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www.advancelrf.org**Debunking the Confusing Standards for Application of LWOPC in China****Hafiz Abdul Rehman Saleem****(Corresponding Author)**

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Punjab, Pakistan.Email: ahsan267@hotmail.com**Abstract**

Life imprisonment without parole and commutation is a new punishment brought in Ninth Amendment in the 1997 Criminal Law. The sentencing criteria of the given punishment present a confusing matrix that cause dogmatic understanding of the application of the punishment. The article explores the analogies to debunk the puzzle of practical application of life imprisonment with parole and commutation in Chinese criminal justice system and critical address the deficiencies it contains to streamline it for better application and to meet the ends of justice.

Keywords: Life Imprisonment without parole and commutation, China, Standards, Death penalty, Corruption.

Introduction

China is one of the few jurisdictions that employ death penalty for the crimes of embezzlement and bribery.(Qiuhong, 2011) China is also under sever condemnation from the international community for its retentionist status.(Lang, 2017) In order to overcome the international outcry for retaining the death penalty, China adopted the Ninth Amendment in 2015 in the Criminal Law of People's Republic of China (Hereinafter 1997 Criminal Law) and inducted life imprisonment without parole and commutation (LWOPC).(Saleem, Khan, & Mukhtar, 2021)

LWOPC is assumed as a tool to bypass death penalty, which in view of a prominent scholar is called a *de facto* moratorium on death penalty for corruption crimes. (Miao, 2014b) However, the LWOPC does not come as a straight forward stand-alone punishment rather as an add-on measure in the existing available mechanism of suspended death penalty. The indirect application of LWOPC creates confusion about its application. The confusion is evident as per the qualifying article 383 of 1997 Criminal Law, which provides punishment of death penalty for extremely large amount of bribery and on severe public impact, which the sentencing judge can suspend for two years and later on give commutation at the same time to life imprisonment without parole and commutation. Hence the final judgement comes out as the life imprisonment without parole and commutation. The confusion is twofold, one in the sentencing logic and pattern and the other in the sentencing pre-requisites. This manuscript discusses the sentencing pre-requisites including the standards that invoke the article 383 and eventually LWOPC.

According to the draft amendment of the 1997 Criminal Law, judgment will be issued based on three criteria: according to the amount of money involved in crimes of embezzlement and bribery, severity of the crime, and social impact. In particular, the offender will face the death penalty if there are large amounts of bribe money or if the corruption act has caused huge losses to the national interests and the interests of the people (Gui, 2016). The crime of embezzlement (article 382) and the crime of bribery (article 386) do not include serious circumstances but punishable under article 383 of 1997 Criminal Law with life imprisonment or death penalty just fulfilling the monetary threshold.

Objective Conditions

The object of life imprisonment without parole and commutation established by the 1997 Criminal Law, Ninth Amendment is specifically based on the crimes of corruption involving particularly large amount of bribery, and particularly heavy losses suffered to the interests of people and the country, and criminal must be sentenced to death which is suspended for two years. The objective conditions have the following four elements specifically.

First, the punishment LWOPC is limited to offenders who constitute corruption or bribery. The crimes of corruption and bribery here is taken in the narrow sense, that is, the crime of corruption is limited to the crime of corruption that constitutes Section 382 of the Criminal Code or the crime of corruption that is described in that section; the crime of accepting bribes is limited to the crime of bribery that constitutes Section 385 of the Criminal Code or the crimes of accepting bribes discussed in this article.

Second, the amount involved in the crimes of corruption and bribery is especially huge/large. However, the law provides three terms for the amount of money involved such as; relatively large, huge/large and especially huge/ large. How to determine the specific criteria of “relatively large amount”, “huge amount”, and “especially huge amount” of the crime of corruption and bribery can be regarded as a hot topic in the current criminal theoretical debate and practical implementation.

Third, corruption and bribery have caused special losses to the interests of the country and the people.

