



Penal Policy in Contemporary China: A Legal and Ideological Analysis

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ABSTRACT

This paper is a theoretically-enhanced and doctrinally-based study of the penal policy in modern China, which combines Marxist penal theory with the notion of the disciplinary power by Michel Foucault. It asserts that the prison regime in China is a tool of state control that is both deterrence and selective leniency, but is rooted in ideological control. Through reviewing the statutory law, judicial interpretations, post-2018 reforms, and leading case law, the paper will show that current reforms have not changed but improved the system. Comparative analysis with India makes it clear that the penal system of India is closer to the modern international constitutional and human rights principles.

1. Introduction

The policy of penalization is the way a state views crime, punishment and justice. In present-day China, the penal policy cannot simply be perceived in terms of legal provisions, but only in terms of the ideology, administration and social control. China values the stability and state power more than the autonomy of individuals unlike liberal constitutional systems. This paper will contend that the penal policy in China is essentially ideological, and deterrence is a means of control but not justice.

2. Theoretical Framework



To gain a better insight into the penal policy of China, it is necessary to involve both Marxist penal theory and the theory of discipline formulated by Michel Foucault since both of them are used to comprehend the structural and functional character of punishment in China.

Marxist penal theory recognizes law not as a system of justice that is neutral but as a tool of state power that is aimed at preserving status quo socio-economic and political systems. This would translate into law in a socialist state like China, where law is used as a tool to maintain state power, guard the socialist system, and the challenges to the political status quo. Crime is thus construed not as a personal evil but rather as a break of group harmony and governance. In this way, punishment is turned into a political action that serves to bolster state legitimacy and social conformity. Sanctions like the denial of political rights are also present and this goes even further to explain that punishment is not merely limited to criminal liability into ideological control.

Another layer of analysis is the theory of discipline as presented by Michel Foucault in *Discipline and Punish*. Foucault contends that the modern penal systems work in a system of constant surveillance, normalisation of behaviour and the use of subtle forms of control as opposed to the use of physical punishment in isolation. This is manifested in Chinese mechanisms like a form of surveillance of the populace, monitoring of the community, re-education, and the institutional focus on confession and cooperation. These factors show that punishment does not exist solely in the court or prison but it exists in the society as a tool of controlling behaviour.

The reading of these two theoretical perspectives makes it possible to see China as a hybrid system in terms of its penal policy. It is a mixture of Marxist concepts of law as an instrument of state power and Foucauldian concepts of discipline and surveillance. What we get is a penal system which is not only a punishment system but a system which creates behaviour, strengthens power and maintains a governance system based on ideological domination.

3. Criminal Law and System of punishment.

The Criminal Law of the People Republic of China provides a hierarchical system of punishment, which includes public surveillance up to death penalty. Although the framework may seem proportionate in theory, it gives wide leeway in practice. The fact that capital punishment is still maintained in the practice of both violent and economic crimes is indicative of a powerful deterrence based philosophy.

4. Judicial Interpretations and SPC Role.



In China, judicial interpretations made by the Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP) are decisive in determining the outcome of a penalty. These interpretations act as quasi-legislative by enlightening the provisions of the statute, remedying sentencing thresholds, and leading the evidentiary principles in courts.

The Interpretation on the treatment of cases of corruption and bribery by the SPC in 2016 greatly contributed to the creation of increased clarity on the sentencing bands where the degree of punishment is proportionate to the measured quantities and situations, which further augmented the punishment of major economic offenses. In 2013, the offence of driving under the influence was standardized by the 2013 SPC/SPP Interpretation on dangerous driving and resulted in a steep rise in conviction rates due to consistent evidentiary standards.

Since 2018, the SPC has provided advice to strengthen the so-called trial-centered reform, stating that it is essential that the conviction should be made on the evidence that has been tried in court and not on the records of the investigation alone. Similar provisions on the inadmissibility of illegally obtained evidence seek to prevent the use of coerced confessions, but their implementation does not always reflect this. The death penalty review processes of the SPC are enhanced by internal process and review opinion, which demand tougher evidence evaluation, corroboration, and mitigation during the capital sentence approval.

