

# Analysis of the Causes and Countermeasures of Wrongful Conviction Cases in China

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## Abstract

After researching and reflecting on the phenomenon of wrongful conviction cases in our country, it is obvious that in recent years all such cases were related to the “contributions” of wrongful conviction cases. We discover too much delay, evasion and resistance from the judicial organs, and their passivity and hesitation make the parties and their families heartbroken, and also make the public heart-breaking. The formation and development of the phenomenon of unjust, false and erroneous cases in China is not the result of one day or one night, but the combined efforts of various subjective and objective reasons. This phenomenon requires sufficient attention and cannot be left in a state of confusion. We should not only explore its superficial causes, but also seek the deep-seated reasons behind it. So we can take appropriate measures to solve this problem from the perspective of judicial reform. While trying to conduct theoretical discussions, we should also propose some feasible solutions and measures.

**Keywords:** wrongful conviction cases, judicial reform, rule of law

## 1. The Phenomenon of Wrongful Conviction Cases in China

Since the founding of new China, the road of legal governance in China has been very tortuous, and the goal of legal governance does not completely fit with the actual effects. At the beginning of the founding of the People’s Republic of China, the country was waiting to develop. The construction focused on economic field and rectification. In addition, with the thought existing thousands of years, the development of legal governance in China was extremely slow. After entering the Cultural Revolution period, the public security organs, procuratorates, and courts ceased to exist, and class struggle replaced them. The construction of legal governance suffered severe damage and blows. The academic and intellectual fields were devastated, and various fields, including the legal profession, suffered terrible havoc. After the reform and opening up, the country’s rule of law construction began to move in the right direction, establishing the basic strategy of governing the country according to law and cultivating a group of modern legal talents. Over the past 30 years, China’s rule of law and democratization process has been ongoing, with many achievements made and many problems and drawbacks exposed. In terms of legislation, unconstitutional laws and regulations have emerged, and the legislative technology is not complete and scientific enough. In terms of law enforcement, state organs abuse public power and seriously violate the basic principle of administration in the way law. In terms of justice, the issue of judicial independence has remained unresolved, and judicial staff have committed numerous cases of injustice, false accusation, and wrongful conviction. Here is an explanation of the phenomenon of injustice, false accusation, and wrongful conviction.

### 1.1 *The Status Quo*

Wrongful conviction cases, as the name implies, are the act of forcing an oral confession or a written confession with all kinds of inhuman and cruel punishments. This phenomenon has long existed in China and even the

world as we know it is not a new thing, since the slavery society has appeared. With the development of human civilization and the popularization of human rights ideas, this phenomenon has been banned or even severely punished by modern countries under law. For example, in China, the criminal code specifically stipulates the crime of unjust, false and erroneous cases, so as to ensure the credibility of the national judicial organs and protect the basic human rights of the parties concerned. Although the law explicitly forbids wrongful conviction cases, this phenomenon still emerges endlessly. The cases of Liu Deshan, president of the Junxian County Court, and Ran Jianxin, director of the Anti-Corruption Bureau of Lichuan Municipal Procuratorate in Hubei Province are typical cases of unjust, false and erroneous cases. Liu Deshan, who was detained for 15 months, suffering both mental and physical torture. Physically, he experienced “lifting up”, which means being illegally used as a shackle and handcuff; experienced “hanging up”, which means being handcuffed and hung on the door beam; also experienced “bowing up”, which means standing with his back bent and buttocks stuck against the wall. Spiritually, all legal books were forbidden to read, and other books sent by his family were all taken away. He and his lawyer have never understood why they were put in prison. As a lawful person, he often felt helpless and sad. Ran Jianxin was arrested by the Badong County Procuratorate on suspicion of bribery. Nobody knows that he suddenly died one day. When he died, he was bleeding from all the orifices, and his wrist was broken. Similarly, his head was bleeding heavily, and his whole body was injured. His family requested to view the surveillance of the interrogation room of the procuratorate, however, the secretary of the Badong County Politics and Law Committee said that the interrogation room monitor didn’t operate. Nevertheless, the actual situation is that the surveillance of the entire procuratorate was trouble-free. The means and methods of miscarriages of justice have also been constantly innovated, giving full play to human subjective initiative. Commonly used methods include the tiger stool, which involves fixing a person in a sitting position on an iron chair, preventing them from sleeping, urinating, and defecating, and controlling their intake of water and food; Duck floating, that is, with both hands buckling with the iron window and hanging up, leaning forward, and pointing the toes to the ground, like a duck; Su Qin’s sword-carrying technique involves crossing his hands behind his back, tying them with a chain, and lifting himself up with his toes just touching the ground; Roasted whole lamb, that is to hold your calves with both hands and handcuffs, and use a stick to pass through the middle of your legs, and put individuals between two tables. These methods are just the tip of the iceberg in the miscarriages of justice because the degree is shocking and chilling. Undoubtedly, these examples result in every person with conscience to feel furious and think deeply.

