

ESSAY: UNDERSTANDING EMPLOYMENT DISCRIMINATION LITIGATION IN CHINA THROUGH THE NOTION OF “RIGHTS APATHY”

Sheera Chan* and Mimi Zou**

The psycho-legal concept of “rights apathy” is developed in this Essay as an underlying factor of the very low rate of incidence of workplace discrimination lawsuits filed in China, despite an increasingly elaborate legal framework “on paper” and workers’ rising awareness of their legal rights under anti-discrimination laws. “Rights apathy” is underpinned by the notions of “frustration” and “learned helplessness,” depicting the indifference of workers in exercising their legal rights before a tribunal or court. A number of institutional problems, namely defects in existing anti-discrimination provisions, judicial practices, and contradictions in other laws, policies, and practices, can contribute to the “rights apathy” of workers experiencing discrimination in the workplace.

* CHAN Hei Ting, Sheera was born and raised in Hong Kong. She earned both her B.A. in English Studies and B.Ed. in English Language Education from The Chinese University of Hong Kong (CUHK). She is currently a Juris Doctor candidate of the Faculty of Law, CUHK.

** Assistant Professor, *Faculty of Law, The Chinese University of Hong Kong*. Law Doctorate (DPhil.), *University of Oxford*, 2014.

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I. INTRODUCTION

Over the past decade, a fairly comprehensive legal framework aimed at combating employment discrimination has developed in China through a range of provisions and rules laid out in the Constitution, laws, administrative regulations, and policy documents.¹ Despite growing public concern, as reflected by the frequency of workplace discrimination issues reported in the media,² the actual number of employment discrimination complaints filed in the courts has been relatively small.³ Only ninety-two discrimination cases were reported between 2000 and 2011,⁴ compared to a total of five million civil cases heard by Chinese courts in 2011 alone.⁵

As observed elsewhere in the world, the level of employment discrimination litigation is relatively trivial compared to other types of civil cases.⁶ In the United States, political science professor, Lawrence Baum, has highlighted a range of contributory factors, including a lack of knowledge among victims of discrimination regarding the availability of remedies, ineffective procedures and insufficient resources of administrative agencies in dealing with complaints, the difficulty of evidence in a trial, and lawyers' reluctance to take on discrimination cases initiated by plaintiffs.⁷ Professor of Law, Michael Selmi, has also pointed to the difficulties for

¹ XIANFA art. 4, 36 (1982) (China); Zhong Hua Ren Min Gong Heguo Lao Dong Fa (中华人民共和国劳动法) [*Labor Law*] (promulgated by the Standing Comm. Nat'l People's Cong., Jul. 5, 1994, effective Jan. 1, 1995) art. 12 (China); GUO BAN FA, NOTICE OF THE GENERAL OFFICE OF THE STATE COUNCIL ON FURTHER IMPROVING THE WORK ENVIRONMENT FOR FARMERS TO ENTER THE CITY, NO. 92 (2004).

² Jiefeng Lu, *Employment Discrimination in China: The Current Situation and Principle Challenges*, 32 HAMLINE L. REV. 133, 189 (2009).

³ Jiefeng Lu, *Regulating Employment Discrimination in China: A Discussion from the Socio-Legal Perspective*, 23 MICH. ST. INT'L L. REV. 437, 443 (2014).

⁴ *Id.* at 439. There have not been any updated, publically available figures in recent years.

⁵ *Id.*

⁶ LAWRENCE BAUM, *AMERICAN COURTS: PROCESS AND POLICY* 214 (Mary Dougherty et al. eds., Houghton Mifflin Co., 5th ed. 2001).

⁷ *Id.*

plaintiffs in winning such lawsuits, including judicial bias and even hostility towards employment discrimination claims.⁸ Kevin Clermont and Stewart Schwab, professors of law, have found that plaintiffs in United States federal employment discrimination litigation have a much lower success rate compared to other civil cases.⁹ The study observed unfavorable attitudes on the part of trial and appellate courts towards plaintiffs in such cases, with appellate courts generally having a misperception that the trial courts were in favor of the plaintiffs.¹⁰

This Essay seeks to develop the notion of “rights apathy,” based on the psychological concepts of “frustration” and “learned helplessness,”¹¹ to understand why workers may not choose to pursue an anti-discrimination lawsuit, despite being aware of their legal rights. Additionally, this Essay elaborates on how institutional problems, namely defects in relevant laws, judicial practice, regulatory inconsistencies, policies, and practices, have contributed to the formation of “rights apathy” in the Chinese context. This Essay argues that the prevalence of “rights apathy” can significantly hinder the implementation of China’s anti-discrimination laws.

While there has been increasing scholarly analysis of China’s anti-discrimination laws,¹² research on the topic,

⁸ Michael Selmi, *Why are Employment Discrimination Cases So Hard to Win?*, 61 LA. L. REV. 555, 555-61 (2000).

⁹ Kevin M. Clermont & Stewart J. Schwab, *How Employment Discrimination Plaintiffs Fare in Federal Courts*, 1 J. EMPIRICAL LEGAL STUD. 429, 429 (2004).

¹⁰ Steven F. Maier & Martin E.P. Seligman, *Learned Helplessness: Theory and Evidence*, 105 J. EXPERIMENTAL PSYCHOL. GEN. 3, 3 (1976).

¹¹ *Id.*; DENNIS COON & JOHN O. MITTERER, INTRODUCTION TO PSYCHOLOGY: GATEWAYS TO MIND AND BEHAVIOR 451 (Linda Schreiber-Ganster et al., Wadsworth, Cengage Learning, 13 ed. 2013).

¹² Lu, *supra* note 3, at 438; Jiefeng Lu, *Curb Your Enthusiasm: A Note on Employment Discrimination Lawsuits in China*, 10 RICH. J. GLOBAL. L. & BUS. 211, 211 (2010); Tang Huaze, *Analysis on Legislation of Anti-discrimination in Employment in China*, 2 J. GUANGXI VOCATIONAL & TECHNICAL C. 61, 62 (2009); Lin Jia, *Legal Regulation on Employment Discrimination in China*, 14 HENAN SOC. SCI. 16, 16-20 (2006); Xun Zeng, *Enforcing Employment Opportunities in China*, 9 U. PA. J. LAB. & EMP. L. 991, 992, 1003 (2006); Ronald C. Brown, *China’s Employment Discrimination Laws During Economic Transition*, 19 COLUM. J. ASIAN L. 361, 371

especially in the English language, is still in an embryonic stage of development.¹³ A handful of studies have examined the barriers for plaintiffs to bring employment discrimination claims in China from socio-legal, institutional, and cultural perspectives.¹⁴ These barriers include a relatively “tolerant” cultural attitude towards discrimination, limited equality awareness among workers, limitations in the existing regulatory framework, including the absence of an effective enforcement mechanism, and legal remedies.¹⁵ This Essay seeks to contribute a new psycho-legal perspective through the lens of “rights apathy,” which draws attention to the psychological barriers that prevent workers from effectively exercising their legal rights against workplace discrimination. Also significant is how the notion of “rights apathy” presented in this Essay interacts with the various legal and institutional obstacles identified by others.

