

The study on abolishment of death penalty of corruption crimes



Bribery and corruption crime exists widely worldwide, and are very serious in some countries and areas. Particularly, bribery and corruption crimes will occur frequently with high degree in the specific period of fast development of economy, rapid transform of society and imperfect of some mechanism in our country. “ It badly harmed healthy development of our society and blocked the aim of building harmonious society of our government. In order to keep bribery and corruption crimes within limits; the government always persists in giving a great blow to the crimes, and even used the most severe criminal punishment-death penalty. (Changsha, 2006) “ But, we can find from the case arising status in the lately decades, that is, one side, the case arising rates, related money amounts and the civil levels constantly broke the record. ”(Zhao, 2004) On the other side, some new circumstances and aspects constantly happened such as high frequency of hiding and spoliation, low utilization rates of death penalty, escaping of corrupt officials, and even appeared giving corrupt officials lower criminal punishment who were repatriated because of extradition.

It made unfair of justice as a matter of fact, showed disability of death penalty in punishing bribery and corruption crimes, and made some misunderstanding of doctrine of severe punishment. The appearance of dispute about existence and abolishment of death penalty of bribery and corruption crimes is based on that with the rapid development of economy, “ culture and society in lately two decades, material wealth get maximum abundance, and people’s concept of human rights and consciousness of rights get progressively boosting up. (Ma, 2004)At the same time, internationally movement of abolishment of death penalty increased. Every

year cases of condemning and carrying out death penalty mostly in our country, which is out suit to great effect of our country, and also runs counter to the great aim of building harmonious society of our country. “ It is necessary that to adapt the trend, to abolish death penalty of bribery and corruption crimes. (Chen, 2001) The necessity of abolishing of death penalty of corruption crimes Death penalty, to be the most stern penalty that take away people’s life, the debate of keeping it or abolishing it was first been put forward in the book “ Crime and Penalty”, written by Beccaria. This issue has been argued for hundreds of years. Nowadays, civilization is highly developed, academic circles’ opinions for the death penalty, especially for death penalty of non-violent crime, which should abolish, are basic consensus.

Professor Zhao, Bingzhi pointed out that “ The crimes that obviously are too harsh to set death penalty or will resulting for value imbalance, should be abolished their death penalty from legislation in time. ” “ In particular for non-violent crimes which there are no specific victim and crimes which do not have the potential hazard to other people’ person basic right” (Zhao, 2004), should be abolished their death penalty from legislation right immediately. Speaking of bribery and corruption crimes, the issue that whether should abolish death penalty or not becomes academic circle and theory circle’s focus of debate increasingly.

One opinion consider that even though bribery and corruption crimes seriously endanger the integrity of country staffs and encroach on public property, but they do not harm for people’s life, so we should abolished death penalty of bribery and corruption crimes(Ma. 2006). Another opinion <https://assignbuster.com/the-study-on-abolishment-of-death-penalty-of-corruption-crimes/>

thinks that abolish bribery and corruption crimes' death penalty is not fit for China's national conditions, and there are two reasons. On one hand, at present, China excessively uses probation or exempted from criminal punishment to majority bribery and corruption crimes, which contravene the principle of fairness penalty.

On the other hand, comparison to other countries which abolish death penalty for bribery and corruption crimes, our country does not have a reasonable alternative penalty, and life imprisonment is too costly and country's financial resources is hard to support. So, bribery and corruption crimes should be abolished. The reasons are: First, from internal cause to consider the form of bribery and corruption crimes, engender and exist of bribery and corruption crimes have necessity.