### *1.2 Causes*

The existence of wrongful conviction cases apparently harms the basic human rights of the parties concerned and the emotions of their families. In fact, it is a blatant challenge to the simple moral feelings of the society and the merciless trampling of the concept of justice in the hearts of the public. On the one hand, it tests the bottom line of the psychological tolerance of the social public and also reflects the level of judicial civilization of a country and even a nationality. This appearance may occur with deep reasons, both historical, national, social and cultural, subjective and objective.

In my opinion, the fundamental cause of wrongful conviction cases in China lies in the judicial concept, that is, the stubborn “confession centrism”. Under its guidance, the modern concept of human rights, the basic principles and spirit of law, and the real facts of cases can probably be easily ignored or even surpassed in the trial process. Oralism, which pays attention to the logic of confession-facts-objective facts, adhering to the concept of confession as the king of evidence, firmly considers that the facts spoken by the parties are iron evidence, and there is few chance to be overturned and refuted. There are some subjective and objective reasons why confession centrism is so stubborn.

Subjectively speaking: Firstly, the confession is that the parties themselves say with no stronger reasons to give a reasonable doubt. It can only be judged as a fact; Secondly, empirical evidence and historical experience of miscarriages of justice show that in most cases, people were coerced into confessions that aligned with the true facts of the case; Thirdly, there is the argument of “national quality theory” which widely believes that citizens are the type of persons who only behave well and speak the truth under high-pressure deterrent measures; Fourthly, cases of miscarriages of justice are often malicious ones. Due to the complexity and challenge of these cases, judicial staff tend to prioritize speedy and stable resolution in order to achieve political results in a short period of time. These malicious cases often involve crimes such as rape, murder, and robbery, which the public desire severe punishment for, even to the extent of skinning them alive or drinking their blood. This reduces the psychological pressure on judicial staff caused by miscarriages of justice, giving them confidence and power; Fifthly, the long history of rule by man in our country has deeply ingrained a humanistic view, resulting in a lack of robust protection for human rights and a weak sense of judicial staff in acting based on the law.

Objectively speaking: First, the low level of criminal investigation technology and insufficient material conditions are determined by China’s scientific and technological level, which is a common problem in countries

around the world. This cannot be used as a lawful reason for miscarriages of justice. If this can also be used as a legitimate reason for miscarriages of justice, then the development of science and technology will never end, and the affairs of miscarriages of justice will never be eliminated. Secondly, confession is naturally regarded as the most direct and reliable evidence for handling with cases, at least for now in our country most people think like this. With the confession obtained, it means that the most critical problem in the case has been solved, indicating that the parties have told the truth and the investigators have been successful. Thirdly, the parties involved in the wrongful conviction cases generally belong to the vulnerable groups of the society, unable to resist, and have few resources owned and can utilize. In strong contrast, the judicial staff regard the state machine as their backing, meanwhile occupying a strong position. So as long as there are no big problems, the probability of an accident is relatively small.

