

A Review of the Current Status of China's Death Penalty System and Pathways for Its Improvement

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Abstract

As one of the oldest forms of punishment in human history, the death penalty has remained the subject of debate over abolition and retention for centuries, and has become an important indicator of social civilization and the development of the rule of law. Worldwide, 156 countries have abolished the death penalty in law or in practice, and abolition has become an irreversible international trend. As one of the few countries in the world that still retain the death penalty, China has consistently adhered to the basic criminal policy of “retaining the death penalty, while strictly controlling and prudently applying it,” and has made notable progress in reforming its capital punishment system. Against the backdrop of the historical evolution of China's death penalty regime and the realities of contemporary Chinese society, this article examines the deep-seated reasons for the continued retention of the death penalty and argues that China should adopt a gradual path of “progressive restriction, partial abolition, and eventual total abolition.” It further explores an institutional framework suited to China's national conditions from the perspectives of legislative refinement, judicial reform, public guidance, and international convergence, with a view to providing both a theoretical foundation and a practical roadmap for the eventual complete abolition of the death penalty in China.

Keywords

abolition of the death penalty; China's national conditions; comparative law; gradual reform; human rights protection; rule of law.

1 Introduction

The death penalty, as the most severe punishment depriving an offender of life, has occupied a distinctive place in the history of criminal punishment. From the explicit provision of capital punishment in the Code of Hammurabi in the eighteenth century BCE to the contemporary global movement toward abolition, the evolution of the death penalty reflects the broader trajectory of human civilization from barbarity to civility, from vengeance to justice, and from intimidation to correction. According to the statistics cited in relevant United Nations documents, among 233 countries and regions worldwide, 156 have abolished the death penalty in law or in practice, or have ceased executions in practice. Fewer than forty states still retain and actually carry out executions (Report of the Secretary-General on the Question of the Death Penalty, U.N. Doc. A/77/299, 2022).



Since 1949, China has attached sustained importance to the reform and improvement of its death penalty system. The 1979 Criminal Law was the first to provide a systematic catalogue of capital offences; the 1997 Criminal Law reorganized and adjusted those offences; the Eighth Amendment to the Criminal Law in 2011 abolished the death penalty for thirteen non-violent economic crimes; and the Ninth Amendment to the Criminal Law in 2015 further abolished nine capital offences. As a result, the number of capital offences was reduced from sixty-eight to forty-six. China has also established a death sentence review mechanism under which the power to approve death sentences has been centralized in the Supreme People's Court, thereby significantly restricting both the scope of application of the death penalty and the procedures for its execution. These reforms demonstrate a growing respect for and protection of the right to life. At the same time, in light of the international trend toward abolition, China's rapid economic and social development, the steady improvement of human rights protection, and the deepening of the rule of law, whether and how China should abolish the death penalty has become a major theoretical and practical issue in Chinese legal scholarship and public discourse.

2 The Current Status of China's Death Penalty System

2.1 Legislative Provisions

Article 48 of the Criminal Law of the People's Republic of China provides that "the death penalty shall only be applied to criminals who have committed extremely serious crimes." This provision establishes the fundamental principle governing the scope of capital punishment in Chinese criminal law: the death penalty is reserved only for offenders whose crimes involve exceptionally grave social harm, profound subjective culpability, and a high degree of personal dangerousness. In terms of offence distribution, the capital offences currently provided for in the Criminal Law are concentrated mainly in the following chapters: crimes endangering national security, crimes endangering public security, crimes undermining the socialist market economy, crimes infringing upon citizens' personal rights and democratic rights, crimes infringing upon property, crimes obstructing social administration, crimes endangering national defence interests, crimes of corruption and bribery, and crimes committed by military personnel in dereliction of duty.

