
SUSPENDED AGENCY: CRIPPING JUDICIAL AMBIVALENCE TO INTELLECTUAL DISABILITY AND SEXUALITY

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Abstract

This article examines how Taiwanese courts suspend the sexual agency of individuals with intellectual and developmental disabilities in adjudicating consent. Analyses of key rulings demonstrate how judicial ambivalence—oscillating between protection and denial—produces legal reasoning that pathologizes desire while erasing deeper contextualization. Advancing a crip/queer jurisprudential lens, the article rethinks legal personhood beyond binary thresholds of capacity. It advocates for relational forms of agency that, while seeking justice, recognize expressions and embodiments that may be ambiguous and illegible to the law. This offers critical insights into how disabled sexualities are framed in law, expanding the scope of rights-based analysis.

Keywords: cripness as queerness; disabled sexuality; intellectual disability; judicial narrative; law in context.

[A] SEXUALITY AS A SPACE FOR CARE, CONTROL, AND CONTESTATION

Across global disability scholarship, there has been growing recognition of the systematic denial of sexual rights to people with intellectual and developmental disabilities (I/DD). While international frameworks like the United Nations (UN) Convention on the Rights of Persons with Disabilities 2006 (CRPD) envision equal access to intimacy, bodily autonomy, and relationship life, the lived experiences of individuals with I/DD continue to reflect institutional and sociocultural constraints,

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particularly pronounced in jurisdictions where disability rights have gained visibility yet remain entangled with enduring protectionist norms. This article asks how Taiwanese criminal courts suspend sexual agency for persons with I/DD—either by pathologizing capacity or erasing agentic refusal when applying Articles 221, 225, and 227.

Article 221's phrase "sexual intercourse against the will" contains no textual requirement of resistance. Article 224 penalizes "obscene acts" committed against another's will. Yet courts often infer non-consent from proxies—such as clear verbal refusal, physical struggle, or a prompt complaint. Article 225 criminalizes both intercourse/indecency by taking advantage of incapacity to resist or to express will; capacity is read contextually (the person's cognitive/volitional state at the time, situational power relations, and the knowledge of the accused), often via clinical reports. Article 227 is an age-based offence that renders consent legally irrelevant for persons under 16, although some judgments still invoke *willingness*. Where I/DD is present, courts effectively choose between Articles 225 and 227 and should explain the basis for the decision. Typical evidentiary practices include psychiatric/psychological, inferences from behavioural proxies (eg continued contact, delayed reporting) and credibility determinations. The following analyses demonstrate how these practices can operate to suspend agency.

Taiwan is a compelling and underexplored example of a jurisdiction: despite formal commitments to disability rights and inclusion, judicial reasoning in I/DD cases can have the effect of suspending sexual agency and constraining disabled sexualities, a tendency mirrored in legal, clinical, and familial institutions. Focusing on key rulings as cultural-legal artefacts, the article traces how global rights discourses are translated, suspended, or subverted, and how courts' protective/denying ambivalence pathologizes desire and strips away relational contexts. Advancing a crip/queer jurisprudential lens, such an approach invites us to rethink legal personhood beyond binary thresholds of capacity.

Scholarly attention to the sexualities of people with I/DD has increasingly sought to redress their systematic erasure from discourses of rights, intimacy, and pleasure. The longstanding marginalization of disabled people's sexual lives reflects not merely neglect but a deeper biopolitical operation denying sexuality as irrelevant or constructing it as dangerous. Across jurisdictions, individuals labelled with intellectual disability are often considered to lack the capacity for informed sexual agency while being subject to regimes of regulation and control (Turner & Crane 2016; Alexander & Gomez 2017). This contradictory condition,

considered both vulnerable and risky, has prompted researchers to question the structural foundations of such exclusions, including cultural taboos, institutional paternalism, and legal illegibility (Winges-Yanez 2014).

In Taiwan, these tensions are evident in both policy and practice. Chou and colleagues (2019b), evaluating a multi-year sexual health programme for adults with I/DD and their caregivers, reveal that parents and service workers initially held overwhelmingly negative attitudes to the notion of disabled people as sexual beings. Through targeted interventions, including participatory workshops and open dialogue, the study documented a shift from moral discomfort to conditional acceptance of sexual rights—yet such transformation remained precarious and highly context-dependent. The programme underscores that, without sustained engagement, prevailing attitudes tend by default to “sexual surveillance” of disabled subjects. Feely (2016) argues that deinstitutionalization has not dismantled regimes of control; rather, surveillance has become more dispersed and embedded in community-based settings, where discourses of vulnerability and propriety silently structure everyday interactions.

This insight resonates with the findings of Wings-Yanez (2014), who explores through autoethnography how professionals and family members, often under the guise of care, reproduce paternalistic norms restricting sexual expression. She highlights the paradox of support structures that simultaneously protect and infantilize, excluding disabled individuals from full sexual citizenship. Similarly, Kattari and Sherwood (2023) call for a shift towards intersectional, community-informed frameworks focused on disabled people’s desires and lived experiences. They critique mainstream approaches that treat sexuality as a site of risk management rather than relational and embodied autonomy.

Such critiques have prompted scholars to turn to crip theory to disrupt normative understandings of ability and capacity. Thorneycroft and Asquith (2019) develop the concept of “cripping criminology” to expose how disabled lives are overrepresented in criminal justice systems yet remain under-theorized and structurally marginalized. Traditional legal frameworks regarding disability—whether grounded in biomedical or social models—fail to consider the complexity and contingency of disabled personhood. Drawing inspiration from queer and feminist criminology, their work suggests that the legal category of “intellectual disability” serves as a proxy for the denial of credibility and voice, invalidating the perspectives of disabled individuals, particularly in cases involving

sexuality, with their accounts being frequently interpreted through the lens of suspicion, deviance, or naivety.

Parallel critiques emerge from Taiwanese scholarship. Chwen-Jen Lin (2010) provides a historical review of how waves of moral panic, eugenic discourse, and policy silence have shaped the sexuality of people with ID. She observes that Taiwanese institutions consistently prioritize discipline and conformity over personal development, considering expressions of desire pathological. Liang (2015) reflects on her professional journey, from enforcing disciplinary norms in disability services to recognizing sexuality as a human right. She notes that despite some progressive efforts—like the establishment of private spaces or partnerships with sexual health educators—most institutions remain paralysed by fear of public backlash, choosing silence over liberation.

These works outline a common pattern: sexuality is acknowledged only to the extent that it can be contained. Rights-based approaches, when adopted, are procedural or rhetorical, rarely transforming the material and legal conditions that enable meaningful agency. As Alexander and Gomez (2017) argue, the dominant framing of sexuality in the disability sector still concerns protection, capacity, and risk, skirting discussions of pleasure, desire, or self-determination. The notion of sexual autonomy is rendered “dangerous” when articulated by the intellectually disabled, reinforcing an episteme where rights are selectively granted and easily withdrawn (Lee & Torres Celis 2024).

This literature also reveals the limits of the global disability rights agenda when local cultures, religious norms, and legal frameworks operate in tension with emancipatory ideals. Even when international conventions, like the CRPD, affirm universal sexual and family rights, their translation into national law remains uneven, and their interpretation in judicial processes ambivalent (Lee & Torres Celis 2024). These studies reveal a profound dissonance between the formal recognition of sexual rights and the continued marginalization of disabled individuals in practice.

