

**CONTEMPORARY RECIDIVISM AND ITS CONTROL
IN CHINA**

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I. INTRODUCTION

Recidivism is a complex social problem which has caused worldwide concern. The recidivism rate reflects the public security situation of a country or a district, and directly reveals the effectiveness of the criminal justice system, especially the corrections system. Nowadays, due to its serious social perniciousness, reducing recidivism has become the emphasis of punishment and prevention in each country's system of criminal justice. However, promoting public safety and controlling recidivism requires complicated engineering of social systems, which must co-ordinate the strengths of the whole society and make use of various means and methods in executing a comprehensive plan.

II. CONCEPT OF RECIDIVISM IN CHINA

Generally, recidivism is defined as the criminal actions of released prisoners who return to prison for a new crime committed within a certain period after release. The Criminal Law of the People's Republic of China, Article 65 stipulates: "If a criminal commits another crime punishable by fixed-term imprisonment or a heavier penalty within five years after serving his sentence of not less than fixed-term imprisonment or receiving a pardon, he is a recidivist and shall be given a heavier punishment. However, this shall not apply to cases of negligent crime. If a criminal convicted of endangering national security commits the same crime again at any time after serving his sentence or receiving a pardon he shall be dealt with as a recidivist."

According to the law, there are two types of recidivism: general recidivism and recidivism of crimes of endangering national security.

A. General Recidivism

General recidivism is when a criminal commits another crime punishable by fixed-term imprisonment or a heavier penalty within five years of serving his sentence of not less than fixed-term imprisonment or receiving a pardon. Its constituent elements are as follows:

1. The first crime and the subsequent crime are intentional crimes;
2. The punishments of the first crime and the subsequent crime are fixed-term imprisonment or a heavier penalty;
3. The subsequent crime is committed within five years of serving the first sentence or receiving a pardon.

B. Recidivism of Crimes of Endangering National Security

Recidivism of crimes of endangering national security occurs when a criminal convicted of endangering national security commits the same crime again at any time after serving his sentence or receiving a pardon. Unlike general recidivism, it doesn't require either the first or subsequent crime to be intentional crimes, nor specifies the type of punishment to be imposed or the length of time between the occurrences of the crimes. However, both must be crimes of endangering national security. By legislating for this type of special recidivism, it is clear that Chinese criminal law will punish crimes of endangering national security more severely.

According to our criminal law, recidivism is defined as above. In practice, however, the scope of the definition is more extensive. Generally speaking, as a judicial concept in China, it means committing crime frequently, and doesn't strictly require certain kinds of crime, types of punishment, or lengths of time between criminal actions etc.

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III. THE CURRENT SITUATION OF RECIDIVISM IN CHINA

Compared to western countries, the rate of recidivism in China is very low. However, the current situation of recidivism doesn't make people optimistic. On the contrary, especially in this period of social and economic transition, the character of recidivists and the trends of recidivist crime have caused many people to be seriously worried.

A. Quantity Characteristics

The Ministry of Justice organized a continuous study in 27 provinces, municipalities and autonomous regions throughout China lasting for five years (from 1986), to investigate and study the behaviour of prisoners released from 1982 to 1986. In five years, a total of 137,000 released adult prisoners were investigated, and the recidivism rate of these people three years after release from prison was 5.19%. In the same period, however, the recidivism rate of western countries was up to 50% or so. This demonstrates that the recidivism rate of China at that time was very low.

At the beginning of the 1990s, China began to pursue a market-oriented economy; with this transition in society and economy, manpower and financial and material resources increased on an unprecedented scale. These changes induced released prisoners to recommit crime, but the powers of restriction and prevention were weakened, so public security did not change for the better, and the crime problem became more and more serious. The Chinese Ministry of Justice investigated more than 27,000 criminals from across the nation taken into custody in 1996. Among them 13.27% had been sentenced at least twice. However, this figure was only 6.34% in 1984 and 8.55% in 1990. These statistics show clearly that the recidivism rate of our country in the middle and later years of the 1990s rose to twice that of ten years previously.

Next, what about the recidivism rate in China in recent years? I do not have the nationwide data, but I do have some information of specific provinces. In 2002, Zhejiang Province Prison Administration Bureau calculated that 13.27% of the total number of prisoners of that province had been sentenced at least twice in the past four years. The details of these four years are as follows: it was 13.2% in 1999, 13.64% in 2000, 14.23% in 2001, and 14.4% in 2002. This information proves that the rate of recidivism in China today has increased to some extent compared to several years ago, and is also indicative of the trend of annual increases in the problem.

