



# Three Dimensions Influencing the Transformation of Modern China's Death Penalty Perceptions

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## Abstract

The issue of the abolition or retention of the death penalty has recently garnered extensive attention from both the public and the scholarly community. This study elucidates three principal factors shaping China's death penalty policy: Firstly, public opinion, manifested as a sociocultural legacy, generally endorses the severity of capital punishment; secondly, the impact of Western modern conceptions of the death penalty challenges traditional Chinese perspectives, primarily through a reevaluation of individual rights and human dignity; and thirdly, international human rights paradigms are influencing domestic legislative policies in China, indicating a gradual alignment with global human rights norms. Upon comprehensive analysis, it can be concluded that while there exists some degree of legitimacy in China's death penalty policy, the country is currently trending towards a more judicious application of capital punishment under the composite influence of the aforementioned dimensions. This trend reflects a profound shift in underlying values and legal culture. Therefore, it is foreseeable that China may progress along the path of incremental abolition of the death penalty in the future.

**Keywords:** Retention; Death Penalty; Punishment; Jurisdictions

**Abbreviation:** ICCPR: International Covenant on Civil and Political Rights.

## Conceptual Paper

### Controversy Over the Death Penalty

**The Essence of Capital Punishment:** The death penalty constitutes a form of punishment whereby the state's judicial apparatus legally employs lethal means to deprive individuals convicted of grave offenses of their lives. As an extreme form of penal sanction, it has accompanied the evolution of human civilization. Within diverse cultural and

societal contexts, the death penalty also embodies an array of social and cultural significances. The most pressing concern pertaining to capital punishment is its irrevocability. Once executed, no subsequent evidence can rectify the irreversible loss of life, thereby amplifying the responsibilities and risks borne by the judicial system. Consequently, its legality and scope of application have perennially been the focal point of scrutiny for numerous legal theorists and practitioners. On a global scale, attitudes towards the implementation of the death penalty diverge widely, primarily influenced by each nation's unique legal framework and socio-cultural fabric. Historically, the death penalty primarily functioned as a tool for maintaining social order and stability. However, with

the maturation of legal systems and the elevation of human rights consciousness, the legitimacy of capital punishment increasingly finds itself under critical examination. Whether viewed through the lens of pre-empirical legal value hierarchies or constitutional fundamental values, the legality of the death penalty warrants rigorous scrutiny and justification.

Globally, the application of the death penalty exhibits conspicuous regional disparities. In certain jurisdictions, capital punishment is deemed an efficacious mechanism for the “eradication of societal scourges,” whereas in others, it is construed as a violation of fundamental human rights. These divergences are not merely reflected in national legal systems but also profoundly influence the development and application of international human rights law. The issue engages multiple layers of legal and ethical complexities and is inextricably linked with social, cultural, and even political variables. Consequently, any discourse on the death penalty cannot be confined to a monolithic legal perspective but requires an interdisciplinary approach that accounts for a myriad of contributing factors. This constitutes a direction warranting further in-depth exploration in future research.

**Debate on the Abolition or Retention of the Death Penalty in China:** Feudal China harbored a relatively complex stance towards the death penalty. On one hand, owing to the peculiarities of feudal governance, capital punishment was perceived as the ultimate punitive measure against unlawful conduct, possessing an irreplaceable deterrent effect. However, underlying this viewpoint often lay the safeguarding of the ruling class’s authority rather than a quest for justice and morality. This intricate dynamic of power is reflected in attitudes towards the death penalty as portrayed in Confucian classics and various ancient legal texts. Transitioning into modern society, particularly under the influence and propagation of global human rights norms, the ethical and legal quandaries intrinsic to China’s utilization of the death penalty have become increasingly conspicuous. Western countries, especially those in Europe, have generally abolished or restricted the death penalty, undeniably exerting a significant impact on China’s traditional perspectives on capital punishment. Importantly, this shift is not merely the result of external pressure but also mirrors the maturation of domestic viewpoints.