Rather than outright denial, what we witness is a suspension of agency—a judicial and institutional hesitation to fully include people with I/DD in sexual personhood. Such ambivalence is not merely conceptual but actively reproduced in legal reasoning, courtroom discourse, and the selective deployment of protective measures. In this article, I first situate Taiwan’s context, then critique the victim–perpetrator binary and outline the crip/queer method, before close-reading five judgments, tracing post-CRPD developments, theorizing “suspended agency”, and concluding with implications for legal interpretations. By engaging with these critical,

queer, and crip-informed perspectives, we can begin questioning how rights are not only granted but also withheld—strategically, contingently, and unequally.

[B] THE “NEVER-MATURE” IN A VICTIM–PERPETRATOR BINARY TRAP

While human rights research has challenged the erasure and overregulation of disabled sexualities, this critical work still assumes a normative legal subject, capable of making claims and being recognized as a fully “capable” legal subject. However, in local legal contexts, including Taiwan, persons with I/DD have been systematically portrayed as “never-matured” (rather than becoming-mature) subjects: not only denied adult sexuality but also made intelligible to the law only through rigid binaries of victimhood or criminality. These legal and clinical framings often sidestep the complexities of relationality and consent, preferring to adjudicate guilt or harm based on capacity thresholds that obscure the role of interpretive and embodied ambiguity.

This binary is not merely discursive but institutionalized in Taiwan’s criminal justice system, where court rulings, forensic assessments, and prosecutorial logic often adjudicate sexual events involving people with I/DD not through contextual analysis but through reductive capacity-based classifications. In this system, individuals with I/DD are frequently framed as passive victims of sexual offences. This legal binary has been constructed and reinforced through a system where state authority, medical discourse, and family protectionism intersect, with sexual agency being suspended rather than affirmed.

This logic is glaringly visible in Taiwan’s criminal courts, where Article 225 cases illustrate how legal assessments of consent often reinforce infantilizing assumptions. Research on adjudicated cases highlights the courts’ struggle in assessing sexual consent and agency, particularly under Article 225 of the Criminal Code, which penalizes “taking advantage”—opportunistically—of those with limited capacity (Li 2019; Lin 2019).

Here, it is important to differentiate between two key crimes. “Forcible intercourse” (Article 221) applies when the perpetrator uses “force, coercion, intimidation, hypnosis, or other methods against the victim’s will”. This includes physically restraining a person or making threats. The law specifies that the force does not have to be so extreme that the victim is “completely unable to resist”, only that it is against their will.

In contrast, “opportunistic intercourse” (Article 225) applies when the perpetrator takes advantage of a victim who is already “unable to resist or is unaware of how to resist” due to their own “mental, physical, or cognitive disability or similar condition”. This means the perpetrator is not the cause of the victim’s state of vulnerability but rather exploits it.

Judicial decisions often hinge on ambiguous standards, such as whether the individual demonstrated “clear refusal” or possessed “sufficient knowledge” to decide, leading to uneven protection (Lin 2019). This creates an epistemic tension where courts distinguish between a victim’s inherent vulnerability, the basis for prosecution under Article 225, and a perpetrator’s overt force, necessary for a conviction under Article 221. This distinction is difficult to make, and courts often interpret a person with I/DD’s testimony not as a reaction to a perpetrator’s coercion but rather as an inherent state of being “unable to consent/resist”. The focus on the victim’s vulnerability may overshadow the perpetrator’s actions and erase the possibility that the individual was an agent negotiating to make sense of the circumstances and whose expression of consent/non-consent was illegible to the law (Liao 2014).

Studies on individuals with I/DD accused of sexual assault reveal institutional responses grounded more in risk containment than in inclusive rehabilitation or contextual understanding. They expose a system that treats accused individuals as inherently prone to recidivism (Yang 2013; Shy & Ors 2023). Expert commentaries further reveal a lack of consensus on evaluating sexual autonomy in persons with I/DD, with contested forensic criteria concerning consent, volition, and power dynamics, such as the use of developmental age to assess capacity, the reliance on a person’s cognitive function over their expressed desires, and the challenge of interpreting ambiguous communication or non-verbal cues as either consent or non-consent (Yang 2013). These Taiwanese studies underscore how legal and medical frameworks constrain rather than enable the sexual personhood of people with I/DD, often undoing their agency in the guise of protection.

The voices and subjectivities of the most affected individuals are absent in these discussions. Few studies consider the narrative agency of people with I/DD in cases concerning their own sexual and intimate experiences. Such omission extends to the courtroom, where representation is often mediated through caregivers, social workers, and experts, reinforcing a dynamic in which people with I/DD are spoken for rather than listened to (Chen 2018). The lack of advocacy mechanisms in the justice system limits the possibility of these individuals being recognized as credible

narrators of their own “feelings”, not just safe or unsafe, but somewhere in between (Chen 2018; Liao 2014). This epistemic absence reflects a judicial imagination that struggles to perceive disabled people as sexually agentic subjects beyond risk paradigms.

Thus, it is important to acknowledge the foundational work of Chao-Ju Chen, a journalist trained in anthropology, whose series of investigative writings has significantly shaped public discourse on disabled sexual agency and institutional violence in Taiwan. Among her publications, *Dark Kingdom: Love and Sex of People with Disabilities* (幽黯國度) in 2018, *Innocent Sinner: A Girl’s Sexual Abuse Case on Campus in the Mist* (無罪的罪人) in 2019, and *Silence: Collective Sexual Abuse at a Special Education School* (沉默) in 2022 have exposed marginalized experiences and triggered social and policy discussions surrounding the entanglements of consent, vulnerability, and care (Chen 2018; 2019; 2022).

While I approach the topic through a jurisprudential lens, Chen’s work remains vital for understanding how these issues unfold in everyday practices and collective experiences. Her interventions, which critically engage the judicial system rather than reject it outright, remind us that movements for sexual justice and sexual rights for people with I/DD must go hand in hand, anchored in both critical legal reflection and lived realities. In her efforts to document cases, demand accountability, and amplify survivor voices, she employed an autobiographical methodology not just as a complement to interviews and field study methods but as a crucial means to narrativize sensitive life events that could hardly be “expressed” consistently and comprehensively (Atkinson & Walmsley 1999).

The binary framing of the victim or perpetrator operates through overt categorization and through what is left unarticulated, unacknowledged, societally neglected, or rendered legally unintelligible. What persists is a juridical atmosphere that demands clarity where ambivalence defines experience, particularly in matters of sexual consent and non-consent for people with I/DD. The marginalization of alternative interpretive frameworks and institutional reliance on reductive expertise contribute to the suspension of disabled sexual subjectivity in the legal process. To move beyond this, we must address what is articulated in judicial decisions and how legal reasoning is constructed and authored.

In this article, “suspended agency” is a concept proposed to capture juridical hesitation about which persons with I/DD are neither fully denied nor fully granted sexual personhood, as courts oscillate between partial recognitions and paternalist defaults. A crip-queer intervention

urges us to stay with complexity—acknowledging vulnerability and non-consent does not have to erase the knowledge and ability to desire, and protection can be the condition of autonomy rather than its negation. To capture this is to unpack the often-omitted ambivalence around crip desire when assessing consent or its absence—without legitimizing any act against a person’s will, irrespective of whether “resistance” is overt or not. Suspended agency also names how agency is partly acknowledged yet withheld when affirming narrative legitimacy, a structural effect of legal systems ill-equipped to engage ambivalence and uncertainty. The next section, therefore, outlines how crip jurisprudential analysis can help us read court judgments not simply as verdicts but as cultural texts that narrate the contours of sexual agency (McRuer 2006).