B. Quality Characteristics

Not only has the rate of recidivism increased, the gravity of recidivist crime has also intensified in recent years. According to statistics from the Chinese Ministry of Public Security, homicide cases at the beginning of the 1980s (1980-1983) increased on average 2.6% every year, but rose unexpectedly by 15.32% from 1984 to 1990, with a particular increase in serious and major cases. In 1985 there were only 80,000 such cases, thereafter increasing sharply to 450,000 cases in 1990, 540,000 cases in 1993, and 700,000 cases in 1995. Important and major cases as a proportion of the total number of crimes was only 9% in 1985; but rose to 21% in 1990; 33% in 1993; and 42% in 1995. A great deal of these serious crimes was committed by released prisoners. An investigation of the autonomous region of Guangxi shows that 19.7% of recidivism cases caused death, severe injury or slight injury, and more than quarter of the cases involved amounts of money greater than 10,000 RMB. It proves that the social harmfulness of recidivism is noticeable.

C. Recidivist's Characteristics

1. Age

A sizable proportion of recidivists are young or middle-aged, and they have become younger in recent years. Among recidivists, the 20-40 years old age group accounts for more than 85% of the total number of offenders. Compared to first-time offenders, recidivists are generally older. An investigation shows that the 18-25 years old age group accounts for 53.5% of all first-time offenders, and the 26-35 years old age group accounts for 30%; while the 18-25 years old age group accounts for 33.3% of all recidivists; the 26-35 years old accounts for 45%. Most first-time offenders are 18-25 years old, and most recidivists are 26-35 years old.

2. Educational Level

Recidivists' educational level is generally on the low side. According to the investigation conducted in Guangxi, 94.7% of all recidivists are educated to middle or junior high school level only.

3. Occupation

Among recidivists, the number of unemployed and peasant class persons is huge, accounting for 86.7% of the total amount.

4. Sex

99.1% of recidivists are male.

5. Living Environment

An investigation of the Ministry of Justice shows that in China most released prisoners live in the countryside or in small towns, and many of them have no jobs. Compared to first-time offenders, recidivists' occupational status and employment histories are generally humble. Because of unemployment and social discrimination, the majority of offenders return to crime after release from prison.

6. Recidivism Timeframe

A majority (57.1%) of recidivists recommit crime within three years of release from prison. This fact demonstrates that the first three years after release is a key period in establishing an effective return to society.

D. Case Characteristics

Regarding case characteristics, the types of recidivist crime are relatively concentrated. The majority of cases involve infringing against property, particularly stealing and robbery. The investigation from the Prison Administration Bureau of the Autonomous Region of Guangxi shows that in almost six years, of recidivists of the whole province, 39.7% were reincarcerated for stealing, and another 23.9% were reincarcerated for robbing. The number of cases involving these two types of crime is higher than those of other crimes in China.

At present, the average number of reoffences is increasing; nearly 40% of persons reoffend three or more times, and there has been an emerging tendency for 'professional' crime. Moreover, the phenomenon of repeat offenders facing two or more charges is becoming more and more frequent. An investigation shows that in 8.4% of recidivism cases the offender was simultaneously charged with two or more offences. Those facing three or more charges account for 1.1% of the total number of cases; the highest number of charges faced by a repeat offender was six.

In addition, recidivism in China also appears to have become more sophisticated and technical in recent years. Organized crime committed by released prisoners is rising. More and more criminals make use of modern communications and means of transportation to implement crimes, and plan elaborately and tactically in advance of criminal acts.

With reference to revivalism, like many developing countries, China faces difficult situations and difficult problems, so it seems to be very necessary to strengthen research projects and co-operation with these countries in this respect.

**IV. THE CURRENT MEASURES AND POLICES TO CONTROL
RECIDIVISM IN CHINA**

A. System of Punishment

1. Principal Punishments

The principal punishments in Chinese criminal law are as follows: public surveillance; criminal detention; fixed-term imprisonment; life imprisonment; and the death penalty. The principal punishments are the major ways of punishing criminals, of which the term of public surveillance shall not be less than three months and not more than two years; the term of criminal detention shall not be less than 15 days and not more than six months; the term of fixed-term imprisonment shall not be less than six months and not more than 15 years.

The death penalty is the heaviest penalty and can only be applied to criminals who have committed extremely serious crimes. If the immediate execution of a criminal punishable by death is not deemed necessary, a two-year suspension of execution may be pronounced simultaneously with the imposition of the

death sentence. For anyone who is sentenced to death with a suspension of execution and who commits no intentional crime during the period of suspension, the punishment shall be commuted to life imprisonment upon the expiration of that two-year period; if the criminal has truly performed major meritorious service, his punishment shall be commuted to fixed-term imprisonment of not less than 15 years and not more than 20 years upon the expiration of that two-year period. In judicial practice in China, the overwhelming majority of criminals who are punishable by death with a suspension of execution are spared the death penalty.

