

A Brief Review of the Referee System in Japan

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Abstract: Since 2009, Japan's Referees Law has been in effect for over 10 years. Initially, the referees system saw active participation and an efficient voting system. However, issues arose in the interface between the trial and jury systems. This paper assesses the reform process, successes, and shortcomings of the referee system.

Keywords: Referee system; Jury system model; Trial level system

1. The reform process

The Referees Law, currently in force in Japan, is not the first separate legislation on the jury system in Japan. Japan once adopted a jury system modelled on American law. In 1924, the Jury Law was enacted and officially implemented in October 1928.^[1] The reason is that during the wave of "Taisho democracy", people were dissatisfied with the search and investigation and trial system that completely ignored the human rights of suspects and defendants. From defense lawyers to ordinary citizens, there was a strong expectation for the jury system.

The Jury Law in Japan, implemented on Oct 1, 1928, marked a "Judicial Memorial Day." It applied only to criminal cases with a 12-person jury deciding guilt. Disagreements led to retrials. The system borrowed from Western models, with the government investing heavily in promotion. However, in 1943, the Law was suspended. In 1948, the Prosecutorial Examination Committee Law allowed citizen review of unprosecuted cases, serving as the only public opinion outlet before the 2004 Referee Law. From 1943 to 2004, Japan's jury system was dormant.

In 2004, Japan re-enacted the Referee Law, which was implemented in 2009 after a 5-year preliminary period. It sparked debate among scholars; some arguing it's unconstitutional, while others see it as necessary to balance democratic participation in legislation, administration, and the judiciary. The Japanese Supreme Court ultimately approved the Referee Law. The participation of ordinary citizens in the trial of criminal cases is considered to be the most important reform to shake the privileged position of judicial bureaucrats and promote the democratization of judicial organs.^[2]

2. The success of the referee system

2.1 Active participation of referees at the beginning of implementation

The "Referee Law" provides 113 provisions in 8 chapters, laying a solid foundation for the new referee system. Key changes include pretrial preparation procedures, which reduce reliance on investigation files and simplify the trial. This focuses the case, shortens trial time, and lightens the referee's burden, trending towards a "witness center" approach.

The active performance of referees in the early implementation of the Referee Law is supported by data. Japanese prosecutors seek punishment, similar to China's sentencing suggestions. Before the law, court judgments were generally lighter than prosecutors' requests, rarely matching or exceeding them. Post-2009, judgments heavier than prosecutors' requests increased significantly, indicating the Referee Law's early success in integrating national consciousness into judgments.

2.2 The voting system is relatively perfect

The new system abolished the jury system and introduced a collegial panel of 3-6 magistrates. The referee system applies only to first instances, with appeals ruled by professional magistrates. In first instances, the referee has same duties as magistrates, including conviction and sentencing votes. The collegial panel follows majority rule, requiring at least one magistrate's consent. If no majority is reached, judges are counted from most severe to lightest, and the lightest penalty of over half determines the final penalty.

It can be seen that the introduction of the referee system has changed the traditional composition of the collegial panel, and the evaluation system has also changed. However, the introduction of the referee system has put the number of magistrates in a disadvantageous position in the collegial panel, and there may be a situation where six magistrates may prevail over three magistrates in making judgments. Therefore, at the time of enactment, the Referees Law stipulates that the majority opinion requires the consent of at least one magistrate. At the same time, the Referee Law also stipulates what rules should be followed to make a decision when the collegial panel cannot reach a majority.

3. The inadequacy of the referee system

3.1 Not handling the conflict with the appeal trial

The jury system has dual attributes of politics and justice since its birth. First of all, the jury system is a political system, the carrier of the people's exercise of sovereignty, the execution of the public will and the symbol of judicial democracy. The political philosophy of "the people do not make mistakes" forbids subjecting the judgments of the people to review by any other body, whatever that authority may be. Secondly, the jury system is also a judicial system, which is widely adopted by all countries. As for jury trial, it is necessary for the appeal system to exist as a remedy measure to correct errors and guarantee justice. There is an inherent conflict of ideas between the two systems.^[3] Japan introduced the referee system without altering appellate trial rules, allowing appeals heard only by judges.. This system model is widely questioned by the public.

In the 10 years from 2009 to 2019, when the "Judges Law" came into effect, there were five cases in which first-instance judges ruled death sentences, and the sentences were revised on appeal. For major cases, even if the Referee Law provides corresponding procedures to reduce the trial time, the trial usually lasts nearly a month, and the referee has to pay a considerable amount of effort, and when the appeal trial negates the result of its efforts, the referee who participated in the first instance must be dissatisfied.

