

Analysis of Community Correction Mechanism in the Perspective of Legal Sociology

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Abstract: Community corrections is a brand-new penalty implementation mode relative to prison corrections, which aims to promote the re-socialization of criminals. It is an important manifestation of the humanization of punishment and the humanization of justice. It has become the trend of global criminal policy development. To understand and understand the community correction system, we need to start with the theoretical foundation and legal value of the system. This article aims to clarify the basic theories of the community corrections system, analyse and demonstrate the legislative defects of the community corrections system in our country and improve countermeasures.

1. Introduction

With the development and progress of society and the increasing popularity of humanized correction concepts, the limitations of the prison correction model are increasingly exposed. As one of the important forms of resocialization, the community correction system has been rapidly developed in European and American countries. The community corrections system originating from countries with common law systems was implemented on a pilot basis in some cities in China in 2003, and has been continuously promoted and improved. It has gone through the laws of the Criminal Law Amendment (8) in 2010 and the Criminal Procedure Law in 2012. It is confirmed that a special law will eventually be formed in 2019-the “Community Corrections Law of the People's Republic of China” (hereinafter referred to as the “Community Corrections Law”). Different from traditional prison corrections, community corrections achieve the purpose of punishing criminals by placing criminals in an open community environment for education and reform, and at the same time realizing that criminals are in harmony with social development in a timely manner. Although the community correction system has been tried out in our country for more than ten years, since the launch of the pilot work, the domestic theoretical circles have continued to study the community correction system, but the system encountered in practice the system is not smooth and the effect has deviated from expectations. With many problems, it is necessary to deepen the knowledge and understanding of the community correction system from the theoretical basis, legal value, legislative flaws and perfect countermeasures.

2. The Theoretical Basis of Community Correction

Community corrections, as a brand-new penalty enforcement method, requires the use of academic theories to solve various problems encountered in system construction and practice. If there is no strong academic theoretical support, community corrections cannot produce strong vitality. The main factors that constitute the theoretical basis of community corrections are the origins of penalty theory, restorative justice theory, and legal sociology.

First of all, penalty theory constitutes the theoretical source of the essential function of community correction. The nature and function of community corrections has a natural internal connection with punishment. The essence of punishment is the unity of the essence of criminal retribution and the essence of crime prevention. Regarding the inner meaning of community corrections, there are currently two mainstream views at home and abroad: one believes that community corrections is a non-custodial penalty execution method; the other believes that

community corrections It is a way of penal execution and also a way of social governance. Both mainstream views define the nature of penalty enforcement of community corrections. Therefore, community corrections is essentially an integrated relationship with the nature of penalty. The function of community correction and the function of penalty also have the same legal origin. Punishment and education are the internal attributes of punishment, and the function of punishment is the external manifestation of this internal attributes. It takes penalty deprivation and penalty deterrence as the core and has a punitive function. However, community corrections, as a non-custodial penalty execution method, its peculiar nature of penalty inevitably contains the function of deprivation of penalty and the function of penalty deterrence with obvious punitive nature.

Secondly, restorative justice theory constitutes the theoretical source of community correction purpose model. There is a close theoretical source between the idea of community correction and the idea of restorative justice. The purpose of punishment is the organic integration of the purpose of retribution and prevention of punishment, which contains the value orientation of restorative justice theory. Community corrections uses an open-ended execution method to deal with prisoners, prompting prisoners to quickly return to society, and maintaining or restoring social order is its ultimate goal. It fully caters to and incorporates the concept of restorative justice. The restorative justice theory believes that the non-custodial penalty execution method is beneficial to improve the legal and social effects of penalty execution. In this sense, the theory of community correction purpose model and restorative justice theory have the same effect.

Third, the legal theory of sociology of law constitutes the source of the community corrections management model. Community corrections has the nature of penalty enforcement, and at the same time advocates relying on social forces to actively participate in management, which is an organic combination of penalty enforcement and social management services. Community corrections uses non-custodial penalty enforcement as its management model, emphasizing the penalization trends and value orientations of light punishment, humane, and socialization, and incorporates the people-oriented management concept and value orientation of modern management concept innovation. The core theory of the sociology of law in the field of penalty enforcement insists on the basic idea that criminals can be re-socialized. This core idea provides a legal basis for the management model of community corrections to adapt to the socialization of execution.

