

## Study on Life Imprisonment as an Alternative to Death Penalty

Xiong He

School of Law, Yangtze University, Jingzhou 434000, China

### Abstract

**Life imprisonment as an alternative to death penalty refers to the method of using modified life imprisonment without applying the death penalty. Alternative measures for the death penalty should be based on the current penal system. As a substitute for not abolishing the death penalty but for some of the current death penalty, life imprisonment as an alternative to the death penalty should also focus on the transformation and return to the society while maintaining a high degree of penalties and deterrence. Therefore, it is more appropriate to improve the existing life imprisonment and set a minimum implementation period of 20 years.**

### Keywords

**Death penalty; alternative to death penalty; life imprisonment.**

### 1. Introduction

With the continuous development of our society, the current death penalty legislation in our country has already revealed the shortcomings of social adaptability, which has led to the related reflection and research on the death penalty and the alternative measures of death penalty in the criminal law system of China. Some scholars believe that the death penalty alternative is the necessary stage to gradually abolish the death penalty. However, how to carry out the reform of the death penalty alternative measures, how to design the specific system to best adapt to China's current national conditions, has increasingly become the object of criminal law scholars.

### 2. The concept of the death penalty alternative

Many scholars have their own definition of the concept of alternative measures for death penalty. Professor Gao Mingxuan, the master of criminal law, believes that: "The alternative to death penalty refers to the criminals of a specific nature in the legislation or under special circumstances in the judiciary shall not apply the death penalty immediately and replace it with other punishments with the purpose of restricting the application of the death penalty."<sup>1</sup> Professor Li Xihui believes that: "The alternative measure of death penalty refers to the method of punishment for the death penalty adopted after the abolition of the death penalty for the most serious crimes."<sup>2</sup> The author believes that the biggest difference between the definitions is that Professor Gao Mingxuan's concept of alternative measures for death penalty is When the death penalty has not been completely abolished as a special penalty, and the legislation is applied to some special offences that have been applied immediately, the death penalty is no longer applied immediately, and other punishments are used instead. Professor Li Xihui's concept is that the alternative measure of death penalty is a method of punishment after the death penalty is used as a form of punishment in China after it is completely abolished.

The author is more inclined to Professor Gao Mingxuan's definition of alternative measures for death penalty. First of all, the death penalty has the ability to meet the political needs of the ruling class and the common people's retribution mentality. The abrupt abolition of the death penalty and the substitution of other penal measures are not conducive to the stability of the state and the protection of the people's psychological security. Secondly, according to the practical experience of relevant

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<sup>1</sup> GAO Mingxuan, "Alternative Measures for Death Penalty in Chinese Criminal Law", Hebei Law Science, Vol.2, PP19, 2008.

<sup>2</sup> LI Xihui, "Alternative to the Death Penalty", Hebei Law Science, Vol.2, PP25, 2008.

foreign countries and the understanding of the law of development of things, the complete abolition of the death penalty should be a gradual process. The ordinary people and society need an adaptation process for the complete abolition of the death penalty. Too radical changes may produce a rebound effect. Therefore, in contrast, the author believes that the concept of alternative punishment for death penalty advocated by Professor Gao Mingxuan is more suitable for the actual needs of China.

### **3. Analysis of the concept of life imprisonment as an alternative to death penalty**

At present, the definition of life imprisonment in China is a kind of penalty between the term of imprisonment and the death penalty. The concept shows that life imprisonment is a method of deprivation of lifelong freedom of criminals and they are forced into laboring. Criminals sentenced to life imprisonment are executed in prisons or other places of labor reform. During the execution period, if they do have repentance or meritorious deeds, they can be reduced to fixed-term imprisonment. Judging from the life imprisonment currently being implemented in China, it allows criminals sentenced to life imprisonment to be reduced to life imprisonment through conscientious repentance and meritorious service during the execution of life imprisonment, resulting in the limit of life imprisonment is not high. Alternatives to the death penalty can lead to a lack of severity in the penalties, and it is not appropriate to apply the existing life imprisonment directly into an alternative to the death penalty. Therefore, it is necessary to carry out certain reforms of the existing life imprisonment in China. The criminal law academic community has different understandings of this, and the following are their points:

