

Quarantined Justice, Compromised Diversity: Barriers to Disability Inclusion in China's Public Sector Employment

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Abstract

Under the advocacy for diversity and inclusion within Chinese society, the judiciary has become a significant institution for the protection of marginalized groups, especially disabled people. Through proactive power expansion, the Supreme People's Court has played a crucial role in scrutinizing employment discrimination in the private sector. However, the judiciary has paid less attention to the fact that government agencies failed to consider the value of workplace diversity and maintained ableist standards that preclude many disabled candidates from public sector positions. Due to the intrinsic political embeddedness within Chinese judicial systems, courts tended to adopt a strategy known as “quarantined enforcement” when confronted with discriminatory recruitment clauses issued by government-tied entities. Social and political factors collaboratively shaped the intersectional marginalization of the disabled community in China. This article attempts to move beyond traditional legislative-centric approaches and emphasize the judiciary's role in minimizing the marginalization of disabled people. It argues that eliminating political barriers within the judiciary is crucial for achieving workplace diversity and employment equality.

Keywords

disability equality; disability rights in China; embedded court; integrated employment; quarantined justice; social diversity

1. Introduction

Stereotypes and stigmatization of the disabled community have led to their marginalized status in job markets, seriously undermining social solidarity. Despite more than 30 years of efforts to promote inclusive

employment, the employment rate of disabled individuals in China has seen little progress (L. Yang & Hao, 2019). According to the latest data from the China Disabled Persons' Federation, as of 2023, only around 10% of individuals holding disability certificates in China were employed (China Disabled Persons' Federation, 2024). Furthermore, these jobs were mainly in unstable, lower-tier sectors such as agriculture, husbandry, and massage services. The enduring stereotypes of disabled individuals as "passive, sickly, and pitiful" (Z. Y. Jiang, 2019) persist in the private labor market and are even more pronounced in government recruitment. Stringent physical examination standards for civil servants impose "one-size-fits-all" requirements that do not consider the specific requirements of individual positions, effectively excluding individuals with visual, auditory, and mental impairments from government jobs (Liang, 2008; X. N. Liu, 2015). Under the perspective of "mechanical solidarity" (Durkheim, 1933; Gofman, 2014), this homogeneous filtering mechanism reinforces the marginalization of disabled individuals, restricting their access to equal employment and full participation in society.

Most Chinese disability studies attribute the marginalized status of disabled individuals to the lack of accessible institutional support, particularly the inadequacies in legislation and government policies. The lower hierarchy of the Law on the Protection of Disabled People (LPDP; Standing Committee of the National People's Congress, 2018b) within China's legal system significantly restricts equal access to justice for disabled people (Qi et al., 2019; Tang & Cao, 2018). The Regulations on Labor Security Supervision (State Council of the People's Republic of China, 2004) do not explicitly include employment discrimination within the supervision scope of labor security departments. These government institutions typically do not accept complaints regarding employment discrimination (H. N. Yang, 2024). However, previous academic dialogues have largely overlooked the judiciary's crucial role in promoting equal employment and social diversity. Most disability studies guided by traditional doctrinal approaches tended to set aside the socio-legal analysis, failing to fully consider the complex social, institutional, and political barriers faced by the disabled community in China. The key point here is that the judiciary wields substantial discretion in implementing national legislation, particularly the equality clauses of the LPDP and the Employment Promotion Law (EPL; Standing Committee of the National People's Congress, 2015). The courts' institutional capacity, interpretative discretion, and external pressures can significantly affect the practical enforcement of these laws. Therefore, it might be incomplete to attribute the marginalization of disabled employees solely to the unresponsiveness of laws and policies.

The intersection of judicial behavior analysis and socio-legal approaches is crucial for identifying the practical barriers to implementing equality laws and addressing the real challenges faced by China's disabled community. Moving beyond the traditional legislative-centric perspectives of disability studies in China, this article incorporates broader social and political contexts and emphasizes the importance of eliminating judicial barriers to create an inclusive employment environment. Furthermore, to address the lack of empirical analysis in prior doctrinal legal studies, we collected twenty-eight employment discrimination cases involving disability by searching the keywords "disability" and "employment discrimination" on *China Judgments Online* (CJO), the official case database established by the Supreme People's Court (SPC). Since our data collection was completed in July 2024 and covers cases from September 2014 to December 2023, the recent reduction in case upload volume in CJO does not significantly affect our study. We excluded twenty cases that are not relevant to our topic, including eighteen cases on disability compensation for work injuries and two cases lacking sufficient detail. Given the limited availability of cases in CJO, we supplemented our sample with two additional cases through media reports and connections within the

disability community. Our final dataset comprised ten cases in which disabled plaintiffs (eight men and two women) claimed employment discrimination. These included three cases where applicants were refused employment, three cases in which employees were denied raises and benefits, and four cases where employees were dismissed by the companies. Of the seven cases brought against private companies, five resulted in victories for the plaintiffs, while all three cases against government entities ended in losses. Our examination focused on two successful cases involving private enterprises, and three lost cases in the public sector. We also incorporated one Guiding Case regarding equal employment rights issued by the SPC into our discussion.

The structure of this article is as follows: First, we highlight the tentative efforts of local courts to promote equal employment within the private sector, driven by the SPC's institutional innovations. Following this, we display empirical data and cases to illustrate how discriminatory recruitment standards persist in government and public agencies. Due to the deep-rooted political and financial embeddedness, Chinese courts face significant constraints in effectively challenging discriminatory practices against disabled people in civil service recruitment. Finally, we emphasize that eliminating "quarantined justice" is crucial for overcoming such compromised diversity and achieving truly inclusive employment in China.