Finally, I reckon the essence of the appearance of wrongful conviction cases lies in the confront of several forces, including both the process and the result. In the conflict of five forces, the first is the judicial staff with state coercion and unscrupulous; The second is the political force or interest group behind the judicial staff who can influence or even decide the direction of the case; The third is the parties, as a weak force, who are often isolated and incapable to defend their personal dignity; The fourth is the mass media, as public opinion maker. In the absence of press freedom in China, they more often represent the official voice and become the official mouthpiece. Its reports often provoke public anger and expose the “ugliness” of the parties involved. The last force is the public who does not know the truth. Owing to the difficult to approach the parties involved, they can only spy on the incident from the media reports. Due to the uneven quality and cultural level, it is easy to form extremism, and either righteous indignation shouts to fight and kill or calls for mercy, for the parties.

## **2. Revelation and Countermeasures**

In the face of the existence of wrongful conviction cases in our country, we should not neglect them and leave them drift. On the contrary, in today’s situation of advocating and implementing legal governance, we are supposed to face the reality, not for the so-called historical reasons, nor to lose confidence in judicial justice. If you only cognize but do not correct, it is only on paper, then judicial progress is invalid. Therefore, I think we ought to take actions in the following four aspects:

### *2.1 Balance Mechanism of Power Conflict*

Since the essence of wrongful conviction cases is the rival of various forces, the settlement of disputes ultimately depends on the balance of them. In order to achieve the game balance, the most critical one is to seek an equilibrium point as a breakthrough to achieve the balance. “Weak export theory”. That, in reality, will constitute a breakthrough point that is chosen by the relatively helpless party or several parties. The weakness here is compared with the political forces in a strong position, so it includes the parties and the judicial workers.

As a weak export party of unjust, false and wrong cases, the parties are the weakest among all parties. Once the law enforcement agencies have identified the facts, the true facts obtained through other channels such as suspect, witnesses, defense lawyers, etc. are likely to be rejected. The logic behind it is that the confession and the objective facts are inevitably corresponding, but is it really true? This is a problem worth discussing. The fundamental human rights of the parties involved are not respected during the process of miscarriages of justice, and even suffer ruthless trampling, which makes the balance mechanism of the game heavily tilt towards the powerful side, and finally there is no balance. Therefore, it is our duty to take the parties as breakthrough point, establish an effective system for protecting the human rights of the parties, truly implement the “respect and protection of human rights” stipulated in the Constitution, and achieve an equilibrium in the game balance mechanism. As the weak export of wrongful conviction case of judicial workers, here mainly refers to the court, is in a weak position in the strong power. Compared with the public security department as the investigation organ and the judicial procuratorate in public prosecution as the main function, its actual power is still vulnerable. Its independence is poor and its authority is not high. However, in conformity with the arrangement and construction of the modern judicial system, it is also the organ to declare the darrein result, which often generates the court to become the target of public criticism after the wrongful conviction cases disclosed. Even if the investigation organs involve the behavior of violating laws and regulations and obtaining evidence, normally, illegal proof can be completely excluded through the trial process of the court, for the sake of maintaining judicial justice. Nevertheless, Chinese current judicial practice determines that the court trial process are unable to master the function of error prevention and error correction that should be under its responsibility. Such a fact, giving rise to the game mechanism tilted to a strong force, the balance mechanism can seldom reach. Therefore, we ought to treat the court as the breakthrough point, indeed practicing the concept of trial as the center, so that the court can really play its due role, protecting the bottom line of equity and fairness so as to fulfill the balance of the game balance mechanism.

