

The Implementation Mode and Status of China's Penalty of Incarceration

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At present, among the penalties handed down by China's judiciary, penalties of incarceration constitute the major part of all. Therefore, the implementation of penalties of incarceration occupies an important place in the implementation of penalties in China.

1. The Scope of Penalties of Incarceration

The penalties of incarceration refer to the punishments which keep the offenders incarcerated in special correctional institutions to be supervised and reformed. According to the provisions of China's Criminal Law and judiciary practice, China's penalties of incarceration fall into four categories:

- (1) Criminal detention. It refers to a penalty a people's court metes out to an offender with minor offences, which deprives the offender's short-term freedom of person. The duration of criminal detention lasts from more than one month to less than six months.
- (2) Fixed-term imprisonment. It refers to penalties a people's court hands down to offenders with more serious crimes, which deprive offenders' freedom of person for a fixed period of time. The duration of fixed-term imprisonment lasts from more than six months to less than 15 years. A fixed-term imprisonment may last as long as 20 years when combined with other penalties.
- (3) Life imprisonment. It refers to a penalty a people's court metes out to a felon whose freedom of person is deprived for life.
- (4) Death penalty with two-year retrieve. It refers to a suspended death penalty a people's court hands down to a criminal with very heinous crime which, however, does not warrant the immediate deprivation of his or her life. It is the universal view among the penal circles in China that the suspended execution of the death penalty does not constitute a category of penalty, but forms an execution regime of the death penalty. From the perspective of practical effect, however, the suspended execution of the death penalty is equivalent to a category of penalty. It plays a positive and important role in cautiously applying the death

penalty and reducing the number of execution of the death penalty.

If a criminal sentenced to the death penalty with two-year retrieve does not intentionally commit a new crime during the period of suspension, his or her sentence will be commuted to life imprisonment at the expiration of the two-year period. If in this period he or she performs major meritorious deeds, his or her sentence will be commuted to a fixed-term imprisonment of no less than 15 years and no more than 20 years. If in this period he or she intentionally commits a new crime which is verified, the death sentence will be executed upon the approval of the Supreme People's Court.

2. The Implementing Organs of Penalties of Incarceration

In China there are two categories of implementing organs of penalties of incarceration:

(1) Prison

In China prison is the principal implementing organ of penalties of incarceration. The offenders sentenced to death penalty with two-year retrieve, life imprisonment and fixed-term imprisonment serve their sentences of deprivation of freedom of person in prisons. In China the supreme administrative organ of prison affairs is the Ministry of Justice. In addition to administering the prisons in the country, the Ministry of Justice has set up a prison directly under its jurisdiction for incarcerating criminals meeting certain requirements. In the judiciary organs of the provinces (municipalities directly under the central government, autonomous regions), prison administrations are specially set up for managing the local prisons.

(2) Lockup

Lockup is a facility for incarcerating criminal suspects. But it is also used for executing short-term penalties of incarceration. According to the provisions of Chinese law, offenders incarcerated in lockups are divided into two groups: I. Offenders sentenced to fixed-term imprisonment whose remaining period of penalty upon the intended transfer for execution of the penalty is less than one year. II. Offenders sentenced to criminal detention.

Lockups are administered by the public security organs. Their supreme administrative organ is the Ministry of Public Security of China. At present, all the county-level administrative areas have set up lockups.

3. The Status and Content of Penalties of Incarceration

Currently, there are about 700 prisons where 1.5 million offenders are incarcerated.

According to the stipulations of Chinese law, special attention should be paid to the following aspects in the implementation of penalties of incarceration:

(1) Prison affairs administration

It refers to the administration of the offenders by the prisons, which is mainly composed of multiple concrete regimes, including mainly:

- I. The regime of separate incarceration and separate management. This is a regime of separately incarcerating and managing and handling differentially different categories of offenders. In China's prisons, male, female, minor offenders and different kinds of male offenders are separately incarcerated and managed.
- II. The guarding regime. This refers to the security and guarding regime in the prisons. By and large, the guarding regime of the prisons in China is divided into two systems: The prison police are in charge of the guarding within the walls of the prison while the armed police take the responsibility of guarding outside the prison walls. The armed police have an independent commanding system. This double guarding regime may be one of the characteristics of China's prison system.
- III. The living and hygiene regime. This refers to the regime concerning the offenders' diet, hygiene, medical treatment, epidemic prevention and health care, etc. At present, comparatively adequate rules and regulations have been set up to keep them physically and mentally healthy.
- IV. The communication and meeting regime. This refers to a regime governing the communication and meetings between the offenders and relevant persons outside prison. According to the rules and regulations of prison administration in China, the offenders may hold correspondence with and meet their relatives and custodians. In many prisons, telephone service is available and offenders may communicate with relatives and custodians over the phone.
- V. The rewards and penalties regime. This refers to a regime which

rewards or punishes offenders in accordance with their different behavior in serving their sentences. In compliance with the provisions of China's Prison Law, the prison or other judiciary organs may reward offenders who perform meritorious deeds with citation, material incentive, registering a merit, visiting relatives outside prison, commutation of the sentence and release on parole, etc. On the contrary, the prison and other relevant judiciary organs may punish those offenders not behaving well in serving their sentences by warning, registering a demerit or confinement. For offenders who commit new crimes while serving their sentences, criminal responsibility will be pursued.