II. EMPLOYMENT DISCRIMINATION LAWS IN CHINA

A. *Discrimination practices*

Workplace discrimination has become more prevalent in China since the economic transformation towards a market economy in the late 1970s.¹⁶ Prior to this transition, employers had little managerial discretion under the former centrally planned economy, where a vast majority of Chinese workers

(2005).

¹³ Jiefeng Lu, *Employment Discrimination Law Research In China: A Reflection On Current Approaches And A Discussion*, 4 TSINGHUA CHINA L. REV. 107, 109 (2011).

¹⁴ Lu, *supra* note 3, at 448; Lewis Silkin, *Is the Great Wall of Workplace Sex Discrimination Crumbling Down?*, FUTUREOFWORKHUB (Nov. 30, 2015), <http://www.futureofworkhub.info/comment/2015/11/30/is-the-great-wall-of-workplace-sex-discrimination-crumbling-down> [https://perma.cc/3SAD-QAGM].

¹⁵ Lu, *supra* note 3, at 451; Silkin, *supra* note 14; Crystal Roberts, *Far From a Harmonious Society: Employment Discrimination in China*, 52 SANTA CLARA L. REV. 1531, 1546, 1549-50, 1552, 1554-55 (2012).

¹⁶ Brown, *supra* note 12, at 371.

were found in state-owned enterprises (SOE).¹⁷ Changes in economic and labor market policies, which emphasized the mass lay-offs of SOE employees and job creation in the private sector, provided the scope for employers to gain and exercise greater managerial prerogative and autonomy in the workplace.¹⁸ This newfound autonomy provided more discretion in making decisions regarding hiring, promotion, and termination.¹⁹

Over the past two decades, workplace discrimination cases in China have involved discrimination on the basis of a person's age, gender, health status, household registration status, and physical appearance.²⁰ In 2006, the China University of Political Science and Law conducted a survey of ten Chinese cities, which revealed that over eighty-five percent of respondents expressed that they had either observed or experienced workplace discrimination.²¹ Another survey conducted in 2010 across the Sichuan Province, Henan Province, Zhejiang Province, and Xinjiang Autonomous Region shed light on the severity of employment discrimination in China.²² Over fifty percent of the 2,240 respondents categorized discrimination in their workplaces as severe.²³

¹⁷ Timothy Webster, *Ambivalence and Activism: Employment Discrimination in China*, 44 VAND. J. TRANSNAT'L L. 643, 650-51 (2011).

¹⁸ Stephen Frenkel & Sarosh Kuruvilla, *Logics of Action, Globalization, and Changing Employment Relations in China, India, Malaysia, and the Philippines*, 55 INDUS. & LAB. REL. REV. 387, 399 (2001).

¹⁹ *Id.*

²⁰ Brown, *supra* note 12, at 382-83, 391, 400, 407; Lu, *supra* note 2, at 184.

²¹ DINGJIAN CAI (丁定蔡), *Zhongguo Jiuye Qishi Xianzhuang He Fan Qishi Zhanlue* (中國就業歧視：現狀和反歧視戰略) [THE EMPLOYMENT DISCRIMINATION IN CHINA: CURRENT CONDITIONS AND ANTI-DISCRIMINATION STRATEGIES] 504 (Zhongguo Funu Xuehui (中國婦女學會) 2007).

²² *Report Uncovers Widespread Employment Discrimination in Shenzhen, CHINA LAB. BULL.* (May 25, 2010), <http://www.clb.org.hk/en/content/report-uncovers-widespread-employment-discrimination-shenzhen> [<https://perma.cc/P37Z-8NJE>] [hereinafter *Employment Discrimination in Shenzhen*].

²³ Zhang Shifei & Tang Jun (张时飞 唐 钧), *Zhong Guo Jiu Ye Shi Ji Ben Pan Duan* (中国就业歧视：基本判断) [*Discrimination in Employment in China: Some Basic Conclusions*], 2 J. OF SOC. SCI. 52, 52 (2010), available at http://paper.usc.cuhk.edu.hk/webmanager/wkfiles/7657_1_paper.pdf [<https://perma.cc/79HD-CHG4>].

At the hiring stage, it is not uncommon to find job advertisements that specify age, gender, health, and height requirements.²⁴ In 2010, the Equity and Justice Initiative, a civil society group based in Shenzhen,²⁵ conducted a report that found that among the 868 companies investigated, almost sixty percent had engaged in some form of direct discrimination against job applicants.²⁶ The report observed that age was the most common ground of discrimination, with around sixty-eight percent of the companies imposing an age restriction at the hiring stage.²⁷ A report survey of employment discrimination in the National Civil Service Recruitment 2011, published by the China University of Political Science and Law, echoed the same observation.²⁸ In this survey, tens of thousands of advertised positions were investigated, with the results revealing a high degree of age and health-related discrimination.²⁹

B. A Patchwork of Anti-Discrimination Provisions

Anti-discrimination provisions can be found in various Chinese laws and regulations.³⁰ It should be noted that China has ratified the two fundamental International Labour Organization (ILO) Conventions on equal treatment, namely the Equal Remuneration Convention, 1951 (No. 100),³¹ and the ILO Discrimination (Employment and Occupation) Convention, 1958

²⁴ See Lu, *supra* note 2, at 138.

²⁵ See *Employment Discrimination in Shenzhen*, *supra* note 22.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Dalu Guokao Zao Zhi Jiuye Qishi Yanzhong (大陸國考 遭指就業歧視嚴重) [*The mainland country examination was referring to serious employment discrimination*], EPOCH TIMES (Nov. 21, 2011, 6:30 PM), <http://www.epochtimes.com/b5/11/11/21/n3436605.htm> [<https://perma.cc/486S-TMFR>].

