Rule of Law and the Criminal Justice Reform in Japan

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ABSTRACT

An independent and impartial judiciary is fundamental requirement of rule of law. In this regard, Japanese criminal justice system has always been problematic and criticized as “hopeless”. The conviction rate in Japan is over 99%, and the statistics casts serious doubt of impartiality of the court, as well as show the problem of justice, in terms of defendants’ human rights and the fundamental principle of the ‘presumption of innocence’. Indeed, serious structural problem in Japanese criminal justice system causes numerous human rights abuse in the custodial interrogations and serious wrongful convictions against innocent individuals.

In response to several criticisms toward the Japanese judicial system, the Japanese government commenced a comprehensive judicial reform in 2000. As one of the reform projects, a bill was enacted in 2004 to introduce a quasi-jury system (the so-called ‘Saibanin system’) and to revise the Code of Criminal Procedure. This new system has come into force in 2009. This is the first time since the end of the World War II 60 years ago for Japan to realize a system of citizens’ participation in the court system.

Although this new system has several progressive aspects, it cannot be evaluated as a victory in terms of fundamental human rights in the criminal procedure and the prevention of wrongful convictions. This paper describes the process of the reform and their subsequent impacts, as well as remained agenda for criminal justice reform in Japan from the perspective of rule of law.

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I. INTRODUCTION

An independent and impartial judiciary is a fundamental element in a rule of law society. Although the Japanese society has a long legal tradition, its modern criminal justice system has been characterized as problematic and “hopeless” by legal scholars. For example, conviction rate in Japan stands at over 99 percent. These and other statistics cast a serious doubt on the impartiality of Japanese courts and demonstrate serious flaws in protection of human rights and presumption of innocence during legal proceedings. Indeed, serious structural problem in Japanese criminal justice system causes numerous human rights abuse in the custodial interrogations and serious wrongful convictions against innocent individuals.

In response to these concerns, in 2000 the Japanese government launched a major judicial reform. As one of the reform projects, a bill was enacted in 2004 to introduce a quasi-jury system (Saibanin system) and to revise the Code of Criminal Procedure. This new system has come into force in 2009 and for the first time in over 60 years Japanese citizens got a chance to participate in court proceedings.

Although this new system has several progressive aspects, it cannot be evaluated as a victory in terms of fundamental human rights in the criminal procedure and the prevention of wrongful convictions.

This study firstly describes the fundamental problem of criminal justice system in Japan. Secondly it describes the process of the recent criminal justice reforms and discusses how far the reform could redress the systematic problem and examine their subsequent impacts on the criminal justice system. This paper further discusses remained problems of criminal justice in Japan and identifies current agenda for the comprehensive criminal justice reform to prevent wrongful convictions.

II. OVERVIEW OF THE JAPANESE JUSTICE SYSTEM

A. History

1. In 1890, Japan enacted its first Code of Criminal Procedure which was largely inspired by the German civil law system. At that time, Japanese legal system did not use an adversary system, nor did it incorporate the due process or human rights protection. However, following democratic

movements during the Taishou Era, in 1928 Japanese government introduced a jury system.\(^4\) Although only men could become jurors and their verdict served merely advisory purpose, the introduction of jury system represented a major effort of modernizing Japanese criminal justice system. This jury system operated until its suspension in 1943.\(^5\)

2. After its defeat in World War II, Japan established the New Constitution which identified human dignity, democracy, human rights and independence of the judiciary as the main guiding principles of the nation.\(^6\) The Code of Criminal Procedure was also amended to incorporate the principle of due process, a fundamental bill of rights and an adversary model of trial procedure - all of which were influenced by the common law tradition.\(^7\) Without a doubt, The new justice system was designed to safeguard human rights and inspired great expectations in the Japanese society.

3. Unfortunately, in practice Japan’s judicial system evolved to be very different from its intended design to serve as the ‘court for the people’ and has found itself deeply hampered by the influence of bureaucracy and other factors. The following sections of the paper outline some of the factors that hampered the development of the criminal law in Japan.