[C] READING JUDICIAL PRACTICES WITH QUEER-CRIP SENSITIVITIES

This study undertakes a close reading of judicial decisions involving persons with I/DD and contested questions of sexual autonomy, drawing from Taiwan’s court records accessed through the [Judicial Yuan Law and Regulations Retrieving System](#) (司法院法學資料檢索系統). As of 12 June 2025, a keyword search for “sexual autonomy” (性自主) along with “intellectual disability” (智能障礙) on the database yielded 3,206 entries of “criminal cases” (the same number as the initial keyword search on 4 January 2025), including decisions at various stages and levels of the same cases. While keyword searches were used as an initial filter, the five cases featured below were chosen for the jurisprudential tensions they signify rather than their representativeness.

Each judicial case, or even each trial and instance of a case, reveals juridico-epistemic contradictions in how sexual agency is constructed, suspended, or invalidated vis-à-vis persons with I/DD. They were selected because they occurred after Taiwan adopted the CRPD in 2014 (Sun 2019). Notably, while the human rights treaty and relevant provisions were not explicitly cited in the decisions reviewed, except occasionally, their broader normative significance provides a critical analytical frame. Although the Convention on the Rights of Persons with Disabilities Implementation Act 2014 gives the treaty domestic legal effect, citations of specific CRPD Articles in the judgments are patchy.

These judgments were chosen to illuminate interpretive ambiguities, normative tensions, and juridical framings in cases where the sexual personhood of I/DD people is put on trial. Through this interpretive lens, I aim not to generalize across all cases but to examine, meta-

ethnographically (Beach 2023), the judicial narratives that repeatedly fail to sustain the personhood of intellectually and developmentally disabled individuals, especially when they enter the legal record as “victims” of sexual acts (Noblit & Hare 1988).

This study adopts a crip-queer ethnographic reading practice—treating court documents as cultural and institutional artefacts that regulate disability, sexuality, and agency in mediated ways (Durban 2024). This approach, informed by queer and disability theorists, critiques the juridical construction of normativity and the contingent recognizability of marginalized bodies and desires (Kempapidis & Ors 2024; Watson 2025). Crip theory urges us to inquire how disability is rendered legible only through ableist norms of capacity, while queer theory questions the timelines and moralities attached to sexuality and “maturity” (Santinele Martino & Moumos 2024). Reading legal texts ethnographically permits a “thick description” of how judicial reasoning mirrors institutional anxieties about unruly bodies, uncertain subjectivities, and unsanctioned desires (Ferreira & Ors 2025).

This methodological orientation is inspired by Santinele Martino’s work on the sexual lives of people with I/DD, which foregrounds relational ethics, narrative dignity, and the critical importance of attending to the material and affective contours of storytelling (Santinele Martino & Ors 2025). While this study involves no direct interviews, it applies the interpretive practice of correctively reading court judgments, inquiring how stories are told about, and on behalf of, disabled subjects in legal contexts (Santinele Martino 2022). Rather than treating court documents as objective factual repositories, I approach them as discursive spaces where sexual autonomy is negotiated or omitted through competing institutional logics.

These logics include evidentiary standards, psychiatric authority, family intervention, and risk discourse, all shaping how disabled individuals are situated in legal and moral orders (Santinele Martino 2017). The selected cases will be introduced in the following subsections. Notably, not all judgments at every procedural level were publicly available or readily retrievable, sometimes due to anonymity requests from a party involved. Through close textual analysis, I trace how persons with I/DD are made legible in the courts, often not as autonomous sexual agents but with juridically ambivalent, thus suspended, subjecthood.

Case 1: contradictions in approaching autonomy (Supreme Court 104-Tai-Appeal-1973)

Suspended agency appears where the court acknowledges hesitation and context, yet discounts narrated refusal through resistance proxies, parcelling agency under the banner of protection.

The first case concerns a young woman with intellectual disability who alleged that a peer with a similar cognitive profile, Mr Liao, had engaged in multiple non-consensual sexual encounters with her over time. The incidents reportedly occurred in both private and public spaces—including the victim’s home, the defendant’s home, a banana field, a tin house, and a temple toilet. The lower courts accepted the woman’s testimony as credible, noting its consistency and specific details about the sexual acts, which provided the basis for the initial convictions. The focus remained on both parties’ behavioural evaluations throughout the proceedings of different instances. However, importantly, the Supreme Court explicitly introduced the need for a socio-relational framing, highlighting the “close, long-standing relationship” and “boyfriend-girlfriend” dynamic, which the lower courts had overlooked.

Ab initio, the District Court (南投地方法院102年度侵訴字第34號) treated the complainant as a passive and vulnerable victim, drawing on psychiatric assessments to conclude that she lacked sufficient understanding or ability to judge sexual acts. She was repeatedly described as being unable to distinguish inappropriate from appropriate intimacy and incapable of “effective resistance”. These findings provided the foundation for a conviction of five counts of forcible intercourse (強制性交) and two of opportunistic intercourse (乘機性交) under Article 225 of the Criminal Code.

On appeal, the High Court (台中高分院103年度侵上訴字第130號) largely echoed the District Court’s rationale, sustaining the division between knowledge to refuse and incapacity to resist. It reiterated that the woman’s cognitive impairment denied her active agency despite her statements still being deemed reliable—a duality that characterizes much of Taiwan’s jurisprudence on sexual victimization involving persons with I/DD:

while the female witness testified during the prosecutor’s investigation that she had refused the defendant and pushed him away, the said testimony was a general statement that she had refused the defendant and pushed him away, and did not detail each instance of the defendant’s sexual assault against her. Thus, it remains questionable whether the female witness, on each occasion of the defendant’s sexual assault against her, expressed her unwillingness

to have sexual intercourse with the defendant by refusing or pushing him away ... (Taichung High Court, 2014, Appeal No 130)¹

However, the Supreme Court (最高法院104年度台上字第1973號) demurred, citing inherent contradictions in the High Court's reasoning, observing that the lower court claimed the victim had refused the defendant's advances on the one hand, implying some level of sexual awareness and volition, while on the other, concluding that she could not (lacking the capacity to) understand or resist sexual acts. This judicial ambivalence hinged on the inconsistent application of the standard of "incapability of knowing to resist", the key requirement for conviction under Article 225—was the victim unaware of her right and capacity to resist, or did she actively reject the sexual advances but was overpowered?

Here, it is important to distinguish "opportunistic intercourse" (Article 225), which applies when a perpetrator takes advantage of a person who is "unable to resist or is unaware of how to resist" due to their disability, from sexual assault cases involving "forcible intercourse", which, however, focuses on a perpetrator's use of force to overcome a victim's lack of consent. The Supreme Court's decision highlighted the lower court's failure to resolve whether the victim was an agent who was actively resisting but overpowered, or if her disability rendered her incapable of resistance, thereby falling under the "opportunistic" category. This trajectory, particularly the Supreme Court's emphasis on "sexual cognition and consent ability" and its reference to international human rights, foreshadowed a growing alignment with principles enshrined in the CRPD.

