

Research on Optimization Strategies for Enhancing the Effectiveness of Judicial Advisory Systems

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Abstract. The planning and construction of Beijing's urban sub-center is a significant strategic deployment made by the Central Committee of the Communist Party of China. Judicial suggestions serve as an important means for the people's courts to extend their judicial functions and support the high-quality development of the sub-center. However, there is an urgent need to improve the level of participation in social governance. This article, through on-site research at the People's Court of Tongzhou District, listening to special report meetings, and obtaining relevant sample data, aims to explore the feasibility of expanding the subject of judicial suggestions, balancing the types of judicial suggestion content, and addressing issues such as the low social consensus and insufficient foresight of the suggestions currently existing in the court system.

Keywords: Judicial suggestion system; source governance; effectiveness; solution path.

1. The Practice Status and Key Issues of the Sub-Central Court Judicial Suggestions

1.1. Overview of the Sub-Central Court Judicial Advisory System

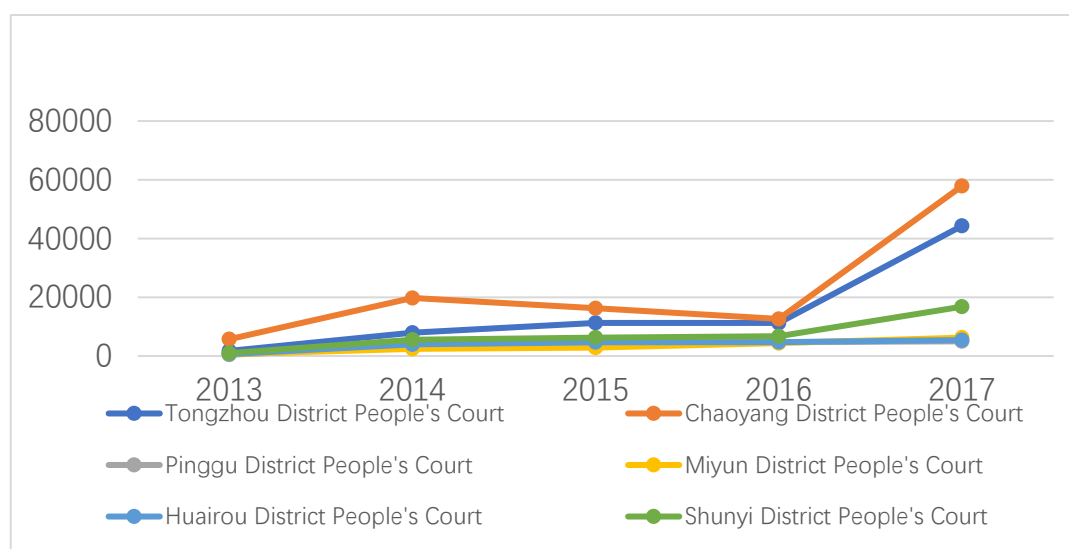
The author has reviewed the current domestic and international research status on issues such as the concept of the judicial advisory system in people's courts. It was found that scholars generally describe the nature of judicial advice as an extension of judicial power. However, there is limited research on the nature of this extension. Tan Bing proposed that judicial advice is a special authority granted to the court by law, which is a continuation of the court's handling of specific cases.^[1] Xu Hongbo believes that judicial advice is a duty of the court, manifested in performance evaluations where judges and courts failing to complete judicial advice tasks must bear corresponding disadvantages.^[2] Professor Li Ao believes that judicial advice conforms to the general form of judicial documents and should be recognized as having public law effectiveness,^[3] while Professor Liu Yitong believes it only has formal effectiveness and lacks enforceability in actual judicial practice.^[4] Regarding the functional positioning of the judicial advisory system, some scholars point out its unique function independent of judicial power, emphasizing its distinct guiding and supervisory intelligence.^[5] However, other scholars oppose the view that the judicial advisory system is merely an extension of judicial adjudication and a supplement to administrative power. As for the content of judicial advice, scholars generally agree that judicial advice letters mainly distinguish between individual case-based advice and advice based on precedent.

