

## HUMAN RIGHTS PROTECTION: A STUDY OF THE DEATH PENALTY SYSTEM IN CHINA'S LEGAL SYSTEM

Ramalinggam Rajamanickam  
Cao Zhaoxun  
Chen Siqi

### ABSTRACT

*With the progress of human civilization and the development of society, the concept of the human rights of citizens is constantly being formed and improved. Among the types of punishment, the death penalty is undoubtedly the most severe punishment. Because the death penalty directly deprives people of life, the death penalty system has been controversial in the legislation of various countries. Currently, in China's criminal law system, the crimes involving the death penalty and the application of laws are far higher than in other countries in the world. This requires China to properly handle international human rights law and the abolition of the death penalty in the international human rights movement in its criminal law practice. Based on this, this paper uses qualitative research methods to analyze the death penalty and human rights protection. On the one hand, it uses the method of literary analysis and historical analysis to sort out the historical evolution of the death penalty system and the protection of human rights vertically. As far as the research results are concerned, considering China's national conditions, the death penalty still exists, mainly in two aspects. First, from the perspective of utilitarianism, the death penalty still has the function of deterrence and punishment. Second, from the perspective of public opinion, the death penalty still conforms to the wishes of most citizens. However, under the background of international law that most countries in the world have abolished the death penalty and the countries that retain the death penalty system are also strictly restricting the application of the death penalty, China can make targeted reforms in the criminal law system. Adjust the number of crimes for which the death penalty applies, extend the suspended sentence for the death penalty, and strengthen the review of the death penalty. To sum up, through the research and analysis of the death penalty and human rights protection research, this paper discusses the spirit of international human rights protection and the Chinese Constitution on human rights protection. It puts forward some reference opinions on the balance between the death penalty and human rights protection in China's criminal law system. Accordingly, this article will provide some academic reference value to aspects of optimizing China's death penalty system.*

**Keywords:** Death penalty, Human rights protection, Criminal law, International human rights law, Chinese Constitution

### INTRODUCTION

With the continuous development of human civilization and criminal law theory, respecting and protecting the right to life has become an important part of international human rights conventions and the development direction of human civilization and society. International law has re-examined the human rights situation. The principle and trend on the death penalty issue are to strictly limit the death penalty and gradually and finally abolish the death penalty. In international law, abolition campaigns and human rights campaigns are inextricably linked. Currently, there are many crimes involving the death penalty in the Chinese legal system. There is no doubt that China needs to think about the protection of human rights and the right to life in its criminal law practice. Based on this background, this paper conducts research on the protection of human rights and the death penalty in China, including the following aspects.

China has been controlling and reducing the application of the death penalty. This reflects China's more cautious attitude toward the death penalty. The value of the right to life should receive respect, and the state's formal policy should control the death penalty application with the ultimate aim of abolishing it. Therefore, the current rules on the application of the death penalty in China should be adjusted. It is necessary to retain the death penalty for some serious crimes against people's lives and health, but some non-violent crimes are not serious enough to warrant its application. For such objections, the criminal law should be amended to reflect protecting and respecting the human right to life. Secondly, reference can be made to the relevant provisions of UN human rights guarantees, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. As well as the relevant contents of human rights guarantees of regional international organizations, such as the European Human Rights Law, the Inter-American Human Rights Law, etc. Discuss the implications for China of the study of the death penalty system and human rights guarantees, recognize that restricting the death penalty is in line with the values of the Constitution, recommend legislative amendments to restrict the death penalty, etc.

### CRIMINAL LAW ANALYSIS: AN OVERVIEW OF THE DEATH PENALTY SYSTEM

As a tool for the ruling class to maintain its own rule, the death penalty has existed in the legal system for thousands of years. As one of the oldest forms of punishment in the world, the death penalty is also known as the death penalty. It is a means of punishment in which the executioner deprives the victim of the right to life by the rights conferred by the law and the relevant content of the law.