²⁹ *Id.*

³⁰ Brown, *supra* note 12, at 389.

³¹ *Id.* at 371; *Ratifications of C100 – Equal Remuneration Convention, 1951* (No. 100), INT'L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312245 [<https://perma.cc/8CS5-UP9N>] (showing China ratified the ILO Equal Remuneration Convention, 1951 (No. 100) on Nov. 2, 1990).

(No. 111)].³²

The Constitution of the People's Republic of China (the Constitution), which does not create justiciable rights that can be enforced in courts, provides that all citizens are equal before the law.³³ Articles 4, 36, 48, and 89 of the Constitution further stipulate that discrimination based on religion, gender, and ethnic minority statuses is prohibited.³⁴ Provisions in the Labor Law of the People's Republic of China also provide equal employment protection on the basis of nationality, race, gender, and religious belief for both employees and job applicants.³⁵ Specific laws, such as the Law of the People's Republic of China on the Protection of Rights and Interests of Women³⁶ and the Law of the People's Republic of China on Protection of Persons with Disabilities,³⁷ include provisions regarding the employment of women and persons with disabilities,³⁸ as well as provisions prohibiting discrimination on the grounds of sex and disability.³⁹

³² *Ratifications of C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*, INT'L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256 [https://perma.cc/AUC3-J78L] (showing China ratified the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) on Jan. 12, 2006).

³³ XIANFA, art. 4 (1982) (China).

³⁴ *Id.* at art. 4, 36, 48, 89.

³⁵ Zhonghua Renmin Gongheguo Lao Dong Fa (中华人民共和国劳动法) [*Labor Law*], at art. 3, 12, 13, 14, 17.

³⁶ See generally Zhonghua Renmin Gongheguo Baohu Funu Quanyi Fa (中華人民共和國保護婦女權益法) [*Law on the Protection of Women's Rights and Interests*] (promulgated by Order No. 40 of the President, Dec. 1, 2005, effective Dec. 1, 2005) (China).

³⁷ Zhonghua Renmin Gongheguo Canji Ren Baohu Fa (中華人民共和國殘疾人保護法) [*Law on the Protection of Persons With Disabilities*] (promulgated by Decree No. 3 of the President, Apr. 24, 2008, effective July 1, 2008) chp. 4 (China).

³⁸ Zhonghua Renmin Gongheguo Baohu Funu Quanyi Fa (中華人民共和國保護婦女權益法) [*Law on the Protection of Women's Rights and Interests*], at art. 22-26; Zhonghua Renmin Gongheguo Canji Ren Baohu Fa (中華人民共和國殘疾人保護法) [*Law on the Protection of Persons With Disabilities*], at art. 30-40.

³⁹ Zhonghua Renmin Gongheguo Baohu Funu Quanyi Fa (中華人民共和國保護婦女權益法) [*Law on the Protection of Women's Rights and Interests*], at art. 23; Zhonghua Renmin Gongheguo Canji Ren Baohu Fa (中華人民共和國殘疾人保護法) [*Law on the Protection of Persons With Disabilities*], at art. 38, 40.

Importantly, the enactment of the Employment Promotion Law of the People's Republic of China⁴⁰ (EPL) provides discrimination victims the possibility of bringing a claim before a local people's court and imposes liability on employers to pay compensation for violating the lawful rights and interests of workers.⁴¹ The EPL prohibits discrimination against workers with disabilities, rural migrant workers based on their household registration status, ethnic minorities, and carriers of epidemic pathogens.⁴² The legislation explicitly regulates the recruitment process to combat common practices of discrimination against job applicants.⁴³

Specifically, Article 27 of the EPL prohibits an employer from refusing to hire female applicants based on their gender and from setting higher employment standards for women.⁴⁴ Article 30 further stipulates that no job applicant should be screened out of the hiring process because of his or her status as a carrier of an infectious illness.⁴⁵ Accompanying the EPL is the State Council's Provisions on Employment Services and Management Regulations.⁴⁶ Notable provisions include Article 9, requiring employers to provide equal job opportunities and employment conditions,⁴⁷ and Article 20, prohibiting employers from putting discriminatory content in any job advertisement.⁴⁸

Over the past decade, in response to specific problems of employment discrimination, the State Council and its various

⁴⁰ Zhonghua Renmin Gongheguo Jiuye Cujin Fa (中华人民共和国就业促进法) [*Employment Promotion Law*] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 30, 2007, effective Jan. 1, 2008) art. 3 (China).

⁴¹ *Id.* at art. 68.

⁴² *Id.* at art. 17, 20, 28-31.

⁴³ *Id.* at art. 26.

⁴⁴ *Id.* at art. 27.

⁴⁵ *Id.* at art. 30.

⁴⁶ Jiuye Fuwu Yu Jiuye Guanli Guiding (就业服务与就业管理规定) [*Provisions on Employment Services and Employment Management*] (promulgated by the Ministry of Hum. Resources & Soc. Sec., Oct. 30, 2007, effective Jan. 1, 2008), *revised*, Feb. 1, 2015 (China).

⁴⁷ *Id.* at art. 9.

⁴⁸ *Id.* at art. 20.

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Ministries have adopted regulations, rules, and policies.⁴⁹ The State Council issued opinions in 2003⁵⁰ and 2006⁵¹ requiring local governments to remove discriminatory administrative restrictions on migrant workers seeking employment in cities.⁵² In 2005, two Ministries issued general standards on the employment rights of Hepatitis B Virus (HBV) carriers,⁵³ including a provision that non-contagious HBV carriers shall not be excluded from applying for civil service positions.⁵⁴ The Ministry of Labor and Social Security also issued a 2007 opinion, declaring any discriminatory act against job candidates with HBV, apart from the few exceptions stipulated by law, as unlawful.⁵⁵ A further notice issued by three Ministries in 2010 was aimed at prohibiting employers from undertaking medical examinations to screen job applicants who may be HBV carriers.⁵⁶ For persons with disabilities, the State Council issued a Regulation in 2007 requiring all enterprises to

⁴⁹ Lu, *supra* note 2, at 139, 150; Brown, *supra* note 12, at 368-69.

⁵⁰ Zuo Hao Nongmin Jincheng Wugong Jiu Yi Guanli Ta Fu Wu (佐昊農民金城武功九夷官禮他富武) [*Notice on Successfully Managing Employment and Services for Migrant Workers in Cities*] (promulgated by the State Council, Jan. 2003) (China).

