

Hafiz Abdul Rehman Saleem* Hamid Mukhtar** Muhammad Ahsan Iqbal Hashmi***

Legal Nature of Chinese Life Imprisonment without Parole and Commutation

Abstract

China adopted the life imprisonment without parole and commutation in Ninth Amendment in 2015 for crimes of corruption and bribery. This new addition is taken as a layer of existing mechanism of suspended death penalty rather a new distinct punishment. The article discusses the nature and mode of execution of the new punishment and debate the anomaly of Chinese life imprisonment without parole and commutation in the light of different perspectives. The article concludes that the perspective given by Chinese scholars do not satisfy the procedural penal logic rather a counter perspective given by author contends it an irregular kind of punishment and require changes to streamline the procedural confusion of punishment.

Keywords: LWOPC; Ninth Amendment; Criminal Law; Death Penalty; Life Imprisonment; China

1. Introduction

According to the Ninth Amendment addressing Article 383 of 1997 Criminal Law passed on August 29, 2015 by the Standing Committee of the National People's Congress (SCNPC) is one of the measures of anti-corruption legal reforms in which a new punishment is coincided specifically for the crimes of corruption and bribery.¹ The punishment brought about in Ninth Amendment is "life imprisonment without parole and commutation (LWOPC)." It became activated after a criminal is given death penalty with two years reprieve. The distinctive feature of China's LWOPC is; it does not provide any opportunity for parole and commutation at all.² From the practical perspective, the LWOPC needs clarification of its legal nature.³ The first aspect is the specific crimes including the gravity of the offense and circumstances that activate the new punishment. The second aspect interrogates the legal status of the new punishment; either it's a new punishment or just a layer of execution—provides another way to carry out the punishment of suspended death penalty. For the purpose of examining LWOPC, we need to examine in detail the parameters of death penalty for corruption and bribery crimes, and the related articles of the 1997 Criminal Law in detail. Further scholastic concerns about the implementation of the new punishment that lack sufficient critical theorization and empirical investigation of the phenomenon, requires to address the topic in detail to enlighten all the aspects to the academia for the proper development of 1997 Criminal Law. As this is a new topic, so ample space is available to examine this latest aspect of criminal legislation and its legal standing in the broader context.

The methodology used in this manuscript is qualitative and comparative. It collects the views of Chinese scholars

* **Hafiz Abdul Rehman Saleem (Corresponding Author)** Assistant Professor, Department of Law, University of Sahiwal, Sahiwal, Punjab, Pakistan. Email: h.a.rehman@hotmail.com

** **Hamid Mukhtar**, Assistant Professor, Department of Law, University of Okara, Okara, Punjab, Pakistan. Email: drhamid@uo.edu.pk

*** **Muhammad Ahsan Iqbal Hashmi**, Assistant professor of law, Bahauddin Zakaria University sub campus Vehari, Punjab, Pakistan Email: ahsan267@hotmail.com

¹ Tobias Smith and Su Jiang, 'Making Sense of Life without Parole in China' (2017) 0 Punishment & Society 1

² Dui Hua Foundation, 'Is Life Without Parole a Signal of China's Will to Reduce Executions?' [2017] Dui Hua Foundation <<https://www.duihuajournal.org/search?q=lwop+china>> accessed 20 December 2021.

³ Smith and Jiang (n 1).

about the nature and procedure for the execution of LWOPC and is rebutted with the logic and arguments collected from the Chinese Law including Chinese Criminal law. The discussion is more logical and builds the analogy to prove the arguments. The manuscript holds significance as a jurisprudential contribution in penology and penal criminology. The organization of the manuscript comprises four parts. Part one discusses the suspended death penalty which provides the basic understanding about the topic and to build a logical construct of LWOPC. In part two, the perspectives of different Chinese scholars about the nature and mode of execution of LWOPC are given. The Chinese perspectives are rebutted in part three. It further contains the logical argumentation about the nature and mode of execution of LWOPC that distinguish it starkly from the understanding established by the Chinese scholars. The last part ends the manuscript with a conclusion.