Fourth, the death penalty was sentenced to execution in accordance with the law. In addition, at the same time got suspension of death penalty execution (as the LWOPC is the second step of

death penalty so death penalty and LWOPC is used to represent the same punishment). Sometimes, I used death penalty because, at that specific point death is more appropriate to refer when the LWOPC is post treatment after the death penalty is suspended for two years. So, in broad perspective, I am taking LWOPC rather death penalty.

Bribery and Embezzlement

The new punishment is a clear manifestation of the Xi Jinping administration to root out corruption and tackle corruption crimes harshly. The harshness is both the administrative handling of anticorruption work as well as the application of criminal sanctions. The specific acts of giving and accepting bribery became the focus of article 383 in the Ninth Amendment. The interpretation also highlights both the giver and the receiver as the persons eligible for similar harsh punishment. But, the 1997 Criminal Law and the 2016 Interpretation do not provide death penalty for the giver of bribery, hence the new punishment LWOPC is only for the one who accepts the bribery or embezzles the property of state or public.

All the articles addressing the ‘offer or giving’ of bribery mentions the state functionary as the counter subject of giver. This first pre-requisite standard for the new punishment is the crime of accepting especially huge amount of bribery by the state functionary for which he/she got death penalty came out to be the ultimate condition for LWOPC. A brief understanding of state functionary is given below.

State Functionaries

The definition of state functionary is better defined by Ko Kilkon and Weng Cuifen (2011), in their conceptual definition of Chinese corruption. The general understanding of state functionary corresponds to any official holding public office whereas the concept in Chinese setup might be broad and carry socialist connotations (Yan, 2001). People or groups that do not belong to the public service, but those who have been entrusted with official duties are also prosecuted by 1997 Criminal Law for corruption. The Ninth Amendment illustrates the especially huge amount of money and especially serious circumstances as the standard for prosecuting a criminal for death penalty. The phrase ‘especially serious circumstances’ as given in article 383, states that materials losses have been caused to state or public, needs clarification of the acts that fall under the canvas of this phrase. A comprehensive review of the legal forms of corrupt practices in China shows that the 1997 Criminal Law includes not only traditional corruption but also corrupt practices including "neglect of duty" and "bad behavior of state functionaries", especially if that behavior is considered to be a threat to the public interest and having a negative impact. The ‘especially material losses’ caused to state or public as mentioned in article 383 signifies that the Chinese corruption need to be understood based on the activities rather than on the public/private sector distinction. The account of activities is discussed in the relevant subsection of especially serious circumstances.

Special Losses to the Interest of the Country and the People

The 1997 Criminal Law counts the damage of public interest as the prerequisite of corrupt practice towards the Chinese officials. It along with the economic corruption regulates the dereliction of duty that causes damage to public interest. The dereliction of duty comprises not only behavior damaging public property but also misuse of power (lanyongzhiquan), neglect of

duty (wanhuzhishou), the engagement of a state functionary in malpractice for the benefit of his friends (xunsiwubi), serious accident involving serious consequences, bigamy, and other activities causing losses to public interests. In China, for various reasons, dereliction of duty is sometimes considered a more serious type of corruption. In fact, the bribery and embezzlement as a prominent standard, as given in article 383 of 1997 Criminal Law is just an initiation of a chain of events that most of the time violate public interest and affect the national assets (Ko & Weng, 2011). Hence the contributing standards for the implementation of life imprisonment without parole and commutation are not just the pecuniary but include all corrupt acts under the tag of ‘especially serious circumstances’ and ‘material losses to state and public.’

