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Legal Regulatory Pathways for Algorithmic Discrimination from the Perspective of Transitional Workers' Rights and International Human Rights Standards

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Abstract

The rapid development of digital technology, the rise of algorithmic power, and the restructuring of data platforms have challenged traditional constitutional value systems. The emergence of platform economies in the digital age has led to the continuous expansion of the "transitional worker" population. However, the protection of their legitimate rights and interests fails to develop proportionally with this growth, resulting in structural dilemmas such as the alienation of labor processes by algorithms, imbalances in procedural justice, inadequate remedies, employment discrimination, and threats to life safety. To uphold the fundamental rights of transitional workers and adhere to a "human-centered" approach, China faces judicial challenges including the absence of adjudicative rules for algorithmic discrimination and difficulties in workers' rights protection. This paper proposes legislative measures such as establishing an "algorithmic dependency" identification standard, judicial reforms like implementing reversed burden of proof and enhancing constitutional review, and technical solutions including tiered audit systems and anti-discrimination algorithm tools. These aim to achieve ethical-technological integration and construct a Chinese paradigm for protecting transitional workers' rights in the new employment landscape of the algorithmic era.

Keywords

Algorithmic Discrimination; Transitional Workers; Fundamental Rights; International Human Rights standards; Burden of Proof Reversal.

1. Introduction

The platform economy is a new economic form that primarily relies on internet platforms, with data as the key production factor, driven by next-generation information technology, and supported by network information infrastructure [1]. In recent years, China's platform economy has experienced rapid growth, and its role in the overall development of the economy and society has become increasingly prominent. The 21st century is the era of informatization, and the development of internet technology has given rise to the platform economy, which centers on data processing, known as algorithms. The advancement of new technologies is profoundly influencing social relationships, interactions, and labor relations in China. In the process of urbanization and digitalization in China, we often encounter gig workers under the platform economy, such as' food delivery riders 'and other' transitional workers. 'The work of food delivery riders is neither formal employment nor simple gig labor; it lies in the gray area between formal employment and informal labor. This profession is characterized by its temporary and transitional nature, and the workers involved exhibit traits distinct from traditional workers. They arise with the development of the platform economy and are closely linked to algorithm technology, thus this new form of employment is defined as' transitional labor.'

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The rights and interests of these workers are at risk due to the deep involvement of algorithmic technology. No matter how advanced the algorithmic system is, it is based on data provided by human society and cannot escape data bias and algorithmic injustice. Algorithmic discrimination is not a new issue in the age of artificial intelligence[2]; it is another form of social discrimination, referring to the discrimination that arises during the design of algorithms, data selection, and the integration, production, and distribution of content. Marx emphasized in his "Theses on Feuerbach" that "the essence of man is the sum total of all social relations," and the technical rationality of algorithmic systems precisely severs the organic connection between workers and social relations through data, reducing them to calculable "production factors."[3] "Transitional labor" not only reflects the confusion and uncertainty of this group regarding their future career development but also reveals how platform economies have shifted from controlling workers themselves to controlling the labor process with greater precision[4]. The key to achieving this transformation is algorithms, which mechanically optimize based on the data they acquire, often overlooking the basic rights of individuals as social subjects, leading to employment discrimination to some extent. If platform algorithm systems heavily rely on data and programs with human biases, machine learning will further reinforce these biases. While the continuous optimization of algorithmic systems is a commendable advancement for their creators, it represents extreme exploitation for transitional workers in the new employment forms that implement this technology. The refined control of algorithmic systems has left many issues in the protection of transitional workers' rights unresolved, including employment equality, rest rights, and life safety. This article examines how algorithmic discrimination affects the rights of transitional workers, drawing on the regulatory approaches of the United States and the European Union. It advocates for the establishment of algorithmic regulation standards, the implementation of a burden of proof reversal, and the integration of technical fairness measures to provide a legal framework for better protecting the labor rights of transitional workers in new forms of employment.

2. Multi-dimensional Deconstruction of Algorithmic Discrimination that Infringes on the Basic Rights and Linterests of Transitional Workers

Algorithms inherently possess opacity and professionalism, making algorithmic discrimination an 'invisible and intangible injustice.' As technology advances, platforms no longer control workers directly but through algorithms. The precise control over labor forces workers to actively comply with the rules of these algorithmic systems.