- VI. The regime of execution of sentence outside prison. This is a regime which allows the legally qualified offenders to serve their sentences outside prison. The legal requirements include three aspects: One, the offenders are sentenced to fixed-term imprisonment or criminal detention. Two, the offender suffers serious illness and needs to be released on medical parole. Three, the offender is a pregnant woman or is breast feeding her child.
- VII. The regime of commutation of sentence. This refers to the regime which commutes the original sentences for the legally qualified offenders. If an offender really repents and mends his or her ways or performs meritorious deeds while serving his or her sentence, the prison may propose commutation of his or her sentence to the court. Commutation of sentence is both a legal regime and a rewarding measure to encourage the offenders to actively submit to management and reform.
- VIII. The regime of release on medical parole. This is a regime which releases an offender ahead of schedule with conditions. The offender in question must have conscientiously abided by the prison regulations, been receptive of education and reform, shown repentance and mended his or her ways and would not threaten society after release.
- IX. The regime of the offenders' appealing, accusation and reporting. It is a regime guaranteeing the exercise of the legal rights of the offenders. Appealing refers to the right to take exception to a legal sentence already in force and request new sentencing. When an offender thinks his or her sentence inappropriate, he or she may appeal to the court or procuratorate.

Accusation is an act by which an offender may request a law enforcement organ to intervene when he or she deems his or her legitimate rights and interests are hurt. When an offender thinks his or her legitimate rights or interests are infringed upon, he or she may request the prison, public security department, procuratorate and court to handle the matter.

Reporting is an act by which an offender exposes others' crimes or offers clues to others' crimes to a law enforcement organ. Such acts by offenders will be rewarded.

(2) Reform through labor

Reform through labor refers to a system which organizes offenders in participating in productive labor conducive to society so that they will be reformed and relevant activities.

It is a major feature of China's prison system to reform the offenders through labor. For a long time in China's prison system, it is held that organizing offenders in participating in productive labor may bring about multiple positive effects. For example, it may help rectify bad habits such as loving ease and hating work, seeking pleasures in life, foster in labor their sense of responsibility for society and the spirit of observing discipline and law, enhance their physique and keep them physically and mentally healthy and help them master one or several productive skills or knowledge so as to create conditions for their employment after release. At the same time, the living standard of the offenders in prison may be improved through productive labor.

(3) Reform through education

Reform through education refers to the multi-form educational activities which prison organizes for the offenders.

In accordance with the provisions of China's Prison Law and the practice of prison work, there are multiple contents in the education of the offenders. They fall by and large into three categories:

First, ideological education. Its main content comprises education in legal affairs, ethics, domestic and international situation, policies and education about the future. Among them, education in legal affairs includes not only enhancing the offenders' legal knowledge and awareness of law, but also the understanding of their crimes through studying law. The main content of education in ethics is the cultivation in ethics of the offenders and rectification of their wrong life outlook and

values. Education in domestic and international situation is mainly aimed at familiarizing the offenders with social events taking place at home and abroad and mitigating their alienation from society. Education in policies enables the offenders to know about the current policies of the state, in particular policies related to their social life after their release from prison. Education about their future is to guide them in understanding the future prospect of life and realizing that they will have a bright future so long as they are conscientiously receptive of reform and earnestly learn knowledge and skills.

Second, cultural education. It aims to enhance the educational level of the offenders. In China's prisons, the offenders who have not had 9-year compulsory schooling, particularly primary schooling, must receive compulsory education. They will reach the above-mentioned educational level through anti-illiteracy campaign, primary and junior middle school education. At the same time, multiple measures are taken to encourage offenders to receive senior middle school and higher education.

Third, vocational and technical education. It refers mainly to offenders' training in practical skills. The aim of such education is to enable the offenders to master skills which will get them ready for employment and making a living after their release. The contents of this education comprise industrial skills, agricultural skills, horticulture, appliances repair, vehicles repair, computer operations, etc.

4. Reform of the Implementation of Penalties of Incarceration

Since the early 80s of the 20th century, China has introduced numerous reforms in the implementation of penalties of incarceration, achieving some new developments in the work in this field. They are mainly reflected in the following aspects:

(1) Psychological treatment of offenders

It refers to the work of adjusting, making use of psychological principles and methods, the inmates' psychology and behavior and encouraging their positive changes. From the late 80s of the 20th century, such work has been undertaken in many prisons¹. At present, organs of psychological treatment of offenders have been set up in the majority of prisons. These organs have attempted to help the offenders solve their psychological, mood and behavior problems through psychological consultation, multiple psychological treatments and rectification of behavior. At the same time, theories and methods of psychological treatment of

¹ *Psychological Treatment for Prisoners in China*, edited by Wu Zongxian, Law Publishing House, Beijing, 2004, page 2.

overseas prisons have been introduced in a systematic way².