In recent years, as judicial participation in social governance has deepened, grassroots courts have increasingly valued the effectiveness of judicial recommendations in participating in social governance.^[6] The number of judicial recommendations sent by Tongzhou District People's Court has shown an annual increase trend. Specifically, in 2019, 21 judicial recommendations were sent, in 2020, 32 were sent, in 2021, 125 were sent, and in 2022, 94 were sent. The fundamental reason for the increase in the number of judicial recommendations sent by the court is to fulfill the requirements of judicial participation in social governance.

1.2. The main issues in the practical implementation of the Sub-Central Court's judicial recommendations.

Since the national proposal to construct the Beijing Urban Sub-center in 2012, Tongzhou District has been accelerating its development continuously. This is specifically reflected in the judicial domain through the rapid growth in the number of cases heard by the Tongzhou District People's Court. A search on the Judgment Documents Network for judgments issued by six courts under the jurisdiction of the Beijing No. 3 Intermediate People's Court from 2013 to 2017 reveals that the number of judgments issued by the Tongzhou District People's Court has been steadily increasing. After 2016, its growth rate ranked second among the six courts, following only the Chaoyang District People's Court.

Table 1 Number of instruments issued by six courts from 2013 to 2017



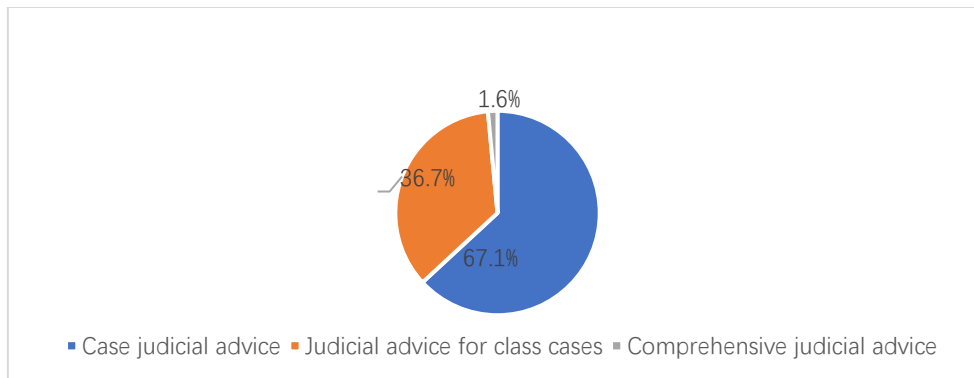
After analysis, the low effectiveness of the Sub-Center Judicial Recommendation System in practice is specifically manifested in the following aspects.

1.2.1. Focusing on individual cases makes it difficult to 'connect the dots' broadly.

According to the Supreme People's Court's "Opinions on Strengthening Judicial Recommendation Work" issued in 2012, judicial recommendations are divided into three types: individual cases, similar cases, and comprehensive cases.^[7] Individual case judicial recommendations focus solely on the issues reflected in a single case, which, although targeted, are inevitably limited. Unlike individual case judicial recommendations, similar case and comprehensive case judicial recommendations address common problems occurring in a certain type of case, not only playing a preventive role but also having a "ripple effect" and leveraging their "one-to-many" social governance scale effect.^[8] Therefore, in terms of usage categories, there are mostly individual case judicial recommendations, which have not fully leveraged the scale benefits of "ripple effect" in social governance.

Through research, it is found that individual case judicial recommendations account for 61.7% of the total, similar case recommendations addressing common problems in a certain type of case make up 36.7%, and comprehensive recommendations addressing common and systematic problems in economic and social development over a certain period account for 1.6%. This reflects that although the importance of judicial recommendations in participating in social governance is increasingly emphasized, most judges still focus on sending recommendations based on issues identified during individual case trials, with fewer recommendations made for common and systematic problems discovered through trial practices in society.