Interpretation of Material Losses to State and Public

The 1997 Criminal Law in article 383, maintains a standard requirement of material losses to the interest of state and public to invoke the LWOPC. The chain of logic is derived from death penalty. The article 383 in paragraph 3, mention the standards for imposition of death penalty as the crime of corruption involving ‘especially huge amount of bribery’ and ‘material losses caused to the interest of state and public.’ The Criminal Law further provides no interpretation of the phrase ‘material losses caused to the interest of state and public.’ The 2016 Interpretation contain interpretation of the standards given in the article 383. But the whole document of interpretation does not mention about the actual merits of the phrase that what constitute the material losses to state or public. However, the article 1 in paragraph 3 in clause 2 mentions ‘the person seeks illegal benefits from others, which causes losses to public property and interests of the state and people.’ This includes the monetary and of influential nature of benefits. But the criminal law is more focused on monetary standards. The detail of monetary standards is given in next section and the death penalty section contain the detail of material losses and especial serious circumstances phrases.

Monetary Standards

The Ninth Amendment raised the standards of criminalization for corruption crime from specific amount of money to abstract standards by using the words, relatively large, huge and especially huge. The mechanism for the determination of appropriate penalty is governed by the amount of money involved whereas the case in which an individual has received more than one bribe, the amount of money will be aggregate of all amounts taken as bribe (Xinhua, 2016). The three statutory standards mentioned in article 383 of Criminal Law gain impetus not only from the specific illegal acts but the immoral acts against the morality of party ethics (Yan, 2001). The threshold amount of money has been clarified in the later interpretations of the Supreme People’s Court whereas the seriousness of crime and loss to national assets and people’s interest needs spotlight focus in terms of corruption crimes (Xinhua, 2016). Criminal penalties specifically depend on the party, whether the body accepting or offering bribe, is an individual or an entity (corporate body). It also depends on, either the party is an individual, state functionary or non-state functionary. The death penalty is only specified for the state functionaries, as an actor of corruption crime, convicted of accepting huge amounts of bribes.

Especially Huge Amount

The only well-defined criteria for LWOPC in the Ninth Amendment and later interpretations

provides the threshold of amount which turn on the punishment of LWOPC is 3 million rmb (SPC and SPP, 2016). Although the monetary criterion is the only well-defined criterion for the imposition of LWOPC because article 382 and 386 mention only the monetary considerations. The monetary specifications at the time of Ninth Amendment were extremely vague. Just the notation of large, huge, and especially huge provides whole criteria to impose the harshest punishment. Initially with this vague criterion, the general conception was divided. Some consider it a political tool to harass the political competitors (Liang, 2017). Others think it merely a scary tool with no intention to practically implement it. However, the clarification of the criteria in April 2016 changed the general perception of just a showpiece nature of the punishment and courts started to consider the new standards while deciding cases. The first case of LWOPC came at the end of 2016, totally changed the perception and made it evident that the new punishment is going to be a potential punishment for especially huge amount of corruption.

The vague standards became clarified in the 2016 Interpretation providing 3 million as an invoking authority for article 383 (LWOPC) to satisfy the threshold of ‘especially huge amount’ of bribery involved in the crime. The pre-requisite standards that must be met under article 383 to justify the authority of article 383 are four. The monetary requirement of especially huge amount is one of them. The satisfaction of only this monetary threshold is not enough to use this punishment. Out of other three pre-requisites, two are important but one holds all the foundation of this new punishment. That foundational element is the death penalty. The whole scenarios follow the order pattern and death penalty is at the first place which finalizes into LWOPC after being commuted at the end of two-year suspension period. This whole pattern concludes, all the crimes of bribery and corruption that can result in death can be converted into LWOPC. The interpretation rather solving the matters and providing ease to applicable standards of LWOPC creates ambiguities regarding monetary threshold and death penalty. The confusing aspect is discussed in the next section.

Death Penalty Eligibility

The most important pre-requisite standard, in terms of punishing strategy, is the application of death penalty to the criminal who is convicted of especially huge amount of bribery. Some Chinese scholars (Bingzhi & Zhiwei, 2014), believe that the death penalty eligibility is not a sufficient standard requirement. But the choice of death penalty with immediate execution is the only choice that can be converted into LWOPC. The reason they give is more compelling to affect the common sense in justifying the intention of the legislature rather the function of criminal law. They declare the LWOPC as the intermediate stage between death penalty with immediate execution and ordinary life imprisonment, where one element is taken from both sides, for example the life imprisonment and the execution of death with the time rather injection or bullet. By combining two, gives the life imprisonment without parole and commutation, in which practically imprisonment will last till death.