⁵¹ Guoyuyuan Shi Guanfu Jiedao Nongmin Jie (郭玉源市官府街道農民街) [*State Council Opinions on Resolving Problems of Migrant Workers*] (promulgated by the State Council, Mar. 27, 2006) (China).

⁵² Zuo Hao Nongmin Jincheng Wugong Jiu Yi Guanli Ta Fu Wu (佐昊農民金城武功九夷官禮他富武) [*Notice on Successfully Managing Employment and Services for Migrant Workers in Cities*]; Guoyuyuan Shi Guanfu Jiedao Nongmin (郭玉源市官府街道農民街) [*State Council Opinions on Resolving Problems of Migrant Workers*].

⁵³ Gong Wuyuanli Yong Tongji Tong Yun (龔武源利永同濟同運) [*General Standards for Physical Examinations in the Employment of Civil Servants (provisional)*] (promulgated by the Ministry of Personnel, Jan. 17, 2005) (China).

⁵⁴ *Id.*

⁵⁵ Baohu Ganyan Biaomian Kangyuan Xiedaizhe Jiuyequan De Yijian (保护肝炎表面抗原携带者就业权的意见) [*Opinion on Protecting the Employment Rights of Carriers of the Hepatitis Surface Antigen*] (promulgated by the Ministry of Lab. & Soc. Security, May 18, 2007) (China).

⁵⁶ Tongzhi Jinyibu Guifan Jiaoyu He Jiuye Tijian de Xiangmu yi Baohu Yixingganyan Biaomian Kangyuan Xiedaizhe de Jiaoyu He Jiuye Quanli (通知进一步规范教育和就业体检的项目, 以保护乙型肝炎表面抗原携带者的教育和就业权利) [*Notice on Further Regulating the Items on Physical Examinations for Education and Employment to Protect the Educational and Employment Rights of Hepatitis B Surface Antigen Carriers*] (promulgated by the Ministries for Educ., Health, and Lab. & Soc. Security, Feb. 10, 2010) (China).

reserve no less than one and a half percent of jobs for persons with disabilities.⁵⁷ In 2012, the State Council issued a Special Provision on Labor Protection of Female Workers, which included various protections for pregnant employees from discrimination.⁵⁸

The expansion of anti-discrimination provisions in recent years,⁵⁹ as well as growing media coverage of discrimination issues,⁶⁰ has increased public awareness.⁶¹ For example, tens of thousands of people made submissions to legislators in 2007 in support for stronger legal protections to tackle employment discrimination.⁶² Nevertheless, considerable obstacles remain for victims of discrimination to bring legally actionable grievances,⁶³ which have shaped the very low claim rates.⁶⁴

III. THE INSTITUTIONAL CONSTRUCTION OF “RIGHTS APATHY”

A. “Rights Apathy” as a Psycho-Legal Barrier

This Essay develops the idea of “rights apathy” as a contributory factor to the meager rate of workplace discrimination litigation in China. “Rights apathy” refers to a particular mentality among victims of discrimination where they are indifferent to exercising their legal rights to file a claim

⁵⁷ Canjiren Jiuye Tiaoli (殘疾人就業條例) [*Disability Employment Ordinance*] (promulgated by the State Council (No. 488), Feb. 14, 2007, effective May 1, 2007) art. 8 (China).

⁵⁸ Guan Yu Nugong Laodong Baohu de Tebie Guiding (關於女工勞動保護的特別規定) [*Special Provisions on Labor Protection for Female Workers*] (promulgated by the State Council (No. 619), Apr. 18, 2012, effective Apr. 28, 2012) art. 5-6 (China).

⁵⁹ Zeng, *supra* note 12, at 1007.

⁶⁰ *Id.* at 1003; Webster, *supra* note 17, at 648.

⁶¹ Zeng, *supra* note 12, at 1011.

⁶² Kuaixun Jiuye Cujin Fa Caoan Zhengqui Yijian Gong Shoudao 11020 Jian Yijian (快讯 : 就业促进法草案征求意见共收到11020件意见) [*News: Employment Promotion Law draft for comments received a total of 11,020 views*], CHINA NPC NEWS (Apr. 26, 2007, 1:53 PM), <http://npc.people.com.cn/GB/14957/53049/5669545.html> [https://perma.cc/43H3-UPRG].

⁶³ Zeng, *supra* note 12, at 1025; Roberts, *supra* note 16, at 1554.

⁶⁴ Lu, *supra* note 3, at 439.

because they regard such an action as futile.⁶⁵ “Rights apathy” is associated with the psychological concepts of “frustration” and “learned helplessness.”⁶⁶

“Frustration” refers to an emotional response when one’s expectation cannot be fulfilled due to the presence of some obstruction.⁶⁷ There are internal and external sources of frustration.⁶⁸ Internal frustration occurs when an individual’s desire cannot be fulfilled due to perceived deficiencies, such as lack of confidence.⁶⁹ External frustration typically arises from conditions that are beyond an individual’s control.⁷⁰ Sources of external frustration come from unfair treatment by others.⁷¹ Repeated and accumulated frustration triggers different types of responses.⁷² For example, quitting and escaping are typical responses.⁷³ This can take the form of physically leaving the source of frustration, such as quitting a job, or psychologically escaping from the source.⁷⁴ Meanwhile, “learned helplessness” refers to a behavioral condition where a person acquires a sense of helplessness in dealing with adverse situations due to the belief, formed by previous encounters and experiences, that the situation at hand is unchangeable or inescapable.⁷⁵

As examined in this Section, multiple and intersecting institutional hurdles can shape “rights apathy” for potential claimants in employment discrimination cases.⁷⁶ Deficiencies in

⁶⁵ Christopher Peterson & Martin E. P. Seligman, *Learned Helplessness and Victimization*, 39 J. OF SOC. ISSUES, no. 2, 1983, at 103, 104.

⁶⁶ COON & MITTERER, *supra* note 11, at 451; Martin E. P. Seligman, *Learned Helplessness*, 23 ANN. REV. OF MEDICINE 407, 408 (1972).

⁶⁷ COON & MITTERER, *supra* note 11, at 451.

⁶⁸ *Id.*

⁶⁹ RAYMOND J. CORSINI, *THE DICTIONARY OF PSYCHOLOGY* 499 (Brunner-Routledge 2002).