2. Suspended death penalty and post treatments

LWOPC raised on the foundations of death penalty with suspended execution, this invokes the importance of a preliminary explanation of the foundational elements of this new punishment. In the penal history of China, the suspended death sentence is an old feature of the Chinese criminal justice system that came up in the mid-twentieth century.⁴ LWOPC in China has a narrow scope and is only applicable to corruption crimes. According to Article 383(4), if an offender is charged with ‘especially huge amount’ of corruption and ‘especially material losses’ have been caused to the interests of the state or the public, the offender can be sentenced to death penalty or life imprisonment. The last paragraph of Article 383 further adds that the sentencing judge can convert the suspended death sentence into life imprisonment and further grant no opportunity for commutation and parole.

After the introduction of LWOPC, the total number of post treatments reached five in number. The criteria for suspension of death penalty is given in Article 48 of the 1997 Criminal Law.⁵ Which is further governed by Article 50 to provide the subsequent treatments.⁶ The criterion is amended in the Eighth and Ninth Amendment for the first four post treatments when the last and fifth treatment is given in Article 383, passed in the ninth amendment in 2015. The brief introduction of all the post treatments is given below;

2.1. Life imprisonment

If an offender is sentenced to death penalty for commission of an extremely serious crime and the immediate execution is not deemed necessary, the court can suspend the punishment for two years (Article 48).⁷ After the expiry of two years period, in case of no intentional crimes, the suspended death penalty will be converted into life imprisonment (Article 50).⁸

⁴ “The death sentence with a two-year reprieve (sìhuán zhìdù) is a new method aimed at thoroughly eliminating the counterrevolution but not at weakening the resolute struggle against the counterrevolution.”, by Zuo Jun, Zhao. 2005. “The Suspension-of-Execution System and Limiting the Application of the Death Sentence.” *Contemporary Chinese Thought* 36 (3):53–76.

⁵ The death penalty shall be applied only 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. (Art. 48(1)) Criminal Law of PR China 1997, Available at: <http://www.npc.gov.cn/englishnpc/Law/Frameset-page6.html>

⁶ Paragraph 1 of Article 50 of the Criminal Law is amended to read: “Where a convict is sentenced to death with a reprieve, if he or she does not commit any intentional crime during the period of reprieve, the sentence shall be commuted to life imprisonment upon expiration of the two-year period; if he or she has any major meritorious performance, the sentence shall be commuted to imprisonment of 25 years upon expiration of the two-year period; if the criminal has committed an intentional crime with execrable circumstances, the death penalty shall be executed with the approval of the Supreme People’s Court. If the crime is committed intentionally but the death penalty is not executed, the period of death penalty with a reprieve shall be recalculated and be reported to the Supreme People’s Court for recordation.” (Art. 50) Criminal Law of PR China 1997, Available at: <http://en.pkulaw.cn/display.aspx?id=19864&lib=law&SearchKeyword=&SearchCKeyword=> (accessed 3 November 2021).

⁷ (Art. 48(1)) Criminal Law of PR China 1997, Available at: <http://www.npc.gov.cn/englishnpc/Law/Frameset-page6.html>

⁸ (Art. 50) Criminal Law of PR China 1997, Available at: <http://en.pkulaw.cn/display.aspx?id=19864&lib=law&SearchKeyword=&SearchCKeyword=> (accessed 3 November 2021).

2.2. Fixed term imprisonment

If the offender during two years of suspension, has any major meritorious performance, the sentence shall be commuted to imprisonment of 25 years upon expiration of the two-year period (Article 50).⁹

2.3. Execution

If the offender, during two years period of suspension, commit any intentional crime. The court imposes mandatory provision of execution of the sentence and the death penalty shall be executed with the approval of the Supreme People's Court (Article 50).¹⁰

2.4. Restricted commutation of life imprisonment

Although this is the forth post treatment of suspended death penalty came in Eighth Amendment. Which says in paragraph 2 of Article 50, for the recidivists and violent criminals, the court while sentencing can impose restriction on the commutation of the punishment.