The death penalty has the following characteristics. First, the subject of the execution of the death penalty is the state. The death penalty is different from the revenge of primitive society. The death penalty is a specific manifestation of the state's exercise of the power of punishment, and it is a means for the state to govern the country and maintain social order. Through the death penalty, the state not only punishes crimes but also through this process makes criminals aware of their mistakes and achieves the purpose of compulsory education. Second, the death penalty deprives criminals of their right to life. Everyone enjoys various human rights in society, but the most basic human right for everyone is the right to life. The existence of life is the carrier of all other rights, and the enjoyment of the right to life is the basis of all other rights. Without the right to life, other rights would cease to exist. Finally, in terms of the degree of punishment, the death penalty is the most severe punishment. On the one hand, it is reflected in the fact that the death penalty not only deprives criminals of the most basic but most important right to life, and other rights that exist depending on life also disappear due to the death of criminals. On the other hand, it is also reflected in the fact that the death penalty not only brings a strong sense of fear to criminals but also brings them extremely serious pain. It is now recognized in the world that the death penalty causes criminals to suffer most intensely. With the development of the human rights protection movement around the world, the necessity and function of the death penalty have begun to be questioned.

As one of the most severe punishments, the death penalty appears along with the emergence of the state and the law. Law has two values. On the one hand, the law has instrumental value. The state stipulates the death penalty in the law. Through the death penalty, social contradictions and conflicts are adjusted, and social members are deterred, to effectively prevent the occurrence of crimes, and to achieve social order. On the other hand, the law has ethical value. By applying the death penalty to criminals, the state has a certain comforting effect on the victims and their families, which is conducive to the realization of social ethics, thereby realizing fairness and justice.

### **JURISPRUDENCE ANALYSIS: AN OVERVIEW OF HUMAN RIGHTS GUARANTEE**

After Beccaria proposed the death penalty abolition theory, there has been a 200-year international debate on whether the death penalty should be abolished. Some developed countries in Europe, such as Sweden, Spain, and others countries, set off the first wave of abolition of the death penalty in the late 19th century, which had a profound impact on a global scale. According to the United Nations Economic and Council statistics, about 70% of the world's countries have abolished the death penalty. Some countries have completely abolished the death penalty, such as Germany and Venezuela. Some countries have abolished the ordinary death penalty and only allow execution in special circumstances, including Brazil and Argentina. Some countries, including China and Japan, still retain the death penalty system.

According to William Schabas, a prominent Canadian human rights expert, international norms restricting and abolishing the death penalty are essentially a post-World War II phenomenon. With the creation of the United Nations in 1948, the UDHR was born. This is the first human rights convention in the world. It is the result of the struggle of countries and peoples for the common ideal of human rights, and it is also a creed that the whole world should abide by in the field of human rights protection. Although UDHR does not directly stipulate the abolition of the death penalty system, its provisions mainly involve two rights, one is civil and political rights, and the other is economic and cultural rights. These two rights have indirectly promoted the process of human rights protection for death row prisoners. Article 3 of the UDHR clearly states that everyone has the right to life, liberty, and personal security. UDHR is considered to be a model of respecting the right to live in the world. Although its regulations on the right to life are not perfect, its original intention is to advocate that member states can issue relevant human rights protection documents as soon as possible, and urge the international community to issue more standardized and binding human rights conventions. Therefore, the convention is an initiative convention and has no mandatory binding force on member states. In the later development process, a series of normative human rights conventions appeared around the world, so the UDHR is more a kind of customary law and is abided by the member states. Hence, the UDHR has been called the foundation of contemporary human rights.

Since its inception, the United Nations has actively advocated strict control of the death penalty around the world. Article 6 of the ICCPR stipulates that everyone has the inherent right to life and no one shall be arbitrarily deprived of life. The Covenant especially emphasizes the right to life as a kind of existence different from other rights and should be paid more attention to. The death penalty can only be applied to death row inmates for the most severe crimes. In terms of applicable objects, it is stipulated that the death penalty system is prohibited from being applied to minors or pregnant women. The ideological and spiritual connotations of the protection of the basic human rights of death row prisoners as determined by the Covenant on Rights are also reflected in the subsequent international documents such as Safeguards guaranteeing protection of the rights of those facing the death penalty. Safeguards restrictive provisions on the death penalty regime have been further developed. In the regulations, the categories of execution methods of the death penalty are clarified, and it is advocated that the death penalty should be executed more humanely and reasonably, the scope of the application of the death penalty is expanded, the application of the death penalty is narrowed, and the old and the lighter are established. In principle, the right of appeal is granted to death row inmates. In 1989, the United Nations General Assembly passed the Second Optional Protocol to the ICCPR. The purpose of the protocol is to further strengthen the protection and respect for the special human rights of death row prisoners based on the original international convention.