⁷⁰ COON & MITTERER, *supra* note 11, at 451.

⁷¹ *Id.* at 452.

⁷² *Id.*

⁷³ *Id.* at 453.

⁷⁴ *Id.*

⁷⁵ Seligman, *supra* note 66, at 407-12; Maier & Seligman, *supra* note 10, at 4.

⁷⁶ See discussion *infra* Part III.

the legal framework, judicial practices, and local government policies can be sources of external frustration.⁷⁷ Based on their own or others' previous failed attempts, victims of discrimination may also feel helpless in seeking to resolve legally actionable grievances through formal claims.⁷⁸ Frustration and learned helplessness can condition "rights apathy" among victims of employment discrimination, where they perceive it futile to exercise their legal rights.⁷⁹

B. Defects in the Legal Framework

Defects and loopholes in existing legal instruments can complicate an employee's attempt to successfully pursue anti-discrimination lawsuits and lower workers' motivation to bring forth such claims despite awareness of their legal rights "on paper."⁸⁰ One notable defect is the limited scope of laws, which do not include grounds of political affiliation, age, or sexual orientation.⁸¹ If a candidate is excluded from applying for a job because of his or her age, which remains a very common practice,⁸² he or she can hardly find a way to challenge or make a complaint against the employer's decision. Age discrimination, which was initially prohibited in the original draft of the Employment Promotion Law,⁸³ was not included in the final version.⁸⁴ Additionally, courts have dismissed a

⁷⁷ *Id.*

⁷⁸ Peterson & Seligman, *supra* note 65, at 104.

⁷⁹ *Id.* at 104-07.

⁸⁰ Li Kejie (李柯洁), Jiuye Cujin Fa: Fan Jiuye Qishi Buneng Dian Dao Weizhi (就业促进法：反就业歧视不能点到为止) [*Employment Promotion Law: can not go beyond anti-discrimination in employment*], XINHUANET (Mar. 3, 2007, 8:00 AM), http://news.xinhuanet.com/comments/2007-03/27/content_5900234.htm [<https://perma.cc/8V5H-ZQJG>]; Lu, *supra* note 3, at 446.

⁸¹ Zhonghua Renmin Gongheguo Jiuye Cujin Fa (中华人民共和国就业促进法) [*Employment Promotion Law*], at art. 3.

⁸² *Report uncovers widespread employment discrimination in Shenzhen*, CHINA LAB. BULL. (May 25, 2010), <http://www.clb.org.hk/en/content/report-uncovers-widespread-employment-discrimination-shenzhen> [<https://perma.cc/K93D-XMRM>].

⁸³ Lu, *supra* note 2, at 139.

⁸⁴ See Zhonghua Renmin Gongheguo Jiuye Cujin Fa (中华人民共和国就业促进法) [*Employment Promotion Law*], at art. 3.

number of cases involving age discrimination at the recruitment stage.⁸⁵

Furthermore, there is no clear statutory definition of discrimination in any Chinese legal provision.⁸⁶ Reflecting on the general and vague manner in which the laws are drafted,⁸⁷ there is no definition of the types of behaviors that may constitute discrimination.⁸⁸ The provisions only stipulate that “no employer shall discriminate”⁸⁹ or that “employees shall not be discriminate[d] [against.]”⁹⁰ A lack of clarity in the definition of “obligations” and “rights” may enhance the difficulty in alleging employment discrimination, especially when dealing with more subtle or structural forms of discrimination.⁹¹

Additionally, employees may not know where to pursue such a claim. Article 62 of the EPL states that workers are entitled to “legal proceedings in the peoples’ court.”⁹² However, it is not entirely clear whether workers should pursue a claim before labor arbitration committees or in the people’s courts.⁹³ One example of this procedural murkiness is a case brought before the Shenzhen Labor Dispute Arbitration Committee in 2009.⁹⁴ Mr. Xiao, who was an HVB carrier, alleged a company

⁸⁵ Lu, *supra* note 2, at 141 n. 37-38.

⁸⁶ Webster, *supra* note 17, at 653.

⁸⁷ *Id.* at 704.

⁸⁸ *Id.* at 653.

⁸⁹ Zhonghua Renmin Gongheguo Jiuye Cujin Fa (中华人民共和国就业促进法) [*Employment Promotion Law*], at art. 26; Jiuye Fuwu yu Jiuye Guanli Guiding (就业服务与就业管理规定) [*Provisions on Employment Services and Employment Management*], at art. 18.

⁹⁰ Zhonghua Renmin Gongheguo Lao Dong Fa (中华人民共和国劳动法) [*Labor Law*], at art. 12; Zhonghua Renmin Gongheguo Jiuye Cujin Fa (中华人民共和国就业促进法) [*Employment Promotion Law*], at art. 3; Jiuye Fuwu yu Jiuye Guanli Guiding (就业服务与就业管理规定) [*Provisions on Employment Services and Employment Management*], at art.4.

⁹¹ Li Kejie (李柯洁), *supra* note 80; Brown, *supra* note 12, at 423; Lu, *supra* note 2, at 142; See discussion *infra* Part IV.

⁹² Zhonghua Renmin Gongheguo Jiuye Cujin Fa (中华人民共和国就业促进法) [*Employment Promotion Law*], at art. 62.

⁹³ See generally *China’s labour dispute resolution system*, CHINA LAB. BULL., <http://www.clb.org.hk/content/china%E2%80%99s-labour-dispute-resolution-system> [https://perma.cc/6VNF-QCNP].

⁹⁴ Xiaomou Yu Huan Sheng Dianzi (肖某与环胜电子) [Xiaomou v. Huan Sheng

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discriminated against him during the hiring process.⁹⁵ The Arbitration Committee rejected his discrimination claim on the basis that an employment relationship was absent at the recruitment stage.⁹⁶ His claim was eventually brought before the Shenzhen (Nanshan) District People's Court on the basis of the EPL.⁹⁷

Furthermore, the EPL does not stipulate to a compensatory range that can be awarded by the courts.⁹⁸ The only exception is the remedies provided under Article 68 of the State Council Provisions on Employment Services and Management Regulations, where a maximum fine of ¥1,000 (equivalent to \$147.49)⁹⁹ can be imposed on the employer, along with an order to make ratification in the case where an employee is discriminated on the ground of being a HBV carrier.¹⁰⁰ Any deterrence effect of a hefty penalty on employers for unlawful discriminatory behavior is undermined by the legislative absence of such liability.¹⁰¹ As examined in the next section,¹⁰² the actual, meager compensation for successful discrimination cases in judicial practice reinforces the “paper tiger” status of anti-discrimination laws.¹⁰³

Electronics (Shenzhen) Co., Ltd.], PKU LAW (Shenzhen Intermediate People's Ct. of Guangdong Province Jan. 16, 2009) (China).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Zhonghua Renmin Gongheguo Jiuye Cujin Fa (中华人民共和国就业促进法) [*Employment Promotion Law*], at art. 68.