2.1. Algorithmic Alienation of the Labor Process

The algorithm creates a precise system for controlling the working hours of delivery personnel. For instance, platforms like Meituan and Ele.me use algorithms to compress the delivery time for riders to the minimum [5]. According to research by a scholar, these platforms train their algorithms using historical data, gradually reducing the delivery time. For example, the delivery time in a certain area was quietly reduced from 45 minutes to 40 minutes, causing the rider's overtime rate to soar from 15% to 32%. This time compression is not based on actual traffic conditions or human limits but is the' optimal efficiency solution 'derived from data experiments. Data shows that the algorithm reconstructs the work rhythm through the' expected arrival time 'mechanism. A 2024 survey in Shanghai found that 68% of riders work more than 12 hours a day, with 73% forced to work continuously due to the system's dispatch mechanism, leaving no time for rest. This extreme time compression directly leads to health issues. Statistics from a tertiary hospital in Guangzhou show that the incidence of lumbar diseases among riders is 83%, and the incidence of gastric ulcers is 58%, significantly higher than in traditional occupations. The algorithm even reinforces control over labor through the contradictory design of 'fatigue reminders' and 'reward mechanisms.' For example, the

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algorithm system prompts a rest break after four consecutive hours of work, but if a rider stops taking orders, their order priority is reduced, leading to a 20%-30% decrease in income the next day. This cycle forces workers to adapt to the algorithm's set schedule.

The algorithm also achieves precise control over the spatial distribution of workers through geographic information systems and real-time positioning technology. The platform divides the city into a dynamic grid, using 'heat maps' to guide riders to areas with high order density. A survey of riders in Beijing's Chaoyang District found that 80% of orders are concentrated in the' core business districts 'designated by the algorithm, where the rider density exceeds actual demand by 40%, leading to intense competition. This spatial allocation mechanism exacerbates the' involution 'of workers. For example, a rider in Nanjing has to cycle over 120 kilometers daily to maintain their order acceptance rate, equivalent to circling the Fifth Ring Road of Beijing three times. Additionally, the algorithm uses' geofencing 'technology to enforce invisible control. For instance, a platform mandates that riders must enter a business district within a 500-meter radius to receive orders, forcing workers to linger in specific areas. The algorithm's restrictions on this space increase the average daily ineffective movement distance for riders.

Faced with the pressure of algorithms, riders have developed various 'counter-algorithm' practices, such as speeding, riding against traffic, running red lights, and taking shortcuts, to boost their income and delivery efficiency. These behaviors not only lead to excessive working hours and traffic violations but also pose a threat to the riders 'safety. Riders push themselves to complete delivery tasks within the algorithm's set time limits, and their delivery speed and other data are fed back into the algorithm system, misleading it into believing that riders can complete more orders faster in a short time. The algorithm optimization based on incorrect and biased data is an extreme exploitation of 'transient workers' and a form of employment discrimination.

2.2. Algorithm Black Box and Program Justice Crisis

Some scholars argue that the existence of an 'algorithmic black box' leads to algorithmic discrimination on platforms [6]. Indeed, the essence of an algorithmic black box lies in its technical opacity and the unexplainability of its decisions, which directly undermines workers 'right to be informed [7]. Firstly, the technical structure of algorithms turns the decision-making process into a' black box, 'making it difficult even for designers to trace the specific decision-making path. For instance, food delivery platforms use dynamic pricing algorithms to adjust the weight of deliveries for riders, but riders are unaware of the core parameters' calculation logic, leading to highly uncertain income fluctuations [8]. This operational model of the technical black box essentially transforms workers into passive recipients of algorithmic decisions, depriving them of their right to informed consent. Secondly, platform companies refuse to disclose algorithmic logic under the guise of 'trade secrets,' such as a food delivery platform evading information disclosure by claiming 'it involves over 2000 parameters' in labor dispute lawsuits [9]. This phenomenon corroborates the 'institutional black box' theory in organizational sociology——, where the technical black box and organizational power collude to form a dual veil, leaving workers without access to the algorithmic rules or the professional skills to understand algorithmic decisions. The case of the Gothenburg Public School enrollment system in Sweden shows that even when algorithmic errors led to thousands of children being enrolled improperly, the education department refused to explain the basis of the decision, citing 'technological neutrality,' highlighting the institutional protection of the algorithmic black box by public authority.

