

The principle of “free intention” in capitalist criminal justice system and its deceitful nature

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The great leader Comrade **Kim Il Sung** said as follows.

“The ‘democracy’ loudly proclaimed by the imperialists is a sham democracy, and the ‘equality’, ‘freedom’ and everything they come up with are nothing but camouflage designed to hoodwink the working masses and hide the reactionary nature of their bourgeois dictatorship and the anti-popular nature of the capitalist system.” (“**Kim Il Sung Works**” Vol.32, p.504)

The capitalist jurists are clamoring that the principle of “free intention” enables judges and jury to settle cases impartially by “discovering objective truth” based on their “free intention” giving people illusions about capitalist criminal justice. The principle, however, is a mere camouflage to defend interests of capitalist society and a handful of exploiting class ruthlessly encroaching upon independence of broad masses of working people.

The principle of “free intention” refers to one under which the probative force of evidence is at the discretion of judges or jury rather than regulated by law. It is alleged that in doing so the principle facilitates them to “discover objective truth”.

The principle, which entrusts judges a sweeping power to determine the truthfulness of evidence based on their “free intention”, has been applied to criminal justice since the establishment of capitalist justice system. The supporters of the principle contends that criminal justice should be administered based on so-called “justice” and “conscience” of judges and jury, but this is, in fact, nothing but a concoction that disguises class nature of capitalist criminal justice.

“Free intention” of judges and jury describes as superclass, i.e., it excludes external influence and comes from the “viewpoint of the third person” beyond any class interests.

Therefore, it is of great significance to unveil and condemn deceitful nature of the principle in raising people’s class awareness so that they have an accurate understanding of the reactionary nature of capitalist criminal justice system and wage vigorous struggle against it.

In the capitalist criminal justice, the principle of “free intention” arose out of the desire and interest of the bourgeois in the late feudal society.

At the close of the feudal society, conspicuous and arbitrary exploitation of feudal ruling class reached its peak in the field of justice as feudal exploitation and oppression was strengthened.

At the time, the facts of the case were decided based on evidence, whose probative force had been specified in law, under the principle of “codified evidence”, so the discretion of judges was not allowed in the settlement of a case. Judges could only mechanically execute law and had no freedom to independently think, analyze and judge. This posed a serious threat to newly-emerged bourgeois as well as to a wide range of working people. This subsequently led to the demand of the bourgeois and their spokesmen for the reformation of feudal justice system opposed to evil law of judicial investigation in

feudal society, and the principle based on bourgeois freedom is one of the consequences of such reformation.

It was a French jurist Dubor in the 18th century who introduced the principle for the first time. He proposed the draft of the report related to the reformation of judicial system to the French Constitutional Enactment Conference. In his report, he revealed unjustness of the practice of collecting and assessing evidence applied in feudal criminal justice in order to justify the principle. He continued that if a judge settles the case based on probative power regulated in law as it used to be done in the outdated criminal justice system of feudal society, it would be unreasonable in reaching proper assessment. He emphasized that since the principle of “codified evidence”, under which a judge has no discretion but is only obliged to approve or deny certain facts, might not give objective representation of the case, and result in encroachment upon people’s rights, it should be abolished as a matter of course and a judge should objectively determine a case based on his “free intention”, which, he argued, could be the only way to fully satisfy the demands for “equality of people under law” and “respect for human rights”.

His idea was regarded as innovative for the time being. Nevertheless, it was not for the sake of safeguarding interests of masses of working people in justice system, but for deceitful and fallacious purposes to win favor of masses of workers in their scramble of political power.

Since justice in general is an authoritative activity to realize interests of the ruling class in a society, judges and jury are subject to its implementation. In other words, all their activities are geared to realize interests of the ruling class. No judicial activities can exist independently of realization of interests of the ruling class.

In the light of this, it can be concluded that his theory efficiently justifies crafty policies of bourgeois to undermine feudal judicial system and establish a new capitalist judicial system in exchange for the struggle of working people by ingratiating themselves with people concealing their identity as a mouthpiece of bourgeois and advocating so-called “super class nature”.

The principle was strongly supported by bourgeois and regarded as a main mode of judicial proceedings after the bourgeois revolution in France. In the late 19th century, it was introduced to the entire European countries and some Asian countries including Japan.

1808 Criminal Procedural Code of France codified the principle of “free intention” of judges and jury. Although it has been amended on several occasions so far, the principle of “free intention” remains intact in the code.

Article 353 of the French Criminal Procedural Code now in force, it is specified that no such external factors as giving influence on free intention of a judge should be allowed. It says that a judge should reach a verdict based on his own intellectual cerebration by analyzing guilty evidence and defense grounds with stability of mind. Article 427 of the French Criminal Procedural Code specifies that apart from legislative regulations, offences can be recognized by any means and a judge shall determine guilt or innocence of the accused based on his own “free intention”.