Table 2: The proportion of different types of judicial proposals



Data reveals that in practice, individual case judicial suggestions overwhelmingly dominate overall judicial suggestions. This conclusion indicates that when courts engage in judicial suggestion work, they prioritize individual case suggestions, while suggestions based on similar cases and comprehensive suggestions fail to fully leverage their "specific-to-general" functionality.

1.2.2. The effectiveness of judicial recommendations needs improvement.

The sample shows that the Sub-Central Court's improvement measures proposed in judicial suggestions can be broadly categorized into six types, displaying diversity. However, these suggestions often employ vague principle-based terms like "highly value," "strengthen leadership," and "actively take measures," lacking specific operability. Similarly, the responses from the suggested entities also tend to use similar wording, leading to a "dialogue of emptiness" that diminishes the operability of judicial suggestions, wastes judicial resources, and reduces judicial authority and credibility.

Regarding the content of judicial suggestions in the sample, although judges propose improvement methods from a micro perspective, their macro-level societal governance effectiveness appears inadequate. Specifically, 8.6% of suggestions are confined to enterprise self-management systems, representing mechanical repetition of industry norms; 2.3% of suggestions merely explain legal issues, focusing on enhancing legal education and compliance with regulations; 3.8% of suggestions lack practicality due to information asymmetry or overly macro guidance; and 1.6% of suggestions are limited to current measures without addressing future risk mitigation. This reflects the limitations of judicial suggestions in social governance, indicating insufficient exploration of underlying issues and a weaker supportive role in macro decision-making by party and government authorities.

Table 3: Number of Various Types of Judicial Recommendations

Category	Number
Category A: A general problem in an industry or sector	32
Category B: Loopholes in organizational rules and regulations and legal risks of work management	175
Category C: Protection of labor and consumer rights	30
Category D: Recommendations for the treatment of violations of legal investigation and enforcement obligations and non-compliance with court decisions	12
Category E: Extension of mature and beneficial experience	5
Category F: Other	2

Source: Quoted from the article "The Dilemma and Optimization Path of Judicial Suggestions in Participating in Social Governance - Taking Habermas' Communicative Theory as a Perspective," by Beijing Tongzhou District People's Court.

1.2.3. The judicial recommendation system lacks standardized procedures.

The 2012 Opinion on Strengthening Judicial Recommendation Work issued by the Supreme People's Court specified the document style, numbering, drafting, issuance, and other procedural matters related to judicial recommendations. However, it left blank the systems for revoking, registering, and publicly disclosing judicial recommendations. In current judicial practice, a complete and comprehensive set of procedures to regulate the entire process of judicial recommendations from creation to implementation has not yet been established.

The lack of procedural safeguards can lead judicial recommendations into a state of management vacuum after issuance. This not only hinders the adoption and implementation of judicial recommendations by the suggested parties but also undermines judicial officers' attention to such recommendations. Moreover, standardized procedures are crucial for the efficiency of the system. Compared to vague and arbitrary procedures, clear and standardized procedures significantly enhance operational efficiency.

1.2.4. Ineffective Feedback on Judicial Recommendations, Inadequate Tracking and Follow-up on Management Systems.

From the feedback on judicial recommendations between 2017 and 2019, there's an increasing trend in response rates. However, the overall response rate remains low, with low willingness from various departments to respond, impacting the effectiveness of judicial recommendations in contributing to social governance.

Table 4 shows the feedback rates on judicial recommendations from Beijing People's Court between 2015 and 2019

Year	2015	2016	2017	2018	2019
response rate	34.80%	32.40%	40.20%	46.50%	56.30%

1.2.5. Need to Improve Social Acceptance of Judicial Recommendations, Challenges in Implementing the Judicial Recommendation System.

In public governance, judicial recommendations can only function as a flexible tool. This flexibility is reflected in the fact that courts can only suggest but not mandate or demand actions from the recommended entities. While this nature encourages relevant units or departments to accept judicial recommendations, it also highlights the lack of institutional enforcement mechanisms within the judicial recommendation system. The realization of the judicial recommendation system's functionality relies solely on its persuasive and moral binding power, while its actual implementation depends almost entirely on the recommended entities.