2. The Courts Against Marginalization: Judicial Power Expansion in Equal Employment for Disabled People

Equality clauses have been adopted in China's Constitution and various national laws for decades. The most relevant one is Article 3 of the EPL (Standing Committee of the National People's Congress, 2015), which prohibits any employment discrimination based on ethnicity, race, gender, religion, and other relevant grounds that could include disability. Similar provisions are also included in the LPDP and the Law on the Protection of the Rights and Interests of Women (Standing Committee of the National People's Congress, 2022). However, these clauses primarily offered general, declarative principles without actionable mechanisms to identify or address disability discrimination in the workplace. Due to their lack of specificity, the application of these equality provisions remained stagnant in labor dispute judgment during the past two decades (Fu, 2012). Despite recent initiatives by the Supreme People's Procuratorate to release model public interest cases regarding employment discrimination against disabled individuals (Supreme People's Procuratorate & China Disabled Persons' Federation, 2022), their practical impact on implementing equality clauses remained limited. For instance, in one case, the Huangpu District Procuratorate in Guangzhou City found job postings by several companies explicitly exclude disabled candidates. The procuratorate thus initiated prosecutorial suggestions to the local government's labor and social security department, urging it to launch a targeted campaign to address such discriminatory actions. Nonetheless, the impact of these public interest cases has been largely limited to "pre-litigation procedures," which merely recommend corrective actions rather than tackling the institutional obstacles to enforce equality clauses in litigation. In most employment discrimination cases, the disabled victims were still faced with numerous legal difficulties, including the lack of a clear definition of rights violations, the absence of established legal consequences for such violations, and even the uncertainty regarding the appropriate cause of action for these cases.

Given the limitations of legislation in effectively addressing employment discrimination against disability, the expansion of judicial power offers a potential remedy. In recent years, judicial power expansion has become a

significant phenomenon in China, with many landmark policy reforms originating from the courtrooms (Chen et al., 2024; Stern, 2013). A series of empirical studies showed that Chinese courts can be potential arenas for policy innovation such as environmental protection, administrative disputes, and labor rights protection (Ahl, 2019; Chua, 2019; He, 2013; Yu, 2014). China's highest court, the SPC, has increasingly positioned itself as a key player in social governance by strategically expanding its discretionary boundaries (Finder, 2024; T. S. Zhang, 2012). As one of the significant steps in enforcing employment equality, the SPC amended its Provisions on the Causes of Action for Civil Cases in 2018 (SPC, 2018b), establishing “equal employment rights disputes” as an independent cause of action. This action directly addressed a widespread problem where local courts routinely rejected employment discrimination cases in the filing processes due to ambiguity over the applicable cause of action (Yan, 2014). The “equal employment rights disputes” also provided a clear legal avenue to address discrimination occurring even before an employment contract is signed. In recruitment processes, job seekers often encounter subtle and invisible forms of discrimination based on gender, age, and, most notably, physical conditions and disabilities. However, before the SPC amended its regulations, disabled individuals could not file a “labor dispute” lawsuit without a signed employment contract. By introducing “equal employment rights disputes” as an independent cause of action, the SPC recognized that discrimination can occur before an employment contract is established, thereby expanding legal protections for job seekers, particularly those with disabilities.

Since China ratified the Convention on the Rights of Persons with Disabilities (CRPD; United Nations, 2006) in 2007, the SPC has actively pursued the implementation of Article 13, “Access to Justice,” through a series of policy documents. In its Opinions on Effectively Safeguarding the Lawful Rights and Interests of Persons with Disabilities during the Trials (SPC, 2018a), the SPC promised to make judicial proceedings accessible to all disabled individuals, providing reasonable accommodations such as online and telephone case filing, in-vehicle courts, remote hearings, and in-home mediation. It also collaborated with the China Disabled Persons’ Federation to provide sign language interpreters and Braille services and worked with the Ministry of Justice to facilitate legal aid access. From 2016 to 2019, the SPC organized a series of human rights training programs to enhance disability awareness among judges. Around 356,000 individuals with disabilities received legal aid in judicial proceedings (Chinese Government, 2021). In response to the 2023 Accessible Environment Construction Law (Standing Committee of the National People’s Congress, 2023), the SPC recently established a unified standard for constructing accessible facilities in all local courts (SPC, 2024). While not directly targeting employment discrimination, these policies reflect the growing awareness of disability equality and may promote broader disability inclusion within the judicial system.

The SPC’s proactive power expansion in addressing disability discrimination can also be shown in Guiding Case No. 185 (*Yan Jialin v. Zhejiang Sheraton Resort Co. Ltd.*, 2022). In this case, Ms. Yan Jialin applied for a position at the Sheraton Company, only to be rejected because her employer deemed her origin from Henan Province “unsuitable” for the position. The court found that the company’s hiring criteria based on regional origin constituted “differential treatment,” placing Yan at a “disadvantage” compared to other applicants. It further held that, since there was no “inherent relevance or lawful basis” to link regional origin to the job’s requirements, the employer’s differential treatment should be deemed as employment discrimination. While this case dealt specifically with discrimination based on region rather than disability, its significance extended beyond its particular context—prior to this ruling, there was surprisingly no legally binding standard or consequence for employment discrimination. For instance, in one previous case, the Beijing First Intermediate Court failed to assess whether the physical disability of the applicant had any “inherent

relevance” to the job position, even stating that “it is a common understanding that not all jobs can be fully performed by disabled people” (*Li Qi v. Beijing Zhongwang Online Advertising Company*, 2014). In Guiding Case No. 185, the SPC took a significant step by recognizing that unjustified differential treatment that does not have “inherent relevance of the job”—such as geographical background and, potentially, disability in future cases—constitutes employment discrimination. It also clarified that tort liability claims based on violations of equal employment rights should be supported in judgments. In a word, Guiding Case No. 185 demonstrates how the definition of and remedies for employment discrimination in China are increasingly shaped by judicial rulings rather than national legislation and government policies.