In an NHK interview, a revised case judge said: "As a pivotal case, they observed all second trial court proceedings. Upon hearing the overturned verdict, they doubted their ears, asking: 'Did the death penalty just get overturned?' Why bother with the first trial?" This revision dampens trial referees' enthusiasm and raises public doubts on the referee system's worth.

The above two cases reflect the contradictions between the participating jury and the trial level system. It can be found that in the appeal trial, the reasons for the court to revoke the death sentence of the first instance are mostly unplanned, the fairness of the death penalty and other reasons. Japan adopts a legal system combining written law and adjudicatory cases. For death penalty cases, the Supreme Court of Japan listed nine basic aspects that should be considered in the sentencing of death penalty in 1983 in the appeal ruling of Norio Nagayama's death penalty case: the nature of the crime; The motive of the crime; The pattern of the crime (the persistence and cruelty of the means and methods of killing); The significance of the outcome of the crime (in particular the number of victims); The feelings of the victim's family; Social influence; The age of the offender; Whether the offender has a prior record; The aftermath of the crime. This is called the "Norio benchmark" for death penalty judgment.^[4] This case stems from the case of "juvenile murderer writer" Norio Nagayama. Nagayama, 19, sneaked into a U.S. military base in Japan, stole a handgun and later shot and killed four people. After being imprisoned, Norio, who had not been to school, began to learn to read by himself, and wrote a book on the subject of his difficult childhood and youth experience, which caused a social sensation and became a famous prison writer. Since there was no case of juvenile death penalty in Japan at that time, the case went through the local court, the High court, and finally was appealed to the Supreme Court. In 1990, at the age of 41, Norio was sentenced to death and executed in 1997.

Since 2009, Japan's death penalty sentencing basis remains. For two cases where judge's judgment changed, first-instance judges likely wouldn't sentence death, and appeal trials only with judges didn't. Magistrates reject decisions based on "Norio benchmark." Magistrates' non-legal thinking and public emotion aid death sentences. Judges persuade each other, showing non-experts can influence professionals for more reasonable judgments. Referee system's original intent achieved. The original intention of introducing referee system has been realized.

The contradiction arises in the trial docking between first instance judges and magistrates-only appeal trials. Greater first instance judge influence on magistrates leads to higher appeal overturn risk. Face-to-face communication between referees and magistrates in first instance cannot be replaced by judgment words. First instance judge opinions lack professional legal basis for appeal judges. Lawyers prioritize appeal trials over first instance due to unpredictable first instance judge influence. Death penalty cases reflect a qualitative change and highlight the jury-trial system contradiction, which the referee system fails to resolve in practice.

3.2 There is a deviation in the understanding of jury system

Whether in the civil law system or the common law system, the contradiction between the jury system and the trial system does not lie in the case or statute law of the appellate court, but in the complete legal thinking logic of the appellate court. As stated

in the “Referee Law”, the purpose of legislation is to integrate the public’s thinking into the judgment, but the purpose of the trial level system is to review whether the first instance judgment conforms to the legal professional logic through the higher court. The contradiction between these two systems cannot be avoided, if there is no contradiction between them, it can only show that one of the systems has not realized the meaning of its existence. The contradiction between these two systems lies in the misunderstanding of people’s participation in justice. As the three pillars of the democratic system, the legislature and the administration are supervised by the people through the election system, while the judiciary should also be supervised through the jury system. However, like the election, the jury system should be a right rather than an obligation. The establishment of the jury system should be aimed at providing the people with channels to participate in and supervise the judiciary. You can’t make juries an obligation of the people.

A Japanese Supreme Court survey shows the referee system was active initially but lacks majority participation. Forcing public participation is challenging and may hinder legislative goals. Like elections, the jury system should be a right, not an obligation. The state should provide participation means. Maintaining motivated participants is key, not sheer numbers.

4. Summary

The Japanese referee system, implemented for over a decade, has merits and flaws worth studying. China’s Law on People’s Assessors, passed in 2018, marks a significant milestone for juror systems in China, introducing a seven-member jury system. However, being new, it faces challenges like power distribution issues, unclear juror duties, and voting system flaws. Learning from the Japanese referee system’s experience could inspire improvements in China’s jury panel system, addressing issues like power distribution, responsibilities, and voting mechanisms. Further discussion on these aspects will be deferred.

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