The remanded High Court judgment (台中高分院104年度侵上更(一)字第12號) sought to resolve this issue by situating the interactions in a more nuanced social context. It was observed that the two parties had known each other through a special education programme and had engaged in behaviours often interpreted as affectionate, such as holding hands and watching television together, thereby raising the possibility of perceived mutual intimacy. This became a primary reason for the acquittal; the court could not definitively conclude her "inability to resist" or the "existence of force", given the relational context. The High Court acknowledged her understanding of sexual acts (eg "fuck" [打炮] and her awareness that others should not touch her) and questioned whether her disability alone meant she was "unaware or unable to resist". Consequently, the

¹ The original text in Chinese: "惟甲女於檢察官偵訊時固證稱伊遭被告性侵害時，有拒絕被告，撥開被告等語...然核證人甲女於檢察官偵訊時所為上開證述，乃概括答稱伊有拒絕被告、撥開被告等語，並未就被告各次對伊性侵害之情節逐一陳述，是被告各次對甲女性侵害時，甲女是否每次均有拒絕被告或撥開被告等表示不願與被告為性交之行為，仍有可疑".

court ruled that the prosecution “failed to prove” her inability beyond a reasonable doubt, considering other evidence.

Throughout these judgments, the woman’s voice was mediated through psychiatric reports, institutional testimony, and behavioural inferences, with little effort to situate her desires, intentions, or uncertainties in a spectrum of socio-sexual experience. While she described the acts in concrete, even vivid terms, these accounts were interpreted as evidence of compliance (due to her lack of distress) or dismissed based on perceived cognitive incoherence. Her continued contact with the accused—explained in court as “not avoiding him” and even returning to his house—was interpreted as evidence against the occurrence of trauma, rather than a reflection of the complex social realities she faced in navigating trust, dependency, and constrained relational options.

This case exemplifies how Taiwanese courts construct the sexual subjectivities of individuals with I/DD through an uneasy blend of psychiatric authority, behavioural scripting, and legal formalism. The judicial system appears unable to accommodate ambivalence—sexual uncertainty, mixed signals, or incomplete resistance—particularly when adjudicating individuals deemed *immature*. As such, the possibilities of coercion versus desire collapsed into a paternalistic framework where protection overrides recognition, in which the courts imported a *de facto* “effective resistance” proxy, then using the romantic/relational context to negate incapacity to suspend the sexual agency of persons with I/DD.

Case 2: reluctant/inconsistent framing of consent (Supreme Court 104-Tai-Appeal-3564)

Suspended agency surfaces in the oscillation between status offence (Article 227(3)) and incapacity (Article 225) frames, blurring the complainant’s will and the accused’s knowledge while toggling standards.

The second case, Supreme Court 104-Tai-Appeal-3564 (2015), involves a teenage girl medically assessed with moderate cognitive disability. At the time of the incident, she was 14 and met the adult defendant through casual social interaction. Describing him as her “boyfriend”, the girl agreed to spend time with him at a local motel, where physical intimacy occurred. After learning what transpired, her father filed a report with the authorities. The man later confessed to the conduct.

At the first-instance trial (台中地方法院103年度侵訴字第183號), the defendant was found guilty under Article 227(3) of the Criminal Code, which addresses sexual relations with adolescents aged 14 to 16.

Although the girl's cognitive condition was mentioned, the court did not invoke Article 225, which concerns interactions involving individuals with limited capacity to make sense of the circumstances or make decisions to consent. The court focused on the victim's behaviour rather than her disability status, asserting that she "did not resist" and appeared to willingly go with the defendant to the motel, suggesting her involvement was not entirely involuntary. This focus is visible in the court's reasoning:

[the alleged defendant], knowing that [the alleged victim] ... was between 14 and 16 years old in January 2014, and without mature sexual autonomy and judgment abilities, still acted with the intent to engage in sexual intercourse with her. On 2 January 2014, after inviting her out, he drove her to the Maldives Motel at [address], and without violating her will, he successfully performed a sexual act with her by penetrating her with his penis (Taichung District Court, 2014, Appeal No 183).²

This approach shifts the burden of proof onto the victim to demonstrate overt, legible non-consent, an impossible standard for many people with intellectual disabilities. It also illustrates how courts de-emphasize a victim's disability when their behaviour, even if influenced by that disability, seems to conform to the ableist understanding of consent. However, at the Supreme Court (最高法院104年度台上字第3564號), the focus shifted to whether the girl's condition should have altered the legal interpretation. A psychiatric report indicated the victim's limited comprehension regarding personal boundaries, relational risks, and the consequences of intimacy. Nonetheless, the court placed greater weight on the girl's statements during questioning, indicating she had learned about intimate relationships in school, felt affection, and desired to "try" the experience. Although she also expressed hesitation and unease, the court viewed these expressions as minor inconsistencies rather than meaningful indicators of intentionality or behaviour.

The Supreme Court explicitly upheld the lower court's finding that her statements of "voluntariness" and "wanting to try that" were consistent with adolescent development, asserting that her intellectual disability alone was insufficient to prove her having been "unaware or unable to resist". Effectively, the girl's situation was interpreted through a binary framework: either she was fully capable of consenting or fully incapable. Her mixed feelings, partial understanding, and socio-emotional vulnerability

² The original text in Chinese: "丙知悉甲...於103年1月間，係14歲以上，未滿16歲之人，無成熟之性自主及判斷能力，竟仍基於對14歲以上未滿16歲之女子為性交之犯意，於103年1月2日邀約甲出遊後，將之載往...馬爾地夫汽車旅館，未違反甲之意願下，以陰莖插入甲陰道之方式，對甲為性交行為1次得逞".

did not fit easily into either category. Eventually, the judicial decision downplayed her diagnosis and affirmed the original ruling.

This case underscores a broader legal pattern: while diagnostic assessments of cognitive conditions are acknowledged on record, they may be marginalized in practice if the individual exhibits behaviour consistent with mainstream expectations of *consenting*. In many jurisdictions, the notion of an adolescent with a cognitive disability consenting to sexual activity with an adult would be considered legally and ethically problematic. However, as the Supreme Court noted, the judicial rationale for the diagnosis not being determinative can be observed in the court's opinion that the definition of "inability to resist" should be based on the "objective physical and mental condition" and "cognitive capacity to consent", not solely on a disability handbook. The court's focus on the girl's behaviour, such as her statements of "voluntariness" and "wanting to try that", was used to support its reasoning (Supreme Court, 2015, Appeal No 3564). This is a crucial point, as the court's legal framing prioritizes a presumed voluntariness over a victim's disability.

Yet, this focus on behaviour can lead to a *de facto* requirement for clear and coherent resistance as indicators of non-consent, which may be impossible for many neurodivergent individuals navigating pleasure in confusing or pressure-filled situations. While Taiwan's law does not explicitly require active resistance in all sexual assault cases, this judicial pattern is heavily critiqued by scholars, as it—portraying and reinforcing a myth of "ideal victims" in sexual assaults—places a disproportionate burden on the victims in complicated, relationship contexts (Lin 2010; Chen 2021). And in the situations where persons with disabilities are involved, such as in this case, the *de facto* requirement imposes an ableist standard for proving non-consent, as also observed in many other jurisdictions (Harris 2018; Esmail & Concannon 2022).