For example, the jury system was not re-introduced following the WWII, and all judicial decisions were made by judges without any citizen participation. It is important to note that most of judges in Japan are appointed from a pool of young lawyers who passed the national bar examination about one year before their appointment. Once these young elites are appointed as judges, they are trained within a career system operated by the Supreme Court without much exposure the legal practice and with little attachment to society. Naturally, these young elites who are kept apart from the outside world can hardly understand the needs of ordinary citizens.

Due to the powerful control of Japan’s Supreme Court over the judges, few of these judges dare to challenge the system and promote legal reform. For example in the 1970s, the Supreme Court started rejecting the appointments of many candidate judges and discriminating against several judges in terms of promotion and compensation because of their judicial activism. Such control measures by the Supreme Court had a chilling effect on the entire judiciary and sent an effective message to judges who

\(^4\) Baishinbō [Jury System Act], § 50 (1923) (Japan).
\(^5\) While some critics argue this jury system did not emerge in Japanese Society, other critics emphasize its positive aspect. See Seiichi Nakahara, https://m-repo.lib.meiji.ac.jp/dspace/bitstream/10291/9172/1/horitsuronso_41_4-5-6_505.pdf.
\(^6\) NIHONKOKU KENP [Constitution], preamble, art.11, para. 13, 31-40, 76 (1946) (Japan).
\(^7\) Keiji sosohō [keisohō] [Code of Criminal Procedure] (1949) (Japan).
attempted to promote change. We have also witnessed numerous instances where judges who acquitted defendants in controversial cases were later re-located to rural area as an unofficial punishment for their decisions.

As a result, the Japanese judiciary lost its initial aspirations and became deeply bureaucratic. For example, the percentage of plaintiff victories in lawsuits against the government, which was approximately 10 percent in late 1960s, declined to 2-3 percent in the period from 1980 to 2000.8 In criminal justice, the acquittal rate has been decreasing and has become less than 1 percent.9

B. A Serious Problem in Criminal Justice

1. Fact Finding

Although the Japanese Code of Criminal Procedure notes the presumption of innocence,10 in reality, defendants have a de facto obligation to prove their innocence during trial proceedings. In Japan, the conviction rate is higher than 99.0 percent.11 Judges rely heavily on prosecutor arguments and endorse police investigations without serious analysis of the evidence.

2. Structural Problems

Japanese criminal law scholar Ruuichi Hirano noted that “in Western countries, court is the place where guilty or not guilty is judged, whereas in Japan, court is the place where guilty verdict is confirmed.”12 According to Hirano, the root of the problem stems from the criminal justice system that places greatest emphasis on investigation and interrogation of defendants rather than on trial proceedings. This has led to the preeminence of confession and created a police culture obsessed with long custodial interrogations and manipulation of detainees into self-incrimination.

(a) Pre-trial Detention and Custodial Interrogation

If a person is arrested in Japan, he or she could be detained for as long as twenty-three days under the control of police authority. Within these 23 days, suspects are obliged to face interrogation in small dark rooms with neither electronic monitoring systems nor any Miranda warnings installed. Attendance of attorneys is not permitted during these interrogation sessions.

9. Id.
Interrogation sessions lasting more than eight hours are not uncommon in Japan.

(b) Misconduct

Police interrogation sometimes entails serious misconduct aimed to manipulate detainees into self-incrimination. In many wrongful conviction cases, exonerated innocent people reported serious police misconduct such as verbal abuse, intimidation, psychological pressure, coercion into self-incrimination, and deceit. Such circumstances naturally force a significant number of false confessions.

(c) The Preeminence of Confessional Statements

Confession statements extracted under the above-mentioned conditions have become the main source of evidence for convictions in Japan. Article 322 in the Code of Criminal Procedure (CCP) allows admissibility of confession statements unless a judge finds a confession to be either coerced or unreliable. However, courts have been reluctant to identify either coercion or unreliability and most confessions are allowed in courts as a direct proof of guilt. Although substantial number of defendants noted that their confessions were forced under pressure, intimidation or deceit, judges rule confessions to be admissible in most of the cases.

