

# The Implementation of Tempering Justice with Mercy Criminal Policy in Imprisonment Execution

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**Abstract.** This paper discusses the implementation of tempering justice with mercy criminal policy in imprisonment execution and mainly to some extent explores on why the execution of this principle, how strict and how mercy, hoping to lead social thought, providing solutions for the progress of imprisonment implementation.

**Keywords:** tempering justice with mercy; imprisonment; implementation

## 1. Introduction

Imprisonment is widely applied in the judicial system, in Japan, also known as detention sentence, a kind of penalty depriving criminals' liberty as the main measure. The ultimate goal of the implementation is correction of act or psychology of criminals. Although imprisonment has long been in the history, but it's as real penalty in the legal system after advent of capitalism, human rights development in Europe and America, the process of free establishment occurring, and more widely in the subsequent time. What appears together with imprisonment is prison, the two are hand in hand. Compared with other legal penalty imprisonment is undoubtedly one of the methods reflecting the humanitarian more, especially with corporal penalty and life sentence, lighter more and more to the psychology of people. Compared with instruments of torture and the gallows it's a great human progress so that some scholars greatly appreciated this way, called it the crystallization of human penalty civilization. But no matter what the nature as a legal penalty measure has not changed.

However, after a century of development, imprisonment and prison has been in development, at the same time a large number of problems arise, for example, criminals and social dislocation occurred because a long time in a relatively closed environment rather than with the outside world contact, many criminals cannot keep changing their thinking and understanding on modern life completely, resulting that after leaving the prison environment they cannot integrate into society, even a serious gap, ultimately, back to prison again. There are people in prison reform process facing large physical and psychological pressure, serious action command, once out of this group, finding him at a loss, being a typical prisoner who eventually forced to return to prison, in addition, there are still infectious, in prison the criminals have cross-infection, insufficient, that sentence has expired, but criminal dangerousness has not eliminated.

Above had occurred in every country of the world, such as a classic movie " The Shawshank Redemption", there is well represented in which. In China, the situation is very similar. China's penalty system can be divided into five levels, the most serious is the death penalty, and the rest belong to liberty. There are three kinds of liberty deprivation (life imprisonment, imprisonment and detention) in the four kinds of liberty, a restriction of liberty (Control). In the daily penalty, the death penalty is due to the cost of life, with less, unless it is heinous. The majority is dominated by liberty, that is imprisonment.

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Based on the above considerations, as the execution of imprisonment, the paper argues that the purpose to punish is the core priorities of liberty, so as much as possible take tempering justice with mercy policy is the best way. On this point, this paper put forward the following ideas on its implementation.

## **2. Continue to adhere to and improve the policy and principle of imprisonment execution**

The formulation and execution of imprisonment relevant law is late in our country, generally based on 1994 "Prison Law". And in which tempering justice with mercy policy has been established, but after years of development and social change, making the appropriate adjustment and improvement is also very necessary. In the current legal requirements, we can find the prototype of tempering justice with mercy policy. "Prison Law" stipulates that prison policy in our country is "combining penalty with reform and aiming to transform the human", on this basis, the execution policy of juvenile correctional facilities is "learn half a day, work half a day, give priority to education reform and punishment as the subsidiary " according to physiological and psychological characteristics of juvenile criminals. Clearly, this has been taken into account when the state law was formulated and as a guideline to execute. So we have reason to continue to execute tempering justice with mercy policy.

But how to achieve the unity of policy and the work is a question worth pondering. From the execution of imprisonment after the founding of our country, we achieve a creative way of penalty, that is, labor reform, have to say, this is wisdom, and it has become feature and highlight of imprisonment execution. In the work of criminals based on their performance to give the corresponding reward or penalty system, differential treatment, to make them feel great power of policy, and to make appropriate education measures, achieved very good result.

Any good system has a certain timeliness, China has used labor reform to make a large number of criminals understand the party's policies and successfully return to society again, but in market economy impact under the reform a number of measures as well as monitoring corporate executed policy separately, over years we have gradually entered the labor reform embarrassment and chosen smaller geographic and scope. And on the other hand, the labor reform is just an implementation way, so it's single only using labor reform. The situation of many criminals does not fit in this way, therefore, we should be actively seeking new change.

In the future imprisonment execution, we should make criminals truly realize their mistakes and seek to change according the spirit of humane, scientific, advanced principles, through human management as possible. This is our fundamental purpose. And scientific management will undoubtedly improve the management efficiency of the existing number of prisons, so that each criminal can have a chance to reform, and advanced management can make criminal not out of touch with society, even after the penalty the criminal can also redefine himself in the society and change the past situation.