2.5. Life imprisonment without parole and commutation (LWOPC)

The fifth post treatment that came in the Ninth Amendment in Article 383 provide a punishment in which for corruption crime of especially huge amount of bribery, the court can impose restriction on the parole and commutation for whole life after it commuted into life imprisonment after expiry of two years period (Article 383 (3)).

The fourth and fifth treatment is actually related to the first category of post treatment named 'life imprisonment.' The court has just added discretionary provision of restriction of commutation in Eighth Amendment and compulsory restriction of commutation and prole for whole life in Ninth Amendment. The focus of manuscript is LWOPC, so the discussion converges only the Article 383 with reference to Article 48, and 50 to judge the legal nature of LWOPC.

3. Perspectives of Chinese scholars

Huang and Yuan¹¹ believe that the life imprisonment without parole and commutation established in the Ninth Amendment is an alternative measure to the immediate execution of death penalty from the perspective of the immediate execution. As per considering the perspective of its execution with suspension, it belongs to the death penalty and Intermediate stage between suspension of death and life imprisonment.¹²

3.1. Alternative penalty

The first perspective, to put in simple words, it is the execution of LWOPC which is dependent on the suspension of death penalty but in nature, it is more linked with death penalty. Huang and Yuan emphasize the legislative idea for the new punishment to provide an alternative penalty which belongs to death penalty with immediate execution and LWOPC as an outcome of its suspension provides a harsher alternative than general life imprisonment. It implies that the functional logic it inherits is the direct conversion from death penalty with immediate execution to LWOPC on the logic of reduction in death penalty policy.

⁹ *ibid*

¹⁰ *ibid*

¹¹ Huang Yongwei, Dean of the National Judges College, Doctor of Law; Yuan Dengming, Director and Professor of the Criminal Justice Department of the National Judges College, Doctor of Law.

¹² 黄永维, & 袁登明. (2016). 《刑法修正案(九)》中的终身监禁研究. 法律适用, (3), 35-41.

3.2. Intermediate stage

The second perspective present it as an intermediate stage and link its logic with the suspended death penalty. LWOPC is an alternative measure that is partially executed immediately. However, from this perspective, the implementation of LWOPC makes the suspended sentence more of a manifestation of the nature of interim punishment. The so-called intermediate penalty refers to the execution method or special penalty measures that are applied severely between the heaviest penalty execution method and the lightest penalty execution method. The imprisonment of the body is attached to the system of suspended execution of death sentence. Although they all belong to the “death penalty”, their severity is significantly higher than the general execution of the suspended death penalty.

3.3. Time as executioner of death penalty

Professor Li Hong opined that; “From the Article 44 of the Ninth Amendment and the Article 383 (4) of the 1997 Criminal Law, the life imprisonment prescribed for the crime of embezzlement and bribery is a possible outcome. Deprivation of personal freedom of criminal through punishment, but in essence it belongs to the death penalty, it has a different execution method with the existing death penalty.”¹³ In the author's opinion, this conclusion is partially reasonable, but there are also issues worthy of discussion. First of all, fundamentally speaking, lifelong detention, in essence, is a type of death penalty. It is not executed by the execution executor using injection or bullet, but execution is carried out by time.¹⁴ On the other hand, since the death penalty is a death sentence and life imprisonment is based on the premise that the death penalty is imposed, it can also be said in this sense that life imprisonment is a death sentence. However, life imprisonment is not the same as immediate execution of death penalty, but it is just a case of death penalty. Because of the different outcomes associated with the application of the death penalty, life imprisonment is not an absolute death penalty. Secondly, what is said to be “different from the existing death penalty system” clearly means that the existing system of punishment is not proportionate to crime and life imprisonment in previous system is not equal to death but with ‘no commutation and parole’ the death penalty after commutation provides equal punishment in the form of LWOPC.

