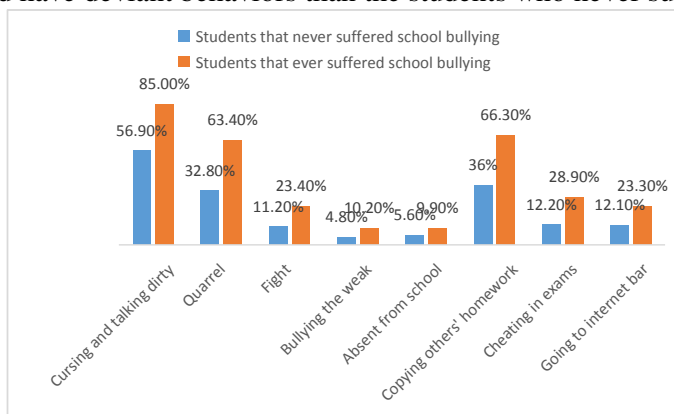
“Bullying” was defined by Olweus in the following general way: A student is being bullied when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more other students.[1] Accordingly, some scholar pointed out that school bullying mainly refers to the intentional body or verbal attacks taken place between students, the immediate cause of which may be the physical and mental ability asymmetric gap between the students, and the result of which is the psychological and physical harm to the victims.[2] School bullying is a worldwide problem, and so is in China. Since 2014, National Survey Research Center at Renmin University of China (NSRC) has designed and carried out annual tracking surveys, extracting a nationwide sample containing 10279 7th graders of 112 urban and rural junior middle school in 28 counties, aiming at explaining the linkages between individuals' educational outcomes and multiple contexts of families, school processes, communities and social structure, and further studying the effects of educational outcomes during people's life course. Until 2016, all the students surveyed have completed 3-year junior middle school study. This survey is called China Education Panel Survey (CEPS), and the data from which is nationally representative. According to the data of CEPS, there are 4 types of school bullying: cyberbullying, social bullying, verbal bullying and physical bullying. The concrete contents and proportion of these four types of bullying can be seen in Fig. 1. Fig. 1 shows that, verbal bullying occurs the most frequently, then social bullying and physical bullying. Cyberbullying is a new type, but also with high probability.



Sources: CEPS by NSRC [3]

Figure 1. Types and contents of school bullying.

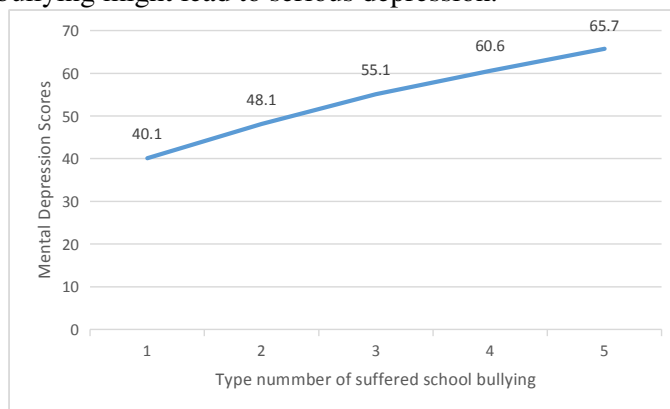
The frequent occurrence of School bullying easily leads to mental health problems and deviant behaviors. Figure 2 below shows that the students who suffered school bullying are more likely to violate disciplines and have deviant behaviors than the students who never suffered school bullying.



Sources: CEPS by NSRC [3]

Figure 2. The probability of deviant behaviors by Students that never /ever suffered school bullying.

In addition, suffering from various kinds of school bullying may do harm to mental health or even have bad influence on the forming of healthy personality of students. As shown in Fig. 3, suffering from school bullying might lead to serious depression.



Sources: CEPS by NSRC [3]

Figure 3. The Relationship between mental depression scores and school bullying.