The profound impact of Guiding Case No.185 is more than a single judgment. Although China follows civil law traditions, all subordinate courts “should follow” the guiding cases issued by the SPC (SPC’s Provisions on Case Guidance, 2015). This means that Guiding Case No. 185 would serve as *de facto* “case law” in future judgments on employment discrimination throughout China. A recent case issued by the Longgang District court in Shenzhen City involving a disabled individual further exemplifies how No. 185 is reshaping equal employment litigation in China (*Li Wenguang v. Shenzhen Keruinai Technology Company*, 2022). In August 2021, Li came across a job posting for an operations manager at an e-commerce company in Shenzhen City. Given the match between his qualifications and the specific requirements of the position, he applied for this job and successfully passed two rounds of in-person interviews. Li was then required to take a physical examination as part of the pre-employment process. Upon reviewing Li’s medical examination report, which noted “a few items requiring regular follow-up due to a condition of sinus bradycardia,” the company chose not to proceed with the hiring process. Despite Li’s efforts to provide further explanation or arrange a secondary physical examination, the company still refused to hire him because of the “high-risk factors” associated with his health condition. Later, Li filed a lawsuit citing “equal employment rights disputes” as the cause of action. In court, the employer defended that their decision was motivated by a desire to mitigate the “potential risks” related to Li’s health deterioration. Although the court did not explicitly cite Guiding Case No. 185 in its judgment, it effectively applied the same legal reasoning structure. The court found that, as Li’s sinus bradycardia was not “inherently relevant” to the job position, the “unreasonable treatment, exclusion, and restriction based on physical condition” constituted employment discrimination, violating his equal employment rights. The court further clarified that the core criterion for determining employment discrimination is “not merely in the presence of direct discriminatory behavior,” but rather an assessment of whether the employer’s decision is “legally relevant and reasonable.” This case was considered the first successful case brought by a disabled individual after “equal employment rights disputes” became an independent cause of action.

Leveraging Guiding Case No. 185, local courts even improved and expanded judicial approaches to protect the employment rights of disabled people. In a recent case handled by the Guangzhou Intermediate Court, the court further broadened the concept of “employment discrimination,” extending its application to social insurance coverage (*Tao Shiwei v. Guangdong Taik Security Services Co.*, 2023). Tao, a man with intellectual disabilities working at a security company, was refused to pay social insurance contributions by his employer. Under China’s Labor Law, companies have mandatory obligations to pay social insurance premiums for their employees (Standing Committee of the National People’s Congress, 2018a). The defendant company argued in court that Tao had concealed his “intellectual disability” during the recruitment process, using this “fraudulent behavior” as grounds to refuse to pay social insurance for him. The legal reasoning of the Guangzhou Intermediate Court’s judgment was consistent with Guiding Case No. 185. By citing Article 30 of

the LPDP, the employment equality clause, the court found that despite Tao's intellectual disability, his cognitive abilities were sufficient for his security guard role, and the employer's refusal to meet mandatory insurance obligations constituted discrimination against a disabled employee. Consequently, the court ordered the company to compensate Tao for the unpaid social insurance, reinforcing the principle that denial of benefits based on disability is another breach of equal employment protection.

By establishing the anti-discrimination Guiding Case, the SPC has empowered local courts to strategically leverage institutional tools to advance employment equality for disabled people. In our examination, it is important to note that, before Guiding Case No. 185, there was virtually no successful case regarding disability discrimination in the workplace. However, the number of successful cases has notably increased following Guiding Case No. 185. It is not difficult to predict that Guiding Case No. 185 will continue to trigger ripple effects in the Chinese judiciary, as local courts are now better equipped to address such cases with enhanced clarity, consistency, and equal awareness. These judicial efforts, though seemingly gradual, can generate sustained and significant changes, progressively bringing the equal employment clauses closer to realization.

3. Rigid Standards, Mechanical Solidarity: The Discriminatory Practice in Government Recruitment

The stringent Physical Examination Standards for Civil Servants (PESCS; Human Resources Department of Social Security et al., 2016) in China have long faced criticism for their discriminatory implications (Guo et al., 2015; Y. Jiang et al., 2002). Empirical data indicates that the discriminatory regulations of PESCS have adversely affected the equal employment rights of nearly 200 million health-disadvantaged individuals, including those infected with HIV (780 thousand), patients with hematologic diseases such as thalassemia gene carriers (10 million in Guangdong), diabetics (97 million), and individuals with hearing (12.63 million) and visual (20.54 million) impairments (Guo et al., 2015). According to Articles 11, 19, and 20 of the PESCS, candidates with hearing (unable to hear whispers within three meters) or visual impairments (both eyes corrected to less than 0.8 vision), as well as those with a history of mental health conditions, are automatically deemed “unqualified” for any civil service role. While such standards may be justifiable for physically demanding roles such as police officers or firefighters, they fail to assess how applicants' conditions might actually affect job performance or meet the specific requirements of different job positions. Such discriminatory standards within PESCS indicate a clear ableism among policymakers that individuals with certain disabilities are “inherently incapable” of performing specific work duties, neglecting the possibility of fulfilling job requirements through reasonable accommodations. More problematically, although the PESCS was revised in 2016—nearly ten years after the adoption of the CRPD and eight years after China's ratification—the awareness to provide reasonable accommodations under Article 27 of the CRPD was conspicuously absent in China's public employers. This absence is not merely a procedural oversight but a substantive failing that perpetuates structural discrimination against disabled people—nearly all recruitment standards of government and public institutions are either directly based on the PESCS or adopted its criteria indirectly.