### **COMPARATIVE CONSTITUTIONAL ANALYSIS: A STUDY ON THE CONSTITUTIONALITY OF THE DEATH PENALTY SYSTEM**

The United States was one of the first countries to conduct a constitutional review of the death penalty. In 1970, American scholars made some plans for the constitutional judgment of the death penalty in the country. They argue that the death penalty is now unconstitutional by the principles of the Eighth Amendment to the U.S. Constitution. The Court, upholding its institutional responsibility to respect principles and precedent, can and should declare the death penalty unconstitutional. If the court chooses

not to, it should not legally impose the death penalty, but continue to weaken the death penalty by enforcing strict procedural safeguards in cases. If courts do follow this process, then other branches, such as state and federal legislatures, and state courts should use Eighth Amendment principles and declare the death penalty unconstitutional. The formal review of the constitutionality of the death penalty in the United States is the 1972 case of *Furman v. Georgia*. In the case, in the process of judging whether the death penalty violated the U.S. Constitution, the nine major courts of the Federal Court each made a judgment on whether the death penalty is constitutional or not and finally decided that the application of the death penalty is inconsistent with the constitutional provisions in a 5:4 decision. Of the five justices who held that the death penalty was inconsistent with the Constitution, Justices William Joseph Brennan Jr. and Thurgood Marshall held that the death penalty itself constituted torture and abnormal punishment and violated the Constitution. Judges William Douglas, Potter Stewart, and Byron White held that the death penalty itself is not unconstitutional, but that the death penalty is unconstitutional in its application. Arbitrary application in application of the death penalty constitutes torture and abnormal punishment. Brennan pointed out that even if the execution method is not extremely tortured, and even if the death penalty was not considered a cruel and extraordinary criminal law when the amendment was made, the death penalty legislation involved in *Furman v. Dignity*, is inconsistent with the Eighth Amendment. In the end, a federal court ruled that how the law imposes and executes the death penalty makes the death penalty a cruel and unusual punishment, inconsistent with the provisions of the Eighth and Fourteenth Amendments to the Constitution. The Supreme Court of the United States only found that the application of the death penalty is unconstitutional. The death penalty itself is not unconstitutional as a punishment. The death penalty is a cruel and abnormal punishment prohibited by the constitution under certain circumstances. The U.S. Supreme Court overturned Georgia and Texas death sentences under state statutes under the Eighth Amendment. The decision in *Furman v. Georgia* did not hold that the death penalty in the United States was unconstitutional but only recognized that the application of the death penalty was unconstitutional. Four years later, in *Gregg v. Georgia*, Justice Potter Stewart said on behalf of the Supreme Court that the death penalty does not violate modern standards of dignity and does not necessarily violate the Constitution.

The Korean constitution does not expressly stipulate the right to life security. The South Korean Constitution expressly stipulates human dignity and worth, freedom, and due process, which has become important evidence for the argument for the death penalty. Although there are no direct provisions on the protection of the right to live in the Korean Constitution, Korean scholars have invoked the Constitution's provisions on freedom and dignity to demonstrate the obligation of the Constitution to protect the right to life. Explain conducting research. But South Korean officials consider the death penalty to be constitutional. South Korea's Constitutional Tribunal, the Supreme Court, and the Ministry of Justice all hold that the death penalty does not violate the Constitution. The Korean Constitutional Tribunal believes that the death penalty is a reasonable restriction on the right to life. As the most basic right in the basic rights system, the right to life should not be deprived in theory, but the setting of the death penalty is also a protection of the right to life. When a criminal violates the lives of others, the state needs to intervene. To protect the lives of others, the state has established strict standards for the death penalty to protect the lives of others and the public interest. The death penalty does not violate the constitution as long as it is strictly restricted by the state. In addition, South Korean officials believe that the death penalty is not unconstitutional because of public opinion. The cultural factor of retribution theory affects the supporting attitude of Korean citizens to the death penalty.