However, the death penalty came out to be one of the most important standard requirements for LWOPC. And the criteria mentioned for potency of criminal act that invoke death penalty in article 383 after Ninth Amendment is given in paragraph 3. It states that if the amount of bribery involved is ‘especially huge’ and ‘especially material losses’ have been caused to the interests of the state or the public, the convict shall be sentenced to life imprisonment or death penalty and a forfeiture of property. One point which is very interesting to note here is the choice of punishments namely life imprisonment and death penalty, when the eight amendment has also

given a punishment which is harsher than ordinary life imprisonment is not mentioned here. I will come back to this point in the later section but here I will just discuss the death penalty.

The article 383 of 1997 Criminal Law in Ninth Amendment has mentioned the standards which are linked together and ‘especially huge amount’ of bribe money and ‘especially material loses’ caused to interest of state or public, cumulatively provide the statutory standards for death penalty. When article 383(3) also provides that even when the amount is ‘especially huge’ or ‘other especially serious circumstances,’ the law stipulates mandatory provision of punishment range that says, ‘the convict shall be sentenced to imprisonment of not less than ten years or life imprisonment in addition to a fine or forfeiture of property’. The statutory law in article 383 of 1997 Criminal Law after Ninth Amendment gives a criterion in which the most important thing that invoke death penalty is ‘material loses caused to the interest of state or public along with ‘especially huge amount’ of bribery.’ Because the first part of paragraph 3 mentions the provision which stipulate the mandatory compulsion of more than ten years or life imprisonment as the concluding punishment for ‘especially huge amount’ of bribery. The criteria to interpret the vague standards and ambiguous terms came in the interpretation of the Two Supremes in 2016 Interpretations even bring more confusions.

2016 Interpretation

The article 383 do not specifically explain the standard culpability conditions but the Two Supremes(SPC and SPP, 2016) in 2016 Interpretation explain the standards mentioned in article 383. The monetary threshold to satisfy the ‘especially huge amount’ of bribery is fixed at 3 million in article 3 of the 2016 Interpretation. Technically, 3 million is the gate pass to enter the death penalty zone but the same article 3(2) also gives another entry path to the death penalty zone that starts at 1.5 million. It adds ‘other serious circumstance’ along with the monetary stipulation of 1.5 million. The ‘other serious circumstance’ is given in all paragraph 1,2,3 of article 383 of 1997 Criminal Law and the monetary threshold combines with other especially serious circumstance in paragraph 1, 2 of article 383 do not prescribe death penalty. But in paragraph 3, it uses the narration ‘or’ to establish the relation and mentions either ‘especially huge amount’ or ‘especially serious circumstance,’ to prescribe a mandatory punishment of life imprisonment or more than ten years of fixed-term imprisonment. The article further extends, maintaining the same relation ‘or’ and combine the ‘especially huge amount’ with ‘material loses to state or public interest’ and prescribe mandatory provision of death penalty and life imprisonment. It doesn’t mention ‘especial serious circumstance’ anywhere in article 383 to prescribe mandatory or discretionary stipulation of death penalty.

The 2016 Interpretation typically came as explicit criteria for LWOPC, which is a post treatment of suspended death penalty, requires the offender convicted must be sentence to death to commute into life imprisonment and no opportunity for parole and commutation. The 2016 Interpretation do not mention anything about the explicit standards of the term ‘material loses to the interest of state and public,’ which specifically provide the only criteria for mandatory imposition of death penalty. However, the 2016 Interpretation do mention about the ‘especially serious circumstance’ to be eligible to death penalty.