Although Article 38 of the Constitution as well as Article 319 of the CCP state that no defendant can be convicted merely through self-incrimination without corroborating evidence, most judges rely excessively on confessions as proof of guilt. There is strong belief, almost a myth, among Japanese judges that “when a suspect confesses to a serious crime without any proven coercion, [the confession] voluntarily and reliable”. These factors have contributed to a substantial number of wrongful convictions.

(d) Lack of Evidence of Disclosure to Defense

Until 2004, the Code of Criminal Procedure had no provisions requiring

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13. For instance, author defended 5 defendants in Chofu Station case. Supreme Court found indictment to be illegal (Sep. 18, 1997), and Tokyo appeal court found all defendants to be not guilty (Dec.12, 2001). All the defendants who once confessed noted police coercion and deceit (5 defendants submit their statement with regard to the interrogations).

14. As for 4 Innocent-death cases which I discuss later, the period from arrest to confession was 113 days in Saitagawa case, five days in Menda case, five days in Matsuyama case and three day in Shimada case. In all these cases, defendants were detained supplemental detention center and long interrogation was conducted until midnight and confession was obtained.

15. Nagoya Kōtō Saibansho [Nagoya High Ct.], Dec. 26, 2006, Hei 17 (ke) no. 4, 1235 HANRET TAIMUZU [HANTA] 94 (Japan). The Center on Wrongful Conviction in North Western School of Law, lead by Steven Drizin criticized this tendency in the amicus brief on Nabari Case before the Supreme Court of Japan.

16. Shihōkensúyō [The Legal Training and Research Institute of Japan], ZIHAKU NO SHINYŪSEI [The Credibility of Confession] (1991). It was written by three leading criminal judges. It studied 49 exonerated cases which the credibility of the confessions was finally denied. Shimada was acquitted in 1989.
prosecution to disclose evidence and defense had no right to request disclosure from prosecutors. The Japanese Supreme Court recognized that courts can order prosecutors to disclose particular evidence to defendants as part of their power of presiding (1969 Supreme Court Ruling). However, courts recognized that decision to disclose is at the discretion of judge and few judges were willing to order such disclosure. Thus, it was very difficult for defendants to obtain evidence in the control of prosecutors.

3. Wrongful Convictions

Because of these structural deficiencies within the criminal justice system, Japan has witnessed many wrongful convictions of innocent people. From 1983 to 1989, four innocent people were exonerated from death row. These defendants spent some 28 to 33 years in prison and their release created awareness of structural deficiencies present within the legal system since all of these defendants were forced to confess after long and coercive police interrogations. In addition to these cases, Japanese society recognized at least 50 serious, and famous, wrongful conviction cases in which defendants were finally exonerated following long and traumatic experiences as prisoners. Nevertheless, wrongful convictions are unlikely to end in the near future.

III. INTRODUCTION OF THE SAIBANIN SYSTEM

A. Comprehensive Reform Proposal

Recognizing the problems mentioned in the second part of this article,
the Japan Federation of Bar Associations (JFBA)\textsuperscript{23} proposed a comprehensive judicial reform in 1999.\textsuperscript{24}

The objective of the reform was to dramatically transform the bureaucratic justice system into the one that served to protect rights of citizens. In order to achieve this goal, the JFBA had two major reform proposals. First, the Association wanted a complete reform of judicial appointment system. The JFBA demanded judges to be appointed from a list of experienced lawyers who have been practicing law for at least ten years. This reform in the appointment system was suggested in order to break up the careerist nature of Japanese judges. Second, the JFBA proposed to introduce a jury system in order to establish a democratic judicial order.

B. Support for the Jury System

The introduction of the jury system has become one of the main legal reform slogans in Japan.\textsuperscript{25} The Japanese civil society supported jury system for the following reasons:

First, jury system was assumed to be the most democratic form of citizen participation system. In order to transform the bureaucratic judicial system and realize social change in Japanese society through the judicial arena, the jury system was expected to be a strong tool.

Second, the jury system was expected to be a vehicle for reforming Japanese criminal justice system. If ordinary people participate in fact-finding, trial testimony will become central part of this process, rather than large amount of statements that were made in investigating stages.