The research on the constitutionality of Japan's death penalty system mainly revolves around several articles of the Japanese constitution on the protection of human rights and dignity. Article 11 of the Japanese Constitution stipulates that the enjoyment of all basic human rights by the citizens shall not be hindered. The basic human rights of the people guaranteed by this Constitution are inviolable and permanent rights, which are granted to the people now and in the future. Article 13 states that all nationals are to be respected as individuals. The rights of citizens to life, liberty, and the pursuit of happiness shall be subject to the utmost respect in legislation and other state affairs, as long as they do not violate the public welfare. Article 31 stipulates that no one shall be deprived of his life or liberty, or subject to other penalties, except by the procedures prescribed by law. Therefore, the Japanese constitution expressly stipulates that the state can deprive people of life by legal procedures and reasons. Officially, the death penalty does not violate the constitution in Japan. An important factor in Japan's retention of the death penalty is the domestic public opinion's support for the death penalty. Public opinion has become the key reason for impeding the abolition of the death penalty.

#### **LEGISLATIVE ANALYSIS: IMPLICATIONS FOR CHINA**

Respecting and protecting human rights is an issue emphasized by all countries in the modern world. Many countries in the world are not in favor of the death penalty, but due to the cultural background and actual needs of different countries, many countries in the world still retain the death penalty, but various international treaties impose strict restrictions on the death penalty, such as Both the International Covenant on Civil and Political Rights and the ECHR set strict standards for the application of the death penalty. From the point of view of the conventions alone, the death penalty is not prohibited. The two conventions advocate that the application and execution of the death penalty should be carried out strictly and humanely, with the aim of not violating the protection of human rights. There are also international treaties expressly advocating the abolition of the death penalty, which mainly require state parties to abolish the death penalty in their own countries and are not universally binding, such as Protocol 2 of the International Covenant on Civil and Political Rights.

Regarding the relationship between the death penalty and human rights, international conventions do not explicitly state that the death penalty violates human rights, but only emphasize that countries that have not abolished the death penalty should strictly restrict and apply the death penalty, and that the death penalty should be executed humanely. In addition, different countries have inconsistent provisions on whether the death penalty violates human rights in their constitutions. The abolition of the death penalty is only a manifestation of civilization and progress. Based on the situation of different countries, international conventions do not strictly abolish the death penalty. Of course, they can only call on countries to do their best to abolish the death penalty. Although

different countries have different attitudes, the right to life is the core content of human rights, and the death penalty deprives people of the right to life. On this point, the death penalty is inconsistent with the concept of human rights. Contrasting the situation of the countries where the death penalty is retained, the rule of the state and the governance of the society, together with the public opinion of the citizens, are the reasons for the retention of the death penalty. Human rights violations are not the main consideration in whether the death penalty should be retained or abolished.

China has been reducing the number of crimes with the death penalty. This shows that China has always been more cautious in its attitude toward the death penalty, and is gradually restricting the death penalty. In 2006, China revised the Organic Law of the People's Courts of the P.R.C., which entrusted the Supreme People's Court with the authority to review the death penalty, reducing the application of the death penalty. In 2010, Some Advice on Implementing the Criminal Policy of Combining Leniency with Rigidity was introduced, which put forward strict requirements for the application of the death penalty. Although the death penalty is retained, it is strictly controlled and applied with caution. There must be sufficient and conclusive evidence, beyond a reasonable doubt, to be able to draw a single conclusion, and limited to serious crimes. In June 2010, the Guiding Opinions of the Supreme People's Procuratorate on the Application of the Provisions on Several Issues concerning the Examination and Judgment of Evidence in Death Penalty Cases and the Provisions on Several Issues concerning the Exclusion of Illegal Evidence in Criminal Cases, Stricter regulations have been formulated for the investigation and collection of evidence of the death penalty, as well as the admission and exclusion of evidence.

These can reflect the progress of China's human rights protection and the protection of the right to life. At present, China's national conditions for the abolition of the death penalty are not sufficient, but China has been controlling and reducing the death penalty. The value of the right to life should be respected, and the country's criminal policy will continue to control the application of the death penalty, ultimately achieving the goal of abolishing the death penalty.