Realizing the life of imprisonment without a period of time. The imprisonment of life imprisonment will be turned into a life sentence, and the offender sentenced to life imprisonment will not be allowed to commute for a lifetime without actual punishment. At present, this view has been practiced in China. The fourth paragraph of Article 44 of the "Amendment of the Criminal Law of the People's Republic of China (Nine)" passed in 2015 provides for the life imprisonment of criminals who commit corruption offences. Article 15 of the Supreme People's Court's Provisions on the Specific Application of Laws for the Reduction of Criminal and Parole Cases, implemented in 2017, further clarifies that criminals sentenced to life imprisonment are reduced to life imprisonment in accordance with the law on the expiration of the death penalty. In the ruling, life imprisonment should be clarified and no further sentence or parole should be allowed.

Implement strict life imprisonment. Professor Gao Mingxuan advocates reforming the existing life imprisonment system, classifying life imprisonment into general life imprisonment and strict life imprisonment, and increasing the severity of strict life imprisonment by setting higher requirements for strict life imprisonment in the commutation and parole system.<sup>3</sup>This view has been reflected in Articles 11, 12, 13 and 14 of the Supreme People's Court's Provisions on the Specific Application of Laws in Cases of Commutation and Parole. This view has been recognized by many criminal law scholars.

Life imprisonment with compensation. Since most death penalty cases involves personal injury, most results are unrecoverable. The use of compensatory life imprisonment on the one hand can satisfy the victim's revenge by sentenced to life imprisonment, and on the other hand, through the criminal's material compensation to the victim, the victim can obtain a certain material basis to help them start new life. From this perspective, the life imprisonment with compensation has its unique rationality.

The author believes that the second and third viewpoints are more in line with the purpose of setting up alternatives to the death penalty. The first viewpoint is contrary to the starting point of the alternative measures for the death penalty. Life insurance, which is truly unpredictable, is a life sentence. Although it is the closest to the death penalty in terms of the severity of punishment, it is theoretically the most suitable substitute for death penalty, but it has been criticized in criminal law.

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<sup>3</sup> GAO Mingxuan, "Alternative Measures for Death Penalty in Chinese Criminal Law", Hebei Law Science, Vol.2, PP19, 2008.

As early as 1764, the criminal jurist Beccaria found that the severity of lifelong punishment was higher than the death penalty on a certain level: "Our spirit is often more resistant to violence and extreme short-lived pain, but it cannot withstand time to wear and can not stand the lingering troubles, because it can temporarily shrink itself to resist violence and short-term pain. However, this strong flexibility is not enough to resist the long-term and repeated effects of time and trouble. "At the same time, the real lifeless imprisonment is not conducive to the prevention of crime. After the criminals have been involved in the relevant criminal acts, it is very likely that they will stimulate the guilty of continuing crimes. When the penalty is executed, because he realizes that he has no possibility of going out of the prison, he will not accept the transformation with a positive attitude and does not meet the purpose of the criminal law. In addition, the life insurance of real life without penalty is a life sentence. After a period of implementation, it will inevitably lead to excessive prisoners, increasing the risk and pressure of prison supervision and increasing the financial burden of the state.

#### **4. The specific system design of life imprisonment as an alternative to death penalty**

In 2015, the Criminal Law Amendment (nine) of the People's Republic of China abolished the crime of smuggling weapons and ammunition, the crime of smuggling nuclear materials, the crime of smuggling counterfeit money, the crime of forgery of money, the crime of fund-raising fraud, the crime of organizing prostitution, the crime of forced prostitution, and the crime of carrying out military duties, the crime of making war in the war, and the crime of nine death sentences. At present, there are 46 categories of 10 types of crimes applicable to death in China, as follows:

Crimes against national security: 1. Crime of betraying the country 2. Crime of splitting the country 3. Crime of armed rebellion, riot 4. Crime of rebellion against the enemy 5. Espionage 6. Stealing, spying, buying for institutions, organizations, personnel outside the country Illegal provision of state secrets or intelligence crimes 7. Capital crimes.