3.4. Creative addition of availing commutation in meritorious performance

Zhang Mingkai,¹⁵ a professor at School of Law in Tsinghua University, presented a clever opinion about the LWOPC and the provision of meritorious performance with reference to Article 50 and 78 of 1997 Criminal Law. He explains the meritorious performance during the two years suspension period, the only way to escape the LWOPC and death penalty. But this demands a timely action to do some meritorious performance. The best meritorious performance here is to expose other corruption networks or high-profile corruption giants. Professor Zhang, mentions this timely narrow escape as the clever invention of Chinese jurors to serve the purpose of punishment as well as to serve other collateral meanings. Whereas this punishment actually provides the opportunity to get oneself released from the prison after 25 years but who could get this benefit and if this privileged is available is still unknown.

3.5. Finality of LWOPC

The Chinese scholars agree with the nature of LWOPC as being not an independent type of punishment, but it is only one of the methods for the execution of specific kinds of punishment. However, if it is applied properly in criminal justice system, its effect is similar to that of an independent kind of punishment, and it can even produce the same effect as an independent kind of punishment. The life imprisonment system itself has inadequacies, unfairness, deprivation of criminal rehabilitation plans, and waste of judicial resources. It seriously deviates from the

¹³ Li Hong. (2016). The legal nature of life imprisonment and its application. *Journal of Legal Research*, 33 (3), 23-26.

¹⁴ Arthur Kaufmann. 转换期の刑法哲学[M]. 上田健二, 监译. 东京: 成文堂, 1993: 262.

¹⁵(Zhang Mingyu. (2017). The nature and application of life imprisonment. *Modern Law*, 39 (3), 77-92.), 张明楷. (2017). 终身监禁的性质与适用. *现代法学*, 39(3), 77-92.

modern values of punishment based on educational reform and rehabilitation. Some scholars have suggested that life imprisonment is even more cruel than death penalty.¹⁶ This is also the main reason why the "Eighth Amendment" debates the process of opposing life imprisonment into the Penal Code. Death penalty and life imprisonment, viewed from the angle of special prevention, belong to the crime of extermination and perpetual crimes, but whether it is a different way of destroying the flesh. The scope of application for life imprisonment should be strictly controlled, and only a handful of criminals who cannot be corrected or unreconstructed would cut off their reintegration into society. Therefore, it can only be an alternative measure to the death penalty, and it should not be obtained by squeezing the ordinary death penalty to implement it.

4. Counter perspective of Chinese LWOPC

Taking a different perspective of Common Law traditions and jurisprudence, LWOPC cannot be the execution method of the death penalty or a special penalty. Article 252, Paragraph 2 of the Criminal Procedure Law stipulates: "the death penalty shall be executed by means of shooting or injection." LWOPC cannot be used as a method of execution. Secondly, since the strict execution of the death penalty is immediate execution, as far as specific cases are concerned, under the premise of retaining the death penalty, if the defendant should be sentenced to immediate execution, the death penalty needs to be executed immediately. If the death penalty does not need to be executed immediately, it is not appropriate to coin the death penalty. This negates the logic in the above perspective that the LWOPC is part of execution of death penalty with immediate execution.

Thirdly, one of the arguments often advocated by the death penalty abolitionists is that a complete life sentence without parole is used as a substitute for the death penalty, but I disagree with it... LWOPC is crueler than death penalty. The maximum penalty that can be used as an alternative to the death penalty when abolishing the death penalty can only be the indeterminate punishment and the indeterminate imprisonment as stipulated in the law."

4.1. New punishment or a mode of execution

The criterion given in Article 383 creates confusion about the life imprisonment without parole and commutation as a layer of execution. In fact the Article 383 is addressing 'life imprisonment' rather 'death penalty'. The court pronounces at the first instance that the crime requires the sentence of death and LWOPC is part of execution of death sentence. This mess up the things to enlist the simple hierarchical arrangement of the events. The LWOPC is the outcome of life imprisonment added with restriction on it. If we consider the real punishment as the death penalty, the whole addition of mandatory provision of restricting commutation and parole lose value because that do not address death penalty. As the Chinese scholars in the previous section declare it a separate punishment in effect but a layer of execution in theory. I disagree simply because it will cause the violation of principle of legality if you consider the LWOPC as a layer of execution of suspended death penalty.