According to sample statistics and follow-up investigations, among the judicial recommendation samples without replies, 30% are due to inter-departmental buck-passing, cross-province or cross-regional issues, inaccurate or incomplete contact information, and 44.4% are due to other reasons for not responding. Additionally, 3.75% indicate partial disagreement with the judicial recommendation content, reflecting low acceptance and response rates. Among the replied judicial recommendations, 2.3% show a tendency towards formalized responses with vague content, avoiding substantial issues and lacking specific improvement plans. In similar cases, with identical recommendations sent to different departments, there's an 0.8% probability of drastically contrasting feedback from the same recommended entities, some highly valuing and promptly acting upon the recommendations while others disregard or disagree with them.

These examples illustrate a lack of high acceptance of judicial recommendation content by certain recommended entities, let alone further implementation and improvement. If judicial recommendations cannot be implemented effectively or at all, not only are social issues left unresolved but it also leads to resource wastage for the judiciary."

2. Analysis of Issues in the Practice of Sub-Center Judicial Recommendations

2.1. The running condition of the court partly leads to the need for improvement in the quality of judicial suggestions.

when making judicial recommendations, judges often tend to use vague and abstract terms like "strengthen," "manage," "promote," "facilitate," "raise awareness," and "attach great importance," rather than focusing on specific corrective actions. This lack of emphasis on concrete reform measures reduces the persuasiveness of the recommendations towards the recommended entities, resulting in the recommendations not being recognized or adopted.

Additionally, in response to the calls from higher-level organizations to showcase work achievements, courts often prioritize the quantity of judicial recommendations, sometimes even making it a significant performance evaluation criterion with minimum quantity requirements. To meet these targets, judges may submit simplistic and vague recommendations per case to reduce the difficulty of meeting the quota. Some judges may also select units that they have easier communication with, sending out hollow recommendations and requesting perfunctory responses from the recommended entities.^[9]

2.2. The insufficient supply of legal norms leads to a lack of standardization in procedures.

Judicial recommendations in China lack a solid legislative foundation. Existing laws, including the Civil Procedure Law, Administrative Procedure Law, and Judges Law, provide limited provisions for judicial recommendations, mainly treating them as litigation safeguards with narrow applicability. Despite some guidance in judicial and non-normative documents from the Supreme People's Court, the lack of specific regulations hampers their effectiveness. This regulatory gap results in judicial recommendations being less binding and impactful than court judgments. Given this context, enhancing the effectiveness of judicial recommendations through legal changes may not be feasible. Therefore, collaboration with other social governance entities becomes essential to bolster the implementation of judicial recommendations.

2.3. The insufficient collaborative supervision and cooperation among various social governance entities result in poor implementation effectiveness.

Judicial recommendations are a flexible judicial tool. Courts that send out these recommendations often lack proactive follow-up and effectiveness assessment for suggestions that haven't received responses. They may settle for written replies from the advised parties without ensuring follow-up on the implementation of corrective measures mentioned in the replies or monitoring whether the suggested issues reoccur. However, the courts themselves cannot be extensively involved in the specific supervision and implementation of recommendations after issuance, nor can they enforce judicial recommendations mandatorily. Otherwise, it could lead to excessive expansion and overstepping of judicial authority. In an ideal model, the entities issuing recommendations and supervising their implementation should be separate. Yet, in current practice, there is no clear provision regarding the entities responsible for supervising the implementation of judicial recommendations, nor are there relevant follow-up assessment mechanisms. This absence of supervisory bodies often leads to inefficiencies in the functioning of judicial recommendations. Additionally, due to inherent professional limitations, courts may lack familiarity with practical social operations and governance, resulting in judicial recommendations that, despite their quality, may lack specificity and practicability. This underscores the necessity of active feedback from other relevant

social governance entities to enhance the precision and practicality of judicial recommendations proposed by the courts.