Importantly, Article 225, which is specifically designed to address situations involving individuals with limited mental capacity, was not invoked. Instead, the court found the defendant guilty under Article 227(3), which criminalizes sexual relations with a person between 14 and 16 years old, regardless of whether consent was given. The court's reasoning focused on the victim's behaviour as proof of her understanding. This approach sidelined the possibility that emotional attachment, social imitation, or a desire for acceptance could coexist with a lack of genuine comprehension or readiness.

The court's focus on her voluntariness also appears to be influenced by an assumption that the father's report stemmed from an overprotective

attitude, leading the judges to consider affirming the girl's consenting agency to recognize her autonomy against paternalistic, traditional parenting. The court also observed that the case was reported by a substitute agency of legal guardianship, not the victim herself, and that she did not desire to report the defendant.

This case reveals a form of legal ambivalence that seems to recognize cognitive differences while simultaneously refusing to accommodate the lived ambiguity of decision-making, dependency, and desire among people with I/DD. By interpreting the victim's behaviour as proof of her willingness, the court flattened her complex experience to fit a legal framework that prioritizes a simplistic notion of consent over relational vulnerability. The court's acceptance of the argument relating to the victim's "voluntariness/trying" disregards Article 225. This framework, for the court's convenience, conflates two distinct legal categories of vulnerability: that of minors and that of people with I/DD, who are presumed to have limited or no capacity to consent for different reasons.

Case 3: circling judgments with epistemic tension (Supreme Court 105-Tai-Appeal-2868)

Suspended agency takes the form of evidentiary flattening, as psychiatric metrics and behavioural proxies sit beside expressed refusal without cohering into a clear recognition of consent or its absence.

The third case concerns a young woman with intellectual disability, whose sexual autonomy became the focus of prolonged judicial scrutiny across five rounds of adjudication. At stake was not only whether the sexual act in question was non-consensual but also whether the girl possessed the cognitive and volitional capacities to offer or withhold consent in the first place. At the trial court (101年度侵訴字第14號), the defendant was convicted of aggravated forcible sexual intercourse. The court found the victim's testimony credible, supported by medical reports confirming her intellectual disability and physical evidence of hymenal tears. It concluded that the defendant, aware of her condition, had engaged in sexual acts against her will.

On appeal, the High Court (102年度侵上訴字第466號) reversed this decision, re-characterizing the act as "sexual intercourse by taking advantage of incapacity", finding insufficient evidence of overt "coercion" beyond the victim's inherent vulnerability, despite her initial claims of resistance. The ruling emphasized that the girl's disability affected her comprehension and subjected her to vulnerability, leading to a conviction for exploitation rather than active force. The High Court

further underscored the need to consider the structural power imbalance and whether the girl could truly evaluate the nature of the encounter or resist effectively. This re-characterization by the High Court, moving from “forcible” to “taking advantage”, highlighted an early epistemic tension in the judicial process: how to interpret the victim’s agency when overt physical resistance was not proven and her cognitive vulnerability was undeniable.

The Supreme Court, in its 2014 judgment (103年度台上字第4570號), echoed this concern and remanded the case. It cited the CRPD to affirm the sexual rights of persons with intellectual disabilities, finding that, while adults with disabilities are entitled to intimate relations, their consent must be based on “actual capacity” and not merely on formal adulthood or physiological maturity. This direct engagement with international norms aligns with the critique of a universal, linear progression to maturity and sexual personhood, instead advocating for recognizing diverse timelines and forms of relationality (Chou & Ors 2019a). The ruling criticized the lower court’s assumption that verbal statements automatically indicated agency, instead demanding a concrete determination of “sexual cognition and consent ability”, recognizing that a person’s ability to consent is not a static trait but a complex, contextual, and sometimes ambiguous state (Lu & Wang 2022; Wang 2025).

In the retrial (104年度侵上更(一)字第5號), the High Court emphasized that although the girl exhibited some sexual knowledge, this did not negate the indicators of compromised judgment or coercion. Her testimony, clinical evaluations, and the context of their encounter suggested a lack of equal footing in decision-making. The court was critical of relying on statements such as “school had taught me about pregnancy” to assert consent, arguing that passive knowledge does not equate to the ability to make a free and informed decision. This judgment demonstrated the court’s attempt to reconcile the Supreme Court’s directives with the need for victim protection, navigating the complex interplay of a victim’s limited understanding and the perpetrator’s exploitation. The court’s decision was ultimately grounded in the finding that the victim’s limited capacity made her unable to give meaningful consent, highlighting that:

the victim’s mental age is at a level of about a 9-year-old person (moderate intellectual disability), and her ability to discern and act is compromised, including in the area of sexual contact; her ability to discern and refuse is extremely low ... Therefore, it is impossible to infer that she also had the psychological capacity to consent to sex just because the victim was an adult woman at the time of the

incident and her sexual development was mature (Taiwan High Court, 2015, Retrial No 5).³

The defendant appealed again, but the Supreme Court (105年度台上字第2868號) dismissed the appeal, maintaining that assessing sexual autonomy in intellectually disabled individuals must extend beyond verbal capacity or factual knowledge. The Court supported a holistic view incorporating developmental assessment, expert analysis, and situational context. Despite acknowledging dissenting interpretations (eg the accused claimed their intimacy was mutual and consensual), the Court affirmed that the girl's vulnerabilities—in both general circumstances and in the sexual context—rendered her unable to consent freely under the law, thus upholding the conviction. It recast contested refusal as incapacity via expert deference, shifting focus from agentic non-consent to vulnerability management. This final decision solidified a judicial approach that, while acknowledging the sexual rights of disabled individuals, prioritized a nuanced interpretation of their capacity for consent, especially when exploitation of vulnerability was evident.

Case 4: presumptions for homosexual encounters (Supreme Court 103-Tai-Appeal-3144)

Suspended agency operates behind formal neutrality, where heterosexist scripts shape how same-sex intimacy is read and protection is invoked, while the complainant's expressed will and the extent to which the will is indicated are bracketed.

The fourth case (最高法院103年度台上字第3144號) involves a reported sexual encounter between two men, of whom the complainant (Mr A) had been certified with an intellectual disability. While same-sex relations are not criminalized in Taiwan, their appearance in legal reasoning remains rare, particularly when intersecting with disability and questions of sexual consent. This case, therefore, provides a crucial lens through which the courts handle non-heterosexual interactions under frameworks primarily built around male perpetrator/female victim dynamics. The facts concern an incident after A was invited to the defendant's home under the pretext of socializing. According to A, the defendant initiated bodily contact, with which A did not feel "totally uncomfortable" until later actions with sexual intentions, such as touching his genitals and buttocks, and anal probing.

³ The original text in Chinese: "A女心智年齡約9歲水準（中度智能不足），其辨識而行為之能力有明顯缺損，性接觸方面亦然，其辨識能力及拒絕能力極低等情，已如前述。是本件自然無法以A女於案發時已為成年女子，其性之發展已經成熟，即推論A女在心理上亦有性的同意能力".

Among all allegations, the High Court acquitted the defendant on the charge of anal penetration due to inconsistent testimony and lack of corroboration. It convicted the defendant of “forced indecency” in an indoor nursery and “sexual harassment” in a vehicle. The court emphasized that these locations were part of a special education day centre, where the defendant worked as an assistant caregiver, thereby framing his actions not as isolated events but as an exploitation of a professional position of authority. The court found that even without overt physical violence, the defendant’s actions constituted a “violation of will” because he “clearly knew the victim disliked his touching and had expressed refusal verbally or physically, but still forcibly proceeded against the victim’s will” (Taiwan High Court, 2014, Appeal No 32). This interpretation broadened the understanding of coercion to include exploiting a known aversion within the specific context of a caregiving relationship.