(2) Pursuing prison work in a legalizing, scientific and socializing way

Pushing forward vigorously prison work in a legalizing, scientific and socializing way (“three *hua*” for short) and striving to improve overall prison work are important goals and work requirement advanced at the end of 2002 by China’s Ministry of Justice for the development of prison work. This has constituted a major shift in the concept of the implementation of penalties of incarceration. It has broken the past practice which emphasized prison work’s political feature (prison being a state apparatus and an important venue of political struggle), feature as a tool (prison being a tool for class dictatorship), self-enclosed feature (prison not having contact with the outside) and mysterious feature (masses in society not knowing prisons and being full of mysterious feelings about the happenings inside the high walls). This is a reflection of a major elevation of the understanding of the work of implementation of penalties of incarceration and an important development in the guiding thought of prison work.

According to the requirements of the Ministry of Justice and the current understanding, “legalizing way” stresses the improvement of the laws and regulations of the prisons and the strict compliance with law in prison work. “Scientific way” emphasizes paying adequate attention to and exploring the objective laws in prison work, guiding prison work with scientific outlook and engaging in prison work with scientific methods. “Socializing way” emphasizes engaging social forces in prison work, including making use of social forces in the construction of prisons and reforming the offenders so as to better realize the interaction between prisons and the society.

(3) Other new probing

Along with the deepening of the understanding of the laws of implementation of penalties of incarceration by Chinese scholars and officials and the gradual expansion of China’s international exchanges in the judicial field, new probing and attempts have been undertaken in the implementation of penalties of incarceration in China.

- I. New probing of the traditional concepts. In the long-term practice in prison work, people have some established concepts which are used to guide the

² Wu Zongxian, *Psychological Treatment for Offenders Abroad*, China Light Industry Publishing House, Beijing, 2004. Wu Zongxian, *Contemporary Western Penology*, Law Publishing House, Beijing, 2005.

work of rectifying the offenders. However, people have begun to have doubt about the scientific and rational nature of these traditional concepts and started new probes into them, such as the issue of military administration of the offenders. Prisons in China have all along conducted para-military administration of the offenders. Such administration has its strong points, including being conducive to rectifying the slack behavior of the offenders and to managing them. However, people have found that such mode of administration has its drawbacks such as being simplistic, encouraging the offenders' tendency toward dependence, causing them to lose independent thinking and deepening the brand of prison on them. Therefore, some people have begun probing into how to improve the mode of administration.

- II. Probing into new concrete modes of administration for prisons. A lot of probing has been undertaken in the work of prison management. For instance, making prison affairs public nationwide has been a major change in the administration of prisons. In the past, China's prisons were highly isolated from society, and within prisons, decisions on the treatment of the offenders were made by the prison staff, lacking adequate channels and regimes for the scrutiny of administrative work of prisons by the inmates. For this reason, on October 12, 2001 the Ministry of Justice promulgated Opinions on the Implementation of Making Prison Affairs Public in the Prison System. The document required that the law enforcement activities in the prisons be made public through news media, various publicity means in the prisons, conducting consultations on prison affairs and printing Manual on Making Prison Affairs Public so that these activities would be placed under the scrutiny of the offenders and their relatives. This practice has enhanced the transparency of the work of prison administration. Another example is the improvement of the quality of the reform of offenders. Although for a long time, in China's prison system, improvement of the quality of the reform of offenders has been encouraged, an in-depth study has been lacking on certain concrete issues such as the meaning of the quality of the reform of offenders and relevant measures. At present, new developments have been achieved in the study and practice in this field³. This has provided a new line of thinking for elevating the level of the work of prison administration.
- III. Changes in certain concepts in the implementation of penalties of incarceration. In the field of implementation of penalties of incarceration, changes have taken place in the concepts which have been used for a long time. For example, with regard to the term of address for those sentenced by

³ See *Assessment of the Quality of Prisoner Reform*, edited by Yu Airong, Law Publishing House, Beijing, 2004.

the judiciary, in the early period, they were called “labor-reform prisoners”. Later, with the promulgation and implementation of The Prison Law of the People’s Republic of China in December 1994, the concept of “prisoner” was universally adopted. These terms seem to contain a strong sense of moral condemnation. In the revised Norms of Conduct of Prison Inmates promulgated by the Ministry of Justice on March 19, 2004, a neutral term “inmate” was adopted. The changes in the term of address seem to indicate some change in the attitude toward those serving their sentences.

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