When discuss the problem of the death penalty's keeping or abolition, people always interested in investigating the social harmfulness of bribery and corruption crimes or death penalty's connatural defect, although these two issues have a great influence to the discuss of keeping or abolition death penalty. But, we ignore the most important internal cause- the basic reason of bribery and corruption crimes' form, because " no matter focus on general prevention or focus on special prevention, penalty's effect will realize through people's reaction. (Liu, 2005) So why these corrupt officials still appears one after one, even if they facing deter of death penalty? Because corrupt officials' psychological defects gradually turned into bad need stimulated by the objective environment, the bad need's malignant development has produced the crime motive finally. Like Beccaria advanced the " crime saturation principle", that is, " each society should has crimes <https://assignbuster.com/the-study-on-abolishment-of-death-penalty-of-corruption-crimes/>

that it deserves, the production of these crimes result from its natural and social condition, its quantity and quality is fit for each social collectivity's development. (Ma, 2004) Even if engender and exist of bribery and corruption crimes has necessity, it will breeding corruption only if the national power exists. So the thought that Monotonous considers with the severe penalties can contain the crime of corruption is clearly untenable. "Killing is not a good way to contain corrupt, exposes ugly and display corrupt can not lead people do good turns. "(Zou, 2006). Second, seeing from the external cause of the corruption crimes' forming, bribery and corruption crimes are always a social syndrome, shift the responsibility is obviously wise. bribery and corruption crimes' happen, " is a result of economy, politic, law, culture and some other factors' synthesis process, not only relate to bribery and corruption criminals that greedy pursue the improper economic interest and extremely ignore to the national social public interest, but also has close relate to the confusion of the state economy management and the lack of the society supervise, as well as criminal law's negligence. (Wang, 2004) On one hand, made significant achievements in economic reform today, the political system lags behind, the condition of power highly concentrate has not fundamentally changed yet, and the party committee and government have too much power so they give party and government leader's excessive power and make them control too much social resources. Coupled with a lack of leadership within the power constraints, supervision is often a mere formality. So, some people who relaxation of ideological and moral cultivation, self-awareness is not strong walking to the abyss of corruption are an inevitable phenomenon.

This lag of the political system is made of history and system and a variety of complex factors, and can not change by using death penalty for individual corrupt criminals. On the other hand, some people think that China's use of the death penalty for corruption crimes, shows that we stepped up punishment of the crime of corruption is bound to greatly reduce the incidence of corruption crime. However, what we think is not the same as the fact, in China, the penalty which install for bribery and corruption crime is "severe", but criminal law is "negligence". "In the installed laws, the problems of legislate negligence, concept lurred and difficult to operating exist in a large amount, the problem in legislate quality restricts anti-corruption practice." All these above show reasons that from bribery and corruption crime—corrupt officials' own psychology defect, besides, many factors from external circumstance. It is a "social syndrome", and this symptom can not be cured by only carrying out severe penalty to corrupt officials, and our country should shoulder the responsibility of system's maturity, if our country ascribe the blame to corrupt officials themselves, I'm afraid the country has a suspicion that transfer responsibility and hoarkae people's enmity.

So, speaking of a corrupt official, our country is "happy to kill him", really. However, it cannot cure the whole society's corrupt crime but produce more corrupt officials. System construct has properties of fundamental, overall and long-term, and it's the basic safeguard for economy, politic and social optimum movement. Same, to prevent bribery and corruption crime must always focus on system construct, not only strike when it happen, but also prevent before it happen. (Tan, 2006) therefore, we can say that, enhance

system construct is the necessary road of preventing bribery and corruption crime radically.

Because the time that China prevent and cure bribery and corruption crime by system construct is short, comparison with western countries, in system install and operate, our country is not so perfect or match, it leads China's rate of bribery and corruption crime increasing year by year. We should learn the achievements in using system to prevent bribery and corruption crime from western developed countries, to get ready for preventing bribery and corruption crime in system efficiently.

Third, speaking of bribery and corruption crime, the method that “ Beat the dog before the lion” is not so efficient and penalty's general prevention function don't show to public. The death penalty for the corrupt officials, surely achieve the aim of special prevention and they won't crime again forever. However, are there any deterrent for other corrupt officials?