The High Court (台灣高等法院103年度侵上訴字第32號), reviewing the District Court’s conviction, partially acquitted the defendant on some charges (including the anal penetration claim) due to insufficient evidence but upheld convictions for “forced indecency” and “sexual harassment”. In doing so, the High Court framed the convicted encounters as opportunistic exploitation. It underscored A’s relational and communicative limitations, pointing to the power imbalance inherent in the situation, and found that the defendant had exploited A’s vulnerability. Notably, the court refrained from making the same-sex nature of the encounter legally salient. It treated the facts through a heterosexist interpretive lens—not by explicitly devaluing same-sex relationships, but by failing to acknowledge how the same-sex dynamic might have shaped the victim’s experience. The court focused on a universal concept of violation without considering possible internalized stigma or potential relational ambiguities that could be specific to a queer disabled context.

The Supreme Court upheld the conviction but similarly sidestepped any critical engagement with the queer implications of the case. It did not discuss how A’s male identity or the same-sex dynamic might shape the interpretive challenges around consent, vulnerability, or social stigma. It is critical to understand that this does not mean the assault itself was different—the act remains non-consensual and culpable; yet, the interpretive challenges arise because a same-sex encounter subverts the traditional legal and cultural scripts of sexual assault, which are often rooted in heterosexist narratives. In this case, the court failed to consider how the victim’s responses or reluctance to report might be tied to unique social pressures or internalized stigma.

Instead, the Court validated the High Court's emphasis on cognitive and situational vulnerability, reaffirming that the complainant's partial sexual knowledge did not equate to legal capacity. The ruling strengthened the use of psycho-behavioural assessments as primary determinants of agency, avoiding broader discussions on how homosexual encounters complicate prevailing legal scripts. Though dismissed by the Supreme Court later, the defendant once argued, playing into the stereotypes of male homosexual encounters and highlighting this heteronormative framing by attempting to use his own identity as a defence:

Actually, the appellant has a wife and children and is a *normal man*. How could he possibly have sexual desires for another man, and he would not gain sexual satisfaction from it? The original trial failed to notice this and convicted the appellant of two counts of aggravated forced indecency, which is a great injustice (Taiwan Supreme Court, 2014, Appeal No 3144, my emphasis added).⁴

This silence is deafening. Mr A's narrative was not a direct account but was instead filtered through the testimonies of professional caregivers and other students with intellectual disabilities. This process was necessary because the case did not originate from A's reporting but from a gas station manager who noticed his abnormal behaviour. Judgments at various levels consistently noted the victims' communication difficulties and that their testimony was "not only inconsistent among themselves but also clumsy with words" (Taiwan High Court, 2014, Appeal No 32). This highlights a significant barrier in meeting the legal system's demand for a clear and coherent narrative of events. This unintelligibility in courtrooms renders A's agency neither recognized nor denied but suspended—awaiting to be made sense of where sexual autonomy was negotiated (cf Lee & Ors 2025).

This case reveals how Taiwan's judicial system, while formally neutral toward sexual orientation, operates with unspoken heterosexist presumptions. The disabled male complainant is protected by the courts declaring queer context legally irrelevant—not as a subject of queer desire but as a cognitively impaired person incapable of resistance. The law's silence on queerness, combined with its procedural reliance on medicalized incapacity, reproduces a regime of suspended agency, where the complexity of identity, desire, and relational nuance is systematically flattened for legal readability.

⁴ The original text in Chinese: "其實，上訴人有娶妻生子，係正常男子，豈會另對男人產生性慾，更不會因此獲得性滿足，原審未察，論處上訴人二個加重強制猥褻罪刑，至為冤枉云云".

Case 5: exception and erasure of queer possibility (Supreme Court 108-Tai-Appeal-1318)

Suspended agency persists at the intersection of youth, vulnerability, and queer desire: the judgment affirms harm, yet neglects the queerness of the context, locationally and situationally.

In the final case,⁵ the complainant (Mr A) was only 16 and had been medically diagnosed with a mild intellectual disability, characterized by slow reactions, limited understanding, and weak self-protection capabilities, making him easily influenced or subdued, according to his schoolteachers. The encounter occurred in a men's public restroom at Taipei Metro Xiangshan Station, *notorious* as a "gay cruising space". Mr A alleged that the defendant, Mr Qiu, a much older man, engaged in indecent acts, including lifting his clothes, pulling down his pants, touching his buttocks and genitals, and kissing his abdomen.

While initial allegations included anal penetration (sexual intercourse), the first-instance court ultimately reclassified the offence as "indecent assault by taking advantage of circumstances" (乘機猥褻罪) under Article 225, paragraph 2 of the Criminal Code, as anal penetration was not proven. The case traversed multiple levels of the judicial system, reaching the Supreme Court in 2019 (最高法院108年度台上字第1318號). Unlike most cases involving persons with intellectual disabilities, where a man is alleged to have assaulted a woman or a girl and the case is often brought to the authorities by a caregiver, this case involved two men. The victim himself reported the incident to his school counsellors, raising additional legal and cultural questions about how homosexuality intersects with perceived vulnerability and consent.

At the High Court (台灣高等法院107年度侵上訴字第144號), the trial focused on whether A's cognitive limitations rendered him unable to consent or object meaningfully. The judgment, citing psychiatric evaluations, found A as having limited comprehension and situational awareness, framing the sexual act as non-consensual, based on his disability status and the encounter's suddenness. The court placed weight on the argument that the defendant had exploited opportunistic circumstances, invoking Article 225 of the Criminal Code. Key evidence included the victim's consistent testimony, DNA matching the defendant

⁵ The case stands out among the search results because the complainant and the defendant were both male. Most cases (over 90%) involved a male defendant and a female complainant, often with the incident reported by a parent or caregiver. Although this case falls outside the core selection period, centred on the years right after Taiwan incorporated the CRPD into its domestic legal system, it was included due to its uniqueness.

found on A's abdomen, and A's immediate and distressed report to his school counsellors and teachers. The defendant's admission to the police that he "felt the victim might have mental problems" further established his subjective awareness of A's vulnerability; however, the defendant also claimed that "I thought he was OK with it when I got closer to him" (Taiwan High Court, 2018, Appeal No 144).

The Supreme Court upheld the Taiwan High Court's conviction and did not engage with the "cruising-ness" of the public toilet. Presence in a space associated with sexual subcultures never implies consent; the analysis here does not seek to lower the threshold for proving non-consent but to show how such contexts are so illegible to courts. This omission imposes an assumed non-queer identity on Mr A, a person with I/DD, foreclosing the layered implications brought by a queer context. While rightly identifying a crime, the Court's reasoning denies Mr A's agency by treating him solely as cognitively impaired and therefore incapable of *cruising*, rather than as a legal subject who may harbour sexual desire and the capacity to refuse.

To be clear, this does not reframe an assault as consensual; it simply urges caution against inferring a lack of sexual agency from intellectual disability. In this case, the courts did not employ pathologizing or discriminatory language toward individuals sexually attracted to others of the same sex; nor did they acknowledge the queer dimension of the encounter, thereby missing an opportunity to inquire how non-normative sexualities are adjudicated when both disability and homosexuality are at play. The silence suggests a juridical discomfort with queerness, not through criminalization but through omission—a passive refusal to consider differentiated understanding, context, or protection regarding queer disabled sexualities.