Chinese criminal law also imposes strict limitations on the categories of persons to whom the death penalty may be applied. First, persons who were under the age of eighteen at the time of the offence may not be sentenced to death. Article 49 of the Criminal Law provides that "persons who were under the age of eighteen at the time the crime was committed and women who are pregnant at the time of trial shall not be sentenced to death." Because minors are not yet fully mature physically or mentally, possess a comparatively weaker capacity to understand and control their conduct, and retain substantial potential for rehabilitation, they are excluded from capital punishment. Second, pregnant women at the time of trial may not be sentenced to death. This rule protects both the life of the fetus and the bodily integrity of the pregnant woman, reflecting a humanitarian concern. Third, persons who have reached the age of seventy-five at the time of trial are, in principle, not subject to the death penalty, except where death has been caused by especially cruel means. This exception reflects a balance between special protection for elderly persons and the need to address extraordinarily serious cases.

Article 48(2) of the Criminal Law provides for two modes of implementing a death sentence: immediate execution and a death sentence with a two-year reprieve. Immediate execution applies to offenders whose crimes are so serious that execution is deemed necessary at once. A death sentence with a two-year reprieve, by contrast, applies where the offender deserves a death sentence but immediate execution is not considered indispensable. During the two-year reprieve period, if the offender commits no intentional crime, the sentence is commuted to life imprisonment upon expiration of the period; if the offender performs major meritorious service, the sentence may be commuted to a fixed-term sentence of twenty-five years; if the offender commits an intentional crime and the circumstances are serious, the death sentence may be executed upon approval by the Supreme People's Court; and if the intentional crime does not warrant execution, the reprieve period is recalculated and the matter is reported to the Supreme People's Court for the record (Supreme People's Court, Provisions on Several Issues Concerning the Application of Death Sentence with a Two-Year Reprieve, 2010).

In practice, China has primarily used two methods to carry out executions: shooting and lethal injection. The 1996 Criminal Procedure Law expressly provided that death sentences may be executed by shooting or injection. Lethal injection, regarded as a comparatively more civilized and humane method, has gradually become the principal method of execution in China.

2.2 Death Sentence Review Procedure

Article 48(2) of the Criminal Law further provides that, except for death sentences rendered directly by the Supreme People's Court in accordance with law, all death sentences must be submitted to the Supreme People's Court for approval. Death sentences with a two-year reprieve may be decided or approved by a high people's court. This provision establishes China's death sentence review system and confirms the central role of the Supreme People's Court in approving capital punishment. In 2007, the Supreme People's Court resumed the power of final approval over all death sentences involving immediate execution, while death sentences with a two-year reprieve remained subject to approval by high people's courts. The death sentence review procedure constitutes a special procedure within China's criminal process, aimed at ensuring the correct application of the death penalty, preventing wrongful executions and indiscriminate killing, and safeguarding the lawful rights of criminal defendants. In the course of review, the Supreme People's Court comprehensively examines the facts, evidence, and application of law in the case. Where the conditions for the death penalty are satisfied, it issues a ruling approving the sentence; where they are not, it refuses approval and orders a retrial or revises the judgment in accordance with law.

Since the Supreme People's Court resumed the power to approve death sentences, the practical effects of the review procedure have been significant. By strictly examining questions of fact, evidence, and law in capital cases, the Court has corrected a number of wrongful convictions and thereby enhanced judicial fairness. The post hoc correction of notorious wrongful conviction cases, such as the Nie Shubin case and the Huguiltu case, illustrates the critical role of death sentence review in preventing wrongful execution and protecting human rights. At the same time, the review procedure has also improved the adjudicatory standards of lower courts. When handling capital cases, lower courts have become more attentive to evidence collection and evaluation, more rigorous in observing statutory procedure, and more focused on ensuring



case quality. In addition, through the issuance of guiding cases and the convening of trial work conferences, the Supreme People's Court has promoted greater uniformity in the standards governing capital punishment and has strengthened the consistency and fairness of its application.