The automated nature of algorithmic decision-making has rendered the 'defense and remedy' mechanism in traditional procedural justice ineffective. In the context of new employment models, when riders challenge algorithmic decisions on issues such as overtime fines and order allocation, the platform only provides standardized appeal templates and refuses to disclose

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specific judgment data or the reasoning behind these decisions. This 'algorithmic monologue' style of dispute resolution completely contradicts the principles of procedural justice. From a value perspective, algorithms were developed to enhance efficiency and gain a competitive edge through practical outcomes. However, the designers and users of these algorithms focus solely on achieving their goals efficiently, often overlooking the inefficiencies in ideals and ethics, and neglecting the individual rights that are insignificant compared to the collective interest.

2.3. Systematic Violations of Basic Rights such as Equality and the Right to Life

According to the survey report on the professional groups of Chinese food delivery riders released by the Chinese Internet Data Information Network, in February 2020, the state officially defined 'food delivery rider' as 'online delivery personnel.' Since then, this profession has been officially included in the National Occupational Qualification Catalogue and has become a new occupation. However, the current laws and regulations in China have deficiencies in recognizing the labor relationship between food delivery riders and platform companies. The 'Online Worker Agreement' signed between these groups and platform companies fundamentally establishes an employment relationship rather than a labor relationship, which lacks a reliable legal foundation for the social security system and results in a lack of effective rights protection. The dual impact of algorithm optimization and social security deficiencies has placed the rider community in a survival dilemma characterized by high risks and low protection, reflecting the common issues faced by 'transitional workers' due to their temporary and transitional nature.

As technology advances, the employment protection system must also evolve. In March 2023, Li Mou, a delivery rider for a platform, died of a heart attack after working for 14 consecutive hours. When his family sought work injury compensation, the platform refused, arguing that they were in a cooperative relationship and not an employer-employee relationship. Although Li's salary was paid by a third-party labor company, his daily tasks were entirely managed by the platform's APP algorithm, which determined his delivery routes, overtime penalties, and daily order volumes. According to the Constitution of the People's Republic of China, workers' rights extend beyond just receiving wages; they also include safety in the workplace, unemployment benefits, respect for dignity, and equal employment opportunities. By using algorithmic technology to shift various risks onto individual 'transitional workers,' the platform seriously violates the relevant provisions of the Constitution and the core values of socialism with Chinese characteristics. This also highlights the profound contradiction between technological power and social justice in the digital economy, and underscores the need for China to improve the social security system for 'transitional workers.'

3. The Applicability of International Human Rights Standards and the Regul-ation of the United States, Europe and China

3.1. The Spplication of International Human Rights Standards to the Protection of Workers In New Forms of Employment

The international human rights standard system provides a universal framework for human rights protection, but in the field of algorithmic governance, it needs to be creatively transformed in combination with the characteristics of digital labor.

Firstly, International Labor Organization (ILO) Convention No.102 clearly outlines the minimum standards for social security, requiring member states to ensure workers 'economic security in cases of illness and work-related injuries through legislation, thus facilitating the modern transformation of labor standards [10]. Workers under algorithmic control, often excluded from the traditional social security system due to ambiguous labor relationships,

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fundamentally conflict with the spirit of the convention. The positive aspects of this convention include prohibiting algorithmic decisions based on discriminatory factors such as gender and race; requiring platform companies to fulfill their obligations to protect workers' health rights; and setting statutory limits on algorithmic time control.

Second, the 'Protection, Respect, and Remedy' framework established by the United Nations Guiding Principles on Business and Human Rights. This framework requires the establishment of an algorithm filing and review system at the national protection obligation level, such as the 'algorithm transparency classification disclosure' mechanism outlined in the EU Digital Services Act. At the corporate respect responsibility level, it mandates that platforms fulfill the 'algorithm impact assessment' obligation, ensuring that companies respect workers 'rights and prevent algorithms from exacerbating inequality. For example, Microsoft's 'Fairlearn' toolkit can monitor algorithmic biases in real time. At the remedy mechanism level, it establishes a 'damages for algorithmic discrimination' system, referencing the punitive damages standards set out in Article 82 of the EU General Data Protection Regulation (GDPR) [11]. The positive significance of this rule is that it sets ethical obligations for platform enterprises regarding algorithms, provides an international legal basis for regulating algorithmic discrimination, and offers a foundation for establishing an algorithm impact assessment mechanism, particularly emphasizing that companies should bear primary responsibility for human rights damage caused by their algorithmic decisions. China's constitution should align with international human rights standards in terms of human rights protection.