Feuerbach, who is a famous jurist of classical school of criminal law, also thinks that law express stipulation penalty of different kinds of crime, at the same time, the law announces that any kinds of crime must be penalized.

Depending on using penalty to prevent crime, is not focusing on strictness but on stringency. Deterrent of penalty should include three aspects, the first one is that penalty has necessity; it means that anyone who affront law must be punished. The second one is that penalty must has promptness, means people who affront laws must be punished in time, to let them aware of the inevitable causality between crime action and penalty. The third one is that

penalty must have strictness. These three aspects relate closely and cannot be divided.

They influence and restrain the deterrent of penalty together. Emphasize the strictness of penalty alone and ignore another two aspects, obviously penalty's general prevention is not so efficient. Forth, seeing the bribery and corruption crime's stipulation in countries all over the world, make its penalty to be death penalty is not fit international fashion. Use death penalty to bribery and corruption crime is out of tune with the international in common principle that "death penalty doesn't extradition", instead even more does not favor to the serious bribery and corruption crime attack.

Majority countries stipulate prison term between six months and ten years. But in South Africa, people who first bribe will be put in jail at least 15 years, second time 20 years, above 2 times the time will be 25 years. In China, the same crime, it may be life imprisonment or even death penalty. From this we can see that China may be the most crucial country that attack bribery and corruption crime for install death penalty for bribery and corruption crime, but its rate of bribery and corruption crime increase year by year.

Other countries don't install death penalty for bribery and corruption crime, and there aren't so many bribery and corruption crimes. Besides, the international current role "death penalty doesn't extradition" makes many Chinese corrupt officials escape to foreign countries and cannot be extradited back to China to judged, and it also makes nation public property loss. Many corrupt officials make use of this hole escape to foreign countries, America, Canada and some other countries become their harbor.

The aim that China installs death penalty for bribery and corruption crime is to attack bribery and corruption crime better, but backfire, this becomes a “reasonable reason” to corrupt officials. The feasibility for abolishment of death penalty of corruption crimes

The Opportunity for abolishment of death penalty of corruption crimes

Violent crimes directly point at human’s life right, and directly threat to people’s life and health, to abolish death penalty in this area, it is a great challenge for the view of “a death for a death” which passed down for thousands years in China, it would certainly causes un uproar and meets with reat resistances; it is not necessary to achieve abolishment of death penalty in military crimes and state crimes, but to link to current situation in china, it has a certain sense to remain the death penalty for maintaining China’s national security and unity, and maintaining social stability and economic order and stability.

Only corruption crimes, it concerns on the money interests, and it encroach on the building system of an incorruptible government, by the standard for China determine nature of crimes with social harmfulness, to abolish death penalty in this field undoubtedly has the least resistance and is according to the international trends, it has more operability. Moreover, compared to other crimes, corruption crimes are entirely preventable, it is no need to threaten and punish with extreme penalty in all respects.

In my opinion, although there are variety of reasons for corruption crimes on the surface, but in reality, it may have roots in a proper system——although not all of it, at least, it can be prevented form the system. However, the happen reason of violent crime is one’s inner violence desires, or the

performance of a occasional crime of passion, or the performance of a

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calculated crime through the course of a crime in preparation, all of them are not the problems which can be solved from the system level.

Therefore, the abolishment of death penalty of corruption crimes is completely feasible. The theoretical basis and sociological basis for abolishment of death penalty of corruption crimes have been founded The theoretical community of China has long advocated that death penalty should not be abolished immediately, but government should gradually reduce and strictly limit death penalty, and provide the conditions for abolishing it in the future. To achieve this goal, many scholars have put forward different options to reduce and limit death penalty.

Although these theories exist many differences, but one thing in common, they all think that the applicable scope of death penalty should be limited to crimes which serious harm to national security, public safety, and personal safety. In most countries which keep death penalty, they also have not set the death penalty for corruption crimes. Jiang Bixin thought that based on the historical tradition and legal culture, the reality situation of China and the public values and other factors, it is unrealistic to completely abolish death penalty in present.