3 Practical Challenges to the Abolition of the Death Penalty in China

3.1 Constraints Imposed by Cultural Tradition

Within China's traditional culture, notions of retributive justice such as "an eye for an eye and a tooth for a tooth" have long exerted deep influence. According to this way of thinking, an offender who commits a grave wrong ought to receive punishment commensurate with that wrong, and the death penalty is seen as the most severe and appropriate sanction for the gravest offences. Under the influence of this cultural tradition, public support for the death penalty remains comparatively high, and resistance to abolition persists. Many members of the public believe that abolition would amount to tolerance of crime, would undermine victims' interests, and would weaken social security and social stability. The persistence of retributive thinking therefore constitutes an important cultural obstacle to the abolition of the death penalty in China.

3.2 Lagging Public Attitudes

Although empirical research has repeatedly shown that the deterrent effect of the death penalty is far from clear, many members of the public continue to place excessive faith in its preventive power. They regard capital punishment as the most effective means of preventing serious crime and fear that abolition would cause crime rates to rise substantially, thereby endangering social order and public safety. These views are partly attributable to an incomplete and insufficiently rational understanding of crime and punishment, as well as to a lack of scientific awareness regarding the actual deterrent capacity of capital punishment. Media coverage of particularly serious criminal cases may also intensify public fear of crime, leading the public to rely more heavily on the death penalty as a guarantor of security.

In addition, some members of the public harbor intense hostility toward offenders and regard them as enemies of society who deserve the severest possible punishment. This emotional response is often shaped by sympathy for victims and their families, who have suffered devastating harm, and by anger toward perpetrators. Under the influence of such sentiments, the public may demand the imposition of the death penalty to satisfy a sense of moral outrage, even where the offender demonstrates remorse or a possibility of reform. Deep-seated hostility toward offenders thus constitutes another important barrier, at the level of public opinion, to the abolition of the death penalty in China.

3.3 Pressures of Crime Governance

China continues to face substantial pressures in crime governance. Certain serious offences, including intentional homicide, robbery, rape, and drug smuggling, trafficking, transportation, and manufacture, still occur from time to time and pose serious threats to social order and public safety. Although the incidence of such offences may be relatively limited, their extreme social harmfulness keeps them at the center of public

concern. Under these conditions, abolishing the death penalty may be perceived by the public as undue leniency toward serious crime, thereby affecting public confidence, the sense of security, and social satisfaction with criminal justice. The continued existence of grave violent crime therefore constitutes an important practical pressure against abolition.

At the same time, China's crime situation has become increasingly complex. New forms of crime continue to emerge, while transnational crime and organized crime have become more prominent. These offences are often highly concealed, seriously harmful, and difficult to investigate and suppress. Such developments pose major challenges to crime governance. Against this background, some argue that the state should retain the death penalty in order to respond to a complex criminal environment and preserve social security and stability. In this view, abolition could weaken the state's punitive capacity and diminish the effectiveness of crime control. The complexity of contemporary crime thus forms another major source of pressure against abolition.

3.4 Inadequacies in Institutional Development

Although China's penal system has been continuously improved, institutional shortcomings remain. For example, the scope of application of life imprisonment without release remains limited, making it difficult in some cases to impose an adequately severe punishment on offenders who commit extremely serious crimes. The enforcement of property penalties is also imperfect, and in many cases the illicit assets of offenders cannot be fully recovered. In addition, disqualification penalties remain relatively narrow in form and limited in their restrictive effect. If the death penalty were abolished before the penal system had been sufficiently improved, some would argue that the punishment of serious crime would become inadequate and that public security and social stability might be adversely affected. The incompleteness of the penal system therefore constitutes an important institutional obstacle to abolition.