The judgment reflects how the legal system continues applying universal standards of consent and capacity to complex socio-relational dynamics without recognizing specific power matrices. The particularities of this case—its same-sex nature and the context of a gay cruising space—are collapsed into a generalized schema of incapacity and opportunism. The court's approach avoids the more difficult task of discerning how these unique factors might have shaped the encounter, instead preserving a singular, narrow understanding of the disabled person as a subject legible only through a protectionist lens.

A's mental capacity is indeed flawed ... Although A had received relevant education on sexual autonomy and had been taught to protect himself, on the day of the incident, he was suddenly asked by the unknown defendant to go into the toilet, and subsequently

allowed the defendant to lift his shirt, pull down his pants ... without taking any action or resisting. This is sufficient evidence that A's intellectual disability rendered him unable to understand the meaning of indecent, and how to resist inappropriate indecent behaviour, in a state of being unable to resist the defendant's act, which is very clear. The defence counsel, based only on the psychiatric report that stated A could focus and gave simple yet relevant answers ... concluding that A was not unaware or unable to resist was a mistake (Taiwan High Court, 2018, Appeal No 144).⁶

This protectionist framing is evident in the High Court's reasoning, which acknowledges A's vulnerability through a psycho-behavioural assessment while simultaneously disregarding a contextual analysis of the same-sex encounter itself. Instead of exploring the interpretive challenges inherent in this male-on-male interaction, the court focused on A's "slow reactions, limited understanding, and weak self-protection capabilities", and the defendant's admission about the opportunity of committing the assault. The court's focus on A's incapacity and vulnerability serves as the primary basis for the conviction, effectively protecting him while simultaneously flattening the complexities of the queer context of the event.

The final two cases—2014 and 2019—are the only ones involving a male complainant and a male defendant. The courts acknowledged the same-sex context but treated disputes over both parties' sexual orientation as irrelevant. The judgments adopt a formally neutral stance: same-sex desire is neither pathologized nor affirmed, subjected to consent scrutiny. Yet this neutrality is narrow. Sexuality is quickly subsumed under diagnostic and behavioural tests of capacity and "resistance", with little engagement with the affective and social textures of queer disabled desire. Even when willing to see same-sex encounters as potentially non-criminal, the courts ultimately "suspend" sexual agency, recognizing non-normative intimacy only insofar as it is legible within a protective legal logic.

⁶ The original text in Chinese: "A男心智程度確有缺陷...A男雖曾接受過相關的性自主課程，也被教導要自我保護，然案發當天突遭非相識之被告要求至大號間廁所，復任由被告撩起其上衣、拉下褲子...卻未為任何之處置或抗拒行為，足證A男應係因心智缺陷，致無猥褻行為之理解力，對於不當之猥褻行為亦不知如何抗拒，處於不知抗拒被告對其為猥褻行為之情狀，甚為顯然。辯護人僅憑鑑定報告書記載A男注意力良好、回答簡單，然皆切題...即認為A男並非不知或抗拒猥褻之行為者，顯有誤會".

[D] HUMAN RIGHTS NORMS INVOKED, SEXUAL SUBJECTIVITY RECAST

While the five cases illustrate how courts routinely suspended sexual agency through clinical ambiguity or evidentiary contradiction, they largely excluded any reference to international human rights. Nevertheless, in 10 criminal judgments between 2014 and 2024 (identified via a supplementary search),⁷ Taiwanese courts explicitly cited the CRPD—mostly on legal capacity, non-discrimination, and sexual/family life. Although these references were not always central to the reasoning, their appearance signals a discursive shift: international human rights language began to offer new legal idioms for recognizing complex sexual subjectivities, where personal agency remained contested or unclear.

Consider, for instance, the 2013 ruling by the Tainan Branch of the Taiwan High Court (台灣高等法院台南分院101年度侵上更(一)字第74號), concerning a young woman with mild I/DD in a long-term sexual relationship with a family friend. Whereas the district court found her incapable of giving meaningful consent, the appellate court considered the consistency of her statements, her affectionate expressions towards the man, and her ability to distinguish between different forms of physical intimacy. The judge, while not explicitly citing the CRPD, invoked other international human rights declarations (such as the 1971 UN Declaration on the Rights of Mentally Retarded Persons and the 1997 Valencia Declaration on Sexual Rights) to affirm the sexual rights and dignity of persons with disabilities.

The High Court argued that “general societal values” should not lead to their “objectification” or a “definite prohibition” on their sexual relations, emphasizing that individuals with I/DD possess sexual needs and rights, including the right to consent and marry. Although the defendant was ultimately convicted, the judgment remains significant for partially reframing the woman with disabilities as not merely a passive victim but a person, an agent with desires, albeit interpreted through the lens of relational power dynamics and cognitive vulnerability. In subsequent cases, such as a 2015 decision by the Taiwan High Court, Kaohsiung Branch (台灣高等法院高雄分院104年度侵上訴字第129號) and a 2020 Supreme Court ruling (最高法院109年度台上字第4036號), courts invoked

⁷ Supplementary keyword search of the Judicial Yuan database on 10 June 2025, combining “CRPD/身心障礙者權利公約” with “sexual autonomy/性自主” and “consent/同意”, filtered to criminal (刑事) decisions; results were deduplicated by case (removing multiple instances/appeals of the same matter).

the CRPD to defend the dignity of complainants with disabilities, citing not only sexual autonomy but also psychosocial well-being.

These international references often coexisted with a more traditional reliance on psychiatric diagnoses and clinical expertise, resulting in hybrid forms of legal reasoning. In Kaohsiung District Court's 2016 ruling (台灣高雄地方法院105年度侵訴字第86號), the court convicted the defendant of forced sexual intercourse against a victim with mild intellectual disability. While the CRPD (Article 17) was invoked to underscore the victim's dignity and integrity in sentencing, the court explicitly found that the victim, despite her disability, was able to understand and express refusal, and thus was not "unable to resist" under Article 225. This instance highlights a judicial effort to recognize the victim's agency in expressing non-consent, even as the rights discourse mainly triggers protective measures.

While the five illustrative judgments show international rights instruments informing judicial reasoning on sexual autonomy, the wider corpus reveals other patterns. In the 2015 Hualien District Court decision (花蓮地方法院104年度侵訴字第13號) and the 2017 Kaohsiung High Court ruling (高等法院高雄分院106年度侵上訴字第43號), CRPD citations sit in prefatory remarks with little effect on the verdict's interpretive logic. Others, such as the 2016 Kaohsiung District Court case noted above, draw on international and scientific sources chiefly to bolster psychiatric expertise or a protective logic, without rethinking core assumptions about sexual capacity, affirmative consent, or the legitimacy of non-normative intimacy.

These judgments show a patchy, often symbolic, uptake of international human rights norms. CRPD citations may signal an aspiration to rights-based reasoning, yet they seldom prompt courts to reimagine legal subjectivity or sexual agency. Tellingly, such references appear chiefly when they bolster protective frameworks. Few rulings treat sexual rights as positive entitlements or as part of a broader affirmation of sexual citizenship. More commonly, the CRPD is invoked to fortify safeguarding, stressing procedural equality or preventing further harm, rather than asking whether persons with I/DD expressed an autonomous will to pursue intimacy on their own terms. The result is a familiar paradox: the vocabulary to support sexual agency exists, but its deployment often reinscribes the paternalism it purports to resist.