According to a report by the NGO Tian Xia Gong (2011) on disabled civil servant recruitment in Eastern China, only eight disabled individuals were recruited as civil servants in Jiangsu, Zhejiang, Anhui, and Shanghai between 2008 and 2011. In these regions, the average employment rate of disabled individuals is

only 0.03%, far below the 1.5% standard stipulated in Article 8 of the Regulation on the Employment of the Disabled (State Council of the People's Republic of China, 2008). In recent years, although some regions have set civil service positions specifically for disabled people and have moderately relaxed physical examination standards, these positions remained scarce (Shi, 2022). Numerous cases of discrimination have demonstrated the systemic barriers faced by disabled individuals in public sector employment. For instance, Tan Jinsong, who only has a visual acuity of 0.3, ranked first in both written and oral exams for a position in the Legal Affairs Office of Yueyang City Government. Nevertheless, he was rejected by the government solely due to his visual impairment (Tan, 2016). This was because the civil servant recruitment rules in Yueyang City strictly adhere to the national-level standards of the PESCS, requiring candidates to have a visual acuity of 0.8 or above in both eyes. Similarly, Zheng Rongquan, the first student in Zhejiang Province to use Braille papers in the college entrance examination, failed to meet the stringent visual acuity standards required for public school teachers (H. L. Zhang, 2019). He applied for a teaching position at the Nanjing School for the Blind and achieved top scores in both the written examinations and interviews. However, the Public Recruitment Announcement for Teachers in Nanjing Municipal Schools (Nanjing Education Bureau, 2019), which strictly adheres to the PESCS standards, mandates that all job applicants must have a visual acuity of 0.8 or above in both eyes. Otherwise, they will be automatically deemed “unqualified” for recruitment. Similar discrimination even extends to height requirements. Zhu Jingjia, a female college graduate, was denied entry to the civil service selection exam in Guangdong Province solely because she was only 148 centimeters tall (Y. Jiang et al., 2002). According to Article 12, Clause 11 of the Physical Examination Standards for Civil Servants (Guangdong Province Government, 1999), male candidates must have a height of at least 1.60 meters, while female candidates must be at least 1.50 meters tall. Despite Zhu's excellent academic performance and background, the two-centimeter height deficit disqualified her from entering the public service. In a similar scenario, Zou Mi, a half-paralyzed wheelchair user, passed both the written and oral tests for the teacher qualification examination. However, she was still unable to obtain a teacher certificate due to discriminatory government regulations (Y. L. Zhang, 2021). According to the Physical Examination Standards for Applicants for Teacher Qualifications in Chongqing City, which is drafted based on the PESCS, individuals with severe deformities and diseases of the musculoskeletal system will be deemed “unqualified” to apply for the teaching qualification certificate (Chongqing Municipal Education Commission & Chongqing Municipal Health and Family Planning Commission, 2016).

4. Quarantined Justice: The Courts' Dilemma in Governmental Employment Discrimination

Local courts have demonstrated their commitment to applying the institutional tools provided by the SPC to promote fairness in disability employment, particularly within the private sector. However, the courts' stance becomes more nuanced when employment discrimination extends to public agencies. When confronted with problematic recruitment standards set by governmental entities, the courts tend to apply a lower level of scrutiny, even though such discrimination can sometimes be more severe than that in private enterprises. This unusual judicial phenomenon should be understood within broader political and social contexts. In China's authoritarian regime, pursuing policy reforms through judicial expansion is possible only within the boundaries set by the state, a concept referred to as “quarantined justice” (Y. D. Wang & Xia, 2023). The judiciary's strategic efforts to combat disability discrimination are “quarantined” in private enterprises and cannot extend to government entities.

The “quarantined justice” manifests in two ways in dealing with discriminatory hiring standards of government departments. On the one hand, courts remain reluctant to accept employment dispute lawsuits where government agencies are defendants. According to a report on employment discrimination conducted by the Constitutional Research Center of China University of Political Science and Law (2011), governmental discriminatory cases often cannot be filed under the cause of employment discrimination or are even rejected by the courts in the filing proceedings. In theory, case filing serves as an initial stage to filter disputes, directing certain matters toward alternative resolution channels to ease the court’s caseload (Ng & He, 2017). In practice, however, due to the judiciary’s relatively inferior position within China’s bureaucratic hierarchy, the filing procedure functions more as a mechanism to exclude politically sensitive or socially contentious cases, thereby minimizing potential conflicts between the courts and government agencies. When higher political forces prefer that courts abstain from resolving certain disputes, courts have little autonomy to resist their directives. Such “dejudicialization” (Peerenboom, 2008) has been a common phenomenon during China’s unprecedented social transformation. Empirical studies have shown that, despite rising public demand for judicial roles, the overall increase in administrative litigation against governments has remained modest over the last several decades (J. Li, 2013). For instance, the SPC has issued a policy document to temporarily halt all collective tort litigation regarding security transactions, aiming to avoid conflicts with financial regulatory agencies (SPC, 2001). It also instructed all local courts to decline cases brought by rural villagers concerning the distribution of land compensation fees (SPC, 2020). As the allocation of rural land is intricately tied to grassroots power structures, courts seek to avoid escalating conflicts through judicial intervention and imposing additional burdens on local governance. Chinese judiciary is reluctant to adjudicate cases related to or against governmental bodies, as these cases are closely tied to the economic interests and political authority of local governments. A significant number of cases—such as those involving discriminatory recruitment within government agencies—are systematically filtered out from courtrooms.