From both legal and philosophical perspectives, the debate over the abolition or retention of the death penalty presents a notably intricate landscape. On one hand, proponents, often hailing from a utilitarian standpoint, argue that the death penalty is requisite under specific circumstances; on the other hand, opponents critique capital punishment on moral and ethical grounds, contending that it

fails to meet modern societal demands for justice and human rights. These discourses are not only widely elaborated within the academic community but increasingly pervade public opinion and legislative reforms. Although the issue of the death penalty’s abolition or retention has sparked extensive discourse and concern within Chinese society, the path to reform remains fraught with challenges. Currently, China’s death penalty system is undergoing a transition from an extensive to a more refined approach, shifting focus from quantity to quality. However, this process is simultaneously confronted with multiple resistances stemming from diverse groups and ideologies [1]. The dispute over the death penalty in China is a complex issue involving manifold factors and dimensions. Any attempt to oversimplify the subject would be impractical. Therefore, for a more comprehensive understanding, it is imperative to contextualize the issue within broader social, cultural, and legal frameworks.

### **Examining the Contradictions in China’s Death Penalty Perspectives through Three Dimensions**

**The Influence of Public Opinion on the Judicial Policy Direction of the Death Penalty:** Social legitimacy is attained through the widespread public acceptance of a particular policy or institution, which in turn significantly influences the effectiveness and stability of said policy during its implementation. Consequently, public opinion serves not only as a pivotal factor in shaping death penalty policy but also as the linchpin for its enduring existence and broad societal endorsement.

Chinese society has long been rooted in the cultural notion of “an eye for an eye,” a concept that is widely disseminated among the populace, thereby creating a robust societal expectation [2]. Particularly in cases that involve special social sentiments and moral considerations, there is an even greater need to balance social attitudes with legal legitimacy. In the practical operation of law, the concept of retribution often serves as a significant consideration in penal decision-making, which, to some extent, reflects the direct or indirect influence of public opinion. Concurrently, the notion of deterrence is predominantly a product of individual subjective psychological expectations, shaped by multiple factors such as personal security needs, perception of safety, values, and media influence. In specific cases, the concept of deterrence is not merely the expectation of the public but also materializes as the basis for judicial policy and court rulings. For instance, during the trial proceedings, a majority of the public express through social media their vehement expectation that the defendant should receive the death penalty. Such public opinion pressure can, to a degree, sway the court’s final judgment, culminating in a capital sentence for the defendant.

The strong endorsement of the retributive function of the death penalty among the Chinese populace can be elucidated on multiple levels. Firstly, as a biologically ingrained self-preservation mechanism, instinct catalyzes to some extent the human desire for retribution. Specifically, within the realm of human biology, the notion of punishment actually serves as an evolutionarily stimulated collective defense mechanism. This mechanism not only assists in maintaining internal group order but also acts as a deterrent, reducing potential threats [3]. Consequently, to a certain degree, the advocacy for the death penalty as an extreme form of punishment reflects humanity's instinctual pursuit of societal stability and individual safety. Secondly, against the backdrop of societal transformation, an unstable social environment further intensifies this notion. Balancing public opinion and judicial fairness has become an exigent issue. In the short term, public opinion may exert some degree of constraint on death penalty policies; however, in the long term, as social norms and the legal landscape evolve, public opinion could potentially serve as a potent catalyst for death penalty reform.

