Research on Exclusionary Rules of Illegal Speech Evidence

-- Starting from Criminal Procedure Law

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Abstract: The rule of illegal speech evidence was established late in our country, and the phenomenon of obtaining illegal speech evidence through torture and other illegal means has always existed in the practice of criminal proceedings. At present, our country has not established a unified and standardized standard for the exclusion of illegal speech evidence. Starting from the general theory of illegal speech evidence, this paper introduces the status quo and difficult problems of illegal speech evidence in our country through the proof standards of illegal speech evidence exclusion system, such as the basis, inadmissibility and exclusion value, so as to continuously improve the rules of illegal speech evidence exclusion and continue to exert judicial fairness and justice. To safeguard the basic rights of citizens and promote the development of civilization by law in our country.

Keywords: Illegal Verbal Evidence; Criminal Proceedings; Human Rights; Extract Confessions by Torture.

1. Introduction

Illegal verbal evidence is the hindrance to the construction of the rule of law in our country, and its harm cannot be ignored. However, in modern society, illegal words are still used as evidence. In the whole criminal procedure practice, it is still impossible to avoid the use of illegal speech evidence as evidence presented in court. This not only undermines the justice and fairness of the judiciary, but also infringes on the basic rights of citizens. Therefore, the exclusionary rule of illegal speech evidence plays an unusual role in the whole law. The main way to obtain illegal verbal evidence is to extract confessions by torture. This paper studies the illegal speech evidence from the Angle of torture, takes the general theory of illegal speech evidence as the starting point, through the analysis of the proof standard of illegal speech evidence, leads to the status quo and difficult problems of the exclusion of illegal speech evidence in China, and constantly improves the rules of the exclusion of illegal speech evidence according to the above.

2. Theory of Illegal Speech Evidence

2.1. Definition of Illegal Speech Evidence

2.1.1. Concept of Illegal Speech Evidence

Illegal evidence refers to evidence materials that are not admissible because they do not comply with legal procedures or because the procedures obtained do not comply with legal provisions (Chen Guangzhong, 2002). Illegal evidence is divided into a broad sense and a narrow sense. In a broad sense, illegal evidence refers to evidence obtained by illegal means or illegal forms, while in a narrow sense, it refers to evidence obtained by procedural damage to the legitimate rights and interests of the person being collected (Dai Changlin, 2017). Illegal speech evidence can also be divided into broad and narrow sense. In a broad sense, illegal speech evidence is divided into three categories, which are the speech evidence of illegal subject, the speech evidence of illegal form and the speech evidence of illegal procedure. In the narrow sense, illegal verbal evidence refers to the improper obtaining procedure of verbal evidence of law. The evidence of illegal speech in this paper includes the testimony of witnesses, the confession and defense of criminal suspects and defendants, and the statement of victims.

2.1.2. Concept of Illegality

The premise of finding illegal speech evidence is to find illegal. What is illegal and what is legal? Therefore, to understand the evidence of illegal speech, we must first understand what laws the word "law" in illegal refers to. In our country, laws take the form of constitutions, laws, administrative regulations, local regulations, autonomous regulations, departmental rules, local government rules and so on. Is it illegal to violate the above laws? The key to finding illegal is to know what the law covers here. However, due to the late start of the exclusionary system of illegal speech evidence in China, compared with other developed countries, it is in a disadvantageous position, so there is no clear standard to identify illegal. But in academia, there are many illegal claims, and their theoretical concepts are slightly different. Because there are broad and narrow definitions of illegality. In a broad sense, illegality refers to the violation of the fundamental law of our country, that is, the violation of the Constitution. In the narrow sense, illegality refers to the violation of the procedural law. The illegality in the illegal speech evidence here is the violation of the criminal procedure law, and also includes the judicial interpretation of the criminal procedure law (Zhou Lixiong, 2013).

2.1.3. Scope of Verbal Evidence

The evidence of illegal speech mainly includes the testimony of witnesses, the confession and defense of criminal suspects and defendants, and the statement of victims. However, in the judicial practice of our country, it mainly focuses on the confession and defense of the criminal suspect and defendant. Oral evidence in Chinese criminal cases mainly relies on oral confession, which leads to the judicial personnel to obtain the confessions of criminal suspects and defendants by torture, thus destroying judicial justice and the occurrence of unjust, false and wrong cases.
2.2. System Basis of Exclusionary Rules of Illegal Evidence

2.2.1. Principle of Presumption of Innocence

The concept of presumption of innocence in criminal law is never similar to that of presumption of innocence. Presumption of innocence means that a person who has not been found guilty through judicial procedures should be presumed innocent or presumed innocent (Chen Hu, 2010). A presumption of innocence means that the facts and evidence of a case are not sufficiently understood to render a verdict of guilty and should be recognized as innocent. The presumption of innocence and the presumption of innocence are reflected in the functions of criminal law. On the one hand, it is necessary to fight crime and protect interests, and on the other hand to protect human rights, that is, human rights should also be protected while fighting crime and protecting interests.