On the other hand, even when cases are accepted in filing proceedings, courts are inclined to deny the existence of discrimination in government recruitment. In the cases of government recruitment discrimination filed by disabled individuals that we collected from the CJO database, not a single ruling identified employment discrimination by the government. Courts typically perform only formalistic reviews of the physical examination criteria, without substantively assessing whether they violate the equality provisions in LPDP, EPL, or the government’s obligations under the CRPD. For instance, the “first case of disability discrimination in civil servant recruitment” (*Xuan Hai v. Anhui Provincial Department of Human Resources and Social Security*, 2012) brought by a disabled candidate ended in disappointment. In 2011, Xuan Hai, a visually impaired individual (corrected vision less than 0.8), applied for a civil service position in Anhui Province. Before the written examination, he requested reasonable accommodations from the organizer of the exam, Department of Human Resources and Social Security of Anhui Province, including a separate testing room, Braille test paper, and an electronic reader. However, on the exam day, Xuan was only provided with several magnifying glasses. He had no option but to give up on the test. Worse, the following year, he was disqualified by the government from taking the exam, simply because he had honestly disclosed his visual impairment during the registration period (Zhan & Yang, 2013). Believing he was discriminated against, Xuan sued the Anhui Provincial Department of Human Resources and Social Security. In the judgment, the court cited Article 21, Paragraph 3 of the Provisions on the PESCS, determining that Xuan belonged to the low vision group. It held that, since low vision could “potentially affect the performance of job duties,” the government’s decision to deem Xuan ineligible for the civil service exam was not found to violate relevant laws or regulations (G. M. Li, 2012).

In addition to government departments, discrimination against disability in other public sectors also struggles to gain judicial support. In China, medical and educational institutions are categorized similarly to government departments, and most of them directly adopt PESCS's stringent standards in recruitment. Lin Sen, a visually impaired individual, faced discriminatory treatment when applying for a massage therapist position at a hospital (*Lin Sen v. Rongcheng Bureau of Human Resources and Social Security*, 2014). Although he ranked first in both the written and oral tests, he was still deemed “unfit for the job” by the employer due to his failure to meet the PESCS vision requirements. The court, however, denied the existence of discrimination because of “insufficient evidence,” without carefully reviewing the reasonableness of the physical examination standards or their relevance to the specific job requirements. Such discrimination is not limited to the recruitment proceedings but extends to unequal treatment of work benefits. Liu Qinghua, a person with physical disabilities, has worked at a college in Hunan Province for 17 years. Despite her long tenure, Liu never received equal remuneration, salary increases, or benefits enjoyed by other employees. She was even denied the opportunity to join the staff union by the personnel department of the college. In the same way, the court, again, rejected the claim of discriminatory work treatment, stating that the wage standards had been “agreed upon in the labor contract” and noting that Liu had not contested the wages during his many years of employment (*Liu Qinghua v. Hunan Women's College*, 2021).

5. Embedded Courts: Institutional Barriers in Governmental Discrimination Lawsuits

The “quarantined justice” indicates that the judicial power expansion finds its obstacles in addressing discriminatory practices within government recruitment. The stark contrast in attitudes toward private enterprises versus government agencies suggests the state established clear boundaries for judicial innovation, effectively confining them within “politically unthreatening areas” (Y. D. Wang & Xia, 2023). Within the permissible bounds, experimental innovations—such as enforcing disability equality standards within private enterprises—can be effectively implemented. These measures align with broader governance objectives without challenging core political interests, and may even improve the state's image as a progressive and equitable role. However, any judicial attempt to challenge government policies will be perceived as a threat to political legitimacy, which will be undoubtedly “quarantined” beyond the permitted boundaries. Such “quarantined justice” is rooted in the inherent “embeddedness” of the judiciary within China's bureaucratic system (Ng & He, 2017). As a significant conceptual tool in new institutional economics and economic sociology, “embedded theory” holds that the behavior of individuals and organizations is not isolated but significantly influenced by social networks, institutional foundations, cultural traditions, etc. (Polanyi, 1944). Specifically, “judicial embeddedness” refers to the complex institutional environments within which the courts operate. The decision-making structure of Chinese courts resembles an inverted funnel—as cases progress through the adjudication process, the scope of consideration expands from pure legal issues to broader non-legal factors (L. Li, 2023; Liebman, 2017), especially political and financial elements. The political and financial embeddedness constrains the courts' bargaining power with superior political bodies, significantly limiting their abilities to deal with governmental discrimination against disabled people.

The political embeddedness can be attributed to China's relatively closed institutional environment, which ensures that decisions made by senior political authorities remain unchallenged in the courts (Y. D. Wang & Xia, 2023). The judiciary is highly localized and cannot be separated from local politics and elites (He, 2017; Keith et al., 2014)—apart from the SPC, nearly all local courts are considered parts of local governments (Hou, 2019). Presidents of local courts shall be nominated by local Party committees before being formally

appointed by local people's congresses. Vice presidents and other regular judges will be then nominated by the presidents (State Council of the People's Republic of China, 2019). Given the symbolic function of local people's congresses (Keith et al., 2014), the substantive power to appoint judges lies in the hands of local political elites. Moreover, the daily management, work assessment, and reward and punishment mechanisms fall under the purview of local Party committees and personnel departments of local governments, making judges almost no different from government servants (H. L. Jiang, 1998). Deep political intervention has prevented the Chinese judiciary from developing independent operations, leaving it unable to challenge the discriminatory standards against disabled individuals of government recruitment. Financial embeddedness is another significant reason why courts are powerless to challenge discriminatory government policies. Under the special judicial-financial system in China, all local courts are funded by local government budgets, and the courts' daily operations depend on local financial support (He, 2007; Ng & He, 2017). Additionally, courts rely on material support from local governments such as land for courthouse construction, provision of utilities, and even infrastructure maintenance (X. X. Liu, 2022; Z. Liu, 2012). Any rulings that go against local political interests, including attempts to overturn discriminatory government regulations against disabled people, could potentially expose courts to a vulnerable position regarding their financial support. To secure essential funding for the operation, local courts must actively align themselves with key resource allocators and avoid ruling that governmental recruitment regulations are unlawful.