⁹⁹ Jiuye Fuwu yu Jiuye Guanli Guiding (就业服务与就业管理规定) [*Provisions on Employment Services and Employment Management*], at art. 68. On October 25, 2016, the Dollar to Chinese Yuan exchange rate was \$0.15.

¹⁰⁰ *Id.*

¹⁰¹ Zhonghua Renmin Gongheguo Jiuye Cujin Fa (中华人民共和国就业促进法) [*Employment Promotion Law*], at ch. VIII.

¹⁰² See discussion *infra* Part III.C.

¹⁰³ LIU CHENG & SEAN COONEY, *China's Legal Protection of Workers' Human Rights*, in HUMAN RIGHTS AT WORK: PERSPECTIVES ON LAW AND REGULATION 149, 164 (Hart Pub. 2008)

C. Judicial Practice

How courts deal with discrimination claims directly impacts the discrimination victims' willingness to exercise their rights under various laws.¹⁰⁴ The general attitude of local People's Courts in handling discrimination cases can be described as "reluctant."¹⁰⁵ Jiefeng Lu, Assistant Professor of Law, argues that incomplete anti-discrimination provisions, scattered across different laws and regulations, have provided discretion to courts that have tactically rejected discrimination cases based on different reasoning.¹⁰⁶ Refusing to recognize the discriminatory behavior in question as a "concrete administrative action," prior to the enactment of the EPL, was a common approach adopted by the courts.¹⁰⁷

Even after the introduction of the EPL, the courts' reluctance has remained about the same.¹⁰⁸ Until 2014, Chinese courts have refused to hear a number of cases claiming employment discrimination against HIV carriers.¹⁰⁹ In one highly publicized case in 2014, Mr. Li Cheng had been teaching in Liping County, Guizhou, for three years, but left his position after the county-level Personnel and Social Security Bureau and

¹⁰⁴ Zeng, *supra* note 12, at 1005.

¹⁰⁵ Michael Wines, *In Rare Move, China Court to Hear H.I.V. Case*, N.Y. TIMES (Aug. 31, 2010), <http://www.nytimes.com/2010/09/01/world/asia/01china.html> [<https://perma.cc/EBS3-TDB8>]

¹⁰⁶ *E.g.*, Lu, *supra* note 2, at 183.

¹⁰⁷ Article 2 of the Administrative Procedure Law of the People's Republic of China allows a person to bring a lawsuit against the government if it has performed a concrete administrative action that infringes upon the lawful rights and interests of him or her. Zhonghua Renmin Gongheguo Xingzheng Susong Fa (2014 Xiuzheng) (中华人民共和国行政诉讼法(2014修正)) [*Administrative Procedure Law (2014 Amendment)*] (promulgated by the Standing Committee Nat'l People's Con., Apr. 4, 1989, effective Nov. 1, 2014) art. 2 (China); Luoyang City "Seed" Case Highlights Chinese Courts' Lack of Authority to Declare Laws Invalid, CHINA L. AND GOVERNANCE REV., no. 2 (2004), <http://www.chinareview.info/issue2/pages/case.htm> [<https://perma.cc/584X-BT2G>].

¹⁰⁸ Lu, *supra* note 12, at 213-14.

¹⁰⁹ *Teacher with HIV receives 45,000 yuan in employment discrimination case*, CHINA LAB. BULL. (Jan. 30, 2013), <http://www.clb.org.hk/print/2388> [<https://perma.cc/ZK62-QH4Y>].

Education Bureau discovered he was an HIV carrier.¹¹⁰ The Guizhou Intermediate People's Court refused to hear the case on the basis that the court had no jurisdiction to do so.¹¹¹ In the same year, the Beijing Municipal Chaoyang District People's Court declined to hear a discrimination case involving an employee's dismissal based on his sexual orientation.¹¹² The court stated that it had no jurisdiction to consider the case, and further suggested the Labor Dispute Arbitration Committee should handle it first.¹¹³

Furthermore, substantial delays often occur in the courts' processing of such cases.¹¹⁴ In a widely publicized case, Ms. Cao brought a gender discrimination lawsuit on the basis that a company had advertised that a job was available to male candidates only.¹¹⁵ In July 2012, Cao submitted a claim to the Beijing Haidian District People's Court.¹¹⁶ In September 2013, the Court finally accepted the case after Cao filed complaints about the Court's initial lack of response with the head of the district court, the court's supervision committee, upper level intermediate court, and upper level procuratorate bureau.¹¹⁷

An absence of meaningful remedies in judicial practice is likely another reason for the low rate of discrimination

¹¹⁰ Quanguo di 6 li Aizi Jiuve Qishi An Susong Zao Ju Qian 5 Li Wu Shengsu (全国第6例艾滋就业歧视案诉讼遭拒 前5例无胜诉) [*The 6th HIV Discrimination Case in China Rejected. The Previous 5 Cases All Lost*], PKU LAW (Nov. 12, 2014), http://yzlx.pkulaw.cn/fulltext_form.aspx?Db=news&Gid=70691&keyword=&EncodingName=big5&Search_Mode=accurate [https://perma.cc/P9JG-49EM] [hereinafter *HIV Discrimination*].

¹¹¹ *Id.*

¹¹² Tongxinglian Zhe Chi Qi Shi 58 Tong Cheng Su Qin Quan (同性恋者斥歧视58同城诉侵权) [*Homosexuals denounce discrimination*], BEIJING TIMES (Feb. 12, 2014), [epaper.jinghua.cn/html/2014-02/12/content_63243.htm](http://paper.jinghua.cn/html/2014-02/12/content_63243.htm) [https://perma.cc/66ZT-TJ9J].

¹¹³ *Id.*

¹¹⁴ Lu, *supra* note 3, at 446-47.