Having introduced a trial by jury in the court in the 19th century, Germany regulated the principle of “free intention” as a main principle in criminal proceedings. Article 261 of the Criminal Procedural Code now in force reads that as regards the result of evidence investigation, the court should determine in accordance with its own assurance established through hearing.

Article 318 of the Japanese Criminal Procedural Code now in force specifies that probative force of evidence is subject to the discretion of a judge, i. e., the principle of “free intention”. Although this principle is not established in countries with common legal systems, the principle is introduced in the “principle of evidence application” in judicial practice. Therefore, criminal justice in common legal system can be said to apply the principle of “free intention” in criminal justice.

As such, the principle arose out of the desire of bourgeois from the early stages of its development and aimed at establishing judicial system favorable to realization of their interests. Since then the principle, which is only for the interests of the reactionary ruling class, has been disguising masses of people.

The deceitful feature of the principle of “free intention” is that it distorts the reality where courts are substantially subordinated to the administrative branch of the government.

Under the principle of “free intention”, evidences are investigated and heard based on free judgment of a judge or the jury who allegedly take impartial attitude in justice and they reach a final decision on its basis. That is, the determination excludes all kinds of external influences and based on the viewpoint of the third party beyond class interests. The theoretical premise of the principle is so-called “division of three powers”: legislative, executive and judicial branches of the government.

Constitutions of capitalist countries specify the “independence of a judicial branch” based on the division of three powers.

The capitalists are emphasizing that the judicial organ, which is entrusted with judicial power, excludes influence from any individuals or agencies and ensure “democracy” of justice. This is a preposterous fallacy.

In general, a court is one of the power organs organized to establish political dominance of the ruling class dominating state power in a certain class society. Therefore all activities of courts reflect interests and desire of the ruling class who hold state power and aims at its realization. There’s no such thing as a superclass court that exist independently of the interests and demand of the ruling class, nor such judicial activities.

“Independence from the government” or “autonomy of court” based on “division of three powers” is nothing but a shrewd trick to conceal class character of the courts in capitalist countries.

Since the judicial branch is not an independent organ separate from the government, but directly subordinated to it, the principle of “free intention” of judge and jury serves for the implementation of reactionary policy of the government.

Subordination of the judicial branch to the government is expressed in the fact that they are organized by the government and the parliament.

In most countries, judges are not elected but appointed by the president or the parliament. Historically, selection of judges by means of appointment started from the early stages of rise of nation states and has been applied in slavery or feudal society when archaic policy of the king or monarch was undisguised and absolute.

Since the monarch monopolized the entire power in ancient and middle ages, he exercised sweeping powers in all fields of legislative, executive, and judicial fields. The monarch directly exercised the supreme judicial power or appointed those who are loyal to them as judges.

The practice of appointing judges continued to be followed through modern times to present age in capitalist countries.

In the US, although judges in Federal Supreme Court should, in theory, be appointed by the president with consent of the Senate, but it is a mere ostentation. The president directly appoints them. For example, judges in federal courts should be a qualified barrister and should have a certain period of standing and are appointed by the president with the consent of the senate. And a judge of the federal court cannot be transferred or dismissed without reasonable legal grounds.

Those who were directly appointed as judges by the government regarded implementation of government policy as their obligation.

While judges are appointed by the president or the King, they are elected in some countries like France and Switzerland. The election is preconditioned on a number of limitations and reservation. One of the typical conditions needed to stand as a candidate and be elected judge is possession of a great deal of property.

The fact that whether somebody can be elected judge or not is decided by the amount of property he owns expresses a fragment of corrupt capitalist society where a man's personal value is determined by money and property.

Consequently, it leads to the conclusion that those who are in the position of judge are unexceptionally monopolistic bourgeois or those who ingratiate themselves with them and are supported financially or materially.

In the capitalist society, jurors are those who are retired government officials or the middle classes or those who are obsequious to the government. Although it is said that the jury is recruited by election in the central or local governments, it is also composed of those who safeguard and represent the interests of the reactionary capitalist state and exploiting class.

For example, a jury should be over 18 years old, have full command of English language, should be a US national who has "sound ideology", and possess certain amount of property. To have 'sound ideology' means to be in the van of implementing reactionary policy of the US government.

Since judges and jury are selected and appointed by the reactionary government and parliament in a capitalist society, it is absolutely preposterous that they are in the impartial position in justice.

Subordination of judicial branch to the government is also expressed in the fact that all judicial activities are under the control of the government. As capitalism switch over to imperialism, reactionary ruling class including monopolistic bourgeois discarded the "independence of court", a favorite word of bourgeois and expanded the scope of power that the government, as a leading institution of state power, can wield and enabled the government to take active part in judicial activities.