### *2.2 Innovating the Concept of Criminal Justice*

Modern justice is built on truths and evidence to erect a channel to tell social justice, in particular, and solve this problem through setting up a complete and transparent legal process. Through the legal and democratic procedure, that is, the judicial organs, the parties and the whole society work together to jointly “agree” on the facts based on the testimony, in order to resolve the disputes and settle the conclusion. A set of effective legislative system to ensure the convention and effectiveness of the convention, and the mode of operation has been human history evolution experience, which certified that so far the excellent way to reach fairness is the most certainty that can tend to maximize the operation mode of the objective facts itself. The mainstream view in epistemology modern times holds that the fact in the pure objective sense is unknown, and it is a more unrealistic idea to find it. Therefore, in real life, all organs can only jointly expect or determine a truth with confirmation and reliability through certain procedures. To be sure, on this basis, it may not be the most ideal state, but it is certainly a more available degree of certainty and reason.

In view of the late course of legal governance in China, this rather modern view of justice has not been widely accepted. Instead, it is the most ideal justice in our mind, hoping to gain the most objective truth and achieve the perfect justice. The example is one of the judicial principles in China, “facts as the basis, law as the criterion”. The interpretation of the facts in the principle has always been dominated by objective truths, and only in recent years has it been adjusted to legal facts. That is, the facts are constructed with proofs. Admittedly, if the objective facts in the real sense can be found, then the handling of the case will be very close to the realization of the ideal of justice. Nevertheless, due to the limitations of various subjective and objective conditions, it is difficult to complete this element. So dream and reality are disjointed, in the case of limited conditions which still adhere to the pursuit of the ideal justice to practice, resulting in easily becoming a kind of the most realistic righteousness: since the fact is hard to find by others, the fastest way is to try every means that requires the parties in prison “to tell the truth”.

In order to end the phenomenon of wrongful conviction cases, we have to reform the current judicial concept, change the focus from objective facts to legal facts, honor evidence and human rights. This attitude based on actuality is the most rational one, and it is also the most suitable way to achieve the goal under the current conditions. With the establishment of the judicial concept centered on legal facts, the confession center doctrine will lose the ideological basis and logical foundation of its appearance, and the plight of wrongful conviction cases can also be vigorously rectified.

### 2.3 *Establishing a National View of Legal Governance*

The concept of the rule of man for thousands of years, as well as the long-pursued value orientation, has led to our people’s enthusiasm for objective facts and the ambiguous attitude towards unjust, false and erroneous cases. This is generally held by Chinese and constitutes the survival soil of the phenomenon of wrongful conviction cases in our country. One of the essential symbols of a district under legal governance is that the whole people understand the law and abide by the law, which is a major challenge to the improvement of legal governance in China. In the process of handling with cases, lawful organs often encounter a kind of pressure and even resistance, including from upper authorities and leaders, and from the mass media and public sounds. With the popularization of the Internet nowadays, electronic information has become an important manner for individuals to acquire information, which has brought about numerous instances ferment rapidly on the Internet. The positive effects caused by it are surely gratifying. However, the negative effects are also apparent. In many vicious cases, more people only emphasize the subjective viciousness of the parties, meanwhile regardless of other aspects, they shout for killing them as quickly as possible. For the power of public standpoint, during the revision process of the Criminal Law Amendment 9, a lot of people called for the death penalty for child abduction directly, not giving any opportunity for human traffickers. The belief of the public is definitely not to blame, but after all, quite a sea of people lack legal expertise, hence they consider community affairs recklessly and simply.

In the progress of ancient culture, substantive justice is usually stressed by us, but sometimes we overlook procedural justice, and wrongful conviction cases come into being in this procedure. No matter what the public purpose is, perhaps because of catharsis, perhaps for personal benefits, there are thousands of purposes in total. Instead, there is a common sense: even if the wrongful conviction cases are promoted by the ambiguous attitude of the public, the current legal system cannot hold the public accountable. Therefore, in the long run, the mess of wrongful conviction cases demands the whole nation to make joint efforts to enhance the concept of respecting the truth, the awareness pattern, the authority of the law and the certification. Only in this way can we live a more bright future under legal governance.

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