Especially Serious Circumstance

The ‘especially serious circumstances’ as given in article 383 paragraph 1 is interpreted in the

2016 Interpretation as the circumstances which are given in paragraph 2 of article 1. The article 1(2) states that; different circumstances that are not liable for death penalty because the article 383 of 1997 criminal law and article 2 of 2016 Interpretation prescribe a fixed term imprisonment of not more than 3 years. But the article 3(2), reduces the monetary range to 1.5 million and make the crime eligible to death on the grounds of ‘other especially serious circumstances.’ The paragraph 2 of article 3 of 2016 Interpretation mentioning the same circumstance as mentioned in article 1(2) of 2016 Interpretation but with extended range of money and prescribe the death penalty for it but this time called the otherwise ‘serious circumstances’ as ‘especially serious circumstances.’ This concludes that the judgment of ‘serious circumstances’ and ‘especially serious circumstances’ is relative to the monetary criteria.

Elastic Monetary Threshold

The monetary criteria interpreted in 2016 Interpretation is, till date, the conclusive document that gives the proper criteria to define the monetary terms of ‘large’, ‘huge’ and ‘especially huge.’ It fixes the starting point of especially huge amount of money as more than 3 million yuan in article 3(1) of 2016 Interpretation. The same time it also fixes the amount less than 3 million but more than 1.5 million yuan in the presence of ‘especially serious circumstance’ as the criteria to impose the death penalty. It makes the monetary criteria elastic and makes the other terms ambiguous as well. The term especially material lose to the interest of state and public is one of the points mentioned in paragraph 3 clause 2 of article 1 of 2016 Interpretation which is complementary stipulation in article 383 of 1997 Criminal Law for death penalty along with especially huge amount of bribery. Now correlating the corresponding provisions in both documents, it is concluded that, in case of just monetary threshold, the criteria is 3 million yuan, but in the presence of other especially serious circumstances, the monetary threshold reduces and starts from 1.5 million yuan.

Serious and Especially Serious Circumstances.

The article 383 of 1997 Criminal Law in all three paragraphs mentions the intensity of serious circumstances along with the amount of money. The paragraph one contains relatively large amount of money and relatively serious circumstances. The paragraph two mentions the amount is huge and other serious circumstances. Likewise, the paragraph 3 mentions, the amount is especially huge, and the circumstances are also especially serious. The relationship between all these three situations provided in article 383 is interpreted in 2016 Interpretation and it refers to the same set of circumstances (given in article 1(2)) to satisfy all the three levels of intensity of serious circumstances. This actually infers that’s the circumstances are the same but the most import thing that define the level of intensity is the amount of money involved with it. It makes sense that the huge amount definitely can have greater impact in terms of lose to interest to public and states interest.

Aggregate or Distributive

The article 383 do not recommend death penalty for the ‘especially serious circumstances’ but for huge amount of corruption. Whereas the 2016 Interpretation provides death with ‘especially serious circumstances’ but with less amount of bribery, implies that the court decided the

punishment after considering both the circumstance. It adopts both the distributive as well as aggregate approach to finalize the punishment. If the amount is especially huge it can also get the death penalty, and if the amount is not huge but the circumstances are serious, the court can still have the power to give the death penalty as an aggregate penalty for the crimes and impact. But a typical approach is that the circumstances are dependent on the amount of money and intensity of the impact increases with the amount of money, which is not always a case.

Practical Applicability

Although harsh enough, the article 383 has denounced the death penalty for corruption crimes. The ultimate criteria for life imprisonment without parole and commutation is; (1) the issuance of death penalty, (2) suspension of death penalty and (3) the sentence commutes to life imprisonment. Initially, it was thought that the new punishment life imprisonment without parole and commutation is just a showcase punishment to cast a deterrent effect in fight against corruption but the later cases of life imprisonment without parole and commutation proved this a practical and far sighted punishment that conform to international standards of abolitionist stance. There are four cases of life imprisonment without parole and commutation by the time of writing this manuscript; Bai Enpei, Yu Tieyi, Wei Pengyuan and Wu Changshun. Without going to the historical background and career development of all these convicts, I will focus on legal aspect of punishment. In all these four cases, the criminals are sentenced to death with suspension and court bared all rights of parole and commutation after it commute to life imprisonment. The parole and commutation bar imposed at the time the death suspended for two years. This provides the practical instance of irregularity of punishment which Zhao Bingzhi, already mentioned required further interpretation and improvement to fully launch it (Gui, 2016). The partially improved version of this punishment still has flaws which are needed to be addressed.