#### **The Collision of Western Concepts of the Death Penalty with Traditional Chinese Views on Capital Punishment:**

Within the historical context of a feudal society, ancient China's legal system was heavily geared towards safeguarding imperial authority and social order. In this schema, the death penalty was viewed as an extreme yet indispensable instrument. From a Confucian perspective, the death penalty serves as a surgical means of "eradicating the diseased tissue," with the ultimate objective of sustaining the moral order of society. While Confucianism advocates governing through virtue, it does not preclude the application of penal measures in extreme circumstances [4]. Hence, the death penalty is not perceived as an unlawful or immoral system in Confucian eyes, but rather a necessary apparatus for social governance. Legalists place even more emphasis on the role of law in maintaining social order. Influenced by the "strict penal laws" of Legalist thought, China's death penalty policies often lean more towards deterrence and punishment. In Legalist doctrine, the death penalty serves not only as a punishment for the perpetrator but also as a deterrent for society at large, aiming to sustain social stability and public order through severe penal measures [5]. Transitioning into modern times, especially after multiple legal reforms and social transformations, China's conceptions of the death penalty have not entirely shed their ancient influences. On one hand, modern society places greater emphasis on human rights and the rule of law, leading to a gradual narrowing of the scope for the application of the death penalty. On the other hand, due to the profound impact of ancient Confucian and Legalist philosophies, the death penalty is still considered to some extent as an effective means of maintaining social and moral order. For instance, when dealing with cases involving

severe crimes or threats to societal safety, the death penalty is often deemed a necessary and effective solution. This is particularly evident in high-profile cases, such as heinous murders or drug trafficking, reflecting to a great extent the continuation and transformation of ancient conceptions of the death penalty in modern society.

Western skepticism toward the death penalty primarily stems from liberal and human-rights-centric values. Prominent figures like Beccaria and Paine, along with numerous postmodern legal scholars, have profoundly critiqued this system. The death penalty is not only ineffective as a deterrent but is also prone to judicial injustice and abuse. Beccaria, in his seminal work "On Crimes and Punishments," levied a three-tiered critique against the death penalty: it inherently contradicts the social contract, is logically flawed, and has limited utility [6]. Beccaria's stance undeniably propelled the abolitionist movement and his arguments were deeply influenced by Rousseau's "Social Contract" theory. He posited that the state has no authority to deprive citizens of their lives through the death penalty, as people did not vest such power in the state within the social contract. From the vantage of social contract theory, he formulated a multi-dimensional critique of the death penalty, significantly advancing Western discussions and practices aimed at its abolition. Entering the modern era, Western attitudes toward the death penalty have undergone significant shifts. The dissemination of liberal and human rights doctrines has led an increasing number of countries to reconsider and question the legality and morality of the death penalty. This transformation is not only evident in legal literature and judicial practice but has also garnered extensive support in public opinion and societal beliefs.

The modern Western notion of abolishing the death penalty poses a significant challenge and impact on China's traditional views on capital punishment. This impact is manifest not only at the level of legal systems but also in the realms of values and cultural identification. For China, this is not merely a question of law and policy; it profoundly touches upon issues of cultural heritage and the process of modernization. Social values serve as the cornerstone for constructing and sustaining penal systems. While the primacy of human rights has deeply permeated Western consciousness, in China, social stability and collective welfare are often deemed the most critical value objectives. These divergent value systems present a stark contrast on the issue of the death penalty, particularly when dealing with severe crimes or factors destabilizing society. Consequently, the Western concept of abolishing the death penalty challenges China's societal values, necessitating a reevaluation and balancing act between individual rights and societal responsibilities.

The transformation in contemporary China's perspectives on the death penalty is not an isolated phenomenon; it is intricately tied to the global movement for the abolition of capital punishment and cultural differences. Chinese Traditional Views on the Death Penalty: Rule of Law and Social Stability. Traditional Chinese perspectives on the death penalty are profoundly influenced by Confucian tenets of "ruling by virtue" and Legalist principles of "strict laws and severe punishments." In contrast to Western philosophies, China places greater emphasis on the practical value of the death penalty in maintaining social stability and public order. While most Western countries have either abolished or restricted the death penalty, China continues to retain it as a vital tool for ensuring societal stability. The stark contrast between Western individualism and Chinese collectivism on the issue of capital punishment also reflects fundamental differences in their value orientations.