Causes that Lead to High Occurrence of School Bullying in China

According to the Figures above, it can be concluded that school bullying is a serious problem with great harm in China. Thus, it should be solved as soon as possible. In order to solve it, causes

should be found out first. Many scholars have discussed that from different aspects. Some pointed out that school bullying is caused by the change of social structure, lack of rule, weak and helpless school governance, change and disability of family structure as well as different characteristics of students. [4] Some scholars conducted analysis about it from the aspect of psychology and pointed out that, fundamentally, school bullying results from the joint effects of multiple factors, but has a great relationship with the understanding of various social sectors as well as the inherent psychological factors of the students. The causes mainly include the following: cognitive biases of various social sectors on the phenomenon of school bullying, social psychological reasons including adverse social psychology of youngsters and their acquisition of violent behaviors, some relatively stable personality trend possessed by bullies and victims - for instance, some bullies tend to think highly of themselves with a high tendency of psychoticism, while victims are usually relatively introverted with lower self-esteem and unstable emotion. [5] Some scholars believe that the following factors are all important causes of school bullying: specific characteristics of the current times, unhealthy network environment, deficiency in school management, negative impact of family environment, some physical and mental growth characteristics of children and youngsters, and lack of corresponding government policies and regulations. [6] It can be seen from the analysis above that anti-school bullying is not a simple project but needs the cooperation of all parties involved including individuals, schools, families, society and the state. Among all these causes, I think, the most significant one is the lack of systemic and mature laws and regulations.

In order to fight against frequent school bullying, the Educational Supervision Committee of the State Council issued the “Notice on Implementing Special Administration of School Bullying” in May 2016. It requires schools to develop and improve the prevention and treatment system against school bullying. However, it is only a policy document rather than a legislative one. When handling with cases of school bullying, they can only accord with the General Principles of Civil Law of People’s Republic of China (although the General Provisions of Civil Law of People’s Republic of China was issued, it hasn’t yet come into force), Tort Liability Law of People’s Republic of China, Penal Code of People’s Republic of China, Protection Law For Juvenile of People’s Republic of China, Education Law, etc. However, the situation is completely different in the United States: From 1999 to 2010 there were more than 120 bills enacted by state legislatures nationally that have either introduced or amended education or criminal statutes to address bullying and related behaviors in schools. Twenty-one new bills were passed in 2010 and eight additional bills were signed into law through April 30, 2011. Moreover, the content of each states’ legislation was mapped onto the 11 components of bullying laws identified by the Department to assess both the coverage and expansiveness of legislation for each state. Exhibit B briefly summarizes the content of the 11 components and six district policy subcomponents used to profile state legislation. The display groups components by four focus areas. Compared to the legislation in the United States, Chinese legislation in dealing with school bullying is lack of special and systematic legal provisions. It mainly embodied in the following aspects:

Lack of Clear Definition of School Bullying

At present, Education Law, Compulsory Education Law, and Protection Law For Juvenile haven’t given a clear definition of school bullying, which puts the practice against school bullying into trouble. When facing school bullying, many schools are inclined to patch up a quarrel and reconcile the parties concerned not in a legal way, even though some bullying behaviors are serious and excessive. Thus, more and more bullying come into occurrence. [2] In order to solve these problems correctly, a clear definition of school bullying should be made.

Lack of Special Governing Organs against School Bullying

One of the primary premises for fighting against school bullying is the owning of sound governing organs. United States has set up Federal Bullying Prevention Committee to take in charge of the supervision of each school's bullying regulations and policies. However, there are no such or similar organs in China. Thus, scientific and effective governance against school bullying could not be conducted. Concretely speaking, due to the lack of specialized organs, it is also short of professional

management staffs and special funds, and also lack of necessary supervision and guidance plans, which make it hard to carry out the present laws, regulations and policies against school bullying. [7] Then, school bullying could not be fundamentally prevented and controlled.

Vagueness of Obligations and Responsibilities among Different Parties against School Bullying

Families, schools and the society all have the obligation to prevent school bullying from happening. For example, according to Marriage Law, parents have the obligation to protect and educate the minor children, and take responsibility when their children do harm to others; Education Law requires the teachers to prevent harm from the students; Tort Liability Law lay down the obligation of administrate the students upon the schools; etc. Therefore, all parties have the obligation to fight against school bullying. But because of lack of systematic laws and regulations against school bullying, the dividing line of obligations and responsibilities among different parties is vague, which leads to buck passing.[4] So, it is necessary to refine the obligations and responsibilities among different parties.