The unbalanced framework of power distribution is another cause of "quarantined justice" in disability discrimination lawsuits. Unlike their counterparts in some other regimes, Chinese courts do not possess the authority to conduct constitutional review of laws and government regulations. They cannot even directly cite equality clauses in the Constitution as a basis for their rulings (SPC, 2016). Constitutional review authority rests solely with the National People's Congress and its Standing Committee, though they rarely exercise this authority in practice (Pan, 2020; S. C. Wang, 2022). Such an unbalanced allocation of constitutional review power means that even when courts find that the hiring standards of civil servants violate the equality clauses of the Constitution, LDPD, or EPL, they cannot invalidate those discriminatory rules. Besides constitutional review, administrative litigation may offer another channel for courts to address discriminatory hiring standards. However, despite efforts in recent years by Chinese courts to expand their roles in administrative cases (He, 2013; Xiao & Ding, 2023; Yu, 2014), their power to challenge government authorities remains limited. Courts are only authorized to examine "specific administrative actions" of government agencies; "universally binding orders" such as recruitment policies and physical examination regulations issued by the government, fall outside courts' review scopes (State Council of the People's Republic of China, 2017). Therefore, even though recruitment regulations like PESCS are clearly discriminatory against disabled individuals, courts cannot directly declare them unlawful.

6. Conclusion: The Judicial Path to Uncompromised Diversity and Social Inclusion

This article provides a socio-legal analysis of employment discrimination against disabled people in China. In contrast to legislation-centered perspectives that attribute the failure to achieve integrated employment to the limited effectiveness of laws and policies, we argue that greater attention should be given to judicial institutions. Through proactively modifying procedural rules and issuing the Guiding Case, the SPC, China's highest court, has significantly expanded its discretionary boundaries, serving a key role in breaking systematic discrimination against disabled employees. To fulfill the requirements of Article 13 of the CRPD, the SPC has also taken proactive steps by ensuring effective access to justice for disabled employees.

In response, local courts have strategically leveraged institutional tools provided by the SPC to establish an inclusive and accessible environment. However, the expansion of judicial power remains “quarantined” to pursue further goals—the courts are not as effective in tackling governmental discrimination as they are in private-sector recruitment. Constrained by institutional embeddedness within China’s political hierarchy, Chinese courts lack the capacity to challenge discriminatory rules issued by governments. The rigid “one-size-fits-all” physical examination standards remain in most civil service procedures without considering the specific requirements of each position. This mechanical categorization based on health conditions effectively excludes most disabled candidates from government jobs, limiting their career opportunities and economic independence, exacerbating social inequality, and reinforcing their marginalization.

In the specific context of China, social, judicial, and political factors comprehensively shaped the landscape of social inclusion and solidarity. The “quarantined justice” has severely limited the impact of judicial actions in combating discrimination and achieving equal treatment for the disabled community. Such compromised diversity may further exacerbate the intersectional marginalization faced by disabled individuals, undermining social cohesion and diminishing the inclusive forces within society. However, the Chinese judiciary still holds substantial potential to eradicate structural discrimination against disabled people in the job market—provided that its innovative power expansion can extend beyond established political boundaries. The key to achieving disability equality lies in changing systems to support people, rather than changing the people to fit into systems. Empowering the judiciary to mitigate political and financial embeddedness is crucial for alleviating “quarantined justice” and building an inclusive, accessible employment landscape in China. Increased collaboration between courts and procuratorates may also be expected, with both institutions leveraging public interest cases to promote government agencies to recruit more disabled individuals. In a word, by shifting from a framework of mechanical solidarity that dismisses the work value of disabled people to one of organic solidarity that embraces diversity and inclusiveness, Chinese society can progress toward broader employment equality. The judiciary, with its capacity for innovation and self-empowerment, will play a critical role in this transformation.

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References

- Ahl, B. (2019). Judicialization in authoritarian regimes: The expansion of powers of the Chinese Supreme People’s Court. *International Journal of Constitutional Law*, 17(1), 252–277. <https://doi.org/10.1093/icon/moz003>
- Chen, T. H., Xu, W., & Yu, X. H. (2024). Administrative litigation in China: Assessing the chief officials’ appearance system. *The China Quarterly*, 259, 744–764. <https://doi.org/10.1017/S0305741024000018>
- China Disabled Persons’ Federation. (2024). *Canjiren shiye fazhan tongji gongbao 2023*. <https://www.cdpcf.org.cn/zwgk/zccx/tjgb/03df9528fdcd4bc4a8deee35d0e85551.htm>