4.2. Punishment based on assumption

Similarly, the court pronounces LWOPC at the first instance about the restriction of commutation and parole for life imprisonment which is an unknown fact, whereas the actual punishment decided on known facts is death penalty. The death penalty after suspension adds more qualifications with it, which can only be decided after expiry of two years test period. The final verdict applying the provision (383) of Ninth Amendment is based on assumption that the offender will repent and will not commit any intentional crime.¹⁷ If the LWOPC is a layer of execution, that makes its dependence more on suspension criteria which is actually neglected in the practical cases, as court at the

¹⁶张明楷. (2008). 死刑的废止不需要终身刑替代. 法学研究, (2), 79-94.

¹⁷ Article 48: The death penalty shall 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. Criminal Law of PR China, See Supra note at 8, also see Chen Youxi. 2015. "有西微语 28: 全国首例终身监禁判决, 或暴露人大立法瑕疵, You Xi Wei Yu 28: Quanguo Shou Li Zhongshen Jianjin Panjue, Huo Baolu Renda Lifa xiaci"(Have West Microblogging 28: The Nation's First Life Imprisonment Sentence, or Expose the NPC Legislative Flaws." 2015.

first instance has fixed the final sentence.

4.3. Justification for suspension

The especially huge amount of bribery as the most compelling condition is the justification for death penalty and logic that, ‘execution is not deemed necessary’ as given in Article 48 of 1997 Criminal Law, is the justification for suspension of execution. The logic ‘execution is not deemed necessary’ got birth from the words of Mao Zedong in 1951¹⁸ primarily to reduce the death penalty for counter-revolutionaries. The same logic is applied here, but the method is improperly crafted. The Article 383 also provides justification for a direct conversion of death into life imprisonment and subsequently into LWOPC, by-passing suspension mechanism. The Article 383 in paragraph 4 allows for lenient punishment based on the truthful confession of guilt, sincere repentance by actively returning the ill-gotten money and help in minimizing the loss. One can say, all the criminals do not show same cooperative behavior. The leniency factor can still be invoked based on the latest principle of “temper justice with leniency”¹⁹ of the Chinese criminal reforms. This principle can serve a better justification to spare life even for severe crimes.²⁰

4.4. Conflict with the basic law

The Article 50 narrate the post-treatments after expiry of two-year test period of suspended death penalty. It, not only, provides the possibility of execution (intentional crime), life imprisonment (no intentional crime) but also the fixed term imprisonment of 25 years (major meritorious performance). This implies the conduct during test period holds both negative and positive impacts on post treatment of suspended death penalty. The question arises here regarding Ninth Amendment, if the court impose restriction on the commutation and parole rights, either it also admits the major meritorious performance, if any, of the potential LWOPC criminals or not? To find the accurate answer, we have to wait till the two-year suspension period expires of the offenders fall in such a category.

4.5. Principle of legality

Fulfilling the principle of legality, either both the positive and negative impacts should be recognized or both rejected. The LWOPC being considered a layer of execution neglect the positive possibilities. The court decides to stop parole and commutation at the first instance when the stage for which it is applied is not even available. One can say, on what factors, the court decided to commute the sentence of death to suspension of execution. Either it is commuted on the policy motives or the cooperative behavior (where the Supreme People’s Court opinions mentions the leniency for cooperative behavior)?²¹ The suspension of execution of death sentence invoke Article 50, and if court convert the death into life imprisonment at first instance, it simply violates the mechanism for suspension mentioned in Article 50. This creates the conflict of Ninth Amendment with the basic law.

4.6. Two levels of leniency

The allocation of harsh punishment in case of corruption tightens with the non-cooperation of the criminal during investigation, the same way, contrary to the non-cooperation, if the defendant cooperate and return the ill-gotten

¹⁸ Michelle Miao, ‘Examining China’s Responses to the Global Campaign Against the Death Penalty’ in ROGER HOOD and SURYA DEVA (eds) (2013).