### **RECOMMENDATIONS: THE WAY FORWARD FOR CHINA'S DEATH PENALTY SYSTEM**

Out of respect for and protection of human rights and the right to life, most countries in the world have abolished the death penalty, and only a small number of countries still retain the death penalty. These countries that retain the death penalty also strictly control the application of the death penalty in various ways, even though some countries still retain the death penalty, but have become countries that do not execute the death penalty, and the death penalty has become a provision that only exists in the law. Various facts have shown that the abolition of the death penalty has become the criminal policy of most countries in the world. Although China has not completely abolished the death penalty, it has been strictly controlling the application of the death penalty in criminal legislation. The reduction in the number of death penalty crimes in China shows the country's tolerant attitude toward the death penalty policy, which is also in line with the general trend of reducing and abolishing the death penalty in countries around the world, and line with the trend of modern human rights protection. However, in terms of the current number of death penalty crimes in China, compared with other countries in the world, China's number of death penalty crimes is still at the forefront of the world, and the country should continue to make efforts to reduce the number of death penalty crimes.

At present, it is still necessary to retain the death penalty for some crimes that seriously violate people's lives and health, but some non-violent crimes are not serious enough to apply the death penalty. For such crimes, it is necessary to speed up the revision of China's criminal laws and gradually abolish such unnecessary crimes of the death penalty to reflect the respect and protection of the human right to life. From the perspective of the value of the constitution, the reduction of the death penalty is in line with the basic spirit of the constitution and is also conducive to the protection of the right to life.

It is a basic principle in the constitution that rights should not be abused, and the constitutions of various countries also clearly stipulate the restrictions on the exercise of rights. The Chinese Constitution has the basis that fundamental rights shall not be abused, and the exercise of individual rights shall not impair other rights. In China, there are no unrestricted rights, and restrictions on the right to life are different from restrictions on other fundamental rights. Compared with other rights, the right to life is rather special. The restriction on the right to life is to deprive a person of his or her life. Each person has only one life. This restriction eliminates the possibility of life. There is no room left for the right to life. Compared with the restriction of other rights, the restriction of other rights is only short-lived, such as the deprivation of liberty and the deprivation of property. These basic rights are recoverable, but the particularity of life makes the restriction on it not recoverable. In the relationship with other rights, the right to life has fundamental value, is the basis for the existence of other rights, and is implicated with other rights. Without the right to life, there would be no other rights. The irreversibility of life requires that in the setting of the death penalty, in addition to strictly abiding by the provisions of the Chinese Constitution, there must be stricter requirements than other basic rights restrictions. This requires strict adherence to the principle of proportionality in the death penalty legislation and the establishment of the value concept of respecting the right to life. The principle of proportionality requires the following aspects to be considered in the restriction of basic rights: the appropriateness between the means of restriction and the purpose achieved; the means of restriction adopted should be balanced with the relevant legal interests; the means of restriction are necessary.

All rights must be subject to certain restrictions, and no right can be abused. This is a basic principle established by the Chinese Constitution. The setting of the criminal law for the death penalty should be based on the principle of protection of the right to life and strictly based on the principle of proportionality. The reserved death penalty should only be aimed at situations that endanger national security and infringe on the right to life of others. In considering the limitation of the offender's right to life, only the security of the state and the right to life of others can be the reasons for the death penalty. The death penalty for crimes of corruption and bribery, crimes of disrupting the socialist market economy, and crimes of obstructing social management order should be reduced. Legislation on the death penalty for these types of crimes depends on whether such crimes endanger the actual security

of the country and cause the loss of the right to life of others. , and this consequence must be directly and intentionally caused by the perpetrator before the right to life can be deprived.