Absence of Victims' Mental Remedy

In the modern law system, victims play a more and more important position in substantial laws and procedure laws. Some scholars even insist that victim should be the fourth party in procedures. Take the bills against school bullying of United States as example, a very important part of these bills is about victims' mental remedy. As to the legal remedy in Chinese laws related, it includes the economic compensation such as medical fees, the fees of transferring to another school, nutrition fees, and so on, but short of mental remedy.[7] Laying down the right of mental remedy upon the victims is also important to fight against school bullying.

The Path of Anti-School Bullying in a Legal Way

In order solve the cure the causes mentioned above, China should formulate specialized and systemically legal system. In the formulation of laws and regulations against school bullying, we should take notice of the following problems:

Setting Reasonable Purpose and Principles for the Laws and Regulations

Purpose is an important part of every law and regulation, because it places clear value orientation. In order to make the purpose reasonable, two points should be cleared: The first one is the possibility of curing the problem of school bullying according to the legal way, that is, before setting the purpose, the advantages and limitations of laws and regulations should be widely considered. The second one is that the legislation of anti-school bullying should base on the purpose of comprehensive governance and management of school bullying.

In addition, besides the traditional principles such as the Principle of Constitution, the Principle of Rule of Law, the Principle of Science and so on in educational legislation, following specialized principles should also be adopted in the legislation of anti-school bullying: The first one is the Principle of Modesty, which means that the legislation of anti-school bullying should focus on the manners that the influence is odious and the consequence is serious. The second one is the Principle of Education, which means, the legislation of anti-school bullying should combine education with punishment, and innovate the way of education and punishment in a legal way to punish the bullies in order to educate them. [4]

Only in the way of insisting such purpose and principles of legislation, can we guarantee the legislation of anti-school bullying is not extreme and not feeble.

Making a Clear Legal Definition of School Bullying

In order to make the legislation of anti-school bullying systematic and scientific, a clear legal definition of school bullying is needed. In the opinion of some scholars, we can learn from the bills of United States and differ the forbidden behaviors from other behaviors. [2] I think, the rule of

“Zero Tolerance” is relatively not completed. We should deal with school bullying differently with the consideration of the factors such as the motive, environment, order of severity and so on.

Establishing the School Bullying Prevention Committee

In order to ensure the work of anti-bullying proceed in an orderly way, the establishment of School Bullying Prevention Committee must be explicitly stipulated by law. Some scholars believe that the newly established School Bullying Prevention Committee should be governed by the Ministry of Education, and that its members should cover educational experts, psychological experts, and legal scholars with professional knowledge as well as primary and secondary school teachers with plenty of teaching experience. From the point of view of responsibility, the main task of School Bullying Prevention Committee is to make overall planning and coordination about various affairs related to school bullying on a national scale. [7] In my opinion, this point of view is advisable.

Reasonably Defining the Boundary of Obligations and Responsibilities among Different Parties

Beforehand prevention, in-process control and remedy afterwards of school bullying cannot do without the involvement of multiple bodies. Therefore, collaborative governance mechanism against school bullying must be constructed with the boundary of obligations and responsibilities among different parties clearly defined. Defining the boundary of obligations and responsibilities among different parties should follow the principle of equal rights, liabilities and interests among different parties.

Perfecting Legal Remedy System against School Bullying

When school bullying occurs, the compensation and remedy for victims is one of the contents that must be paid attention to by relevant laws and regulations. China should perfect legal remedy system as soon as possible. From the perspective of legal remedy contents, the law needs to extend the remedy scope of school bullying victims, that means, the mental remedy should also be included in legal remedy system. Schools should give all-round and three-dimensional psychological care and help by mobilizing multiple powers including the government, families, schools and communities, etc.

Conclusion and Discussion

Fighting against school bullying is a huge project and it should be done under rule of law, which involves the setting of reasonable legislative purpose and principles, and also involves the construction of concrete system and mechanism. The beneficial practices of other countries like the United States may provide certain reference to China. However, many problems still need to be examined in terms of how to implement the local law construction against school bullying in China.

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