

# The Legal Structure and Practical Dilemma of the Establishment of the "Review System"

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## Abstract

**In order to improve the judicial responsibility system, implement the supervision and management responsibility of the presiding judge, and improve the quality of court judgments, the Supreme People's Court has proposed the reform of the courtyard long review system for judgment documents. This proposal helps to improve the quality of case trials and alleviate the pressure on judges under the "lifelong responsibility system" in handling cases; However, if the implementation of the review system is not appropriate, it will inevitably lead to significant changes in the operation mechanism of the judicial power, and may even substantially affect the effectiveness of the reform of the judicial responsibility system. In this article, the author will explore the feasibility and implementation difficulties of the review system from two perspectives: the legal structure and practical difficulties of its establishment.**

## Keywords

**Review system; Legal construction; Practical dilemma.**

## 1. Introduction

According to the interpretation of the Supreme People's Court, the "review system" refers to a system in which, based on the list of supervisory powers and responsibilities of the chief judge, the list of judge powers and responsibilities, and the system of the chief judge attending the collegiate bench, the closing documents made by the collegiate bench and the sole judge system are reviewed and marked by the chief judge or the responsible leader from aspects such as evidence acceptance, factual recognition, and legal application. This is a management and supervision system mainly applied to the review and verification of documents, materials, reports, etc. This system ensures the accuracy and completeness of relevant documents or information during transmission, processing, and storage through a series of standards and processes.

The report of the 20th National Congress of the Communist Party of China clearly pointed out that the comprehensive and accurate implementation of the judicial responsibility system has achieved a series of results in the reform of the judicial responsibility system, but it cannot be denied that a series of problems have also emerged in the process of judicial practice. For example, the low efficiency of judges in handling cases, the low quality of case trials, and the unrestricted discretion of judges have led to doubts about the fairness and integrity of the judiciary. Based on this background, the proposal of "review system" has emerged.

## 2. The Legal Structure of the Establishment of the "Review System"

The "review system" advocated by the current court system is essentially a form of exercise of trial supervision and management power by the presiding judge. What it gives to the presiding judge is still a procedural right rather than a substantive right, that is, the presiding judge

cannot have a decisive impact on the trial results of the case, but only provides suggestions and solutions for this case and the judgment results given by the judge. Essentially, this is based on the "independent trial of cases by judges" and the "lifelong responsibility system" in the Chinese judicial field. Therefore, at the legal level, in order to respect the independent power of judges to handle cases, the presiding judge should remain humble, use some regulatory measures cautiously, and strictly limit regulatory methods in the process of handling cases, ensuring the relative independence of judges in handling cases under the "review system", and separating "administrative power" and "judicial power" within a reasonable range, so that the administration does not interfere with the judiciary.

### **3. The Rationality of the "Review System" in Case Review**

The establishment of the "review system" is an innovative move based on some specific problems in the current judicial field, and we should see its rationality and usefulness.

The "review system" is an innovative exploration in China's judicial field, which is different from the "approval system", and can even be said to be fundamentally different from the "approval system". Under the "approval system", the presiding judge can adjust or even directly change the judge's opinion as long as there are objections to the trial results of the case. Under this system, the drawbacks of "judicial administration" gradually become apparent in the trial of cases, and the implementation of this system will inevitably lead to unclear rights and responsibilities; The judge does not judge, and the judge does not try. The provision in the Law of the People's Republic of China that "judges are responsible for the cases they handle within their authority" is also difficult to truly achieve. Therefore, this approach has long been abandoned by various countries. The "review system" stipulates that even if the presiding judge disagrees with the judge's opinion, direct adjustments and changes to the case trial results cannot be made. Instead, suggestions can only be made and submitted to a professional judge's meeting for discussion. Under this system, the presiding judge only has the power of "review", and the case trial results are still made by the statutory trial organization in accordance with the law. Under the institutional framework of the "review system", we can see its relative rationality in application.