¹⁹ Noakes, Stephen. 2014. “‘Kill Fewer, Kill Carefully.’” *Problems of Post-Communism* 61 (3):18–30.

²⁰ Lewis, Margaret K. 2010. “LENIENCY AND SEVERITY IN CHINA’S DEATH PENALTY DEBATE.” *Columbia Journal of Asian Law* 24 (2):304–30.

²¹ “Notice of the Supreme People’s Court on Issuing the Opinions on Several Specific Issues concerning the Handling of Voluntary Surrender and Meritorious Behaviors [Effective] (最高人民法院印发《关于处理自首和立功若干具体问题的意见》的通知 [现 行 有 效])” effective 12-22-2010. Available at: <http://en.pkulaw.cn/display.aspx?id=8955&lib=law&SearchKeyword=&SearchCKeyword=> (accessed 3 November 2021).

gains can have the leniency in sentencing.²² This is the leniency factor which a defendant accused of corruption crimes can avail mentioned in Article 383 and also in the opinions of the SPC.²³ The Article 383 and SPC's opinions include the return of ill-gotten gains, voluntary confession and meritorious behaviors appropriate to the specific case in hand.²⁴ The actual scheme of suspended death sentence is, if the immediate death is not deemed necessary mentioned in Article 48. The phrase 'not deemed necessary' can be understood as the criminal is not dangerous and there is no need to immediately condemn the criminal to death. Now this is the first instance where the death can be suspended whereas another instance that also grant leniency in execution of death penalty, is the cooperative behavior. In corruption case, which instance triggers the suspension of death penalty with immediate execution is still a mystery,²⁵ because following the basic pattern of suspension before Ninth Amendment, the offender after Ninth Amendment is entitled to have two levels of lenient opportunities.²⁶ Extending the previously establish analogy of logical pattern, if the suspension is because of second level of leniency mentioned in Article 383 for the cooperative behavior, it in fact mark the final punishment out of the death penalty circle. Because Article 48 grant suspension on the humanitarian aspects considering the nature of criminal with relation to the society. However, the suspension in Article is 383 is based on the criminal act, and if all criminal acts cumulatively don't require death, the suspension, in this case, actually implies that the death penalty is not a suitable punishment. Hence, rather to call it suspended, a proper term could denote the situation better is that the death penalty not concluded as the most appropriate sentence and the criminal is given another punishment. Both situations are different and ultimately should result in different punishments in its finality.

4.7. *De facto* life imprisonment

The LWOPC, after suspension of death penalty, a layer of execution does not make sense because both have different end results. Michelle Miao (2016)²⁷ calls the suspended death penalty and subsequent treatment in the form of LWOPC function, as a 'default' replacement of ultimate punishment and a 'de facto' life imprisonment. She further, using a careful narrative, declare the suspended death penalty as an independent sentencing option from death penalty, an approach discussed above. The amorphous nature of suspended death penalty also affects the status of LWOPC. LWOPC as a continuation of suspended death penalty, as an alternative and an independent punishment operate parallel to death penalty with immediate execution and suspended death penalty, make its whole existence confusing and misleading²⁸.

The wording used here "if the immediate execution of a criminal punishable by death is not deemed necessary" needs further explanation. The suspension of the execution available and applied since more than half a century since 1951,²⁹ is distinct from the "leniency factor", which is one of the latest strategy factor of the criminal reforms in contemporary China came on board in 2010 as an off spring of harmonious society rhetoric.³⁰ In the policy implementation of the 'temper leniency with severity', the explicit intention descended from the higher

²² Article 12, Ibid

²³ "最高人民法院印发《关于处理自首和立功若干具体问题的意见》的通知 [现行有效], Zuigao renmin fayuan yinfa "guanyu chuli zishou he ligong ruogan juti wenti de yijian" de tongzhi [xianxing youxiao] (Notice of the Supreme People's Court on Issuing the Opinions on Several Specific Issues concerning the Handling of Voluntary Surrender and Meritorious Behaviors [Effective]), Passed on; 12-22-2010, Available at: <http://en.pkulaw.cn/display.aspx?id=8955&lib=law&SearchKeyword=&SearchCKeyword=>, (accessed 3 November 2021).