## CONCLUSION

Among the types of punishment, the death penalty is undoubtedly the most severe punishment. It has been controversial because it directly deprives others of human rights and violates human rights. The death penalty has instrumental value and ethical values. In the development process of the death penalty, whether to retain the death penalty or abolish the death penalty has always been the core of the debate in academic circles. Since the main body of the implementation of the death penalty is the state, many international conventions related to the death penalty and human rights protection have emerged around the world. Worldwide, UDHR and ICCPR provide advocacy guidance. There are also different views on whether the death penalty system is constitutional in different countries. The United States believes that the death penalty is constitutional, but the death penalty procedure is not. South Korean officials believe that the death penalty system is constitutional, but there is a lot of controversy among the people. Japan's constitution clearly states that the death penalty is constitutional. In China, the death penalty is constitutional, but China has been making efforts to eliminate the death penalty system. Academic research believes that the abolition of the death penalty is not necessarily related to the protection of human rights, but the existence of the death penalty will inevitably lead to better protection of human rights. To this end, China has promulgated many laws and regulations and is strictly requiring the conditions for the application of the death penalty to gradually reduce the application of the death penalty. To reduce the application of the death penalty and strengthen the protection of human rights, the concept of the principle of proportionality can be adopted to balance the legal rights and interests of all strata, so that a dynamic balance can be achieved between the state's rights to punish and citizens' right to life.

## REFERENCES

- Amnesty International. (1989). *When the State Kills-the Death Penalty: A Human Rights Issue*. Amnesty International.
- Chen Aiqun. (2013). *A study of death penalty legislation in the perspective of human rights protection*. (Doctoral dissertation, Guangzhou University).
- Ding Kui. *International human rights conventions and China's death penalty system*. (Doctoral dissertation, Dalian Maritime University). DOI: 10.7666/d.y1240547
- Feng Yanting. (2011). *The abolition of death penalty in international law and the reform of death penalty in China*. (Doctoral dissertation, Zhengzhou University). DOI: 10.7666/d.y1931699
- Gong Shanshan Sun Xiangyu. (2021). An exploration of the reasons for the existence of capital punishment in the perspective of local legal culture. *Journal of Huaiyin Normal College (Philosophy and Social Science Edition)*, 043(001), 37-41.
- Jia Chenghao. (2020). Research on the judicial control path of death penalty in China. *Journal of Liaoning Public Security and Judicial Management Cadre College* (6), 7.
- Li Kanshuai. (2014). *A study on human rights protection for death row inmates in China*. (Doctoral dissertation, Northeastern University). DOI: CNKI:CDMD:2.1016.014133
- Liu Yu. *International Human Rights Protection and the Abolition of the Death Penalty System in China*. (Doctoral dissertation, Inner Mongolia University). DOI: CNKI:CDMD:2.1013.293519
- Nie Wanglin. (2022). Reflections on the death penalty for drug crimes. *People of the Times* (32), 4.
- Shen, Liang. (2022). Unifying the punishment of crime and the protection of human rights to ensure social stability. *China Trial* (14), 2.
- Smith, N. B. (1983). The Death Penalty as an Unconstitutional Deprivation of Life and the Right to Privacy. *BCL Rev.*, 25, 743.
- Vidmar, N., & Ellsworth, P. (1973). Public opinion and the death penalty. *Stan. L. Rev.*, 26, 1245.
- Wang Shen. (2018). *A constitutional study of China's death penalty system*. (Doctoral dissertation, East China University of Political Science and Law). DOI: CNKI:CDMD:2.1019.804426
- Woll, R. (1983). The Death Penalty and Federalism: Eighth Amendment Constraints on the Allocation of State Decisionmaking Power. *Stanford Law Review*, 787-829.
- Yin, Jianfeng, & Zhou, Kai. (2022). The implication and manifestation of human rights in China's death penalty policy. *Human Rights* (5), 22.
- Zhang Meng. (2017). *The harmonization of China's death penalty system under international human rights protection*. (Doctoral dissertation, Yunnan University).

Ramalingam Rajamanickam  
*Faculty of Law*  
*Universiti Kebangsaan Malaysia, 43600 UKM Bangi, Selangor Malaysia*  
*Email: rama@ukm.edu.my*

Cao Zhaoxun  
*Faculty of Law*  
*Universiti Kebangsaan Malaysia, 43600 UKM Bangi, Selangor Malaysia*  
*Faculty of Culture and Education*  
*Jingdezhen Vocational University of Art, 333000, Jingdezhen, China*  
*Email: p111446@siswa.ukm.edu.my*

Chen Siqi  
*Faculty of Law*  
*Universiti Kebangsaan Malaysia, 43600 UKM Bangi, Selangor Malaysia*  
*Zhejiang Haipo Law Firm, 314000, Jiaxing, China*  
*Email: 108337@siswa.ukm.edu.my*