- Chinese Government. (2021). *Replies of China to the list of issues in relation to its combined second and third periodic reports on CRPD*. <https://digitallibrary.un.org/record/3977324?v=pdf>
- Chongqing Municipal Education Commission, & Chongqing Municipal Health and Family Planning Commission. (2016). *Chongqing shi shenqing jiaoshi zige renyuan tijian biao zhun ji banfa*.
- Chua, L. J. (2019). Legal mobilization and authoritarianism. *Annual Review of Law and Social Science*, 15(1), 355–376. <https://doi.org/10.1146/annurev-lawsocsci-101518-043026>
- Constitutional Research Center of China University of Political Science and Law. (2011). Guojia gongwuyuan zhaokao zhong de jiuye qishi diaocha baogao. http://edu.newdu.com/Official/Class942/Class951/201111/199298_15.html
- Durkheim, É. (1933). *The division of labor in society*. Macmillan.
- Finder, S. (2024). How China's Supreme People's Court supports the development of foreign-related rule of law. *China Law and Society Review*, 8(1/2), 62–118. <https://doi.org/10.1163/25427466-08010001>
- Fu, H. L. (2012). Embedded socio-legal activism in China: The case of Yirenping. *Hong Kong Law Journal*, 42(2), 245–274.
- Gofman, A. (2014). Durkheim's theory of social solidarity and social rules. In V. Jeffries (Ed.), *The Palgrave handbook of altruism, morality, and social solidarity: Formulating a field of study* (pp. 45–69). Palgrave Macmillan.
- Guangdong Province Government. (1999). *Physical examination standards for civil servants*.
- Guo, B., Huang, S. X., & Yang, Q. (2015). Gongwuyuan luyong tijian biao zhun xia de zhiduxing qishi. *Fan Qi Shi Ping Lun*, 2, 33–55.
- He, X. (2007). Why did they not take on the disputes? Law, power and politics in the decision-making of Chinese courts. *International Journal of Law in Context*, 3(3), 203–225. <https://doi.org/10.1017/S1744552307003023>
- He, X. (2013). Judicial innovation and local politics: Judicialization of administrative governance in East China. *The China Journal*, 69(1), 20–42. <https://doi.org/10.1086/668805>
- He, X. (2017). The politics of courts in China. *China Law and Society Review*, 2(2), 129–153.
- Hou, M. (2019). Cong gongwuyuanfa kan xin xiuding de faguan fa—Yi faguan guanli zhidu wei zhuxian. *Fa Lv Shi Yong*, 2019(9), 20–26.
- Human Resources Department of Social Security, National Health and Family Planning Commission, & National Civil Service Bureau. (2016). *Physical examination standards for civil servants*.
- Jiang, H. L. (1998). Sifa quanli difanghua zhi libi yu gaige. *Ren Min Si Fa*, 1998(2), 29–31.
- Jiang, Y., Jiang, Y. S., & Li, F. (2002, March 28). Bao kao gongwuyuan jing zaoyu shengao qishi nv daxuesheng bei juzhimenwai. *Sohu News*. <https://news.sohu.com/61/06/news148300661.shtml>
- Jiang, Z. Y. (2019). Canzhangzhe laodongquan de sifa jiuji—Jiyu sifa caipan anli de fenxi. *Ren Quan*, 2019(1), 81–94.
- Keith, R. C., Lin, Z., & Hou, S. (2014). *China's Supreme Court*. Routledge. <https://doi.org/10.4324/9781315883939>
- Li, G. M. (2012, July 31). Quanguo gongwuyuan zhaokao canji qishi diyian yishen bohui qi susong. *Legal Daily*. <https://fzzfyjy.cupl.edu.cn/info/1075/2573.htm>
- Li, J. (2013). Suing the leviathan: An empirical analysis of the changing rate of administrative litigation in China. *Journal of Empirical Legal Studies*, 10(4), 815–846. <https://doi.org/10.1111/jels.12029>
- Li, L. (2023). Order of power in China's courts. *Asian Journal of Law and Society*, 10(3), 490–515. <https://doi.org/10.1017/als.2023.16>
- Li Qi v. Beijing Zhongwang Online Advertising Company, Yi Zhong Min Zhong No. 05698 (2014).

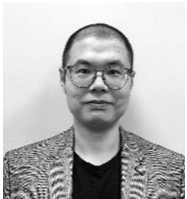
- Li Wenguang v. Shenzhen Keruinai Technology Company, Yue 0307 Min Chu 6503 (2022).
- Liang, F. (2008, January 15). *Luelun canjiren jiuye qishi de falv baozhang—Zai canjiren baozhang fa xiuding bei jing xia*. Beijing Lawyers Association. <https://www.beijinglawyers.org.cn/cac/1576655936738.htm>
- Liebman, B. L. (2017). China's courts: Restricted reform. In A. Christoph & T. Roman (Eds.), *Law and society in East Asia* (pp. 237–280). Routledge.
- Lin Sen v. Rongcheng Bureau of Human Resources and Social Security, Rong Xing Chu Zi No. 17 (2014).
- Liu Qinghua v. Hunan Women's College, Xiang 0103 Min Chu 9021 (2021).
- Liu, X. N. (2015). Gongwuyuan zhaokao ruzhi tiaojian dui nvxing de duochong qishi yanjiu. *Zhong Hua Nv Zi Xue Yuan Xue Bao*, 3, 5–13.
- Liu, X. X. (2022). Keceng zhong de fenliu: Zhongguo fayuan renshi guanli zhidu de eryuan jiegou. *Zhong Wai Fa Xue*, 34(4), 885–902.
- Liu, Z. (2012). Tiao tiao yu kuai kuai guanxi xia de fayuan yuanzhang chansheng. *Huan qiu fa lv ping lun*, 34(1), 107–125.
- Nanjing Education Bureau. (2019). *Nanjing shi jiaoyuju zhishu xuexiao zhaopin gonggao*. http://edu.nanjing.gov.cn/bsfw/zpzk/201901/t20190104_1363576.html
- Ng, K., & He, X. (2017). *Embedded courts: Judicial decision-making in China*. Cambridge University Press.
- Pan, X. M. (2020). Judicial lawmaking and discontent: Debating the legislative function of Chinese courts. *Asia Pacific Law Review*, 28(2), 297–315. <https://doi.org/10.1080/10192557.2020.1855793>
- Peerenboom, R. (2008). More law, less courts: Legalized governance judicialization and dejudicialization in China. In T. Ginsburg & A. Chen (Eds.), *Administrative law and governance in Asia: Comparative perspectives* (pp. 175–202). Routledge. <https://doi.org/10.4324/9780203888681>
- Polanyi, K. (1944). *The great transformation: The political and economic origins of our time*. Farrar & Rinehart.
- Qi, F., Hu, L. J., & Wu, Y. Q. (2019). Rhetoric and reality: Litigation rights of Chinese disabled people. *Disability & Society*, 35(8), 1343–1348. <https://doi.org/10.1080/09687599.2019.1708560>
- Shi, H. J. (2022, November 24). Gongwuyuan zhaolu wei canjiren shezhi zhuangang. *Guangming News*. https://guanqia.gmw.cn/2022-11/24/content_36185464.htm
- Standing Committee of the National People's Congress. (2015). *Employment promotion law*.
- Standing Committee of the National People's Congress. (2018a). *Labor law*.
- Standing Committee of the National People's Congress. (2018b). *Law on the protection of disabled persons*.
- Standing Committee of the National People's Congress. (2022). *Law on the protection of the rights and interests of women*.
- Standing Committee of the National People's Congress. (2023). *Accessible environment construction law*.
- State Council of the People's Republic of China. (2004). *Regulation on labor security supervision*.
- State Council of the People's Republic of China. (2008). *Regulation on the Employment of the disabled*.
- State Council of the People's Republic of China. (2017). *The administrative litigation law*.
- State Council of the People's Republic of China. (2019). *Judges law*.
- Stern, R. E. (2013). *Environmental litigation in China: A study in political ambivalence*. Cambridge University Press.
- Supreme People's Court. (2001). *Notice of refusing to accept civil compensation cases involving securities*.
- Supreme People's Court. (2015). *Provisions on case guidance*.
- Supreme People's Court. (2016). *Specifications for preparing civil judgments*.
- Supreme People's Court. (2018a). *Opinions on effectively safeguarding the lawful rights and interests of persons with disabilities during the trials*.
- Supreme People's Court. (2018b). *Provisions on the causes of action for civil cases*.
- Supreme People's Court. (2020). *Interpretation about the issues concerning the laws applicable to the trial of cases of disputes over rural land contracting*.