3. The Legal Value of Community Corrections

Reflect the justice and freedom values of the rule of law, earnestly respect human rights, and protect the due rights of the corrected. Rawls believes: "Justice is the primary value of the social system, just as truth is the primary value of the ideological system." He also pointed out: "When norms make the conflicts of various social life interests require a proper balance, these systems are justice." Community Correction advocates people-oriented, focusing on the protection of offenders, so that offenders can live in the community and basically become socially normal people, so that offenders can have human dignity, rights and freedom. Specifically, it includes: First, it can guarantee the effective exercise of the offender's rights, make full use of the special advantages of not being isolated from society, and maximize the satisfaction of the rights of prisoners on the premise of ensuring the stability of social order. "In a democratic society, the loss suffered by criminals is the loss of freedom. All other rights, political, economic, and educational rights, should be preserved like other citizens." To a certain extent, it guarantees the exercise of other free rights of criminals, such as labor rights, education rights, relief rights, marriage and family rights. Second, compared with prisons, in an open community environment, social supervision is more effective and direct, which prevents some supervisors from abusing their rights and arbitrarily depriving prisoners in a closed and weak social supervision situation like prisons. Rights and freedoms. Finally, community corrections concentrate specialized human and material resources on psychological corrections, ideological education, and behavioral supervision of correction targets, and can also provide criminals with better vocational training and cultural education, so that they can learn labor skills that meet social needs and improve their culture. Knowledge level, successfully complete the re-socialization process.

Strengthen the pertinence of the reform of criminals to better realize the purpose of punishment. The “Community Corrections Law” stipulates that the objects of community corrections are criminals who have been sentenced to control, probation, parole, and temporary execution outside prison. For the above-mentioned four types of offenders, compared with the traditional imprisonment, community corrections can better achieve the purpose of punishment-preventing crime and avoiding the emergence of “prison personality”. “Prison personality” is a special personality type formed by prisoners who have served a long-term sentence in the process of adapting to the life of imprisonment. Its essence is a diffuse negative psychological structure of the criminal, which is a unique personality disorder, which greatly increases the difficulty of its re-socialization. Through this completely open correction method that integrates the strengths of all parties, the prisoner can be more often connected with the family and the society, and the feeling of loneliness and loss can be reduced. Correction workers can use the basics of sociology, criminology, psychology and related disciplines. The theory and knowledge are used in the process of reforming and correcting criminals, through concentrated strength and professional correction staff to carry out psychological correction and behavior monitoring of criminals, to prevent the formation of “prison personality”, and to give full play to the enthusiasm and motivation of prisoners. Take the initiative to adapt to social life, accept social norms, and re-socialize smoothly to achieve the effect of crime prevention. According to the data provided by the Ministry of Justice, since the launch of the pilot in 2003, community corrections have been carried out across the country for 4310,000 people, and a total of 3,610,000 people have been removed from corrections. There are currently 700,000 registered community corrections personnel. Compared with traditional prison corrections, community corrections The per capita implementation cost of corrections is 1/10 of that of prisons. During the period of community corrections, the re-offending rate of community corrections personnel has also been greatly reduced, only 0.2%.

4. Legislative Defects of My Country's Community Correction System

The “Community Corrections Law” promulgated by China was formally implemented on July 1, 2020. It is of far-reaching significance for advancing the rule of law, standardization, and specialization of community corrections work, and has great theoretical value for building a national governance system and improving grassroots governance capabilities. However, the law still has many unsatisfactory points.

First, the nature of community corrections needs to be further determined. At present, the theoretical and practical circles in China still have controversies on the nature of community corrections, and there are huge differences. There are mainly two popular views: one believes that community corrections is a non-custodial penalty execution method; the other believes that community corrections is both Penalty enforcement methods are also social governance methods. Throughout the provisions of the “Community Corrections Law”, China’s determination of the nature of community corrections is more biased towards social governance, and corrections are more often penalized by public security for various violations of laws and regulations during the period of community corrections, while ignoring corrections. This special status of criminals lacks punishment.