2.4. The internal production process is closed, leading to a lack of high acceptance of the content.

The information asymmetry theory suggests that in market economic activities, different individuals have varying levels of understanding of relevant information. Courts inherently have a cognitive advantage in understanding how businesses conduct risk prevention and how governments practice lawful administration. However, this does not imply that the opinions of the advised parties can be disregarded. The current unidirectional design of the judicial recommendation operation process fails to reflect the interests of the advised parties. From the formation of content to the completion of delivery, judicial recommendations lack the involvement of advised parties. The absence of a platform and procedure for expressing opinions leads to a lack of acknowledgment from advised parties regarding the content of judicial recommendations.

2.5. The lack of an external feedback guarantee system leads to poor feedback effectiveness.

The mechanism to ensure feedback from appointed judges lacks sufficient driving force. Since judicial recommendations lack legal binding force, most courts adopt the approach of including judicial recommendation work in judges' performance evaluation indicators in an attempt to motivate judges to pay attention to judicial recommendations and improve their quality. However, judicial recommendation work involves both the court and the advised parties, and feedback and implementation of judicial recommendations are not decisions that individual judges can intervene in or decide; they require a joint mechanism for internal and external coordination to ensure their realization. In practice, there is an excessive focus on internal incentive mechanisms for the production and sending of recommendations, neglecting external incentive mechanisms for feedback and implementation from advised parties, which are the fundamental way to improve the implementation and feedback of judicial recommendations.

Certainly, this weak feedback obligation is a manifestation of the weak compulsory nature of judicial recommendations. However, in order to truly stimulate the active role of judicial recommendations in social governance and avoid judicial recommendations becoming mere empty words that dampen the enthusiasm of judges to write them, it is necessary to clearly assign certain feedback obligations to relevant advised parties. Some scholars have pointed out that the nature of judicial recommendations determines that they do not need to be fully adopted by the advised agency; as long as they respond positively and explain the reasons, it shows respect for the court, and such respect is the expected result of a positive interaction.^[10]

3. Reform of the Judicial Recommendation System

3.1. Balancing the Types of Judicial Recommendations — Leveraging Precedent Cases to Influence Broader Situations

Regarding the distribution of judicial recommendation types, two key issues need to be addressed: reducing the time for judges to summarize similar cases and increasing their initiative in creating recommendations; establishing a collaborative mechanism to periodically summarize common issues and incentivize recommendation production.

Firstly, establish a judge collaboration mechanism where relevant case information is recorded after case hearings and shared on an internal platform, with dedicated personnel summarizing and publicly addressing common issues for judges to undertake.

Secondly, improve the incentive mechanism by rewarding the creation of similar case recommendations and weighting recommendations from relevant departments to encourage an increase in both quality and quantity of judicial recommendations.

Additionally, encourage the presentation of instructive and typical judicial recommendations through case research and establish a unified, categorized database for judicial recommendations to promote their comprehensive and directive development.

3.2. Enhancing the Effectiveness of the Judicial Recommendation System - Employing Multiple Measures for Comprehensive Improvement

Expand the producers of judicial suggestions to include other conflict resolution experts, such as people's mediators and court complaint handlers, to alleviate judges' workload and ensure the quality of suggestions; incorporate forward-looking and practical content reviews during approval, establishing a comprehensive assessment system; involve administrative agencies in the process to enhance supervision and implementation pathways, including sending judicial suggestions to relevant authorities, utilizing public information for societal oversight, and urging and overseeing non-administrative agencies that do not respond proactively through higher-level departments.

regarding the responses that have accepted judicial recommendations and clearly informed the court about their implementation status, the court should regularly organize and summarize them. We believe that exploring the establishment of a judicial recommendation response database is feasible. After processing various positive responses in a batch and systematic manner, the data should be made public at regular intervals (such as monthly or quarterly). Transparently showcasing positive feedback can enhance the recognition of the recommending entities towards the court's standard work procedures and facilitate the court's long-term retrieval of similar case responses.