- Supreme People's Court. (2024). *Specifications for the construction of accessible environments in court litigation service centers*.
- Supreme People's Procuratorate, & China Disabled Persons' Federation. (2022). *Ten model procuratorial public interest litigation cases of protecting the rights and interests of disabled people*.
- Tan, J. (2016, August 17). Hunan yi canjiren kao gongzhi chengji diyi zuizhong luoxuan, tijian biao zhun bei zhi jiuye qishi. *Pengpai News*. https://www.thepaper.cn/newsDetail_forward_1514855
- Tang, N., & Cao, Y. (2018). From multiple barriers to a co-prosperity society: The development of a legal system for disabled people in China. *Disability & Society*, 33(7), 1170–1174. <https://doi.org/10.1080/09687599.2018.1471373>
- Tao Shiwei v. Guangdong Taike Security Services Co., Ltd., Yue 01 Min Zhong No. 26922 (2023).
- Tian Xia Gong. (2011). *Investigation report on recruitment status of disabled civil servants in East China*. <http://edu.sina.com.cn/official/2012-08-30/0953353810.shtml>
- United Nations. (2006). *Convention on the rights of persons with disabilities*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>
- Wang, S. C. (2022). The judicial document as informal state law: Judicial lawmaking in China's courts. *Modern China*, 48(3), 617–649. <https://doi.org/10.1177/00977004221079528>
- Wang, Y. D., & Xia, Y. (2023). Quarantined judicial expansion: The environmental legal entrepreneurship of Chinese courts, procuratorates, and NGOs. *Law & Policy*, 45(2), 159–180. <https://doi.org/10.1111/lapo.12205>
- Xiao, H. N., & Ding, C. Y. (2023). Explaining the variations in legal mobilization of environmental nongovernmental organizations in authoritarian China: A fuzzy set qualitative comparative analysis. *Law & Policy*, 45(2), 181–210. <https://doi.org/10.1111/lapo.12208>
- Xuan Hai v. Anhui Provincial Department of Human Resources and Social Security, 2012.
- Yan Jialin v. Zhejiang Sheraton Resort Co. Ltd., Guiding Case No. 185 (2022).
- Yan, T. (2014). Fan jiuye qishi fa de yiban lilun—Zhongmei liangguo de jiangou yu fansi. *Huan Qiu Fa Lv Ping Lun*, 6, 59–79.
- Yang, H. N. (2024). The social public interest in China's employment anti-discrimination laws and its realisation paths. *The International Journal of Human Rights*, 28(6), 912–935.
- Yang, L., & Hao, Y. (2019). Chengzhen canjiren jiuye: Wenti de zhuan yi yu zhengce yinyu. *Xi Bei University Journal*, 49(4), 74–88.
- Yu, X. H. (2014). Celue xing fucong: Zhongguo fayuan ruhe tuijin xingzheng susong. *Tsinghua Law Journal*, 8(4), 103–124.
- Zhan, T. T., & Yang, D. M. (2013, March 22). Quanguo gongkao canji qishi diyi an yuangao zai fu anhui gankao. *Xinhua News*. <https://news.sina.com.cn/c/2013-03-22/081726608479.shtml>
- Zhang, H. L. (2019, May 19). Baokao mangxiao lv yin tijian shouzu, shizhang qunti nengfou shixian “jiao shi meng”? *Xinhua News*. http://www.xinhuanet.com/politics/2019-05/19/c_1124515086.htm
- Zhang, T. S. (2012). The pragmatic court: Reinterpreting the Supreme People's Court of China. *Columbia Journal of Asian Law*, 25(1), 1–61.
- Zhang, Y. L. (2021, May 06). Lunyi shang bu bei renke de nv jiaoshi. *Pengpai News*. https://www.thepaper.cn/newsDetail_forward_12543048

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