¹¹⁵ *Juren Academy lawsuit (re employment gender discrimination in China)*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, <https://business-humanrights.org/en/juren-academy-lawsuit-re-employment-gender-discrimination-in-china> [https://perma.cc/CF6M-YPU5] [hereinafter *Juren Academy*].

¹¹⁶ *Id.*

¹¹⁷ *Id.*

litigation.¹¹⁸ Courts may not grant any compensation or only grant meager compensation despite a ruling in favor of a plaintiff.¹¹⁹ Even when compensation is awarded, the remedy may not adequately address the harm suffered by the plaintiff.¹²⁰ For example, in a case in 2014, the Hangzhou Xihu District People's Court ruled for Ms. Huang Yuong, who was discriminated against by a cooking vocational training school during the recruitment process on the basis of her gender.¹²¹ The District People's Court did not order the defendant to make a written apology to the plaintiff as she had requested.¹²² Another case involved Ms. Ma Hu, who sued the city's postal service in November 2015 for gender discrimination in her job application.¹²³ The Beijing court ruled for the litigant, but refused her demand for a formal apology.¹²⁴

These illustrations of judicial practice in discrimination cases can create an impression among victims that pursuing a formal claim through the courts is unavoidably exhausting and most likely unsuccessful,¹²⁵ and can give rise to feelings of frustration and learned helplessness that underpin "rights apathy".¹²⁶ Notwithstanding the development of legal rights "on

¹¹⁸ Lu, *supra* note 3, at 447.

¹¹⁹ Zeng, *supra* note 12, at 1023.

¹²⁰ Zhejiang Jiuye Xingbie Quishi Diyi An Er Shen Kaiting Dongfang Pengren Xuexiao Reng Quexi (浙江就业性别歧视第一案二审开庭东方烹饪学校仍缺席) [Huang Yuong v. Hangzhou Cooking Vocational Training School], PKU LAW (Huang Rong Xihu District People's Ct. Jan. 7, 2015) (China); *Woman successfully sues Beijing postal service in gender discrimination case*, CHINA LAB. BULL. (Nov. 3, 2015), <http://www.clb.org.hk/en/content/woman-successfully-sues-beijing-postal-service-gender-discrimination-case> [https://perma.cc/3T59-9YHE] [hereinafter *Postal Service Case*].

¹²¹ Zhejiang Jiuye Xingbie Quishi Diyi An Er Shen Kaiting Dongfang Pengren Xuexiao Reng Quexi (浙江就业性别歧视第一案二审开庭东方烹饪学校仍缺席) [Huang Yuong v. Hangzhou Cooking Vocational Training School], PKU LAW (Huang Rong Xihu District People's Ct. Jan. 7, 2015) (China).

¹²² *Id.*

¹²³ *Postal Service Case*, *supra* note 120.

¹²⁴ *Workplace Discrimination*, CHINA LAB. BULL., <http://www.clb.org.hk/content/workplace-discrimination> [https://perma.cc/ZKH9-M99S].

¹²⁵ Lu, *supra* note 3, at 456.

¹²⁶ Seligman, *supra* note 66, at 408; Maier & Seligman, *supra* note 10, at 4.

paper” in recent years,¹²⁷ it remains to be seen whether courts will be less reluctant to take on claims by potential victims of discrimination in the near future.¹²⁸

D. Contradictory Government Practices

Another important factor contributing to “rights apathy” is the continuation or introduction of other laws and policies at various levels that seem to contradict the spirit of anti-discrimination provisions.¹²⁹ For example, the Ministry of Commerce published a draft of The Bathing Industry Management Regulations in 2013,¹³⁰ which sought to prohibit HIV carriers from entering public bathhouses and spas.¹³¹ At a local level, a recent announcement made by the Shanghai Municipal government is expected to allow only skilled migrant workers to reside in the city.¹³² More broadly, the Hukou System, or household registration system, remains a significant institutional barrier that undermines the protections against discrimination for rural migrant workers under the EPL and other regulations.¹³³

¹²⁷ *Understanding and Challenging Employment Discrimination against People Living with HBV in China*, CHINA LABOR WATCH (Feb. 1, 2010), <http://www.chinalaborwatch.org/newscast/17> [<https://perma.cc/23YM-P9LL>].

¹²⁸ Wines, *supra* note 105.

¹²⁹ See, e.g., Shang Wubu Guan Yu 《Muyu Ye Guanli Ban Fa》 Gongkai Zheng Qiu Yijian (商务部关于《沐浴业管理办法》公开征求意见) [*Ministry of Commerce on the “bath industry management approach” public for comments*], DEP’T OF TREATY AND LAW DEP’T (Oct. 11, 2010, 9:17 AM), <http://tfs.mofcom.gov.cn/article/as/201310/20131000341580.shtml> [<https://perma.cc/TQ5R-63NA>] [hereinafter *Bath Industry Management Approach*].

¹³⁰ Wang Qingyun, *Bathhouse ban bid makes waves*, CHINA DAILY (Oct. 15, 2013, 12:24 AM), http://usa.chinadaily.com.cn/china/2013-10/15/content_17032244.htm [<https://perma.cc/U68S-7AGY>]; *Bath Industry Management Approach*, *supra* note 129.

¹³¹ *Bath Industry Management Approach*, *supra* note 129.

¹³² *Shanghai caps population at 25 million to rein in booming housing market amid limited land supply*, SOUTH CHINA MORNING POST (Jan. 24, 2016, 11:45 PM), www.scmp.com/news/china/policies-politics/article/1904774/shanghai-caps-population-25-million-rein-booming [<https://perma.cc/PFN2-EVN4>].

¹³³ Yin Lily Zheng, *It’s Not What Is on Paper, but What Is in Practice: China’s New Labor Contract Law and the Enforcement Problem*, 8 WASH. U. GLOBAL STUD. L. REV. 595, 604 (2009).

These regulatory inconsistencies can weaken the confidence of rights-bearers in the actual implementation of anti-discrimination laws.¹³⁴ Some have already cast doubt on the EPL as a mere political statement, given the presence of few enforcement mechanisms and remedies provided in law and in practice.¹³⁵ This can be another external source of frustration that shapes the “rights apathy” of the intended beneficiaries, who may believe that laws such as the EPL pay only “lip service” to equal employment rights.¹³⁶ In the cases discussed above,¹³⁷ a government department as the defendant is not uncommon.¹³⁸ Systemic discrimination embedded in the policies and practices of governments at various levels, some of which, like the Hukou System, are nearly impossible to change, can undermine the very purpose of giving rights to claimants in anti-discrimination litigation.¹³⁹

Nonetheless, some local lawmakers have shown a greater willingness to tackle employment discrimination problems in their localities.¹⁴⁰ In June 2012, the Standing Committee of the People’s Congress of Shenzhen Municipality passed the Shenzhen Special Economic Zone Gender Equality Promotion Regulations.¹⁴¹ Detailed provisions include a definition of gender equality and specific penalties, such as a fine between ¥3,000 and ¥30,000, for violators who fail to rectify

¹³⁴ Lu, *supra* note 2, at 142.

