

# ***The Phenomenon of Difficult Enforcement in the Circuit Trial System in China from the Perspective of Power Operation***

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**Abstract:** The phenomenon of "difficulty in enforcement" is prevalent in the judicial practice of China and poses similar challenges to circuit trials. This paper, based on Su Li's premise of the shifting local power dynamics in rural China, utilizes Foucault's theory of micro-power and Geertz's theory of local knowledge to explore how these misalignments in local power relationships affect the enforcement work in circuit trials in China, and provides suggestions on how to alleviate this issue. In the power relationship of enforcement within circuit trials, the relatively weaker state power struggles to support the compulsory execution of judgments, while the relatively stronger individual power resists the enforcement of judgments. This leads to a reliance on the recognition and cooperation of the judgment debtor, as well as the assistance of local power as a third party. However, the lack of local knowledge among judges makes it difficult for "legally sound but unreasonable" judgments to gain the recognition and cooperation of the parties involved, resulting in challenges to enforcement. Therefore, it is necessary to strengthen cooperation with local powers and other state agencies, seeking a multi-faceted approach.

**Keywords:** The Circuit Trial System, Difficult Execution, Power Operation.

## **1. Introduction**

The contemporary circuit trial system in China originated from the Ma Xiwu mode during the Anti-Japanese War period[1]. Circuit trials, as the primary method of handling cases in the Ma Xiwu mode, were extensively utilized in the Shaanxi-Gansu-Ningxia region at that time. After the founding of the People's Republic of China, the method of handling cases through circuit trials was vigorously promoted, and grassroots courts across various regions created numerous forms of circuit trials, playing an active role in judicial practice. However, in the 1990s, the Supreme People's Court pushed for reforms in the adjudication methods nationwide, leading to a gradual reduction of "circuit trials" in judicial practice across various regions, and a significant shift towards "sitting in court to handle cases," causing circuit trials to gradually fade[2]. In recent years, with the introduction of proactive judiciary and source governance concepts, the circuit trial system, as an important vehicle for proactive judiciary and source governance, has once again come into the spotlight.

However, the issue of "difficulty in enforcement," a common phenomenon and problem in China's judicial practice, also troubles the implementation of circuit trials. Currently, there are two main

tendencies in the research on circuit trials in China. In these studies, the "rule of law perspective" and the "governance perspective" are the two basic tendencies. This article adopts the governance perspective research approach, taking as a premise the local power distribution changes in rural China discussed in Su Li's book "Sending Law to the Countryside." Using Foucault's theory of micro-power and Geertz's theory of local knowledge as lenses, the article explores how the dislocation of these local power relationships affects the enforcement work in China's circuit trials. It also proposes suggestions and opinions on how to alleviate the enforcement difficulties in circuit trials. Circuit trials are not only a judicial system but also an important means of promoting rural governance. Therefore, the research on the issue of enforcement difficulties holds significant importance for both circuit trials and rural governance.

## 2. Literature Review

Early research focused on the purposes and characteristics of circuit trials, attempting to reveal the differences between the "rule of law" in rural China and the "rule of law" in the West through the unique aspects of circuit trials. Su Li pointed out that the existence of a circuit trial system as a non-standardized system is to ensure and promote the effective penetration and control of state power, including the power of law, into rural areas[3]. You Chenjun, from the perspectives of sociology and law, noted that the judicial governance process in rural China, including circuit trials, tends to use local knowledge rather than state law as a tool for dispute resolution[4].

In recent years, research has often employed empirical methods such as field visits and surveys, focusing on the operational processes of judicial practices in circuit trials and their role in rural governance. Zheng Zhihang analyzed mediation practices in the rural judiciary through typical case studies, pointing out that grassroots courts should effectively utilize micro-level rural power resources to resolve disputes[5]. Xie Bingbin, through an analysis of various data from grassroots courts, highlighted issues faced by circuit trials such as weak judicial service capabilities, and inadequate legal outreach[6]. Cao Caiyun and Gao Qiong, using the circuit trial practices of a suburban court as a starting point, emphasized the role of circuit trials in extending the rule of law at the grassroots level and their synergistic effect with grassroots judicial organizations[7].