3.2. Analysis of the Applicability of Computing Regulations in the United States, the European Union and China

The EU's AI Act introduces the' algorithmic explainability obligation, 'which mandates that algorithms in high-risk areas, such as labor management, must have a mechanism for human review. In the Dutch SyRI case, the judicial authorities declared the social welfare algorithm unconstitutional, demonstrating a strong stance against systemic discrimination by algorithmic decision-making systems. In contrast, the COMPAS algorithm case in the United States highlights the limitations of the common law system in addressing algorithmic discrimination — Although judges acknowledged the algorithm's racial bias, they ultimately upheld the original ruling on the grounds of 'technical complexity.' [12] Despite the lack of clear adjudication rules for algorithmic discrimination in our country's judicial practice, the absence of typical cases has left workers facing a legal challenge.

From the above comparison, it is evident that compared to the United States, the EU's regulations on algorithmic discrimination are more effective in protecting transitional workers in the platform economy. The EU adopts a' priority of fundamental rights 'regulatory approach, which has several institutional advantages: Firstly, it emphasizes judicial initiative. The' right to explain algorithms 'requires platforms to disclose their automated decision-making logic, highlighting judicial initiative. Secondly, it mandates' human intervention rights 'for' high-risk algorithms, 'requiring systems to generate explainable reports every 72 hours. Thirdly, it introduces the' presumption of algorithmic labor relations 'rule. When algorithms influence workers' working hours or remuneration by more than 40%, the law presumes the existence of a labor relationship, addressing the challenge of identifying hidden employment relationships. This provides valuable insights for China in addressing the issue of 'hidden labor relations.' In summary, one of the key challenges in regulating algorithms in China include algorithmic transparency, the determination of labor relations between platforms and transitional workers, the lack of rules for judicial adjudication, and the localization of technical governance.

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Table 1. Comparison of the Applicability of Algorithmic Regulation in the EU, US and China

dimension	EU	America	China
Legal framework	GDPR Article 22, AI Act, Platform Work Directive.	Chapter VII of the Civil Rights Act, the Algorithm Accountability Act (Proposed).	Article 24 of the Personal Information Protection Law and Regulations on the Management of Algorithmic Recommendation for Internet Information Services.
Characteristics of judicial review	The judiciary is highly active and allows for constitutional review of the content of algorithmic entities.	Judicial initiative is weak and focuses on procedural review.	The intervention of the judiciary is insufficient, the algorithm dispute of takeout riders has not formed a guiding case, and the rules of burden of proof distribution are missing.
Core regulatory tools	The algorithmic interpretability obligation requires companies to disclose the core parameters of the algorithm.	The differential effect theory proves the effect of discrimination through statistical data.	Policy declaration is the main part, relying on administrative interviews, rectification notices and other flexible regulatory means.
Typical case	SyRI algorithm case: The Dutch Supreme Court has ruled that the social welfare assessment algorithm used by the government is unconstitutional.	Fourteenth Amendment: Due process and equal protection.	Case : Delivery rider injured in manual injury recognition. The court generally avoids the issue of algorithm liability attribution.
Regulatory characteristics	Human rights protection takes precedence: the establishment of an algorithmic impact assessment (AIA) system creates a "digital human rights" judicial remedy path.	Market autonomy orientation: relying on industry self-discipline and decentralized legislation to strictly protect the trade secret privilege.	Policy-driven: the algorithm filing system has been preliminarily established, and the laborers' difficulties in providing evidence are prominent.
Effectiveness of regulation	Establish a whole-cycle supervision system of "pre-compliance, in-process audit and post-responsibility".	It is difficult to break through the technical neutrality barrier, and the defense of trade secrets weakens the legal binding force.	The system supply lags behind, the algorithm filing system has not been implemented, and the judicial relief channels are not smooth.