¹³⁵ RONALD C. BROWN, UNDERSTANDING LABOR AND EMPLOYMENT LAW IN CHINA 65 (Cambridge U. Press 2009); COON & MITTERER, *supra* note 11, at 451.

¹³⁶ Rangita de Silva de Alwis, *Opportunities and Challenges for Gender-Based Legal Reform in China*, 5 EAST ASIA L. REV. 197, 300 (2010).

¹³⁷ *HIV Discrimination*, *supra* note 110; *Juren Academy*, *supra* note 115; Zhejiang Jiuye Xingbie Quishi Diyi An Er Shen Kaiting Dongfang Pengren Xuexiao Reng Quexi (浙江就业性别歧视第一案二审开庭东方烹任学校仍缺席) [Huang Yuong v. Hangzhou Cooking Vocational Training School], PKU LAW (Huang Rong Xihu District People’s Ct. Jan. 7, 2015) (China); *Postal Service Case*, *supra* note 120.

¹³⁸ *HIV Discrimination*, *supra* note 110; *Postal Service Case*, *supra* note 120.

¹³⁹ Webster, *supra* note 17, at 671.

¹⁴⁰ Brown, *supra* 91, at 400.

¹⁴¹ Shenzhen Jingjitequ Xingbie Pingdeng Cujin Tiaoli (深圳经济特区性别平等促进条例) [*Shenzhen Special Economic Zone Gender Equality Promotion Regulations*] (promulgated by the Shenzhen Municipal People’s Cong. Standing Committee, June 28, 2012, effective Jan. 1, 2013) (China).

discriminatory conduct.¹⁴² The Shenzhen municipal government is also planning to set up an Equal Opportunities Commission to implement the Shenzhen Regulations, which would have similar functions to anti-discrimination bodies found in other jurisdictions, such as the United States and Australia.¹⁴³

Several local non-governmental organizations in Shenzhen, such as the Equity and Justice Initiative, have been active in campaigning on anti-discrimination issues.¹⁴⁴ Their activities include: conducting public education on legal rights, directly contacting employers regarding discriminatory behavior, bringing lawsuits on behalf of workers, undertaking regular surveys, and making recommendations to local lawmakers to tackle specific problems.¹⁴⁵

An actor that has played a very limited role in anti-discrimination litigation, but has the potential to change the “rights apathy” mindset, is the All China Federation of Trade Unions (ACFTU).¹⁴⁶ According to the Measures for Legal Aid of Trade Unions issued in August 2008, trade unions are urged to provide free legal services to employees with financial difficulties.¹⁴⁷ This safeguards lawful rights in arbitration and legal proceedings.¹⁴⁸ However, the willingness of trade unions to assist workers in bringing discrimination cases before the courts

¹⁴² *Id.* at art. 16.

¹⁴³ Shenzhen Xingbie Pingdeng Jigou Jianshe Yantaohui Shunli Zhaokai (深圳性别平等机构建设研讨会顺利召开) [*Shenzhen Symposium on Gender Equality Construction was held Successfully*], Zhongguo FunuYanjiu Wang (中国妇女研究网) [CHINA WOMEN'S STUDIES NETWORK] (Nov. 27, 2010), www.wsic.ac.cn/academic/news/82046.htm [<https://perma.cc/TK3H-J74D>].

¹⁴⁴ *Equity & Justice Initiative*, CHINA DEV. BRIEF (2010), <http://chinadevelopmentbrief.cn/directory/equity-justice-initiative/> [<https://perma.cc/7GBP-LX92>].

¹⁴⁵ *Id.*

¹⁴⁶ Trini Leung, *ACFTU and Union Organizing*, CHINA LAB. BULL. (Apr. 26, 2002), <http://www.clb.org.hk/en/content/acftu-and-union-organizing> [<https://perma.cc/FH99-CV4W>].

¹⁴⁷ Gonghui Falu Yuanzhu Banfa (工会法律援助办法) [*Measures for Legal Aid of Trade Unions*] (promulgated by the Nat'l Fed'n of Trade Unions, Aug. 11, 2008), art. 2 (China).

¹⁴⁸ *Id.*

remains to be seen.¹⁴⁹

IV. CONCLUSION

Despite the emergence of a more elaborate legal framework in China for discrimination victims to bring lawsuits,¹⁵⁰ a range of institutional barriers to the effective exercise of their legal rights likely shapes a mind-set of “rights apathy” that entails frustration and learned helplessness. The main contributory factors include deficiencies and limitations in the patchwork of anti-discrimination provisions,¹⁵¹ such as a lack of standards offered by the law in terms of how anti-discrimination proceedings are to be conducted,¹⁵² the types and amounts of compensation and remedies to be awarded to victims,¹⁵³ and sanctions on violators.¹⁵⁴ Current judicial practices have indicated a general reluctance of Chinese courts to engage with discrimination claims and to provide adequate remedies to redress the wrongs suffered by victims.¹⁵⁵ Furthermore, conflicting laws, policies, and practices at various levels that reinforce discriminatory practices can also contribute to perceptions among discrimination victims that anti-discrimination laws operate only “on paper,”¹⁵⁶ and that attempts to protect an individual’s legal rights in practice would be futile. Without systemic change, the growth of “rights apathy” among the Chinese workforce will regrettably see the continued pervasiveness and tolerance of employment discrimination into the future.

¹⁴⁹ PETER SHELDON, SUNGHOON KIM, YIGIONG LI & MALCOM WARNER, *Introduction, in CHINA’S CHANGING WORKPLACE: DYNAMISM, DIVERSITY AND DISPARITY* 1, 15 (Rutledge 2011).

¹⁵⁰ See discussion *supra* Part II.B.

¹⁵¹ See discussion *supra* Part I.

¹⁵² See discussion *supra* Part III.B.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ See discussion *supra* Part III.C.

¹⁵⁶ *Id.*