Four Cases of LWOP

In the four cases referred above, the criterion for the court to apply for the death penalty is given a material shape. The basic logic given in all these four cases is the reduction in the immediate execution of death penalty. For example, in the Bai Enpei case, the court verdict (not the official judgement but just the analysis of news articles) pointed out: "because after he got caught, he truthfully confessed his crimes and took the initiative to explain the facts of the majority of bribery crimes that the investigating authorities had not yet grasped; to plead guilty, to repent, to help recover all ill-gotten property, and to have statutory discretion, that if the penalty is imposed, the death penalty may not be immediately enforced." In Wei Pengyuan's case, the court's decision stated: "because of the fact that while investigation, he confessed his crimes and took the initiative to explain the facts of the majority of bribery crimes that the investigating authorities did not already have found, plead guilty, repentance by returning of illicit money and stolen goods, punished to death based on the facts of crimes and other circumstances, but got the statutory leniency, and the death is not executed immediately." In the case of Tie Yi, the court ruled that: "because after arrest, he confessed to the facts that the case handling agencies have not mastered at that time. He took initiative to disclose some of the facts of the crime that the case handling agencies have not yet grasped, reported the crimes committed by others, have meritorious deeds, plead guilty, and active retreat. The relatives and friends have also actively returned the money taken on his behalf and return of bribes and property. According to the

statutory and discretionary authority to punish him according to law deserve death," but because of his cooperative behavior got the suspension in the immediate execution of the sentence. In the Wu Changshun case, the court verdict pointed out: "After Wu Changshun arrived at the case, he truthfully confessed his crimes and actively confessed the facts that the authorities had not yet grasped. He pleaded guilty, actively retreated, and provided clues to detect the meritorious performance of other cases. He also had availed the statutory leniency and his sentence got suspended for two years. According to the law, the four defendants all had the circumstances of "faithfully confessing their own crimes, conscientious repentance, and active retreating." It can thus be seen that the judicial practice also regards "truthfully confession of crimes committed, conscientious repentance, and active retreat" as a holistic, single-plot situation, and forms an alternative relationship with other plots such as "surrendering" and "giving meritorious service". The perpetrators although deserve death penalty for the crimes but based on the deeds and cooperative behavior got the statutory leniency given in article 383 and their death penalty has been suspended to life imprisonment. The punishment in all these four cases is justifies and legitimate and legal but the conversion of suspended death penalty into any other punishment still needs justification to proceed. However, the court in all these four cases, have sentenced the offenders for life imprisonment and restricted all rights of parole and commutation.

If No Ninth Amendment, the Death Penalty will Execute Immediately

The standard practice that this punishment highlights is that, if there is no Ninth Amendment and change in article 383, all these offenders will have their death sentences executed. The court has given them leniency just because of the Ninth Amendment. Now here the next stage of punishment comes in spotlight. The next stage of punishment is the conversion into life imprisonment after the expiry of two years and no rights of parole and commutation. The trial court has barred all right of commutation and parole at the first instance judgment. If talk about the standard practice of 1997 Criminal Law, the suspension of death penalty under any of the reasons as authorized by article 48 of 1997 Criminal Law invoke article 50 for further procedures.