In particular, a judicial executive department has been established so that the government can strengthen its control over judicial activities, and established the system for controlling the activities of judicial organs.

For example, in some capitalist countries such as France, Germany and Japan, courts of law are subject to supervision of judicial branch and a judicial minister.

Judicial activities that provide lawful premise, condition and guarantee for the realization of demands and interests of capitalist society aims at making it easy for the government to perform its

function better still. Consequently, the mission of judicial bodies in capitalist countries is to facilitate implementation of government policies and judges are little more than henchmen of monopolistic bourgeois. Therefore, “free intention” of judges in capitalist justice system is not so much a superclass one as so-called “justice” and “conscience” directly controlled and intervened by the government and the ruling class.

The foregoing indicates that there can be no such thing as superclass ‘justice’ or “conscience” and the principle of ‘free intention’ is deceitful in that it denies class character in capitalist criminal justice system.

Whatever crafty means they may resort to so that they can conceal class nature of capitalist criminal justice system under the principle of ‘free intention’, it can never be obscured or vanished.

The deceitful feature of the principle of “free intention” can also be found in the advocacy of reality of unfair capitalist criminal justice as the one in which ‘democracy’ is ensured. “Free intention” of judges and jury is strictly confined to the facts of assertion claimed by the litigants. In other words, judges and jurors are supposed to reach their decision on the evidence necessary for case resolution within the extent of the assertions made by the litigants.

This is all the more so in the trial of criminal cases. Once the defendant pleads guilty, judges and jurors recognize it as absolute in the first place and conduct no further investigation. Guilty plea of the litigants is original and direct evidence, which is of great significance in case resolution in a criminal case.

The court should attach great importance to plea of the litigants, a sort of evidence, and should pay due attention to and verify in several aspects, i.e., even guilty plea should be thoroughly investigated and verified before being used as evidence. This is because in some cases it might be possible that plea of litigants might be exaggerated or fabricated contrary to the truth due to certain negative factors.

If a judge and jury recognize guilty plea of the accused as absolute truth without any investigation, it would result in a perverse decision of a case.

In present-day criminal justice system in some common legal countries like the US and the UK, “assurance” of a judge is confined to the contents of plea under the pretext of ensuring the defendant with the right to plead. This is because guilty plea is regarded as the ‘king of evidence’ and they reach a final decision without any further investigation or hearing.

Such indifferent attitude of judges and jury towards admission makes it commonplace that the accused may make unwilling misstatement compelled by fraud, conciliation, coercion in corrupt capitalist society.

In criminal justice system, the charges on the indictment of the prosecution are recognized as absolute by judges and jury. The prosecution should be based on scientific and objective investigation of facts of crime.

If investigation is performed contrary to the facts of a case due to mistakes of the investigator or evidence is collected mistakenly, absolute reliance on it in prosecution will be detrimental to scientific accuracy of evidence. Therefore once a case is brought to the court, it should hear and verify the credibility before going on to deal with the case under legal requirements and its own conviction.

Criminal proceedings in capitalist criminal justice, however, entirely rely upon the indictment filed

by the prosecutor, so it is impossible to extend its range beyond the charges of indictment.

In particular, in some common legal systems like the US and the UK, no evidence is filed apart from indictment, it is even more important for the court to have a high sense of responsibility.

Nevertheless, since judges and jury in these countries regard the guilty indictment that is made through cross-examination between the defendant and the plaintiff as absolute, they reach a verdict immediately after receiving it without any further hearing or trial.

Cross-examination, however, cannot be said to be based on “free will” of the parties. In the capitalist society, where only the “Jungle’s Law” prevails and all sorts of contrasts and confrontations are aggravated, cross-examination cannot be made on an equal basis between litigants, but by means of conciliation and deception.

After all, guilty plea made by the accused may be forced by deception or coercion of the prosecutor.

Therefore, regarding guilty plea of the accused as the “King of Evidence” without investigating its truthfulness provides enough ground for high-handedness and arbitrariness of prosecutors who serve for the interests of reactionary exploiting class.

Today in criminal justice in the majority of capitalist countries, plea of the litigants are given absolute priority under the pretext of defending free exercise of procedural rights of litigants, and judges and jury are submitting to it implicitly, thus completely ignoring objectivity and impartiality of justice.

As seen above, the principle of ‘free intention’ in capitalist criminal justice system emerged out of the desire of the bourgeois to overthrow feudal justice system and safeguard their interests, and has been applied to conceal its class character and disguise and justify unfair nature.

It is strongly demanded that we should defend and give full play to the superior socialist justice system of our style by waging active struggle against capitalist criminal justice system with raised awareness of the deceitful features of the principle of ‘free intention’ alleged by the capitalist jurists.

Keywords: capitalist criminal justice, free intention, government