²⁴ Ibid

²⁵ proclaimed in the notice of SPC for handling the specific cases of handling voluntary confession and other meritorious behaviors still remains a mystery.

²⁶ Bingzhi, Z., & Yunfeng, W. (2009). On Limiting and Abolishing the Death Penalty for Economic Crimes in China. *Chinese Sociology & Anthropology*, 41(4), 14-40.

²⁷ Miao, Michelle. 2016a. "Two Years between Life and Death: A Critical Analysis of the Suspended Death Penalty in China." *International Journal of Law, Crime and Justice* 45. Elsevier Ltd: 26-43.

²⁸ Life imprisonment: Judicial interpretation is still needed, Available at: http://www.legalweekly.cn/article_show.jsp?f_article_id=10610, (accessed 3 November 2021).

²⁹ Zhonglin, Chen. 2009. "SPECIAL ISSUE: EXAMINING THE DEATH PENALTY IN CHINA, The Death Penalty and Human Rights." *Social Sciences in China* XXX (2):152-65.

³⁰ Jiang, Su. 2017. "From 'Harsh Justice' to 'Balancing Leniency with Severity.'" *Peking University Law Journal* 5 (1). Routledge:139-64.

echelons is to be severe to curb corruption.³¹ However, the *de facto* life imprisonment, creates more strong logic in a way that the death sentence has been suspended with the restriction on parole and commutation because the sentencing authorities are drafting the final judgment by keeping the ‘life imprisonment’ in mind. That’s why it is actually a life imprisonment for which there is no any opportunity for parole and commutation, a less severe punishment than death penalty.

4.8. Legislative aspects

The sudden emergence of LWOPC in final draft of Ninth Amendment also compel to examine the legislation process.³² The Constitution of China confer powers to SCNPC to interpret the constitution and basic laws.³³ According to Legislation Law 2015, the Standing Committee of NPC, can only amend laws to the extent that the basic law and the underlying principles do not change.³⁴ The recent wave of 1997 Criminal Law reforms has made leniency as the basic principle of criminal law. The LWOPC violates the basic principle of 1997 Criminal Law and the national policy,³⁵ which advocates to give the offenders lenient punishment under Article 12. The criteria for suspension of execution is mentioned in Article 50 and the fifth post treatment of suspended death penalty forms an exception to Article 50. Although life imprisonment is also available for corruption crimes but the linkage with suspended death penalty invoke Article 50 and anything increasing the harshness beyond Article 50 is repugnant to basic law and need ratification from the NPC.

5. Conclusion

Since the Chinese penal system is developing at a constant pace. Under the notion of harmonious society, the Chinese system is incorporating global standards to its domestic system including the abolition of death penalty. The LWOPC is a technical punishment that ensures the death penalty abolition motive as well as provide a proper incapacitation and prevention. It is evident that the life imprisonment without parole and commutation is designed for the state-functionaries involved in the crime of accepting huge amounts of bribery. The phenomena of giving or accepting bribes linked with gaining illegitimate benefits from the those holding power. The concentration of huge power in party-state can only possible with the political roots. Hence this punishment is especially designed for the high-profile party members who are found indulge in the corruption of huge amount of money as well as threat to national sovereignty. The threshold criteria of the amount of money involved is primary indicator for prosecution. Another logic that for this new punishment is that, the party can do proper checks and balance on party members and officials also discourage the corrupt tendencies. Hence till the development in the strengthening of anti-corruption institutionalization of the party and standardization of 1997 Criminal Law, the high-profile officials cannot be set free to damage the legitimacy of the party and loot the nation’ s wealth. Ultimately, a punishment is devised that

³¹ Article 8, “最高人民法院印发《关于贯彻宽严相济刑事政策的若干意见》的通知 [现行有效], *Zuigao renmin fayuan yinfā “guanyu guanche kuan yanxiangji xingshi zhengce de ruogan yijian” de tongzhi [xianxing youxiao]*” (Notice of the Supreme People’s Court on Issuing the Some Advice on Implementing the Criminal Policy of Combining Leniency with Rigidity), Passed on; 02-08-2010, Available at: <http://en.pkulaw.cn/display.aspx?id=7980&lib=law&SearchKeyword=&SearchCKeyword=> , (accessed 3 November 2021).