Numerous studies have briefly mentioned the challenge of enforcement difficulty in circuit trials. However, this issue is often used to justify why circuit trials tend to favor mediation, rather than being thoroughly researched on its own. Therefore, this article aims to delve into the phenomenon of enforcement difficulty in rural circuit trials in China, examining its unique causes and potential solutions from a perspective of power operation."

## 3. The Current State of Enforcement Difficulties in Circuit Trials

The phenomenon of enforcement difficulties is pervasive in China's judiciary, and circuit trials are no exception. Due to the absence of specific statistical data related to circuit trials, and considering that enforcement work in circuit trials is within the jurisdiction of grassroots courts, I propose using the enforcement completion rate of grassroots courts (enforcement completion rate = amount actually enforced / total case amount  $\times$  100%) as a proxy. By collecting enforcement completion rate data from grassroots courts or people's tribunals in various regions and comparing it with the provincial enforcement completion rate during the same period, I aim to indirectly present the enforcement difficulties in circuit trials. Scholars conducting research at the SH People's Tribunal in Hubei Province have pointed out that the issue of low enforcement completion rates in grassroots courts has persisted (Table 1)[6]. Similarly, another scholar's research at the T County People's Court in Jilin Province found that the enforcement completion rate has remained difficult to improve, tending to stay at a low level, indicating that the enforcement results are proportionally unsatisfactory and have

not sufficiently protected the legitimate rights and interests of the applicants for enforcement to some extent (Table 2)[8]. During the same periods, the provincial enforcement completion rates in Hubei and Jilin were 48.17% (2016) and 38.63% (2021), respectively, which are significantly higher than the average rates of 39.26% for the SH Tribunal in Hubei from 2016 to 2019 and 30.53% for the T County People's Court in Jilin from 2018 to 2021[9][10]. Thus, it is evident that the enforcement completion rate at the grassroots judicial level is relatively lower than the provincial average, and the issue of enforcement difficulties in circuit trials remains prominent.

Table 1: Categorized Number of Enforcement Cases and Enforcement Completion Rate at the SH Tribunal from 2016 to 2019 (Partial)[6]

|                                 | 2016  | 2017  | 2018  | 2019  |
|---------------------------------|-------|-------|-------|-------|
| Enforcement Completion Rate (%) | 54.54 | 33.73 | 30.43 | 38.33 |

Table 2: Execution Completion Rate of T County People's Court from 2018 to 2021[8]

|                                                  | 2018  | 2019  | 2020  | 2021   |
|--------------------------------------------------|-------|-------|-------|--------|
| Enforcement Completion Rate of T County Court(%) | 23.37 | 27.32 | 48.8  | 22.63  |
| Year-on-Year Growth Rate(%)                      |       | 16.9  | 78.62 | -51.58 |

Circuit trials are not only a special form of grassroots judicial proceedings in China but also an important means for the state power to penetrate into rural areas. Given that circuit trials bear the responsibility of ensuring the effective penetration and control of legal power in rural areas, their execution work is not only related to the rights and interests of the parties involved but also affects the penetration of state power into grassroots rural areas.

#### 4. Causes of the Difficulty from the Perspective of Power Operation

##### 4.1. Misalignment of Local Power Relations

The premise discussed in this section is the phenomenon of shifting power relations in rural China, as pointed out by Su Li. Owing to the unique regional characteristics and geographical layout of rural areas, the overall authority of the state may appear relatively diminished within this specific geographic context, while the influence of individual entities with comparatively less power may seem relatively amplified[4]. Foucault believes that power is a complex network of relationships, encompassing various power dynamics. The social order is shaped by these intricate power structures and is upheld through the conflicts and tensions among different forms of power relations[11]. Therefore, when examining the local power relations involved in circuit court enforcement, at least three main entities need to be considered: state authority as the enforcer, individual power as the enforced party, and local authority as the third party.