2. Supplementary Punishments

The supplementary punishments are as follows: fines, deprivation of political rights, and confiscation of property. Apart from this, deportation is a supplementary punishment, which may be imposed independently or complementarily upon a foreigner who commits a crime. Supplementary punishments may be imposed independently. The above punishments are major judicial methods of controlling crime and recidivism in China. When a criminal commits crime, a punishment shall be imposed upon him or her based on the facts, nature and circumstances of the crime, the degree of harm done to society and the relevant provisions of criminal law. By means of the punishments, we hope to realize the prevention and/or reduction of crime and recidivism.

B. Penalty Policy

The Criminal Law of the People's Republic of China, Article 65 stipulates that recidivists "shall be given a heavier punishment". So recidivism is an official reason for heavier punishment in accordance with the provisions of Chinese criminal law.

To crack down on serious crimes and recidivism is China's traditional penal policy. China has launched several successive large-scale movements against serious crimes since 1982. Considering the harsh nature of criminal acts, a 'strike-hard' policy against serious crimes is still in place. In recent years, the focal point of the 'strike-hard' policy has been organized crime and gangster activities which are rampant at present.

On the whole, China maintains a high-tension approach to crime because it is accepted as an effective way to prevent and control crime (and recidivism). In the past nine years (from 1998 to 2006), 6,201,191 criminals were pronounced guilty by the Chinese court system and 22.23% of them (1,378,525 people) were sentenced to imprisonment for more than five years. It is evident that quite a lot of criminals were given serious penalties and need to receive correctional treatment for a long time.

In recent years, the Chinese penalty policy has begun adjusting to some extent; while placing an emphasis on sternly combating serious crime, we have begun to pay attention to implementing a light and more lenient criminal policy for less serious offences. Some criminals, whose social harmfulness and subjective evil is slight, are given non-custodial penalties such as fines, public surveillance, suspension of sentence and parole, etc. China attempts to balance severity and leniency in its criminal policy. This is a great adjustment of the Chinese penalty philosophy, and is an important social policy which China is presently advocating and pursuing vigorously.

C. Policy of Correction

China firmly believes that people, including most criminals, can be rehabilitated. It is the basic target of China's policy of correction that criminals should become law-abiding citizens who can lead independent lives.

Directed by this thought, China's criminal punishment policy is focused on corrections rather than straightforward punishment. During the process of correction, the focus is on the implementation of the principles of humanism and education, and great attention is paid to the criminals' conscious correction through labour, morality, culture, technology and so forth. By these means, criminals can become law-abiding citizens, giving up the intention to commit crime to fulfil their greed. China adopts the measure of combining special State penal organs with civic society organizations. The main task of correction is undertaken by the penal executive organs in prisons. At the same time, other departments and social strata contribute their efforts to support and co-ordinate criminal correction throughout the whole process, which extends to matters such as living arrangements after release and employment of the released prisoners. The experiences of China, I think, show that an effective way to prevent and control recidivism is by paying great attention to the education and correction of criminals.

D. Policy of Social Education and Employment

The Policy of Social Education and Employment mainly refers to the education, employment, assistance and management of released criminals. When the released criminals return to society and cannot establish a residence and employment without assistance and regulation from society, they will tend to reoffend. Therefore, China has always paid great attention to the task of assisting and educating released prisoners, and has taken multigradation, multichannel and multiform measures to arrange post-release life, and furthermore incorporates this work into the government public security system. In many places, special factories and enterprises were established as the employment bases for released prisoners. These enterprises provide employment for quite a long period. At the same time, based on the units and districts in which those people live, deposed by the government, we can mobilize civic organizations at primary level such as residents' committees, village committees, etc, to take part in the work of assisting, supervising, educating and managing released prisoners. In this way, we can comprehend and gain firsthand information about their living conditions and employment, and settle their practical problems and difficulties actively. Through such protective and precautionary measures, we effectively control and reduce recidivism to some extent.

V. CHALLENGES AND PROBLEMS IN CONTROLLING RECIDIVISM

A. Increase of Social Elements Which Can Induce Recidivism

Today, China is in the process of economic and social transformation. In the course of transition from the old structure to the new, there is likely to be some innovation required in the legislation, institutions and regulations which provide opportunities for criminals. In the presence of imperfect legislation and institutions, the negative aspects of a market economy will be more likely to appear and directly influence the number, method, form, character and object of criminal acts. Particularly in recent years, with the wave of urbanization and flourishing development which has pushed innumerable peasants and vagrants into cities, the change in living circumstances in cities has induced or obliged many people to select the path of crime.

B. Tradition and Practice of Severe Punishment

In traditional Chinese legal culture, the idea of severe punishment for crimes has always been important. Whenever crimes were rising and social security was deteriorating, the direct policy would be severe punishment. For a long period, we were more likely to believe in striking hard against crimes and in the effectiveness of penal deterrence. As a result, there were frequent large scale movements to severely punish criminal acts. With the implementation of this policy, many criminals were sentenced to long term imprisonment. Maltreatment in prisons was exposed as much as possible.