**The Impact of Modern International Human Rights Discourse on Chinese Perspectives on Capital Punishment:** In 2007, the United Nations General Assembly passed Resolution A/RES/62/149, calling for a global moratorium on the execution of the death penalty for the first time. This resolution garnered support from the majority of member states but also elicited a complex set of international reactions, including opposition from China. Concurrently, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) imposes stringent restrictions on the use of the death penalty, even though it does not explicitly prohibit it. This provision has gained widespread recognition in international legal circles, providing a legal foundation for the abolition or restriction of the death penalty. China's response to the draft resolution on the "issue of the death penalty" at the United Nations Human Rights Council not only unveils the core position of state sovereignty on the issue but also hints at a more intricate reality: the multifaceted impact of modern international human rights norms on China's views on the death penalty. China explicitly states that the issue of the death penalty falls within the purview of national sovereignty in legislative and judicial matters. However, under the influence of international human rights law, many countries have gradually abolished or limited the use of the death penalty, undoubtedly exerting a certain pressure on China. Particularly in the face of multiple inquiries into China's death penalty system by international human rights organizations, China persists in maintaining its policy of "retaining and strictly applying the death penalty," albeit with some adjustments in relevant legislation and practice.

Since the inception of the reform and opening-up policy, China has accorded significant attention to the development of its human rights agenda and has enacted multiple phases of the National Human Rights Action Plan. Amid the trend of the increasing internationalization of human rights

norms, China has also begun to exhibit a more cautious and humane stance on the issue of the death penalty. China typically underscores its policy of "retaining but strictly limiting the use of the death penalty," noting that it has been reducing the number of offenses punishable by death and exercising greater prudence in its application. Influenced by these key international texts, a series of adjustments and changes have emerged in China's death penalty policy. Firstly, from a legislative standpoint, China has gradually reduced the number of crimes eligible for the death penalty, explicitly stipulating that it is only applicable for "extremely severe" offenses. Secondly, in judicial practice, China has increasingly focused on the compliance and transparency of trial procedures, emphasizing that death penalty cases must undergo rigorous judicial scrutiny. These changes do not imply that China will fully embrace Western-dominated human rights concepts. In fact, within United Nations human rights bodies, China has repeatedly emphasized that the issue of the death penalty constitutes a part of its national sovereignty, and no external forces have the right to intervene. This stance highlights China's cautious and balanced approach when faced with the tension between international human rights pressures and the preservation of national sovereignty. This shift reflects both China's respect for and acceptance of international human rights standards and its steadfast stance on maintaining national sovereignty and social stability. Regardless, the global trend towards the universalization of human rights norms will continue to exert profound influence on China's death penalty policy and perceptions.

The issue of the death penalty particularly touches upon the complex equilibrium between national sovereignty and international human rights. China's response within the United Nations Human Rights Council not only accentuates this complexity but also reveals the multifaceted pressures and challenges faced by China's death penalty perspectives within the global human rights landscape. International human rights law has increasingly adopted a cautious stance toward the death penalty, and most countries have gradually abolished or restricted its use. This international trend exerts evident pressure on China, especially against the backdrop of repeated questioning of China's death penalty system by international human rights organizations. Nevertheless, the Chinese delegation clearly articulated during the 48th session of the United Nations Human Rights Council that the issue of the death penalty falls within the legislative and judicial purview of a sovereign state, thereby reflecting China's foundational stance of upholding national sovereignty on this matter. China demonstrates a cautiously balanced approach in reconciling international human rights pressures with the maintenance of national sovereignty. This stance is manifested in its response to the United Nations draft resolution on the "issue of the death penalty," namely,

neither blindly accepting mainstream international human rights viewpoints nor entirely excluding the possibility of abolishing the death penalty. Instead, China opts for moderate adjustments and reforms to its death penalty policy, grounded in the respect for national sovereignty.