Third, the presumption of innocence would be taken much more seriously in a jury system rather than in the current system. In a jury system, judges have no power to intervene in the jurors’ fact finding. Judges must concentrate on presiding over the trial to ensure that proper proceedings are followed. It is reasonable to

\textsuperscript{23.} The Japan Federation of Bar Associations (JFBA) is an autonomous body comprised of the 52 local Bar Associations in Japan and their members founded in 1949. Their purpose is the protection of fundamental human rights under the Japanese Constitution and the realization of social justice.


\textsuperscript{25.} In early 1990s, The Supreme Court, led by the chief judge Kouichi Yaguchi, started an extensive research of jury system and lay judge system. Many judge went to the US and European countries to research citizen’s participation systems. However, the Supreme Court did not reach the decision to introduce citizen’s participation system into Japan and took rather negative position toward citizen’s participation.
assume that ordinary people living in the same community as defendants will carefully consider all factors involved before convicting their fellow citizens. Thus, presumption of innocence is likely to be respected more in a jury style system, rather than in a system dominated by career judges.

C. Commencement of Judicial Reform

1. Saibanin System

In late 1990s, public criticism of the bureaucratic judicial system was escalating and civil society demanded a comprehensive judicial reform that included civic participation in the system. In response to these demands, the Japanese Government initiated a major judicial reform and established the Judicial Reform Council (JRC) in 1999.26 Introduction of civic participation system into court was one of the biggest issues in the Council which was tasked with designing a possible jury style system.

On June 12, 2001, the JRC issued its final report in which it proposed the creation of a new citizens’ participation system, named the “Saibanin system”. Following the national debate on the issue, in May 2004 the Japanese parliament enacted the law introducing the “Saibanin system”.27 The basic structure of this system is as follows:

(a) “Saibanin”

Citizens who participate in a trial are called “Saibanin”. Citizens who will be summoned as Saibanin are ordinary individuals, randomly selected by an electoral roll. Like American juries, Saibanin are selected through a voir dire process.28

(b) Structure of the “Saibanin” Panel

In principle, three judges and six citizens (“Saibanin”) constitute a “Saibanin” panel and act together in the decision making process during a felony case.29 Both fact-finding and sentencing is to be decided by three judges and six citizens. Judges and Saibanin have an equal vote and an equal say in their deliberations. The verdict is decided by a simple majority rule. However, verdicts against the defendant shall not be decided by mere

28. In the voir dies hearing, the presiding judge asks certain questions to the candidates in relation to their applicability of exclusion and exemption in accordance with the law as well as impartiality and fairness. Based on the hearing, judges decide to exclude candidates from Saibanin. Besides, both party has right of peremptory strike up to 4 candidates (Article 28-37, Saibanin Law).
29. It was suggested that in exceptional cases, panel could be composed of one judge and four citizens.
majority formed by either judges or Saibanin. The legal judgments, interpretations of the law and control of trial procedures remain in the hands of professional judges.

2. Evaluation of the New System

(a) Composition of the Saibanin System as a Compromise

Initially, the JFBA proposed to introduce an American Types of jury system which is constituted by twelve jurors. However, the Supreme Court and the Ministry of Justice strongly opposed the introduction of jury system and insisted on judge’s involvement in the decision making process. The final outcome was a compromise: a mixed panel system of judges and citizens was created.

Second, the number of judge and citizens in Saibanin panel was another area of contention. While the JFBA proposed twelve juror’s participation, the Supreme Court strongly insisted on preserving the status quo and wished to have three judges per panel. On the other hand, civil society wished to have a more meaningful and autonomous participation in legal proceedings, rather than a ceremonial one. After the long political debate, the governmental committee proposed to create a panel of three judges and six citizens.

(b) Evaluating Saibanin Reform

The enactment of the Saibanin system is positive step to change Japanese judiciary; however, the reform is not drastic enough to change the problem of Japanese criminal justice system and bureaucratic judicial system as a whole.

First, unlike in the U.S jury system, the “Saibanin system” will be dominated by initiatives of judges since the influence of three judges is likely to be very strong. Citizens may hesitate to voice their opinions to three professional judges and could be easily influenced by their authority.