#### **3.1. Improving the Quality of Case Trials**

There may be omissions in the judge's trial. The shortcomings in this judicial field are inevitable. As the saying goes, "the onlookers get the better of the situation." From a legal perspective, while legal professionals use technical means to apply legal provisions neatly, they will inevitably have their own inherent emotional biases towards the nature of the case and the parties involved, which are influenced by legal professional ethics. In addition, due to the heavy workload of judges, the tedious handling of cases, and the limitations of personal cognitive abilities, it is inevitable that there will be omissions and defects in the judgment. At this point, the emergence of the "review system" can effectively improve the quality of case proceedings.

#### **3.2. Remedy Defects in Case Trial**

At present, the quality of judges in our country is still uneven. The judicial reform aims to establish a high-quality group of judges who meet the requirements of the judicial responsibility system through the implementation of the judge post system and classified management. Due to the shortcomings in the long-standing system of judges and supporting mechanisms, the quality of judgments in some cases is still not high, and the development of a mature group of judges still needs time. Strengthening the review process is conducive to timely making up for errors caused by judges with weak sense of responsibility and insufficient case trial ability, better serving the public, and better realizing the beautiful vision of "rule of law China".

### **3.3. Maintain Judicial Justice**

The review system is conducive to improving the consistency of application in the trial of similar cases. Each case may be independently tried by different judges, which may lead to differences in the trial of similar cases. Inconsistent legal application and judgment standards are not conducive to judicial fairness and the protection of the interests of the parties involved. The establishment of the "review system" is conducive to achieving consistency in the application of laws and rules in case proceedings through the supervision of the presiding judge.

### **3.4. Strengthen the Responsibility of the President of the Court**

Under the current judicial system in our country, the presiding judge only assumes administrative management responsibilities and is not responsible for the trial process and results of cases. The implementation of the "review system" has improved this phenomenon, effectively enhancing the presiding judge's understanding and familiarity with judicial affairs, and effectively solving the problem of the presiding judge's reluctance, inability, and unwillingness to manage cases. At the same time, under the "review system", the responsibility of the presiding judge has been correspondingly increased. After the judge reports the case comprehensively and truthfully, the presiding judge makes suggestions. If there is an error in the final judgment, the presiding judge must bear leadership responsibility, review responsibility, and even primary responsibility.

## **4. The Practical Dilemma of the "Review System"**

However, we should also recognize that the implementation of the "review system", as an important measure in the field of judicial system reform in recent years, is bound to have a ripple effect, and may even reshape the judicial responsibility system's constructed judicial power operation mechanism. Therefore, we should have a deeper understanding of the difficulties that exist in the "review system".

### **4.1. The implementation of the "review system" may conflict with the mechanism of judicial power operation**

The implementation of the review system may conflict with the current mechanism of judicial power operation. The Third Plenary Session of the 18th Central Committee of the Communist Party of China proposed to implement a judicial responsibility system of "judges make judgments, judges are responsible". The production of review materials is one of the core issues of the trial system, and its actual administrative review role may impact the principle of unity in trial and adjudication, and may also lead to ambiguity and disorder in the allocation and assumption of trial responsibilities. The "review system" seems to be a process of repeatedly reviewing the verdict of a case to improve the quality of the trial and reduce misjudgments. However, in reality, the implementation process is fraught with difficulties and even unrealistic. Firstly, at the theoretical level of the "review system", the president of the court is the core manager and leader of the court, whose main responsibilities include leading the court's trial work, political responsibility, moral standards, and specific administrative management responsibilities. That is to say, under the current administrative system in China, the court president does not require mastery of legal knowledge. Therefore, is it inappropriate for the court chief to be the subject of the "review system"? Secondly, from a practical perspective, as a judicial supervision and management system, the "review system" must be accompanied by corresponding responsibilities while empowering. However, the presiding judge does not review cases, does not appear in court, does not read papers, and only reviews legal documents. After understanding the legal issues of the case, it is necessary to rely on legal documents to understand the factual issues of the case, make substantive reviews of the two issues, and provide corresponding suggestions. In fact, this invisibly puts a lot of pressure on the court chief.