3.3. Legislative Focus: Enhancing the Legal Norms of the Judicial Recommendation System

In terms of the rights and obligations of judicial recommendations, it is necessary to clarify their positioning. Judicial recommendations, as an extension of active judicial and adjudicative functions, naturally possess a power nature. However, the use of uncertain terms like "should" and "may" can lead to a passive exercise of power in judicial recommendations. Therefore, in system design and legal regulations, it should be clarified that judicial recommendations are not only a judicial duty for judges but also a responsibility, reflecting the unity of power and duty.

In terms of review and management, strict standards are needed for the presentation of judicial recommendations. Establishing a dedicated department to oversee the management of judicial recommendations, with the court's litigation division initiating and drafting them, and then having a specialized department review them, ensures that judicial recommendations are representative and typical.

Regarding format requirements, it is essential to standardize the format of judicial recommendations. Firstly, the scope of judicial recommendations' targets should be clearly defined, limited to government entities, enterprises, people's organizations, or industry associations. Additionally, establishing a training system for judicial recommendations, focusing on standardized writing and content, along with developing an information exchange platform, will enhance judges' skills in proposing judicial recommendations. This approach avoids the abuse and expansion of judicial power, ensuring the quality and effectiveness of judicial recommendations.

3.4. Addressing the Receiving End of Judicial Recommendations Specifically

Categorizing the recipients of judicial suggestions based on whether they are government entities yields two categories: government entities and non-government entities (mainly including enterprises, social organizations, and other social groups). Regarding government entities, administrative agencies have a greater responsibility compared to other entities to actively improve their various operations. They should, within a certain time limit after the judicial suggestion is issued (such as one month), respond to the judicial institution with a reply letter containing the rectification measures and their opinions on the judicial suggestion, thereby providing feedback on the implementation of the judicial suggestion. For non-government entities, the corresponding supervisory administrative

department or the local people's government in their jurisdiction should, after supervising the implementation, provide feedback on the implementation status and the non-government entity's opinions on the judicial suggestion to the judicial institution within a certain time limit after the judicial suggestion is issued (such as one month). Specifying the average response time for judicial suggestion recipients in a written manner helps standardize the process, improves the overall response rate to judicial suggestions, and effectively strengthens the practicality of judicial suggestions in participating in social governance.

3.5. Establishing a Special Research Group in Conjunction with Sub-Center Construction

As the urban sub-center, Tongzhou District is rapidly developing and constructing at an unprecedented pace, continuously innovating and enhancing in areas such as green finance, urban planning, cultural tourism, and business services. Rapid development can easily lead to legal disputes and social issues due to initial construction norms and lack of experience. This presents a favorable opportunity for the court to participate in social governance and improve the effectiveness of judicial suggestions based on its judicial practice advantages. It is recommended that Tongzhou District People's Court establish a special research group within its judicial suggestion work to conduct specialized case studies and handling of judicial cases related to the development of the sub-center. Furthermore, focusing on typical issues in sub-center social governance, clarifying the research direction of judicial suggestions, and refining the provisions of the Supreme People's Court's "Opinions on Strengthening Judicial Suggestions" in Article 7 specifically for judicial suggestions. This could include specifying judicial suggestions related to green finance and financial technology development in the sub-center or suggestions regarding the demolition and relocation issues in the sub-center.

4. Conclusion

Beijing's urban sub-center construction is a major strategic deployment by the central leadership. Judicial recommendations (JR) play a crucial role in extending courts' judicial functions, engaging in grassroots social governance, and supporting the sub-center's high-quality development. This study, based on Tongzhou District People's Court's judicial practices, empirically examines JR system's operational status, identifying systemic deficiencies due to weak legal norms, closed procedural processes, and lacking external feedback mechanisms. Through data analysis and discussions, it aims to enhance courts' relevance and effectiveness in social governance, proposing strategies to improve JR work and contribute to the judicial recommendation system's enhancement in courts.

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