This uneven integration of human rights language into judicial practice attracts renewed scrutiny of how legal systems navigate vulnerability and desire. Rather than focusing solely on moments of affirmation or denial, we might instead examine how sexual agency

is suspended, particularly at the intersection of clinical testimony, legal procedure, and familial intervention. What emerges across both the core and supplemental cases is not merely a failure to adjudicate consent but a deeper epistemic impasse: a reluctance to accept that persons with I/DD may contain complex, affectively rich subjectivities. It is within this impasse that a crip/queer jurisprudential lens becomes most urgent. By unsettling normative demands for linear narrative and categorical resolution, such a lens advocates a slower, more situated mode of legal engagement that foregrounds relational ethics, ambiguity, and interdependence, as advocated by feminist legal scholars in Taiwan (Lu & Wang 2022; Wang 2025).

While these rights-aware cases mark a discursive shift, they do not dismantle the scaffolding that suspends agency. Instead, they gesture towards the possibility of a more context-sensitive jurisprudence—one that might, over time, better accommodate both the risks and rights associated with sexual expression among persons with I/DD. These insights deepen our understanding of how Taiwanese courts—and potentially those elsewhere—grapple with the entanglements of desire, capacity, and vulnerability. In what follows, I return to the conceptual terrain to consider how “suspended agency” may not only describe these juridical patterns but also provide a critical tool for reimagining legal responsibility through a crip-queer ethic of relational justice.

[E] “NO ALTERNATIVE?” REPARATIVE FOR THE SUSPENDED AGENCY

The cases analysed above trace more than individual verdicts, revealing a phenomenon of suspended agency—a condition in which persons with I/DD are neither fully denied nor fully granted sexual personhood. The law hesitates: while occasionally recognizing partial capacities and affirming rights to intimacy and sexual autonomy, it rarely sustains such recognition when agency becomes entangled with ambiguity, dependency, or non-normative expressions of desire. This procedural and affective suspension positions individuals between contradictory epistemic demands (Santinele Martino 2020).

The concept of “suspended agency” marks a key intervention in crip and queer theoretical perspectives. Unlike liberal paradigms that seek equilibrium between autonomy and protection, a crip-queer approach begins with the premise that no such balance is fully attainable or normatively neutral (Puar 2017). As Kafer (2013) reminds us, the legal subject is always already racialized, gendered, and able-bodied—a

fantasy of coherence against which disabled, queer, or interdependent lives appear deficient. Thus, suspended agency is not a by-product of legal inconsistency but a symptom of the law's structural incompetence to accommodate differences.

Rather than resolving this suspension through sharper diagnostic thresholds or statutory definitions, a crip-queer intervention—aligned with feminist critiques of liberal autonomy that equate independence with moral and political ideals—urges us to stay with the complexity. In this view, justice must account for individual rights and the social structures that sustain (or fail to sustain) dependency relationships (Kittay 1999). It prompts a rethinking of consent: what if consent is not always affirmative, or refusal explicit? What if knowledge and desire coexist with hesitation, confusion, or attachment? And what if protection were reimagined not as the negation of agency but as its condition of possibility?

Here, relational ethics offers a more generative path forward. Such ethics does not presume a stable, universal model of capacity or agency, but calls for close, case-by-case readings—attentive to narrative, context, personality, communicative style, and affective atmosphere (McRuer 2006). In the legal domain, this means interpreting judgments through not only their formal reasoning but also narrative form: whose story is told, how contradictions are resolved or obscured, and how the disabled subject is rendered either knowable or illegible. Across the Taiwanese cases, courts interpret identical diagnostic labels, psychiatric assessments, or witness statements in divergent ways, producing inconsistent accounts of agency. In one instance, the subject appears emotionally naïve yet physically cooperative, and in another, cognitively impaired yet sexually aware.

This interpretive fluidity is rarely acknowledged as such. Instead, decisions hinge on implicit norms regarding what counts as real understanding, genuine resistance, or proper subjecthood. Hence, in developing the concept of *suspended agency*, this article contributes to ongoing debates in socio-legal and disability studies about how agency is imagined, recognized, or deferred in institutional contexts. Traditional legal approaches tend to frame agency through binary logic—either an individual is fully autonomous and capable of consent or entirely incapacitated and thus requires protection (Lin 2019; Chen 2022). This framework fails to capture the affective and temporally contingent nature of agency experienced by people with disabilities (Thorneycroft & Asquith 2019).

Drawing on queer theory's challenge to normative developmental timelines (Freeman 2010) and crip theory's critique of ableist metrics of coherence and productivity (McRuer 2010; Santinele Martino & Fudge Schormans 2020), suspended agency foregrounds the legal system's discomfort with ambiguity. It names a jurisprudential condition wherein the individual's agency is acknowledged partly (sufficient to render them complicit or intelligible) but simultaneously withheld when affirming desire, autonomy, or narrative legitimacy. This suspended state is not merely the result of epistemic uncertainty or forensic caution, but a product of legal structures ill-equipped to engage with refusal and ambivalence, or consent and hesitation, not due to inadequate knowledge or ability to make sense, but because the relationships complicating the situation are simply too confusing.

Crip-queer approaches invite us to understand agency as something not possessed in isolation but negotiated across interdependencies, affective attachments, and situational supports. In this light, suspended agency is not a deficiency of the disabled subject, but a structural effect of legal systems built around normative presumptions linking knowing and acting. The crip analysis resists the impulse to resolve the ambiguity; it interrogates legal outcomes and the broader conditions of (non)recognition that shape how disabled lives are felt, regulated, and remembered. A crip-queer ethics of judgment does not offer a universal solution but recognizes that justice for individuals with I/DD requires more than protective intention. It demands that we take seriously the diversity in personality emerging through ambivalence, not despite it.

[F] CRIPPING JURISPRUDENCE, RECOGNIZING QUEER AMBIVALENCE

This article examines how Taiwan's criminal courts adjudicate cases involving persons with I/DD and contested claims of sexual consent, knowing and knowability, and vulnerability. Rather than resolving the tension between protection and recognition, courts often oscillate between partial acknowledgments of autonomy and paternalistic default modes, ultimately suspending legal personhood when most needed. The concept of *suspended agency* names this juridical hesitation: a condition where individuals with I/DD are neither fully denied nor granted subjecthood, and where the evidentiary threshold for consent is structurally out of reach.

A crip-queer jurisprudence, by contrast, does not seek universal fixes but invites us to dwell in ambivalence—to make space for uncertainty

without erasure. As disability theorists remind us, legal systems often valorize autonomy, coherence, and productivity—values at odds with the interdependence and unpredictability that shape many disabled lives. Applied to sexuality, such ideals tend to regulate rather than empower. What is needed is not merely a more inclusive legal framework but a rethinking of legal personhood, which centres desire, vulnerability, and relationality.

This is not a call to abandon protection but to reimagine it. As mentioned, journalistic works by Chao-Ju Chen exemplify how lived experience, narrative, and public critique can inform legal change from the ground up. Realizing sexual agency for persons with I/DD requires working both within and beyond the legal system. Addressing how law constructs and collapses/denies sexual personhood simultaneously, this study contributes to broader efforts to rethink justice, not as a destination of clarity but as an ongoing, ethically fraught practice of listening, witnessing, refusing to look away, and thinking otherwise.

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