In this situation, how can they judge the trial of the case without losing fairness? How should the accountability of the court president be implemented under this system? How should the courtyard chief be responsible for the quality of the case trial? It is obvious that there are also contradictions at the practical level.

#### **4.2. The implementation of the "review system" may affect the efficiency of case handling**

The implementation of the "review system" requires a significant investment of manpower and time resources. Once the case review system is implemented, for courts with a large number of cases, the presiding judge, especially the presiding judge and deputy presiding judge, who are the backbone of case handling, will inevitably invest a considerable amount of energy in business activities into the review work, and direct case handling will be affected. Secondly, if the "review system" is not implemented properly, it can easily lead to slow case processing speed and affect judicial efficiency. In some courts, due to the complexity and redundancy of review, or insufficient understanding and improper operation of review by staff, cases may be held up for too long during the review process, causing unnecessary troubles and losses to the parties involved.

#### **4.3. The implementation of the "review system" may lead to unclear case handling responsibilities**

Under the "review system", the responsibilities of the presiding judge are stipulated. If the presiding judge's suggestions are incorrect and result in biased trial results, they shall bear corresponding responsibilities. In this context of consistent rights and responsibilities, the presiding judge may also shift the blame or even argue over the review of cases based on pressure. Even if there is division of labor and classification within the court for cases that the presiding judge is responsible for reviewing, it is difficult to substantially improve the quality of case proceedings. In the process of practice, it is likely that the presiding judge of the case court will approve cases with clear facts and no doubt about the trial results; For cases where the facts of the case are slightly complex and there is some debate from the outside world, the President of the Court proposes a review proposal, and the final responsibility still falls on the judge. The President's decision naturally does not need to be held responsible, and any disputed cases will be given some suggestions and requested for a retrial. This not only avoids the adverse responsibilities that may be caused to the President of the Court under the "review system", but also further increases the pressure on the judge to hear the case, and may even affect the normal progress of the case trial, causing losses to the parties involved. This behavior undoubtedly contradicts the original intention of the judicial organs to "serve the people".

#### **4.4. The original intention of the "review system" and the "post system" reform is contradictory**

The judicial responsibility system is a systematic project that requires supporting personnel classification management and reform of the quota system for judicial officials. By allocating a reasonable number of judicial officials with high quality and certain professional guarantees, we aim to ensure the effective operation of the mechanism of "judges make judgments, judges take responsibility" with the professionalism and elitism of judicial officials. It is through the implementation of the judicial responsibility system and the reform of the post system that China aims to make courts more like courts and judges more like judges. However, due to the implementation of the review system, the trial of some cases will return to the trial of the case collegiate bench and the independent judge, who will review and produce judgment documents. The president of the court will approve the review, which actually means that the final power of the case, that is, the last line of defense for judicial fairness, is handed over to the president of the court. This is not in line with the original intention of the judicial post system: to break

administrative constraints to a considerable extent, set up independent judicial officers responsible for case trial, and cultivate judicial officers who are responsible, cultured, and capable. The judicial post system is a fundamental system for the construction of modern judge systems in China. The implementation of the "review system" has to some extent undermined the original intention of the post system.

Therefore, under the reasonable legal background of ensuring judicial independence, it is not difficult to see the rationality of the establishment of the "review system": adopting the "review system" to hear cases can help improve the quality of case proceedings through multiple reviews by judges and the presiding judge; Strengthen review to reduce defects in case handling; By supervising the trial of cases through the presiding judge, we ensure the consistency of the trial procedures and rules, thereby maintaining judicial fairness. Seeing the positive significance and positive role of the review system in judicial trials, we should also recognize the many difficulties that exist in its practical application: the implementation of the review system may conflict with the operation mechanism of the judicial power, affect the efficiency of case handling, and even lead to the mutual shirking of responsibility by the responsible personnel, which is contrary to the original intention of the "post system" reform. Therefore, in order to make the efficient use of the review system in judicial practice not a day's work, the practical path still has a long way to go.

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