If blindly focus on the protection of interests, it is easy to be found guilty. If the focus is on protecting human rights, it is easy to be found innocent. However, when the two functions are in conflict, the priority is given to protecting human rights, which is known as favoring the accused when there is doubt. Therefore, the principle of presumption of innocence embodies the guarantee of basic human rights of citizens by law and the fairness and justice of law. In today's society, it is endorsed by international law scholars and has become an important symbol of the degree of construction of rule of law civilization. The principle of presumption of innocence plays an important role in the current judicial practice in our country. In the feudal society, our country implemented the principle of presumption of guilt, which often ignored the protection of human rights. From the legal point of view, criminal suspects and defendants were in a disadvantageous position, their basic litigation rights could not be protected, and the judicial system also had great defects, which led to the frequent occurrence of unjust, false and wrong cases. At present, our country applies the principle of presumption of innocence, which protects the rights of criminal suspects and defendants on a certain basis, and guarantees the fairness and justice of the judiciary.

2.2.2. Voluntary Rules of Confession

The voluntary rule of confession is also called the voluntary principle. Confession refers to the behavior of a criminal suspect or defendant who admits his crime and confesses the facts of the crime to the judicial organ. Arbitrary means that it is not affected by any factors and exerts what it wants to express subjectively (Guo Xu, 2016). That is, to make a confession legal, two standards need to be met, the first is the requirement of confession, and the second is the arbitrary standard. Without one, it is difficult to find that verbal evidence is legitimate. If the criminal suspect or defendant has not explained his criminal facts or criminal acts to the judicial organs, the rule of confession cannot be achieved. If the criminal suspect, the defendant out of free will self-incriminating confession can be used as the basis for the decision. There is a lack of arbitrariness in the confessions of criminal suspects and defendants forced by the judicial organs through torture and other methods, and the arbitrariness of confessions obtained through intimidation and coercion, violence and other methods also has great defects. The principle of arbitrariness of confession protects the legitimate rights and interests of criminal suspects and defendants to a certain extent, so as to standardize the interrogation process of judicial organs.

2.2.3. Principle of Right to Remain Silent

The right to silence refers to the right of criminal suspects and defendants to remain silent during the interrogation process, that is, to remain silent and refuse to answer. The right to silence is a right of defensive nature. The right to silence extends the protection of interrogators, who are not obliged to prove their guilt or to express themselves against it, and who have the right to refuse to answer or remain silent when questioned by the judicial authorities, which is a legal act.

2.3. Value of Exclusionary Evidence of Illegal Speech

2.3.1. Inadmissibility of Illegal Speech Evidence

Article 54 of the Criminal Procedure Law of our country provides that "Confessions obtained through torture and other illegal methods and witness testimony and victim statements obtained through violence, threats and other means shall be excluded, and where the collection of material evidence or documentary evidence does not conform to legal procedures and may seriously affect judicial justice, it shall be corrected or a reasonable explanation shall be made, otherwise the evidence shall be excluded." It shall not be used as a basis for prosecution opinions, prosecution decisions, conviction and sentencing." Article 54 of the Criminal Procedure Law of the People's Republic of China: "Confessions obtained through torture and other illegal methods and witness testimony and victim statements obtained through violence, threats and other means shall be excluded, and where the collection of physical evidence and documentary evidence does not comply with legal procedures and may seriously affect judicial justice, corrections or reasonable explanations shall be made, otherwise the evidence shall be excluded." Shall not be used as a basis for prosecution opinions, prosecution decisions, conviction and sentencing. " Illegal speech evidence shall be excluded. The law clearly states that it should be excluded. If such evidence is taken, it will violate the legitimate rights and interests of criminal suspects and defendants, and destroy the justice of our country's justice.

