

JUDICIAL PRACTICE AND JUDICIAL REFORM
IN THE PEOPLE'S REPUBLIC OF CHINA:
LESSONS FROM ADMINISTRATIVE LITIGATION
IN GUANGDONG PROVINCE

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ABSTRACT

Since legal reform was launched in the People's Republic of China ("PRC" or "China") in the late 1970s, courts in the country have, though made some improvements, remained to be hamstrung by various problems including corruption and judges' incompetence. Although Chinese leaders are well aware of some of these problems, governmental measures taken to reform the judiciary have been mostly ineffective because, among other reasons, these measures are not premised upon a close study of the operation of the courts. Few scholars had opportunities to conduct this kind of research. However, in recent years, as China has become politically more stable and open, more avenues for research have emerged. My research on judicial practices and judicial reform is thus timely.

This paper attempts to chart emergent judicial practices in Guangdong province of the PRC, as reflected in administrative litigation; to explore the sources of and the rationales for these practices; and to analyze the implications these practices and their relationships with the legislative intentions of the *Administrative Litigation Law of the PRC* ("ALL") have for judicial reform in China.

I will adduce evidence generated from literary sources as well as my observation of three court trials and interviews with forty-six judges, professors, lawyers, administrative officials, and litigants in Guangdong to show that Guangdong's emergent judicial practices in administrative litigation display distinct trends in five areas including courts' attitudes towards procedural requirements, the number of administrative cases accepted by courts, intra-court and inter-court supervision, the percentage of cases upholding administrative acts, and the rate of withdrawing cases from courts.

I will explain that these practices are attributed to the fact that judges in the province are controlled by the Chinese Communist Party, interfered by administrative organs, susceptible to *guanxi* (connections) and corruption, involved in the practice of local protectionism, and in need of better knowledge about law, the rule of law, and judicial independence. Then, I will show that these practices are against the ALL's legislative intention of curbing official arbitrariness. These problems, as revealed from the practices, therefore, imply that remedial measures should be taken to make the judicial process more transparent and judges more competent and independent.

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