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4. Activate the Algorithm Specification Mechanism to Protect the Basic Rights and Interests of Transitional Workers

4.1. Establish the Identification Standard of "Algorithm Subordination" in Legislation to Solve the Problem of Identifying Hidden Employment Relationship

The iterative updates in algorithm technology are reshaping the fundamental logic of labor relations, posing structural challenges to the traditional labor law system. To construct a regulatory framework that adapts to the form of algorithmic control, the primary task is to establish the criteria for recognizing 'algorithmic subordination.' The current labor law's three-dimensional subordination standard, rooted in the labor relations of the industrial age, struggles to effectively capture the algorithmic control over workers in the platform economy. It is suggested to draw on the EU's 'Platform Work Directive' and introduce the concept of 'algorithmic decision-making weight threshold.'[13] When an algorithm's decision-making weight in labor arrangements (such as order allocation and salary calculation) exceeds 40%, it can be presumed that a labor relationship exists. The legal rationale for this standard is that the decision-making logic formed by algorithms through data training essentially replaces the traditional employer's management authority, constituting a new form of control over workers' behavior.

In terms of institutional design, a specialized Digital Labor Standards Act should be formulated to establish a comprehensive regulatory framework that includes algorithmic time regulation, spatial equity, and safety measures. For algorithmic time regulation, the legislative concept of Germany's Working Hours Act can be referenced, stipulating that algorithm-generated work instructions must not exceed the physiological limits of workers (for example, the interval between consecutive orders should be no less than 45 minutes), and a dynamic adjustment mechanism should be established to meet the specific needs of different job types. The spatial equity clause should transcend the geographical limitations of traditional labor law, requiring platforms to publish data on regional order density distribution and prohibiting order allocation discrimination based on factors such as region or gender. The safety measures should establish an algorithm risk assessment system, set up an ethical review process for algorithmic decisions that could lead to worker injuries or fatalities, and mandate that platforms conduct stress tests before upgrading algorithms and publicly disclose the test reports.

Innovations in the social security connection mechanism are crucial for protecting workers 'rights. The current work injury insurance system is based on labor relationships, but the flexibility of algorithmic employment makes it difficult to determine labor relationships, leading to many occupational injuries not being compensated. It is recommended to establish a new work injury insurance system that combines' pay-per-order + national coordination': 1) Establish a dynamic rate mechanism that adjusts the work injury insurance rate based on factors such as the intensity of algorithmic dispatching and risk levels, with higher rates for high-risk orders (such as night deliveries or orders during adverse weather conditions); 2) Develop a cross-platform settlement system to aggregate social security benefits from multiple platforms, addressing the loophole where platform companies evade payment responsibilities by splitting their business; 3) Include traffic accidents and sudden deaths due to overwork caused by algorithmic instructions in the statutory list of occupational diseases, and clarify the burden of proof reversal for platform companies.

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4.2. In theJudicial System, the Burden of Proof Is Reversed and the Constitutionality Review Is Carried out to Solve the Dilemma of Safeguarding Rights

The establishment of the burden of proof reversal system is a key approach to addressing the judicial challenges posed by algorithmic discrimination. The 'differential impact theory' established in Article 26 of Germany's General Equal Treatment Act offers valuable insights for China: workers need only provide preliminary evidence that their rights and interests are affected by algorithmic decisions, while platforms must prove that their decisions are not discriminatory. Specifically, when workers present preliminary evidence such as algorithm decision logs or data comparisons with similar groups, it can be presumed that the algorithm has a discriminatory effect, and the platform must refute this presumption using core evidence like algorithm training datasets and decision parameters. In terms of the standard of proof, the' high probability 'rule is adopted, allowing indirect evidence to be used for inference. For example, if an algorithm gives significantly lower priority to deliveries to specific groups (such as riders over 40) compared to other groups, age discrimination can be inferred. Additionally, activating the class action lawsuit system is an effective mechanism to address individual rights protection issues. Based on Article 58 of the Civil Procedure Law, a special procedure for' public interest litigation against algorithmic discrimination 'can be established: granting social organizations such as trade unions and consumer associations the right to represent workers in public interest litigation, addressing the practical issue of high costs and weak evidence-gathering capabilities for individual lawsuits. Courts can order platforms to disclose core evidence such as algorithm training datasets and decision logs, breaking down the technical barriers of the' algorithm black box.' To enhance the effectiveness of the system, it can be stipulated that judgments from public interest litigation have pre-judgment effect on factual determinations in similar algorithmic discrimination cases, avoiding the waste of judicial resources caused by repeated litigation.