China's crime prevention system, though steadily developing, still contains weak links. Social prevention measures are not always sufficiently targeted; preventive efforts directed at key populations and key regions are not always adequate; judicial prevention mechanisms have not yet developed effective systems for the rehabilitation, follow-up, and social reintegration of offenders; and public security prevention still has room to improve in terms of technological capability and practical effectiveness. If abolition were undertaken in the absence of a well-developed prevention system, some fear that crime might increase and public safety might be compromised. The incompleteness of the crime prevention system therefore represents another institutional challenge.

Similarly, although China's victim assistance regime has improved over time, it still suffers from deficiencies. Assistance standards remain relatively low and are often unable to meet the actual needs of victims and their families; the scope of assistance remains limited, leaving many victims without effective support; and the procedures for obtaining assistance are sometimes cumbersome, making access difficult. If the death penalty were abolished while victim assistance remained inadequate, victims and their families might feel that their interests had not been effectively protected and that justice had not been done. The insufficiency of victim assistance thus constitutes a further institutional obstacle to abolition.



4 Pathways for Improving China's Death Penalty System

4.1 Concrete Legislative Path and Implementation Measures

The legislature should conduct a comprehensive review of all capital offences in the Criminal Law and, in light of judicial practice and the degree of social harm involved, continue to reduce the number of offences punishable by death. More specifically, capital offences in chapters such as crimes undermining the socialist market economy and crimes obstructing social administration should be abolished first. In the final stage, the death penalty should be retained, if at all, only for a very limited number of especially serious violent offences, such as intentional homicide, robbery, and rape. At the same time, the legislature should further clarify the meaning of the statutory standard of “extremely serious crimes” so as to avoid arbitrariness in the application of capital punishment. This standard should be specified by reference to factors such as the degree of social harm, the offender's subjective culpability, and the extent of personal dangerousness. In addition, the scope of application of the suspended death sentence should be broadened, so that any offender who deserves a death sentence but does not require immediate execution should, as a rule, receive a death sentence with a two-year reprieve.

The legislature should also refine the institution of life imprisonment without release and develop it into the most severe punishment available after abolition. More concretely, the law should clearly define the scope of cases in which life imprisonment without release may be imposed. For offenders who have committed exceptionally serious crimes—such as intentional homicide, robbery, and rape—courts should be permitted, where appropriate, to impose life imprisonment without parole or sentence reduction. At the same time, the execution regime for such sentences should be improved by strengthening prison administration and rehabilitation measures so as to ensure both public security and the meaningful management of long-term imprisonment.

The legislature should further improve the victim assistance system and strengthen the protection of victims' rights. Assistance standards should be raised, the scope of eligible victims should be expanded, and application procedures should be simplified so that victims may obtain timely and meaningful relief. A victim compensation fund should also be established to provide financial compensation to victims and their families, while psychological counseling and legal aid should be enhanced in order to help them move beyond the retributive mindset embodied in the notion of “a life for a life.” In fact, the death penalty cannot truly restore victims' rights, nor can it eliminate the suffering of victims and their families. Once a victim's life has been lost, the execution of the offender cannot bring the victim back, nor can it genuinely compensate for the harm already suffered (Liang Genlin, “A Jurisprudential Analysis of Criminal Reconciliation in Capital Cases,” 2010). On the contrary, execution may also trigger hostility and retaliatory impulses on the part of the offender's family, thereby aggravating social antagonism.

4.2 Judicial Reform

Because the application of the death penalty directly implicates the offender's right to life, any wrongful judgment produces irreversible consequences. Although China has established a relatively complete death

sentence review system, the risk of error cannot be entirely eliminated, given the complexity of facts, the limitations of evidence, and the cognitive constraints of adjudicators. Judicial authorities should therefore apply especially stringent evidentiary standards in capital cases and ensure the overall quality of such proceedings. More specifically, they should adhere firmly to the principle that conviction must be based on evidence and should examine the authenticity, legality, and relevance of all evidence with particular rigor. Where there is no reliable and sufficient evidence to prove guilt, the defendant should be acquitted in accordance with law; where the evidence is insufficient and the charge cannot be established, a judgment of not guilty should likewise be rendered.