Second, serious human rights problems discussed have not yet been effectively addressed. During the reform process, civil society and the JFBA demanded to address the main cause of wrongful convictions: custodial interrogations, forced confessions, and the preeminence of statements. In particular, civil society wished to see introduction of videotaping during entire custodial interrogation session as well as progressive reform of discovery rules on evidence. However, with strong resistance of law enforcement agencies toward these reforms, the reform suggestions failed to take root in Japanese legal system.

Third, the civil participation was introduced in very limited area of judicial decisions in Japan. The Saibanin system is applied only to felony criminal cases. Thus, citizens cannot participate in civil cases.

At the same time, the reform process failed to change judges’ appointment
system, which was one of the two major proposals of JFBA.

In this regard, the reform is far from satisfaction in the perspective of democratization of bureaucratic judicial system as a whole.

3. **Future Reform Agenda**

Despite the deficiencies in the reform, it is important to see the new system as a first step towards improving the “hopeless” criminal court system. If the common senses of citizens are properly introduced to the criminal justice system, they could serve as a catalyst to improving fact-finding procedures and greater adherence to the fundamental principle of presumption of innocence. Furthermore, citizen participation may create greater public awareness of deficiencies in the Japanese criminal justice system and promote future judicial reforms. In order to make this system work for justice, the Japanese judiciary has to face up to a new agenda.

(1) First, the new system should realize the aspiration to an “autonomous and meaningful participation” of citizens. For example, Judges should not dominate or lead discussions and facilitate ordinary citizens participate autonomously and positively in the judicial decision making processes. The judiciary should make the whole criminal process understandable and accessible for ordinary citizens. Judges and attorneys should choose more understandable words in court, modify their bureaucratic and authoritative attitudes, and listen to citizens’ opinions with due respect.

(2) Second, citizen’s experiences should be utilized to improve the system. Attitudes of judges toward Saibanin and courts’ treatment of Saibanin must be shared and discussed. Even if a judge dominates discussions and saibainin’s opinions are disregarded, nobody can change such practices unless the system introduces a feedback mechanism to hear the Saibanin’s voice. While the law prohibits Saibanin from talking about deliberation, and even provides criminal penalties for breach, the experience of jurors should be analyzed without threat of penalties. If there is no system to listen to the Saibanin’s voice, we can never improve the system.

(3) Third, the fundamental principle of presumption of innocence should be fully respected during the entire trial process. In order to deliver proper judgment, ordinary citizens must be fully educated and be requested to

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30. In this regard, we should learn from jury reform in the U.S jurisdiction. For instance, New York State judiciary continues the effort to reform jury instruction in order to make it more understandable for jurors.

respect this fundamental principle of modern criminal justice. In this regard, the Supreme Court of Japan adopted an example of explanation of the rule for Saibanin, however, the term is ambiguous since it does not clearly explain or define the concept. The Saibanin must be given proper instructions and explanations of concepts such as the presumption of innocence both, prior to and after trial proceedings, in the same manner the US jurors are.

(4) Finally, the ongoing problem of wrongful convictions needs to be urgently addressed. The comprehensive criminal justice reform is necessary in order to stop re-occurring abuse of power by authorities and prevent wrongful conviction. These reform suggestions are discussed in the next part of this article.

IV. CRIMINAL JUSTICE REFORM

The introduction of the Saibanin system opened the door not only to citizens’ participation but also to substantial criminal justice reform. Along with the enactment of Saibanin Law, the Code of Criminal Procedure was revised in 2004. In the course of drafting process, the criminal justice proposals were discussed by an expert committee appointed by the government. The findings of this committee are summarized as follows:

A. Transparency in Interrogation Proceedings

1. As described before, forced confession under custodial interrogation is one of leading causes of wrongful conviction in Japan. Thus, critics demanded a major legal reform to address this problem.

The reform agenda includes guarantee of right to have attorney present during interrogations and shorten the duration of interrogation sessions. One of the most controversial reform proposals that emerged is videotaping of entire custodial interrogations. It is reported that UK, Australia, Italy, some part of the U.S and several Asian countries have introduced videotaping regulations and these reforms had a dramatic impact on interrogation practices in all of these countries. Thus, the introduction of the recording system in interrogation has become a top priority reform agenda in Japan.