2.3.2. Value of Exclusion of Illegal Speech Evidence

Illegal verbal evidence is a hindrance to the construction of our country's legal system, which is very harmful. The harmfulness of illegal speech evidence is as follows: First, illegal speech evidence seriously destroys the value system of criminal procedure. As the most severe litigation law, criminal procedure is a powerful weapon to fight crime and ensure that innocent people are not prosecuted, and it demonstrates the justice value of criminal law. The existence of illegal verbal evidence will likely cause innocent people to be hit and guilty people to escape from legal sanctions, which directly affects the value orientation of criminal justice in the people. Second, illegal verbal evidence infringes on the basic rights of the parties. In the judicial practice of our country, most of the illegal speech evidence is not obtained through legal procedures, its source is based on the infringement of citizens' personal rights and property rights. Third, illegal verbal evidence violates procedural justice. An important reason for the source of illegal speech evidence is that it attaches importance to the entity and ignores the procedure. Such a serious ideological tilt undermines procedural justice. In reality, evidence collection separated from legal procedures will inevitably cause the balance of judicial justice and social justice to fail and tilt, and directly damage the image of judicial organs in people's minds. In this society with rapid
economic development, every revision of the law, every major reform, shows the progress of the society, every step forward is a process of "taking the essence, cookie dross", the significance of illegal words and evidence exclusion is extraordinary, and constantly promote the continuous improvement of procedural law. The research and improvement of the exclusionary system of illegal speech evidence is the most important part of judicial practice in our country, no matter the entity or the procedure, its value is beyond doubt.

3. **Situation and Difficulties of Exclusionary Rules of Illegal Speech Evidence in China**

3.1. **Current Situation of Exclusion of Illegal Speech Evidence**

The legislation of our country does not give a clear concept of illegal speech evidence, but only makes some provisions in the criminal procedure law and related judicial interpretation. For example, Article 43 of the Criminal Procedure Law, "judges, prosecutors and investigators must, in accordance with legal procedures, collect all kinds of evidence that can confirm the guilt or innocence of criminal suspects or defendants and the seriousness of the crime." It is strictly prohibited to extort confessions by torture and to collect evidence by threat, inducement, deception or other illegal means. It is necessary to ensure that all citizens who are involved in the case or have knowledge of the case have the conditions to provide evidence objectively and fully, except in exceptional circumstances, and that they can be recruited to assist in the investigation."

Article 43 of the Criminal Procedure Law of the People's Republic of China: "Judicial personnel, procurators and investigators must, in accordance with legal procedures, collect all kinds of evidence that can prove the guilt or innocence of criminal suspects or defendants and the seriousness of the crimes. It is strictly prohibited to extort confessions by torture or to collect evidence by threats, inducements, deception or other illegal means. It must be ensured that all citizens who are involved in the case or have knowledge of the case have the conditions to objectively and fully provide evidence, except in exceptional circumstances, and can be recruited to assist in the investigation. ". As can be seen above, China's illegal speech evidence exclusion rules seem to be perfect, but in fact lack of theoretical support, and fail to form such a system.

3.2. **Difficulties of Exclusion of Illegal Speech Evidence**

3.2.1. Vague Definition of Illegal Speech Evidence

According to the way evidence can be embodied, verbal evidence is mainly through the words of people to restore the truth (Zhan Jianhong, 2012). The expression of the exclusion of illegal verbal evidence in Chinese law is vague, and there is no clear legal provision, which will happen in judicial practice. Judges use discretion and easily exclude or adopt verbal evidence at will according to the doctrine of free reasoning. According to the provisions of Article 54 of the Criminal Procedure Law, illegal verbal evidence in our country is obtained through torture, violence, threat and other illegal means. However, in judicial practice, the above means can easily be seen whether they are illegal verbal evidence means, and the expression forms are too obvious. For example, light violence, that is, to reduce the amount of food and other harm to the criminal suspects and defendants, but once the duration of a long time, it is easy to become a way of torture, so that it compromises, and the judicial organ obtains illegal verbal evidence. Therefore, there are various means and ways to obtain illegal speech evidence in our country, and it is difficult for judicial organs to distinguish the degree of illegality, which can only let judges judge by their own experience, making it difficult to determine the strength of proof of speech evidence. The legislation on illegal speech evidence in our country is imperfect and the scope of illegal speech evidence cannot be completely listed in the law, which makes it difficult to exclude the evidence of illegal speech in judicial practice in our country, thus hindering the development of the process of rule of law.

3.2.2. Difficult to Run Obstacles in Illegal Speech Evidence Removal Procedures

The exclusion of illegal speech evidence belongs to the criminal procedure law, which is biased to procedural law, and if the procedure of the exclusion of illegal speech evidence wants to play its role, it must be able to start and easy to start. If it is only told in the book theory, but cannot be really used, it will be difficult to play its effect.