It is difficult for relatively weaker state power to support the enforcement of judgments: Modern rural areas in China are currently in a “semi-acquaintance society”. Despite undergoing a series of reforms and transformations, they still retain characteristics of community orientation and closedness. Based on Fei Xiaotong’s theory “the Pattern of Difference Sequence”, judges and laws, as external forces, occupy the peripheral areas of the relational network in this “the Pattern of Difference Sequence”[12]. It is difficult for them to gain the heartfelt sense of recognition of villagers, let alone enforce actions that significantly infringe on villagers' property. Therefore, even with the backing of state power and judicial force, individual enforcers as executors still find it challenging to compete with the vast community. Moreover, the inadequacy of state power is also clearly demonstrated in

the composition of personnel. In the primary application scenarios of circuit trials, which are ethnic minority regions, scholars have found through empirical investigation of court work that judicial auxiliary personnel are strained (the ratio of judicial auxiliary personnel to judges is about 1:2), and the strength of court police is also severely insufficient (the ratio of court police to judges is only 1:6)[13]. Even in economically more developed non-ethnic regions, people's courts face similar issues with non-standardized personnel ratios and severe shortages of auxiliary personnel such as court police and logistics staff (court police only account for 12% of court personnel, and logistics staff account for 15%)[14]. Therefore, it becomes even more challenging to ensure the effectiveness of circuit trials when many grassroots people's courts are only staffed with a limited number of law enforcement personnel.

**The resistance of individual power to the enforcement:** As mentioned earlier, due to the weakness of state power in rural China, the enforcement from circuit courts makes it difficult to receive adequate support from state power. The inevitable consequence of this is that the enforcement of judgments from circuit courts requires support from the individual power of the party being enforced. However, because of the shifting power relations in rural areas, the balance of power between the state and individuals has changed in this context. The enforcement of judgments from circuit courts has lost the strong backing of state power. In this situation, relatively stronger individual power is entirely sufficient to resist the weak state power, whether explicitly or implicitly.

The enforcement work requires the assistance of local power as a third party. It is difficult to directly request the cooperation of the enforced party, so circuit trials often need to seek assistance from local powers as a third party. In rural China, local powers mainly refer to “village elites”. These individuals, who are esteemed or hold influence within the village, play a pivotal role in rural governance. However, besides cooperation, there is also a potential for conflict between local powers and state authority. Although village elites representing local powers generally do not intentionally obstruct the enforcement work, theoretically, most of them are locals whose interests are closely tied to the village and are not entirely representatives of state power at the grassroots level. In the “semi-acquaintance society” of rural areas, it is entirely possible for them to form mutually beneficial relationships with the enforced person. Therefore, the local powers represented by village elites do not necessarily choose to assist grassroots judges in conducting circuit trials in all circumstances.

#### **4.2. The Lack of Local Knowledge among Judges**

Japanese scholar Shiga Shuzo pointed out that what traditional Chinese litigation aims to maintain is a sense of “commonsensical justice and equity”[15]. For villagers who are the enforced party, this “commonsensical justice and equity” comes from the rural society in which they live and grow. This rural society is characterized by its own unique local features, which are reflected in the regional informal rules represented by local customs and traditions, which contrast with the formal rules represented by state laws. These informal rules form villagers’ standards for judging right and wrong. This concept of informal rules is encompassed in the “local knowledge” theory proposed by American scholar Clifford Geertz[16]. In other words, the villagers' standards for evaluating the judiciary are shaped by local knowledge rather than national legal norms. Although the legal basis used by the courts — state statutory law — is fundamentally based on principles of fairness and justice, it largely ignores or even contradicts the informal rules of the village. Such judicial decisions disrupt the “commonsensical justice” that the villagers have been accustomed to and fail to meet their expectations and demands for justice. Therefore, for judges to gain the recognition and cooperation of the parties involved, it is often necessary to incorporate local knowledge.