Crimes against public safety: 1. The crime of arson 2. The crime of water-breaking 3. The crime of bombing 4. The crime of poisoning 5. The crime of putting dangerous substances 6. The crime of endangering public safety by dangerous methods 7. The crime of destroying electric equipment 8. Crime of destroying flammable and explosive equipment 9. Crime of hijacking aircraft 10. Crime of illegal manufacture, sale, transportation, mailing, storage of firearms, ammunition and explosives 11. Illegal sale, transportation of nuclear materials 12. Illicit manufacturing, sale, transportation, storage Crime of dangerous substances 13. Crime of theft, looting of dangerous substances such as firearms, ammunition, explosives, etc. 14. The crime of looting dangerous substances such as firearms, ammunition and explosives.

The crime of producing and selling fake and inferior commodities: 1. The crime of producing and selling counterfeit drugs 2. The crime of producing and selling toxic and harmful food.

Crimes against citizens' personal rights and democratic rights: 1. Intentional homicide 2. Intentional assault 3. Rape 4. Kidnapping 5. Trafficking in women and children.

Crime of property infringement : 1. Robbery.

Obstruction of justice: 1. The crime of rioting and imprisonment 2. The crime of looting armed with arms.

The crime of smuggling, selling, transporting, and manufacturing drugs: 1. The crime of smuggling, selling, transporting, and manufacturing drugs.

Crimes against national defense interests: 1. Crimes of destroying weapons and equipment, military installations, and military communications 2. Providing unqualified weapons and equipment and military facilities.

Corruption and bribery: 1. Corruption 2. Acceptance of bribes.

The crime of military personnel violating duties: 1. The crime of disobeying the war in wartime 2. The crime of concealing and misrepresenting military sentiment 3. The crime of refusing to pass, the

false pass of military order 4. The crime of surrender 5. The crime of fleeing in wartime 6. Driving aircraft, ship defect Crime 7, for the overseas institutions, organizations, personnel to steal, spy, buy, illegally provide military secrets 8, theft, looting of weapons and military materials, crimes, illegal selling, transfer of military weapons and equipment 10, wartime in military operations In the area, the innocent resident or the indemnity of innocent residents.

Alternatives to the death penalty apply only to crimes of extremely serious social harm that should apply the death penalty. As an alternative to the death penalty, it is necessary to meet various conditions. First of all, the object of the death penalty alternative is those crimes that are extremely harmful to the society. When we put in the alternative measures of death penalty, we cannot reduce the social harm degree of the death penalty object considering the introduction of the death penalty measures, so that the death penalty alternative measures abuse. Secondly, the author believes that the alternative to death penalty is a substitute for death penalty in cases where the death penalty has not been completely abolished. Therefore, we should recognize that those who are in extremely serious social harm should proceed further when distinguishing the death penalty alternatives. For the most serious crimes, we should continue to apply the death penalty, and for those crimes that are less harmful than the most serious crimes, the death penalty should be used instead.