The introduction of the constitutional litigation mechanism provides a final remedy for regulating algorithmic discrimination. By using the constitutionality review system, it addresses the challenges in algorithmic governance by requiring the review of algorithmic rules on platforms that allegedly violate the constitutional right to equality. The review criteria can be based on a three-tier framework of the 'principle of proportionality': first, whether the algorithm's optimization goals align with public interests; second, whether there are non-discriminatory alternatives; and finally, the balance between the benefits of the algorithm and the harm to workers' rights. For algorithms found to be unconstitutional after review, dual remedies can be applied: a deadline for rectification and a judicial injunction. If necessary, the algorithm's registration can be declared invalid. This mechanism essentially transforms basic constitutional rights into concrete digital rights, providing a fundamental legal basis for algorithmic governance.

4.3. Technically, Algorithm Audit Standardsand Anti-discrimination Algorithm Technology Should Be Established to Enhance Algorithm Transparency

The systematic construction of the algorithm audit system is a crucial step in achieving technical governance. Firstly, differentiated review standards can be set based on the risk levels of algorithms, establishing a tiered audit mechanism. High-risk areas, such as labor management, should undergo mandatory annual audits; medium-risk areas, such as personalized recommendations, should be subject to spot audits; and low-risk areas, such as information display, should opt for voluntary audits. Secondly, the audit standard system should encompass multiple dimensions, including fairness, explainability, and security indicators. Finally, the application of audit results must be stringent, stipulating that algorithms

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found unqualified must be suspended within 48 hours, and platforms that fail two consecutive audits will have their algorithm filing permits revoked.

The technical implementation of anti-discrimination algorithms must deeply integrate legal and technical logic. In terms of data cleaning, the 'adversarial training' method can be used to eliminate biases in historical data, such as IBM's AI Fairness 360 toolkit, which generates synthetic datasets to compensate for the lack of minority data. Regarding algorithm design constraints, a' bias suppression layer 'should be established to ensure that algorithms prioritize the rights of disadvantaged groups, and an' ethics constraintor 'should be developed to automatically block discriminatory decision-making paths. The construction of a dynamic monitoring system requires setting up a real-time monitoring platform for algorithm biases, establishing a threshold warning mechanism, and developing a' algorithm health check 'tool for users, which visually presents the impact of algorithmic decisions. The integrated application of these technologies can transform algorithm systems from' efficiency optimization tools 'into' rights protection carriers,' achieving an organic combination of algorithms with the core values of socialism with Chinese characteristics.

5. Conclusion

In the context of the platform economy deeply restructuring labor relations, the protection of transitional workers 'rights and interests faces systemic challenges due to algorithmic discrimination, which also challenges the authority of China's constitution. The essence of algorithmic discrimination is the projection of social discrimination in the digital age onto the technical dimension. Only through a systematic reconfiguration of legal regulation can we achieve a dynamic balance between technological progress and the protection of workers 'rights and interests. This article examines the legal theory and comparative law, suggesting that compared to European and American models, China's algorithmic regulation should be grounded in local practices and chart a unique path that balances technological innovation with human rights protection: Firstly, in institutional design, it should integrate 'technological rationality' with 'institutional rationality.' It should adopt the strict regulatory philosophy of the EU's GDPR, establish the basic framework for algorithm governance through the Digital Labor Standards Act, while avoiding the pitfalls of excessive market autonomy in the United States, and achieve collaborative governance between the government and platforms through the algorithm filing system. Secondly, it should leverage the role of trade unions in collective bargaining over algorithms, establish a tiered disclosure system for algorithm transparency, and transition from' government managing platforms 'to' platform governing algorithms. 'Thirdly, in terms of technical approaches, it should promote localized practices of' algorithmic benevolence. 'This involves developing an algorithmic ethics framework that aligns with labor ethics, integrating core socialist values into algorithm design, and enhancing workers' well-being through technology empowerment rather than replacement. This is both a necessary requirement for human rights protection in the digital age and an essential part of the rule of law construction in socialism with Chinese characteristics. Future research can further explore the formulation of international rules for algorithmic governance, providing theoretical support and practical solutions for China's participation in global digital governance.

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