Local knowledge, as informal rules, participates alongside the formal rules represented by state laws in the entire process of rural governance, profoundly influencing the logic of rural governance. Zhang Xuewen pointed out that “this knowledge and the logic of life have a strong exclusivity,

constituting the social constraints under which grassroots judges exercise judicial power, and they must actively respond to these social constraints.” From local customs and traditions to the clan rules of the parties involved, such local knowledge influences the operation of the formal rules in each specific case. Therefore, when the state power represented by the judiciary intervenes as an outsider in rural governance, it must pay attention to local knowledge and the inherent local order and power it signifies.

## **5. Suggestions to Alleviate the Difficult Enforcement in Circuit Trials**

### **5.1. Strengthen Cooperation with Local Authorities and Local Grassroots Organs**

Strengthening the enforcement capabilities in circuit trials can be approached from two aspects: reinforcing state power and better involving local authorities in enforcement activities. Firstly, in terms of top-level design, it is significant to actively seek support from local primary-level Party committee and Party organizations and fully leverage the guiding role of primary-level Party building. Additionally, to promote the regularization and effectiveness of the joint coordination mechanism for enforcement, it is recommended to incorporate enforcement coordination efforts into the comprehensive governance performance evaluations of primary-level Party committees. Secondly, it is important to collaborate with other grassroots state agencies and local grassroots organizations in order to consolidate enforcement efforts. Addressing the difficulties and pain points in enforcement during circuit trials requires joint efforts and coordination with local grassroots state agencies and local organs such as village committees and judicial offices, each performing their duties and working together for collaborative enforcement. For example, circuit courts can sign a memorandum of understanding with local banks to establish a mechanism for information exchange concerning properties under enforcement; also, they can proactively develop and strengthen relationships with village officials.

### **5.2. Respecting the Pragmatism Orientation of Grassroots Justice**

To guide and urge enforced parties to voluntarily fulfill their obligations and cooperate with the enforcement, judges should thoroughly understand local knowledge and comprehensively employ various judicial strategies. Firstly, in addition to the use of purely legal language, judges can introduce everyday power techniques and local knowledge to their decisions, including personal relationships and social face, leveraging the incentive mechanisms of rural society and the underlying social punishment mechanisms. This approach has the potential to incorporate the legal awareness of the involved parties, enhance their comprehension of legal issues, and consequently encourage voluntary compliance with legal obligations. Secondly, adhering to the basic principle of “mediating where possible, ruling where necessary, combining mediation and judgment, and concluding cases efficiently.” This approach maximizes the utility of both mediation and adjudication as different dispute resolution mechanisms, enhancing judicial efficiency while dynamically ensuring effective resolution of disputes. Lastly, various measures should be taken to promote the execution of cases and strengthen the coordination and cooperation between filing, trial, and enforcement.

## **6. Conclusion**

The difficulty in enforcement is a problem that concerns the entire society and similarly presents challenges in circuit trials. Due to the misalignment of local power relations within circuit trials, the state power acting as enforcers becomes relatively weak, while the individual power of enforced parties and the local authority acting as the third party become relatively strong. Because the enforcement of judgments is difficult to achieve with the support of the weakened nation power, the

execution of enforcement work in circuit trials relies on the recognition and cooperation of enforced parties. Thus, the participation and assistance of the third-party local authority are necessary to guide parties subject to enforcement in complying with the enforcement. The key to "persuading" enforced parties to cooperate lies in local knowledge. Based on this, I believe that alleviating difficult enforcement in circuit trials can be approached from two aspects. From the perspective of the enforcers, strengthening cooperation with local authorities and local grassroots organs, seeking multi-party coordination, and establishing a regular coordination mechanism for enforcement work can ensure stronger state power support for the enforcement in circuit trials. From the perspective of enforced parties, judges need to comprehensively utilize local knowledge and employ various judicial strategies in circuit trials to guide and urge the party being enforced to willingly fulfill their obligations and cooperate with enforcement. The article only provides a theoretical description of the use of local knowledge in circuit court trials without empirically investigating its specific impact on enforcement work. Future research could conduct a typological analysis and summary of the application of judges' local knowledge and various judicial strategies, as well as their impact on the enforcement situation in circuit court trials.

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