Based on this, the author believes that the 46 existing death penalty crimes in China should be divided into two categories. For the seven crimes against national security crimes, the crime of arson, water, crime, poisoning, dangerous substances, dangerous public goods, and aircraft hijacking The crime of death penalty, five counts of death penalty in violation of citizens' personal rights and democratic rights, smuggling, trafficking, transportation, and drug-making crimes, as well as wartime violations of military duties in military operations, killing innocent residents or looting innocent residents Property crimes, the death penalty, these 22 death penalty charges are still extremely serious social harm in our country. They are basically consistent with the provisions of the UN International Covenant on Civil and Political Rights and are the "most serious crimes". They shall continue to apply the death penalty. For the existing offences that should continue to be subject to the death penalty, the remaining 24 crimes should be replaced by the death penalty. The penalties that best make these 24 crimes with extremely serious social harms compatible with crimes and punishments are improved life imprisonment, because the death penalty system does not independent of the death penalty, and it is obviously not a substitute for death penalty. In line with legal logic, except for the degree of severe life imprisonment, it can basically adapt to the social harmfulness of the remaining 24 existing death penalty, but it is still lacking in severity. Therefore, it is necessary to improve current life imprisonment. The author believes that the minimum actual execution period of life imprisonment as an alternative to death penalty should be adjusted from the current 10-year period to 20 years, and the sentence can be allowed to be reduced during the implementation of life imprisonment, but only after the implementation of the minimum practical execution period of 20 years, parole is allowed.

## **5. Advantages of improved life imprisonment as an alternative to death penalty**

Conducive to the connection with the term of imprisonment and the death penalty. According to the provisions of the Supreme People's Court on the provisions of the law on the specific application of law on commutation and parole, the prisoners who have been sentenced to life imprisonment after one or several commutations shall not be sentenced to a period of not less than thirteen years. The offenders who are suspended for the execution of the death penalty shall not be less than fifteen years after one or several commutations after being commuted to life imprisonment, and the period during which the suspension of death penalty shall not be included. The author advocates that the minimum actual execution period of the current life imprisonment is determined to be 20 years. On the one hand, the life imprisonment can be effectively distinguished from the death penalty, life imprisonment and fixed-term imprisonment. On the other hand, the minimum actual execution period of life imprisonment is determined to be 20 years. In terms of the severity of the penalty, the death penalty can be better connected.

It can guarantee the severe punishment of the death penalty alternative measures. The life imprisonment for the death penalty alternative is targeted at crimes of extremely serious social harm. From the perspective of the compatibility of crimes and punishments, the penalties for such crimes are required to be quite severe. In addition, from the perspective of crime prevention, through the stricter degree of punishment for such crimes, those potential criminals who are guilty of intentions are afraid to commit crimes, thus playing a general preventive role. At the same time, through the provision of life imprisonment with a minimum execution limit for criminals of such crimes, criminals are isolated from the outside world for a long time and undergoing transformation to achieve special prevention. The life-long imprisonment is set at the minimum implementation period of 20 years. After 20 years of actual execution, parole is allowed to make the degree of severity and the current life imprisonment system greatly improved, and the prevention function of punishment can be better realized.

It can realize the organic unity of criminal law retribution and humanity. Professor Zhang Mingkai advocates abolishing the death penalty when it is actually mature, and there is no need to find alternatives to the death penalty for the death penalty. He believes that the severity of the penalty as an alternative to the death penalty must be equal to the death penalty or more severe than the death penalty. The death penalty is cruel but of short duration. But as an alternative to non-death punishment, there will inevitably be a long-term mental repression of the offender. To some extent, this long-term mental suppression is more cruel than the death penalty. The author believes that setting a minimum execution period for life imprisonment allows parole after the actual period of time can solve this problem well. The concept of modern retribution emphasizes that the equivalence of punishment and crime should be determined by the state of social relations. The minimum execution period of 20 years for life imprisonment allows criminals to accept the punishment and transformation they deserve, and on the other hand, during the implementation period, the criminals are not prohibited from actively reforming or the commutation of the sentence is given to the criminals to seriously accept the hope of reform and return to the society. At the same time, after the actual implementation for 20 years, parole is allowed, and it is this system setting that shows the unify of retribution and humanity.

## **6. Conclusion**

How to design a specific system for the alternative measures of death penalty, many criminal experts have proposed their own constructive programs. However, the reform of the penal system is an extremely important institutional adjustment. Before the adjustment of the penal system, careful verification and pilot research are needed. The final decision is also the result of thorough debate and rational choice. The whole process is extremely long and requires constantly strive of several generations of criminal corporation.