The key of prevention and containment for economic crimes is to sound economic management system, to improve the social supervision mechanism; government should abolish death penalty for most corruption crimes. This view is as the same as the objective of building a socialist harmonious society and establish a new culture in China. In conclusion, the

theoretical basis and sociological basis for abolishment of death penalty of corruption crimes have been founded.

Use ratio of corruption crimes is low in recent years In recent years, from the use of corruption crimes of death penalty in judicial practices, few cases have been sentenced to death, it account for a few percentages of the incidence of these crimes, so death penalty of corruption crimes is keeping itself for future possible use. Many corruption crimes cases which the amount of the province with tens or hundreds thousands did not apply death penalty.

Abolishment of death penalty of corruption crimes is conducive to have a unified jurisdiction in China Abolishment of death penalty of corruption crimes is conducive to main criminal disposition be unified with related mechanisms of Hong Kong and Macao. “ In recent, China’s subject increasingly close exchanges with political and economic of these regions, personnel exchanges gradually achieve the accessibility, it is great practical significance. (Roger, 2005) For now, China Mainland sentenced the death penalty for some comers who came from Hong Kang and Macao; it also caused a number of international non-governmental organizations concerned. Amnesty International thought: “ when many criminals who implement crimes in HKSAR and MCSAR have been sentenced death penalty by China Mainland, this makes effectiveness problems which are called “ transfer rather than extradition to China Mainland” emerged from the water; in the foreseeable future, Amnesty International will continue to launch attack to the Chinese government on this issue.

Immediate abolishment of death penalty of corruption crimes is the need of completely fighting against the corruption crimes suspects fled Since 1992 to the end of June 2007, in the Chinese corruption criminals fled, there are 87 provincial and ministerial levels, 320 are to departmental level, 1920 is to vice departmental level, 8250 is to the division level, 11340 is to the deputy position at the division level, it is a total of about 16000 people; these people embezzled and took over one billion of RMB.

In fact, it is a very conservative data. In fighting against them, China have been caught in a dilemma: Because most countries have abolished the death penalty, according to a particular principle of extradition, these countries generally made in its extradition legislation with the principle of non-extradition of the death penalty, Chinese government can not have commitments of “ corrupt officials will not be sentenced to death for these countries”.

If Chinese government has these commitments, it would be contrary to Chinese law, at the same time, it is difficult to achieve fairness for corrupt officials fled in the criminal law, and leading to different punishment with the same crime; this problem is particularly that reflected in the crime. To solve these problems, the fundamental method is abolishing death penalty for bribery and corruption crime. Abolishing death penalty is a trend that is already reached common ground in academic cycle.

Many people think that China does not have the conditions of abolishing death penalty. As abolishing death penalty is the thing that must do sooner or later, we must walk out the first step. And today is a good chance. Predict

for bribery and corruption crime with no death penalty Abolishing death penalty for bribery and corruption crime, on one hand, makes the penalty measures of bribery and corruption crime more reasonable, on the other hand, can restrain corrupt officials' escaping and reduce the space that they can escape and hide.

Abolishing death penalty for bribery and corruption crime has a strong justice practice meaning: our government can sing extradition role with developed countries which hidden many corrupt officials and thorough attack escaping corrupt officials; at the same time, it is an efficient frighten to the potential criminals to hardly reduce the escape space. On one aspect, abolishing death penalty for bribery and corruption crime shows more justify by sentence with the amount of money or circumstances.

On another aspect, penalty's determinism will obtain a thorough implementation with escaping corrupt officials becoming less, which decrease bribery and corruption crimes. In 1997, China published " New Law" which abolishes death penalty for steal crime. Through these years' check, the rate of steal crime is not increasing apparently after abolishing death penalty and common people don't show much more attention. Therefore, speaking of practicing, abolishing death penalty for economic crime is totally possible.

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