### **Trends and Reflections on the Transformation of Chinese Perspectives on Capital Punishment**

Amidst the global backdrop of the proliferation of human rights paradigms and the juxtaposition of divergent societal views, China's death penalty system and its associated philosophies are at a delicate and complex juncture of transformation. This metamorphosis implicates not merely the fairness and efficacy of the judiciary but extends to the multi-dimensional advancement of the state's rule of law and the civilization of society. However, the realization of this objective necessitates overcoming a constellation of obstacles and challenges, including but not limited to the entrenched nature of traditional culture, the intricacies of public sentiment, and the pressures and expectations from the international community.

The traditional Chinese notion of "an eye for an eye" is deeply ingrained in both cultural and legal substrata, functioning as a societal mindset that has long influenced the public and judicial perceptions of capital punishment. Two primary tenets underlie this outlook: first, the concept of retribution, which posits that severe criminals should pay a commensurate price; second, the notion of deterrence, which argues that capital punishment effectively discourages potential offenders. These two tenets find varied manifestations and reinforcement in modern society, reflecting the multifaceted interpretations of "crime and punishment" within the Chinese social construct. As previously delineated, public opinion plays a pivotal role in the formulation and implementation of death penalty policies. This is particularly salient in China, where public sentiment and social legitimacy often directly influence the efficacy and sustainability of capital punishment policies. However, this very legitimacy acts as a double-edged sword; while bestowing legality upon capital punishment, it may also curtail or stymie requisite legal reforms.

Consequently, a concerted effort from both governmental and societal sectors is imperative. Multiple channels such as education and media advocacy must be utilized to transform this entrenched notion, aligning it with the exigencies of modern society and elevating societal awareness in the protection of human rights.

The sanctity of fundamental human rights is increasingly coming to the fore, a shift that not only challenges traditional Chinese conceptions of the death penalty but also subjects

the legality and compliance of the capital punishment system to stringent scrutiny. From Pound to Beccaria, Western jurists have subjected the death penalty system to multi-faceted criticism and introspection, with particular emphasis on the potential for judicial inequity and abuses of power. The retributive concept of "a life for a life" is deeply entrenched in Chinese history and culture, resonating profoundly with the populace. However, as society evolves and undergoes transformation, this notion too necessitates progressive recalibration. Specifically, through avenues like education and media, the "eye-for-an-eye" mentality should be gradually supplanted by a more humane and scientifically grounded philosophy of punishment.

In the grand scheme of globalization, China's death penalty policy is inherently interconnected with global norms. Internally, the transformation in China's perception of the death penalty is a manifestation of a complex equilibrium between societal stability and the safeguarding of human rights. On the one hand, the death penalty, as the ultimate form of punishment, plays an irreplaceable role in maintaining societal equilibrium and combating egregious criminal conduct. Conversely, with the burgeoning dissemination of human rights ideology domestically, the legality and compliance of the death penalty have come under increasing scrutiny. Faced with human rights pressures from the international community, particularly from Western developed nations, China is obligated to gradually align with international human rights standards while preserving its sovereign prerogatives. This is not merely an international obligation but also a catalyst for the domestic rule-of-law construction. Influenced by international human rights law, the trajectory of China's death penalty policy is evidently shifting.

Notably, in multiple resolutions on "The Question of the Death Penalty" brought forth by the United Nations Human Rights Council, China, while adhering to its sovereign position, has gradually exhibited introspection and adjustments in its death penalty policy. Within this context, limitations on the scope of the death penalty's application and stringent judicial review stand as the two most salient aspects. In summary, the transformation in China's conception of the death penalty necessitates comprehensive reforms at legislative, judicial, and societal levels. This involves not merely amendments to legal statutes and improvements in judicial practice but also a fundamental shift in societal norms and the molding of an international persona. Confronted with the intricate relationship between international human rights standards and national sovereignty, China demonstrates a cautiously balanced posture. This posture is reflected not only in its prudent handling of external pressures but also in its comprehensive consideration of internal legal requirements. Therefore, China's evolving views on the death penalty

represent both a gradual embrace of international human rights standards and a profound introspection on domestic legal needs and societal changes.