The procedure of exclusion of illegal speech evidence starts in three links, the first is the investigation link, the second is the review link, and the third is the trial link. In the investigation process, the detection of cases mainly relies on the confession of suspects to establish evidence clues. In the face of efficiency, in order to solve the case as soon as possible and complete the work within a certain period, investigators usually take improper means to obtain the confession of suspects. The suspects form illegal verbal evidence based on the pressure of signing and writing, which destroys the procedure of obtaining verbal evidence. In order to eliminate illegal speech evidence in the investigation process, the investigation department must separate the function of investigation and evidence collection from the function of examination and prosecution to form mutual supervision, so as to prevent the illegal speech evidence from being difficult to abandon because of the pursuit of efficiency. Even in order to pursue the evaluation of professional titles and other work, they dare not take out their own work and use it as illegal speech evidence, so the investigation organs generally do not take the initiative to exclude illegal speech evidence (Chen Guangzhong, 2014). The second link is the examination link, which is in the middle position and has the role of connecting the preceding and the following. During the review of prosecution, the procuratorate starts the procedure of excluding speech evidence mainly according to the disclosure and accusation of the parties, and the judge is different from it. In general, the procuratorate investigates the behavior of investigators through its powers, and the procuratorate starts the process of excluding illegal speech evidence, so vital evidence may be excluded, and the efforts of the investigation organ will be wasted, and the detection of the case will be delayed. In the last stage, that is, the trial stage, this is the last line of defense for criminal suspects and defendants to maintain legal verbal evidence. Judges often dismiss applications for lack of material. To sum up, in judicial practice, it is difficult to start the procedure of excluding illegal speech evidence. Even if the procedure for the exclusion of illegal speech evidence is started, it is difficult to exclude it in general. In our country, there is not yet a set of perfect rules for the exclusion of illegal speech evidence.
evidence, because our country has established it late in this respect. Therefore, it is difficult to exclude illegal verbal evidence and cannot protect human rights (Chen Ruihua, 2018).

3.2.3. Problem of Illegal Verbal Evidence in Juvenile Crimes

The lowering of the age of criminal responsibility means that there are more and more juvenile crimes, which is in line with the characteristics of physical and mental development of minors and the law of growth, not only to maintain the principle of modesty in the criminal law, but also to avoid unnecessary punishment (Zhang Jing, 2020). For juvenile delinquency, both the human rights protection mechanism and some protections are given to a certain extent. For example, when a minor is being questioned, a competent adult should be present. However, there are some defects in this system, such as the interrogation of minors without the presence of appropriate parties, at this time, the fact that the minors said can be used as verbal evidence, there is no such representation in the law of our country. If the verbal confession of a minor is used as evidence, its authenticity and feasibility are difficult to determine. As minors are immature in all aspects and lack cognitive ability, it is necessary to be accompanied by an appropriate adult. On the one hand, it will not leave psychological shadow and harm to minors. On the other hand, in order to pursue the efficiency of handling cases, judicial staff take illegal means to obtain verbal evidence, resulting in the occurrence of unjust, false and wrong cases, which leaves a shadow on the life of minors and their distrust of the law (Xiong Quihong, 2010).

3.2.4. Right of Lawyers to Present During Interrogation

Not all people know the law. The law has an important place in society, but not everyone understands the law. People may have some knowledge of substantive law, but for procedural law, which is difficult to come into contact with in life, it is almost difficult to learn and understand. This requires professionals, that is, our lawyers, to come out and provide people with legal knowledge, so that they can pick up the weapon of law to protect themselves. If the lawyer is not present during the interrogation, the interrogated people are in a situation of no help, they do not have the legal knowledge to protect themselves, and are likely to answer under the wrong guidance of the interrogator or make some actions that are not conducive to their own. In judicial practice, after a suspect is restricted from his personal freedom, no defender is commissioned. To a large extent, if the interrogator uses torture to extract confessions, the suspect is easy to self-incriminate, and obtaining such evidence is illegal and is not recognized (Guo Jian, 2013).

4. Suggestions on Perfecting Rule of Exclusion of Illegal Speech Evidence in China

4.1. Clearly Define Standard of Illegal Speech Evidence

In our country, the definition of illegal speech evidence is vague, which leads to the judicial practice cannot determine whether it is illegal speech, so it cannot be excluded, so it is necessary to establish the definition standard of illegal speech evidence. Our country adheres to the principle of absolute exclusion of illegal speech evidence. However, some regulations are too vague, which is not conducive to better exclusion of illegal speech evidence. In the Anglo-American law system, criminal suspects and defendants are endowed with a defensive right - the principle of silence, which does not force them to confess their behavior. The mainland states clearly define what constitutes illegal means and what constitutes verbal evidence obtained by illegal means. However, due to the late establishment of the system of verbal evidence in our country, there are many problems in judicial practice, and legislators cannot anticipate it in advance. Therefore, lawmakers should appropriately expand the interpretation of "illegal" methods, follow the principle of voluntarism in the process of interrogation, give the parties the right to silence, and prevent the situation of being unable to rely on the judicial practice and extract confessions by torture.