These interpretations make the judicial system more consistent and predictable, but they also consolidate judicial power and unify adjudication against state policy, limiting the discretion of lower-courts, and reducing judicial independence.

5. 2018 Reforms: Reform or Reinforcement?

The latest reforms indicate that there is an endeavor to modernize the penal system without necessarily changing its structure. The reforms of 2019 in death penalty consideration procedures added some new protective measures like the obligatory consideration of the Supreme People's Court and increased access to legal services. The reform was the trial-focused reform which was based on evidence-based adjudication and aimed to decrease the use of forced confessions. Community Corrections Law, which was enacted in 2020, broadened non-custodial measures.

Nonetheless, the essence of the system is not changed by these reforms. Rather, they optimize procedural elements, but keep high levels of state control and deterrence as main values.

6. Case Law and Systemic Concerns.



The operations of the penal policy in China can be best perceived with the help of the main cases that reflect the corrective ability and the systemic danger.

The Nie Shubin case (2016) is a seminal case of wrongful execution, in which exoneration at posthumum revealed flaws in evidence assessment and confession overreliance. The Huugjilt case (2014) is not an exception as a wrongful execution was later reversed, which led to a renewed consideration of the standards of evidence and review processes.

The case of Zhang Yuhuan (retrial acquittal, 2020) exemplifies the overturning of a decades-old conviction on murder after the courts determined the confession unreliable and unproven by the physical evidence. The case has been mentioned as a result of the trial-focused reform and a progressive reinforcement of evidentiary test.

A retrial of the Sun Xiaoguo (2019) case revealed corruption and manipulation in the criminal justice system as an offender had already avoided a complete punishment. The normative intolerance of judicial corruption as well as the rebuilding of confidence in society were signaled by the following retrial and heavy sentencing.

In capital cases, SPC review opinions have been more and more stating corroboration requirements and mitigation. A stream of internal guiding cases has restricted the application of the death penalty whereby evidence is mostly confession-based or where mitigating circumstances of surrender and cooperation exists. Though not every guiding case is reported in detail publicly, the trend is toward a narrowing of the application of capital punishment with caution.

All these cases reveal a twofold truth: the system can clean itself, but it is susceptible to the errors of pressure to efficiency, a focus on confessions and their investigation, and policy priorities.

7. Ideological Working of the Penal Policy.

The Chinese penal system is based on a complex of legal doctrine and political ideology. The mobilization of law through campaigns like the Strike hard initiatives can be seen to deliver governance goals. The fact of leniency and severity also depicts the principle of strategic methodology that is meant to induce obedience and discourage rebellion.

8. Comparative Analysis to India.



Comparative analysis of China and India shows that there is a great divergence in the penal philosophy and practice. The penal system of India is based on constitutionalism, especially the safeguarding of life and personal liberty as stipulated in Article 21 of the Constitution. The doctrine of due process and judicial independence guarantee that state power is not beyond the law.

In the case of *Bachan Singh v. State of Punjab* (1980), the Supreme Court of India came up with the doctrine of the rarest of the rare that seriously curtailed the use of the death penalty. Indian law focuses on equality, openness and safeguarding of individual liberties.

The Chinese system, in contrast, emphasizes efficiency, deterrence and state control. Judicial procedures are highly politicized, and procedural protections are relatively more lax. Though China has instituted reforms, they are still under the state-centric governance.

In a modern global understanding, the penal policy of India proves closer to global human rights standards, the rule of law and the constitutional protections. A system of governance is still a feature of the Chinese system even with modernization as law remains an instrument of control.

9. Conclusion

The Chinese penal policy is a multifaceted combination of law, ideology and government. It is a mixture of prevention and discriminatory indulgence with a high degree of state control. This theoretical analysis shows that both Marxist and Foucauldian theories have an impact, as punishment is evident as a means of control and power.

Although recent reforms show that there is movement towards procedural refining, the system is still essentially state-centric. Conversely, the Indian constitutional system is more balanced and humane, and is closer to the new international justice and human rights standards.

Footnotes

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