C. The Decrease of the Function of Correction in Prison

Firstly, the circumstances of criminals are becoming more and more complex at present, which increases the difficulty of correction. Secondly, the quality of policies in prison cannot satisfy the development of corrections and meet fully the requirements of the task. Thirdly, the traditional method of correction cannot meet the challenge of new pattern crimes emerging nowadays. Fourthly, the change in social circumstances has meant that prison officers cannot focus their whole energies on the work of criminal correction. Last but not least, the market economy and the opened society require a more socialized execution of criminal penalties, but this fact is contrary to the reality that prison is still closed to the outside world. The resocialization of criminals is more difficult than before, and criminals are more likely to reoffend after release from prison. To sum up, the function of corrections in prison has slowed to a certain extent.

D. Ineffective Execution of Social Education and Employment Policy

China's economy has recently become extremely competitive, and the employment situation is rather harsh. Most released prisoners have a grave drawback in the areas of quality and technology demanded by the employment market. Furthermore, taking their special personal experiences into account, they find it is very difficult to obtain employment. At the same time, the government also cannot solve this problem soundly because many State-owned or group-owned companies have transformed into private companies. As a result, in addition to the stigmatizing of released prisoners, the pressure on them to manage their own living is rising. Some of them will take up their old criminal habits, especially larceny and plunder. Simultaneously, because of the enforcement of the market economy, there are vast and fast flows of people through society. As a result, social organizations find it is very difficult to supervise, regulate and educate released prisoners effectively because even these organizations cannot track where those persons are.

Particularly, the aim of effective supervision and regulation cannot be achieved because so many peasants and vagrants have migrated to cities.

VI. NEW CHOICE: COMMUNITY REHABILITATION

Community Rehabilitation is a type of penalty without imprisonment. The Special Judicial Administrative Department, with the aid of other administrative departments, non-governmental community groups and social volunteers, helps to rehabilitate the criminals' psychology and vices. Eventually, criminals can return to society smoothly. This is China's exploration for a more humane penal system. In it, more attention will be paid to the function of education and rehabilitation, and respect for and preservation of the rights of criminals will be fully demonstrated. This is an important component of China's judicial reform. As of August 2006, there are 18 provinces, 85 big cities, 375 county districts, and 3,142 streets (villages or towns) promoting community rehabilitation. Nationwide, there are about 7,778 full-time judicial assistants of community rehabilitation, 4,415 full-time social workers, and 60,004 social volunteers currently participating in this scheme. Under the leadership of the Judicial Administrative Department and with the co-ordination of police departments, civil administration, fiscal departments and so on, this kind of model has come into being successfully.

Those subject to community rehabilitation in China comprise five kinds of criminals: those put under public surveillance, those whose sentences have been suspended, those sentenced to parole, those permitted to temporarily serve their sentences outside prison, and those only deprived of political rights. Different plans are made for each person made subject to a Community Rehabilitation order. In doing so, the criminals' relatives, social volunteers, experts and so on together provide the criminals in the community with psychological consultation, training courses, and duly solve the problems and difficulties of employment, life, psychology, education, etc. The above measures help released prisoners successfully integrate with society.

This system affords more opportunity for non-violent, non-threatening and truly remorseful criminals to repay their debt to society with a non-custodial penalty such as probation and parole, etc. Non-custodial sentences avoid the negative physiological and psychological effects of prison life and allow fuller participation in educational and rehabilitative programmes. According to statistics of the Ministry of Justice, until August of 2006, this new rehabilitative system has accepted 65,616 persons and has succeeded with 15,092 of them. Excepting some special cases in Beijing and Guizhou province, the recidivism rate is zero. Obviously, the effects of community rehabilitation are very noticeable.

VII. CONCLUSION

Promoting public safety and controlling recidivism is a complex and systematic project. From the results of the Chinese system, I believe deeply that the following process should be adopted: first, the most important work should be in establishing better societal circumstances to achieve harmonious relationships between society, economy, politics and culture, etc. Better societal circumstances are a key factor in controlling and reducing the crime rate. Second, enforcing all aspects of the judicial and corrections systems, and fulfilling in full the functions of retribution, deterrence, correction and rehabilitation are a comprehensive way to prevent and reduce crime and recidivism. Third, encouraging and including more citizens in the education, assistance, supervision, and rehabilitation of offenders is also a good method of controlling recidivism and promoting public safety. In the new century, criminal justice should be a process contributed to by all citizens. In our new criminal system, government, non-government organizations, volunteers, and community workers should co-operate closely and harmoniously to realize our mutual dream.