## Conclusion

The transformation in perceptions of the death penalty is not merely a theoretical discourse; rather, it represents a complex issue closely tethered to reality, imbued with ethical quandaries and legal value orientations. It raises intricate questions regarding the accurate gauging of public opinion, the resolution of cultural clashes, and the nuanced balancing act of respecting international human rights norms while also accommodating domestic particularities. The multidimensional nature of death penalty conceptions is not an isolated or sporadic phenomenon. It emerges as a composite outcome of a confluence of sociocultural, politico-economic factors. In contemporary society, this multidimensionality is accentuated, interwoven with a plethora of complex variables, both domestic and international. While conflicts and contradictions are highlighted, this multidimensionality also, to a certain extent, mirrors the diversification and complexity of legal perspectives during periods of societal transition.

In China, the death penalty serves as the ultimate form of punishment, exerting a potent deterrent effect.

Its existence functions not merely as a psychological deterrent against potential severe criminal activities but also contributes to the maintenance of social stability and the rule of law. From historical and cultural vantage points, the death penalty has an enduring presence in China. Influenced by Confucian cultural ethos, Chinese society generally posits that for acts of extreme immorality and societally detrimental ramifications, the death penalty constitutes a punishment in alignment with both moral and legal tenets.

Thus, at this juncture, the existence of a policy endorsing the death penalty carries a certain degree of moral legitimacy. Under the framework of international law, despite the United Nations and a majority of countries gradually moving toward the abolition or restriction of the death penalty, it does not necessarily denote the complete erosion of its legality. According to international human rights law, matters related to the death penalty still fall within the purview of national sovereignty. Therefore, when China upholds its death penalty policy, it is exercising a legitimate right as a sovereign state, viewed from multiple dimensions—which include but are not limited to social stability, traditional culture, international law, and social psychology—the current existence of the death penalty policy in China holds a certain level of rationality. However, this does not imply that the

policy should remain unaltered and unoptimized. Amidst a backdrop of increasingly unified global human rights norms and legal environments, how to apply the death penalty more rationally and humanely remains an issue meriting in-depth scholarly investigation and discourse.

China's evident trend toward cautious employment of the death penalty in recent years transcends mere adjustments in legal texts and judicial practices; it represents a deeper transformation in values and legal culture. In the context of the global dissemination of human rights ideals, China's societal understanding of human dignity and rights is gradually deepening. This understanding is not confined to academic circles or legal experts but permeates the general populace and various social strata. Consequently, the death penalty is no longer singularly perceived as the ultimate form of punishment or as an ultimate deterrent against criminals; it increasingly engages significant questions concerning human dignity and worth. Confucian culture, which has long upheld the principle of "governing through virtue," provides a cultural bedrock for the death penalty to some extent. However, under the impact of modern human rights ideals, this traditional perspective is undergoing subtle shifts. An increasing number of individuals are contemplating whether to correlate "governing through virtue" with the death penalty, thereby revisiting the intricate relationship between the death penalty, morality, and law. With the rapid socio-economic development and diversification of cultural perspectives, people are considering legal issues from broader vantage points. This transformation manifests not only in a more circumspect attitude toward the application of the death penalty but also in the recalibration of the balance between individual rights and collective social interests. In sum, China's gradual move toward more judicious use of the death penalty is symptomatic of a deeper shift in values and legal culture. This shift is not only exhibited through adjustments in legal provisions and judicial practices but more critically, it encapsulates the progression of social beliefs, cultural amalgamation, and a renewed comprehension of human rights and dignity. As this trend continues to evolve, there is reasonable ground to anticipate that China will treat the issue of the death penalty with increased prudence and may potentially move toward its gradual abolition in the future.

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