Regrettably, because of strong opposition from prosecutor offices and police departments towards the introduction of video or audio recording, the reform proposal was not introduced during the revision of the CCP in 2004.

2. In April 2009, following the three year pilot project, the Supreme Public Prosecutor office introduced partial videotaping of interrogation cases which will be decided by Saibanin panel in all prosecutor offices of Japan. At the same time, in January 2008 the police published a new policy aimed
at improving interrogation practices. The new policy includes establishment of supervising section over interrogation in national headquarters and all prefecture headquarters in addition to the creation of manuals that exemplify types of act during interrogation which may be inappropriate. Also, the reform requires interrogators to file written reports of interrogations and prohibits midnight (10pm-5am) interrogation and/or interrogation that continue for eight hours or more without previous permission of supervisor in charge of the police office.

3. All of these reforms are not sufficient to change the practice of interrogation in Japan. In particular, partial videotaping is misleading and dangerous for fact finding, since police and prosecutors can arbitrarily select best parts of interrogation and hide other incriminating sections. Thus, the new partial recording practice may actually further promote wrongful convictions rather than serve to protect human rights.

B. Disclosure

1. As was explained, until 2004 there was no rule for discovery of evidence in Japanese criminal justice system. However, the introduction of the Saibanin system gave compelling reasons to reform this practice. In order to ensure successful operation of Saibanin system, courts need clear rules to avoid time-consuming debates on discovery by parties during trial proceedings. Thus, the discovery rule has become a major reform agenda in Japanese criminal justice.

During the reform process, the JFBA, scholars and members of the civil society proposed a system obliging prosecuting attorneys to disclose all evidence in their possession to defendants in advance of trial. However, the Ministry of Justice and Police Departments fiercely opposed the “all” discovery rule and insisted that it would facilitate perjury or the intimidation of prospective witnesses.

As a result of these debates, the revision of the Code of Criminal Procedure set forth new provisions outlined in articles 316-14~27. Although new provisions oblige prosecutors to disclosure certain scope of evidences to

33. JFBA, supra note 24.
34. In September 24, 2002, the Ministry of justice submitted its opinion to the special committee in which it articulated in summary that the purpose of the discovery rule is just to ensure speedy and consecutive trial and proposal of full discovery is against this purpose as well as adversarial system so that there is no possibility to incorporate into Japanese criminal justice system. It also indicated that discovery would facilitate intimidation, perjury and abuse of witnesses as well as forgery of the evidence, available at http://www.kantei.go.jp/jp/singi/sihou/kentoukai/saibanin/dai7/7siryou20.pdf.
defense, this disclosure is not full discovery and has no rules for discovery of exculpatory evidence.

C. Evaluation

In conclusion, although civil society groups insisted on the comprehensive criminal justice system reform, current reforms are incomplete and, at times, cosmetic in their nature. The so called reforms are far from satisfaction, mainly because of the reluctance and resistance of the Ministry of Justice and the Supreme Court.35

V. RECENT DEVELOPMENT

A. Commencement of Saibanin System

1. Control of Trial Proceedings by Judges

Following the enactment of Saibanin law, the general public started to express their concerns on the new jury duty. Opinion polls consistently show that the majority of people in Japan do not wish to be summoned as a “Saibanin”. This negative feeling towards the new law is due to the lack of time available to participate in the new societal obligation and fear of participating in serious issues that involve the death penalty.

Following the unpopularity of the new law, the Supreme Court started to minimize Saibanin’s duty, in particular by shortening schedule of trial proceedings through the control of arguments and evidence presented by all parties. In order to complete trials as short as possible, the Court implemented court scheduling management system and strongly suggested all parties to minimize the time of trial activity and refrain from providing unnecessary proof. However, such control measures suppress the rights of defendants and undermine the criminal justice values such as protection of human rights, discovery of truth and prevention of wrongful convictions. It seems that court prioritizes easing Saibanin’s burdens over improving the system and making it more useful to serving justice. Therefore, many lawyers started to express serious concerns regarding these practices in courts.