The article 48 also accommodates the cooperative behavior as a legitimate reason to suspend the death penalty. The article 48 states that if the court finds the immediate execution are not deemed necessary can suspend the execution for two years. The cooperative behavior, in fact, creates a strong logic for suspension, rather linking it with the leniency of the court. The statutory leniency which the article 383 claims is already inherent in article 48 of 1997 Criminal Law. But the further treatment that the court in disguise of leniency intends to proceed with is to bypass the suspension mechanism or could say customize the suspension mechanism other than mentioned in article 50. The court abandoning of all rights of parole and commutation at the first instance is incompatible with article 50. The proper procedure requires the expiry of two years suspension period to further proceed with any further punishment. The final verdict applying the provision (383) of Ninth Amendment is based on assumption that the offender will repent and will not commit any intentional crime.

Suspension and Further Treatments

The mechanism of suspended death penalty has been enumerated in the article 50 of the 1997 Criminal Law. There are five post treatments of the suspended death penalty as the 1997

Criminal Law has prescribed. Among the five post treatments including life imprisonment, fixed-term imprisonment, execution with grant of SPC, life imprisonment with restricted commutation and LWOPC. The first four falls in the general provisions whereas the last fifth falls in the special provisions.

General Provisions

The standard statutory practice of the 1997 Criminal Law for the application of general provisions is given in article 101 of the 1997 Criminal Law. It authorizes the special provisions to apply over general provisions as an exception. The fifth post treatment of suspended death penalty falls in the special provisions and technically can be applied as an exception to the general rule.

Special Provisions

The standards practice for the application of 1997 Criminal Law statute is given in article 31 and provide authority to prefer special stipulations over general stipulations. The scheme of the special stipulation that came in article 383 is that, it grants leniency to the offenders and decide to suspend the immediate execution of death penalty and suspended the death penalty for two years. The court for the application of suspension of execution derives the authority from article 48, which at the time the death is suspended invoke the article 50. Now it creates a situation when a special provision invokes a general provision, and the general provision when invoked by the special provision also gain the authority equal to special provision. The article 383(3) mentions in the last paragraph that the court based on crime committed decided to commute the sentence into life imprisonment after expiry of two years period convert the sentence into life imprisonment and stops all rights of commutation and parole. Here, the irregularity arises that conflict with the standard practice is when the special provision of article 383 invoke article 50, the further treatment should be based on the mechanism given in article 50. The article 50, requires waiting for two years and decide the next treatment based on the conduct of the offender during these two years suspension period. But the court applying article 383 stipulate provisions which have not yet happened. The stipulations merely based on the assumption.

Conclusion

The standard regular practice of 1997 criminal law statute is to punish an offender based on the intensity of their crimes. The official reason presented for the introduction of new punishment is to bring the punishment in proportionate position to crime. If review the recent development of the 1997 Criminal Law, the Eighth Amendment provided a new post treatment of suspended death penalty which has created a comparatively harsher punishment, which is called life imprisonment with restricted commutation. The article 383 gives multiple options of punishments such as fixed term imprisonment, life imprisonment and death penalty. It does not mention the life imprisonment with restricted commutation (forth post-treatment) rather create a new post treatment without even checking the credibility of that new measure. Although the life imprisonment with restricted commutation was introduced for other crimes but the basic intention was also the same as in case of article 383 to reduce the executions and maintain the proportionality of crime and punishment (Miao, 2014a).

The punishment of death with immediate executions since 2000 -2007, the time when review

power reverted back to Supreme People's Court, were very few in number (Sina, 2015). Even after 2007, the overall policy regarding death penalty tightens and the anti-corruption efforts also become intense but the rate of execution of offenders guilty of corruption was even low (Sina, 2015). The total number of officials sentenced to death since 2000 till 18th National Congress are approximately 25, and the same is the trend after 18th congress. Most of the offenders executed are either guilty of intentional homicide or the impact of their crime threat the national sovereignty, party or other crimes that impact public security at large. In this situation, even despite the huge amount of bribery, the number of executions is very low; the logic for the new punishment does not justify the leniency justification. Even, there is no even a single case in which the offender is sentenced to life imprisonment with restricted commutation. The new punishment presents a very weak logic of for bringing up in the criminal law.

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