4.2. Improve Institutional Guarantee of Exclusionary Rules for Illegal Speech Evidence

4.2.1. Establish Concept of Protecting Human Rights

With the continuous development of society and the progress of legal system, our country has gradually changed from entity realism to entity realism giving consideration to procedure doctrine. Our country constantly reflects on the traditional mode, and actively adopts the reasonable part of the litigant mode, which not only protects the interests but also guarantees the human rights. It is not easy to make the transition from traditional entity to entity program. In order to solve this problem, the exclusionary rule of illegal speech evidence is the problem (Wang Shouan, 2012). For example, the illegal verbal evidence obtained through torture must be absolutely excluded. For the method of extorting confessions by torture, even if the evidence obtained is justified, it should be excluded. Because extorting confessions by torture violates human rights and the principle of due process, it must be severely cracked down on. An important measure to curb such illegal verbal evidence is absolute exclusion.

4.2.2. Recorded and Videotaped Whole Interrogation Process

During the entire examination process, interrogators should make audio and video recordings of the entire process when facing criminal suspects or defendants, so as to prevent interrogators from obtaining illegal verbal evidence by extorting confessions through torture, threats of violence and other illegal means. Audio and video evidence in the process of interrogation can directly reflect whether the parties voluntarily and subjectively express what they want to say, and can effectively prove the legitimacy of the interrogator's verbal evidence. The main purpose of audio and video recording is to prevent interrogators from using illegal means and protect the legitimate rights of the interrogated. It can supervise the interrogator's behavior in real time, prevent the use of illegal means, ensure the legality and usability of the interrogatee's verbal evidence, and start the procedure of excluding illegal verbal evidence according to law, so as to better curb the implementation of illegal means (Yang Junying, 2014). During the whole process, all activities of interrogators and criminal suspects should be recorded and videotaped, so as to avoid the discontinuance of audio and video recordings resulting in illegality of the whole process. And the interrogators have acted illegally. Therefore, audio and video recordings should be maintained without interruption, continuity, and cannot be deleted. Only in this
way can the authenticity and legality of the audio and video recordings be effectively guaranteed, so that illegal verbal evidence can be more accurately excluded.

4.2.3. Minors be Accompanied by Appropriate Adult

Minors in criminal cases involving the confession of facts and other words, in order to prevent interrogators from taking illegal means, should be accompanied by an appropriate adult. Minors are not very mature in all aspects and do not understand the whole procedure. In order to prevent minors from taking illegal means to obtain some clues or evidence during the interrogation process, which may cause psychological or physical harm to minors, appropriate adult presence system must be formulated to prevent interrogators from using illegal means to obtain illegal verbal evidence.

4.2.4. Strengthen Investigation of Responsibility of Illegal Evidence Personnel

The investigation stage is the first stage in which verbal evidence is produced. How to suppress the production of illegal verbal evidence? When the criminal suspect or defendant is interrogated for the first time, the lawyer can be present and provide the suspect with legal weapons. In Germany, criminal suspects can request the right to be present when they are questioned, and when they are questioned for the first time, they always remain silent and only begin to answer questions when their lawyers are present. In the absence of a lawyer, the suspect may remain silent until the lawyer appears. This is a right that every criminal suspect should have, and until the case is not finalized, they are criminal suspects, not criminals, and they should be given such rights (Lang Sheng, 2008). Therefore, a system of lawyers present at the first interrogation was established. In order to prevent interrogators from pursuing the efficiency of handling cases, and even worry that their professional title assessment will be implicated and the exclusion of illegal speech evidence will bring them some trouble, do not exclude illegal speech evidence, should formulate the responsibility of evidence collection personnel, establish a punishment mechanism, and investigate their responsibilities.

5. Conclusion

The exclusionary rule of illegal speech evidence is an indispensable part in the whole litigation process. In our country, the procedure of investigation and exclusion of verbal evidence was formed late, with insufficient experience and many problems. This paper starts from the basic concept of illegal speech evidence, understands the scope of illegal speech evidence and illegal speech evidence, and then draws out the unacceptability of illegal speech evidence and the value of exclusion, leads to the current situation and existing problems of our country, the definition of illegal speech evidence is vague, the lack of system and other problems, on this basis, constantly improve the exclusion rules of illegal speech evidence. Based on the study on the rule of illegal speech evidence exclusion, this paper realized that the rule of law can make the judiciary fairer and more equitable, advance the rule of law in our country, protect human rights and build a more beautiful and stable society.

References