35. The reason behind was that both Ministry of Justice and the Supreme Court strongly believed that Japanese criminal justice has operated very well and there is no problem to address. They recognize the purpose of judicial reform as “strengthen the system and gaining more public support” other than modify the problem of justice system. This reflected the provision of the Saibanin Law, which underscores the purpose of the system, is “to enhance the understanding and trust for justice system of public”.
2. **Operation of the System**

The *Saibanin* system started its operation in August 2009. Since then, *Saibanin* panels all around Japan have dealt with significant number of felony cases. Since most of the media channels have positively covered the operation of *Saibanin* system, public feeling toward the system has gradually changed.

Some of these *Saibanin* panels have been very effective and delivered “not guilty” verdicts based on strict application of fundamental principle of presumption of innocence. Although, judge’s explanation for *Saibanin* on the rule of judgment is not strict on the fundamental principle, we can find that some *Saibanin* panels fully respected the principle. We also found that the reasoning of acquittal of several cases reflects citizen’s sound common sense and such reasoning can be never expected in a decision made by a judge.

On the other hand, short duration of a trial (three days to one week) sometimes causes very serious problems for courts in examining sufficient volume of evidence and other relevant issues. Sometimes, judge suppressed defense demand for examining evidence. This practice may undermine the fundamental purpose of criminal justice system of finding truth, protecting human rights and preventing from wrongful conviction.

B. **Successive Exoneration**

In addition to the new system, Japanese criminal justice experienced another interesting development. Since 2007, successive false charges and wrongful convictions have been revealed in Japan and received large media publicity.

1. **Shibushi and Himi Cases**

In Shibushi case (all defendants acquitted as of February 2007), it was revealed that police used physical and psychological torture in order to obtain confessions. In this case, local village residents and a politician were arrested for violations of election law, but it turned out the police has made up the story of crime which did not actually exist at all.

In Himi case (the defendant was approved for a retrial and acquitted in April 2007), the defendant was accused of committing a rape and was forced to confess. Based on the confession, the court convicted defendant. However, the conviction was later reversed since the real perpetrator was later identified.
2. The First DNA Exoneration

The more shocking incident involving DNA exoneration is known as the Ashikaga case. An innocent man, Mr. Sugaya was forcibly taken to police as a suspect in a case involving the rape and murder of a 14 years old girl. After a long and abusive interrogation, he was forced to confess. Based on the confession and inaccurate DNA test results, the court convicted Mr. Sugaya in 1991. The Conviction was affirmed by the Supreme Court in 2000.

However, improved DNA testing proved that Sugaya was not actual perpetrator and was acquitted in March 2010. Mr. Sugaya spent 19 years in prison for a false charge and wrongful conviction. The terrible circumstances of the case ignited a serious reform debate in Japan and raised awareness of dangers associated with wrongful convictions.

3. Review of Serious Conviction Cases

The cases described above received large media coverage and inspired serious judicial review of two serious conviction cases:

In December 2009, the Supreme Court granted a re-trial of Fukawa case. The case involved a burglar and a murder which took place in 1967, with two men convicted based on a confession and sentenced to life in prison. The court found reasonable doubt on the conviction against them and expressed serious doubt of the confessions.

In April 2010, the Supreme Court remanded a case and ordered the Nagoya High Court to investigate another serious conviction case - the Nabari case, following the discovery of serious error in the decision of the previous court. The case involved murder of five women by poisoning which took place in 1961.

A villager Mr. Okunishi was forcibly taken to police and was forced to confess following a 49 hour interrogation. Although trial court acquitted him in 1964 based on reasonable doubt the confession and other evidences, the high court convicted him again and passed death sentence based on his confession in 1969 and the decision was affirmed by the Supreme Court in 1972. Since then Mr. Okunishi has been claiming his innocence for 40 years and has unsuccessfully applied for re trial seven times.

It is no doubt that the Supreme Court decisions on two cases are influenced by the previous acquittals and exonerations, in particular Ashikakaga case. It is presumed that the Supreme Court became more careful to affirm conviction and more respectful to the fundamental principle of the “presumption of innocence” than before based upon the bitter lesson of
previous wrongful conviction cases.