At the same time, the defence and legal aid mechanisms in capital cases should be strengthened so as to ensure the effective protection of defendants' lawful rights. Every defendant in a capital case should receive meaningful legal representation, and legal aid counsel should be appointed in all cases where privately retained counsel is absent. The professional competence and practical ability of legal aid lawyers should also be improved in order to ensure the actual quality of defence. Finally, the Supreme People's Court should continue to improve the death sentence review procedure itself by enhancing the depth of review with respect to facts, evidence, and legal application, thereby ensuring the correct and cautious use of capital punishment. The transparency of the review process should be increased, defence lawyers' participatory rights should be better protected, and a greater degree of public oversight should be introduced.

4.3 Public Communication and Social Guidance

The government should strengthen legal education and public communication so as to enhance public understanding of the rule of law, human rights, and humanitarian values. Legal education concerning crime punishment, and the death penalty should be incorporated into the broader system of civic education and carried out through schools, communities, and other public platforms. Through such efforts, the public can come to understand both the inhumanity and the practical limitations of capital punishment, and can better appreciate that abolition is a necessary requirement of human rights protection, legal development, and social progress. The media should likewise play an active and responsible guiding role by disseminating balanced knowledge concerning the retention and abolition of the death penalty, introducing comparative experience from jurisdictions that have abolished it, and promoting humanitarian and rights-based values. At the same time, reporting on serious criminal cases should remain objective and restrained, avoiding sensationalized depictions of violence and bloodshed and encouraging a more rational understanding of crime and punishment. In addition, the government should organize diversified forms of public participation—such as hearings, seminars, and surveys—to solicit views and recommendations from different sectors of society. Publicly reasonable and constructive views should be fully incorporated into the design of the abolition process so that any future reform may be better aligned with China's national conditions and developmental needs.

5 Conclusion

Whether to retain or abolish the death penalty is a complex question involving multiple dimensions,



including human rights protection, the development of the rule of law, social governance, and cultural tradition. At the global level, abolition has become an irreversible trend, and more and more states are joining the movement away from capital punishment. As one of the few countries that still retain the death penalty, China has consistently adhered to the basic criminal policy of “retaining the death penalty, while strictly controlling and prudently applying it,” and has made substantial progress in reforming the relevant legal regime.

This article reaches four main conclusions. First, abolishing the death penalty in China is normatively necessary. It is an inevitable requirement of protecting the right to life and implementing humanitarian values; it is also an internal demand of improving the rule-of-law system and safeguarding judicial justice, a realistic need for maintaining social harmony and promoting civilizational progress, and an objective requirement of responding to international trends and fulfilling international commitments. Second, the abolition of the death penalty in China is institutionally and socially feasible. Sustained economic development provides a solid material foundation; the continuing advancement of the rule of law provides an increasingly sound institutional basis; gradually emerging social consensus lays a more favorable social foundation; and the ongoing improvement of supporting institutions offers important structural support. Third, China’s path toward abolition still faces real challenges arising from cultural tradition, public attitudes, crime governance, and institutional development. Fourth, China should move toward the ultimate abolition of the death penalty through coordinated measures in legislative reform, judicial reform, and social guidance.

The abolition of the death penalty in China will necessarily be a long-term and complex process rather than an abrupt transformation. In that process, due regard must be paid to China’s historical traditions, social conditions, and level of legal development, and a careful balance must be maintained between crime control and human rights protection, as well as between the maintenance of social order and the advancement of social civilization. At the same time, both theoretical research and practical experimentation must continue, so that the path and institutional design of abolition may be further refined and its implementation may proceed in a stable and orderly manner. With the continued development of China’s economy and society, the steady improvement of the rule of law, and the further elevation of social civilization, China may ultimately achieve the complete abolition of the death penalty and thereby make a meaningful contribution to the progress of human civilization and the development of the rule of law.

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