³² Miao, Michelle. 2013. “Capital Punishment in China: A Populist Instrument of Social Governance.” Edited by Maggy Lee and Karen Joe Laidler. *Theoretical Criminology* 17 (2). SAGE Publications Sage UK: London, England:233–50. Also see, Xiumei, Wang, Zhao Chenguang, Beini Zhu, and Chen Zhijuan. 2017. “Is Life Imprisonment without Parole or Commutation an Effective Anti-Corruption Measure for China?” *JOURNAL OF ANTI-CORRUPTION LAW* 1 (1):70–87. http://www.jacl.org.za/images/stories/XIU_MEI.pdf. Also see, Roberts, Julian V., and Wei Pei. 2016. “Structuring Judicial Discretion in China: Exploring the 2014 Sentencing Guidelines.” *Criminal Law Forum* 27 (1):3–33.

³³ 中华人民共和国宪法, *Zhonghua Renmin Gongheguo Xianfa (Constitution of the People’s Republic of China)* (adopted by the National People’s Congress on 4 december 1982 and amended in 1988, 1993, 1999 and 2004), Article 67.

³⁴ Article 7: The Standing Committee of the National People’s Congress shall develop and amend laws other than those developed by the National People’s Congress; and when the National People’s Congress is not in session, partially supplement and amend laws developed by the National People’s Congress, provided that the basic principles in such laws are not violated. [Legislation Law of the People’s Republic of China (2015 Amendment)], Available at: <http://en.pkulaw.cn/display.aspx?id=19023&lib=law&SearchKeyword=&SearchCKeyword=> , (accessed 3 November 2020).

³⁵ Zhao Bingzhi and Wan Yunfeng, ‘On Limiting and Abolishing the Death Penalty for Economic Crimes in China’ (2009) 41 *Chinese Sociology and Anthropology* 14.

has perfect solution for the *guanxi* and *mianzi* problem. The permanent incapacitation and abrogation of political rights stop all the influential politics that in Chinese political setup plays very important role.

The characteristic shared norms of Chinese culture are found to have an influence on relationship cultivation strategies. *Guanxi* and *mianzi* are the most prominent one which hold strong implications in interpersonal and inter-organizational relationships. The LWOPC in this socio-political setup provides a best solution of criminal punishment satisfying the deterrent and preventive function. The block chain relationships between party elites and colonization in the party-state power dynamics requires a corresponding punishment that provides solution for the wrong doings but also contains the deterrence that best deduced from the cultural composition. The breakage of *guanxi* networks by permanent incapacitation and lose of *mianzi* serve as resurrecting deterrent in this regard. In the normal setup, the convict of suspended death sentence after subsequent treatment in the form of life imprisonment and fixed term imprisonment can come out after 20-25 years, which is not considered as a long time in political arena. The Iranian revolution and the Turkish coup provide examples, where the improper political incapacitation can mushroom up grave circumstances. The loss of *mianzi* and permanent condemnation contains element of continued deterrence for the other party members. The enforcement is focused on deterrence through apprehension and punishment rather than on constant monitoring and compliance. The monitoring with proper system of checks and balance is the main focus of 19th NPC agenda. Hence till the evolution of proper check and balance mechanism, the LWOPC will serve as a temper head of all the ongoing efforts. However, the LWOPC with its anomalous nature is a confusing punishment and a threat to the penal logic and sentencing rationale which needs to be rectified in subsequent amendments. There can more areas for extending the research in order to find a better penal strategy to control the corruption crimes as well as to find a better socio-legal mechanism for it.