4. *Postal Service Miscarriage Case*

These incidents were followed by a rather scandalous case known as Postal Service Miscarriage case, which has been recently revealed.

In 2009, the former Chief of Equal Employment Opportunity, Children and Families Bureau of the Ministry of Health, Labour and Welfare, Ms. Atsuko Muraki was arrested and then indicted for violations of the Postal Services Act and fabrication of official documents. The Special Investigations Bureau of the Osaka District Public Prosecutor’s Office alleged that Atsuko Muraki was involved in unauthorized use of the special benefit system designed for disability groups, by issuing fabricated official document which certified an inactive organization as disability group. Although she did not confess, her former colleague Mr. Tsutomu Kamimura was also arrested and confessed that he fabricated the documents at request of Ms. Muraki.

Although during the trial, Kamimura stated that Muraki was not involved in the fabrication and his previous confession was obtained under duress, the prosecutor submitted Kamimura’s statement as evidence.

The Court then denied the admissibility of most of Kamimura’s statements as evidence and acquitted Ms. Muraki on 10th of September 2010. The Osaka District Public Prosecutor’s Office did not appeal the case.

In the wake of the acquittal, it was revealed that the chief prosecutor of Muraki fabricated the evidence of the case. The prosecutor admitted that he seized a floppy disk from Kamimura’s office and updated the final date in order to frame the evidence to fit the accusation. The supreme public prosecutor office started investigation of the case and arrested the chief prosecutor involved in the case, as well as the chief and vice chief of the Special Investigations Bureau.

The case clearly shows the law enforcement indeed falsely charged innocent people and try them to be wrongfully convicted by coercive interrogation and fabricating material evidence.

C. *Public Support for Criminal Justice Reform*

Successive exonerations and acquittals are extensively covered by media and attracted large public attention.

In all the above cases, false and forced confessions were a result of coercive interrogations. Thus, it is certain that way interrogation methodology of Japanese authorities needs to undergo major reforms in order to prevent wrongful conviction.
Also, in many cases, prosecutors were found guilty of withholding exculpatory evidence or fabricating evidence to fit accusations. The shocking Muraki case has seriously damaged the respect and trust authorities have in the eyes of Japanese people. Most importantly, these cases demonstrate a dire need to implement videotaping system and full discovery of evidence.

Since people began to participate in the Saibanin system, their attitudes towards criminal justice system began to change. People are more informed and aware of issues surrounding criminal justice and follow the lesson of wrongful convictions and false charges.

No one wants to be involved in a wrongful conviction based on fraudulent charges. Thus, there is a strong public demand for a comprehensive criminal justice reform to prevent wrongful convictions. Such escalated people’s concern will be a vehicle to change the criminal justice system in Japan.

IX. CONCLUSION

It is still too early to evaluate the operation of Saibanin system, but it is fair to say that introduction of a citizens’ participation system is expected to produce major changes in Japanese criminal procedure.

In order to the system to work for truth and justice, the Japanese judiciary must address unresolved reform issues, such as discovery and the transparency of interrogation, based on the recent painful lesson of wrongful conviction, as well as increasing public demand for real reforms. The new system should separate itself from the past ill practices of police obsession with cruel interrogations and pressures for self-incrimination that distort criminal justice system as a whole.

Finally, I would like to express the expectation of the new system in terms of its impact on democracy as a whole. I think that if the 1928 jury system would have not been suspended but would have continued to operate in Japan for the last 70 years and taken its roots in our society, Japanese democracy might have been more real and lively. Alexis de Tocqueville emphasized in his study that the jury system was an essential element to achieving real democracy. The new civic participation system should not be abolished nor undermined into a mere sham by judicial bureaucracy. It is necessary for Japanese lawyers to make all efforts to develop the new citizens’ participation system as a valuable key for democracy and justice.

36. One of the evidence of this phenomenon is that recent poll shows 80% of people support for introduction of the video-taping on entire custodial interrogation.

37. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 291 (Trans. 1945) (1835).
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