## **3. Strict supervision, prevent escape, commutation control, enhance prison**

Since the establishment of imprisonment is to desire criminals in a special prison environment deeply to be aware of their mistakes, accept the penalty for their actions, prevent crime from happening again, be responsible for their actions, and protect the country and the people's lives and property. From cognitive attitude for their own mistakes, a lot of criminals cannot understand and recognize that, the idea of trying to get rid of imprisonment is as their primary task, so for the executives of the imprisonment, to take strict supervision and management system to prevent criminals escape is top priority. No prison cannot talk about the reformation, it is a new threat to society. We require tempering justice with mercy, but the principle cannot be changed, when strict then strict, prison is prison, the police must be like police, the criminals must be as criminals, which is never any change, although the party and government require supervision department seeing criminals as staff, the prison as a factory or school, but the performer cannot puzzle. If the criminals' penalty disappears, then imprisonment loses its meaning. The criminals are unaware of the psychological pressure because of their own fault, then they will continue to act with fault when return to society, then the chance of re-offending will greatly improve.

To achieve this goal, we should proceed with both software and hardware. From the hardware, some old equipment should be timely maintenance and replacement, to ensure workplace safety. From software, strengthen the ideological education of criminals. Crack down on the escape criminals, no mercy for collaboration. Both to do in order to better achieve the supervision to criminals.

In addition, proper commutation is one of the measures essential to the imprisonment execution process. By commutation, to make criminals be sure some of their own behaviors, gradually build up their yearning for return to society, plays an active function. But pay attention to there must be not bulk commutation, so commutation as a reward system would lose its original meaning. But from a human rights perspective, the commutation system is unreasonable, because over-reliance the system to the prison side, ignoring the importance of the parole system and the execution, the basic human rights of criminals are not fully realized, so in the long run , it is best to phase out the system and replaced with the parole system.

Furthermore, the basic function of the prison is prisoning criminals to prevent its continued danger to society, so the prison side must have thorough understanding of their responsibilities. From this perspective, prison management should be strengthened, not weakened. However, due to the prison building and management into huge, this article thinks that it is best to make simple classification for prison, according to the circumstances of the crime there are the highest alert, general alert, relaxed alert and other prison types.

#### **4. Respect and protect human rights of criminals, expand parole, actively explore the prison execution social initiatives**

In recent years human right is a word raised high frequency, and slowly has gained understanding and concern. Whether human right is present in the execution of penalty? Almost everyone gives definite answer, so the enforcement of human right in penalty is absolutely not ignored. Reflecting the humanitarian in the penalty is one of the world's penalty goals to pursue.

So-called human right is the fundamental right enjoyed as a social person. The essence of human right is freedom and equality. As a society special existence, the desire for freedom is borne and very strong to human. "Life is dear, love is dearer. Both can be given up for freedom." Mentioning the poem world widely spread hundred years, people will think of its author - Hungary poet Petofi. This poem illustrates the pursuit and longing for freedom of people. Execution of imprisonment is to deprive criminals' freedom to achieve, but each criminal enjoys human right, which leads to contradiction. The criminal is human, of course, enjoyment of human right, according to deprive criminals of liberty in the prison, the other human rights should give moderate satisfaction to criminals depending on different penalty nature. There is no doubt, no matter what type of criminals, as long as he has not been deprived of the corresponding rights, he should enjoy the right to vote, be elected, out of copyright, the right to supervise, etc., but how in prison? This issue has become what many people are concerned about, domestic and foreign. Overseas, the parole system is typical right relief system, but it's different at home and abroad on parole. According to China's Criminal Law Article 81, paragraph 1, refers to the parole is to criminals sentenced to imprisonment and life imprisonment, after the execution of a certain sentence, because of seriously comply with prison regulations, access to education reform, true repentance, not further harm society, and therefore the conditions attached to its early release system. Parole is a penal system with the conditional early release, parolee at the parole test period must comply with certain conditions. Otherwise, we should revoke parole, prison execution. But in the Western world, the range of parole is broad. Many countries do not ask for parolee, there are some countries limiting parole applicable object. For example, the Italian criminal law clearly provides for dereliction of duty, property crime, anti-crime and other criminal elements shall not apply to parole. This paper argues that the appropriate reference to the Western countries parole system is an improvement for our country to protect the rights of criminals.

In addition, we should seriously think about the prison execution social issues. How to get rid of prison's role and rapidly integrate into the society soon after his release from prison is extension of the penalty. Many places have been doing similar reforms, such as the Shanghai women's prison system serving a trial weekend, and this is also a need for all sectors of society participation. This paper argues that in order to improve the imprisonment execution social work, we should start from the following aspects: first, to make sure return to society as the execution concept when prison education; second, to re-establish the evaluation system from a

national perspective on crime risk degree; third, to re-position prison management, execution correction progressive system can be implemented, the establishment of a transitional semi-open or open prison; fourth, according to the circumstances of the criminal severity, to allow some less serious prisoner work out appropriately, for some open professional positions may be appropriate to retain; fifth, to vigorously promote the learn release, work release system, etc.; sixth, to promote weekend detention system; seventh, to expand the size and scope of holidays, weddings and funerals, "home visit" special right.

## **5. Conclusion**

Today, after the country's reform 30 years, people's living standard and Thoughts level have large change and progress, and people have new understanding on imprisonment. We must not forget the fundamental purpose of implementation, in line with the principle of humanity, when strict then strict, when mercy then mercy, tempering justice with mercy and do law enforcement work of imprisonment, and strive to make all criminals be aware of their own mistakes, serious repentance, for the early return to society, and to contribute their efforts for the country and social development.

## **6. References**

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