The second is the lack of protective measures for social work. The “Community Correction Law” emphasizes social work to help community corrections personnel and promote their socialization to return to society, but completely dilutes or even ignores the potential personal dangers of community corrections subjects, and lacks necessary for social workers participating in community corrections Protective measures

The third is to exclude the victim from the community corrections system. In our country, the public has long been deeply influenced by the traditional severe punishment ideology, and most of the criminal correction models agree with prison labor reform, while the community correction system is derived from outside the territory, and there is a certain gap with the local culture, especially it is difficult to obtain victims. Agree. The implementation of community corrections for prisoners without the victim’s understanding is very likely to generate new social conflicts.

5. Suggestions for Establishing and Improving the Community Correction System in My Country

Clarify the mutual construction relationship between the object and nature of community correction. The object and nature of community corrections are closely related to their respective rationality issues. The nature of community corrections will limit the scope of community corrections, and the definition of community corrections will also affect the nature of community corrections. The first issue should be the reasonable determination of the object, and the second is the positioning nature. The reasonable definition of the object is the premise of the scientific positioning of the nature. my country's current "Community Corrections Law" stipulates that the subjects of community corrections are criminals who have been sentenced to control, probation, parole, and temporary execution outside prison. Based on the rational understanding of community corrections subjects, the most mainstream viewpoint in the domestic academic circles to determine the nature of community corrections adheres to the theory of non-custodial penalty enforcement. However, in the process of community corrections practice and exploration, because of incorrect understanding of the nature of community corrections, many places emphasized the assistance of community prisoners too much, equating community corrections simply with material assistance and life for community prisoners. Arrangements have turned "enforcement activities" into "probation activities", and eventually the nature of community corrections has evolved into the so-called "social welfare", which is difficult to gain widespread recognition from the society, and will inevitably lead to fairness and justice for the public to perform the penalty function of community corrections. The result is questionable.

Change the concept of punishment. The concept of punishment is people's understanding of the nature, function, purpose of punishment and the law of punishment setting and operation. Severe punishment doctrine still occupies people's thinking in our country. On the one hand, this is due to the deep-rooted thoughts of ancient punishment, on the other hand, it is because people now attribute the deterioration of the public security situation after the reform and opening up to insufficient crackdown and insufficient punishment. The ideological basis of severe punishment is the omnipotence of punishment. The purpose of penalties in our country is to prevent crime, which is divided into special prevention and general prevention. Special prevention deprives offenders of their ability to commit crimes to prevent them from committing crimes again. General prevention uses deterrence and vigilance to prevent other people in society from committing crimes. This view itself is not problematic, but it is a big problem to place all hope of crime prevention on punishment. In fact, the limited function of punishment and the scarcity of punishment resources determine that the task of maintaining social order cannot be completely expected to be completed by punishment. Therefore, reforming the concept of punishment must get rid of omnipotent punishment and heavy punishment. Inferring to the work of community corrections, it is necessary to correct the idea that "community corrections are criminals serving sentences in the community". Because this thought directly leads to two results: one is the rejection of community corrections by felonists; the other is overemphasis on the supervision and management of community corrections objects. In this way, community corrections subjects cannot get the education, help, and guidance that they deserve, and community corrections cannot achieve the expected goals.

Follow the principle of gradualism. The establishment of our country's community correction system is a reform of the penalty system, and at the same time, the community correction itself is an extraterritorial theory. As a country that has long been affected by traditional severe punishment doctrine, my country has learned from, introduced, and implemented the modern community correction system, which must fully consider the particularity of our country. The existing penal system has a certain legitimacy in the context of contemporary China. It has played a role in fighting crime and maintaining social stability for a long time, and the public and the government generally recognize it. So now only gradual reforms are needed, not earth-shaking revolutions. The establishment and improvement of China's community correction system must fully consider the material foundation that society can provide, consider the people's sense of identity with the new system, consider the quality and ability of the staff, and actively and steadily advance in accordance

with the principle of gradual progress to avoid triggering or cause confusion. Even some very advanced and mature practices in foreign countries, such as in our country, do not have one-step operability, they can only be used as a goal.

6. Conclusion

The establishment of the community correction system is an important achievement of my country's judicial reform. The promulgation and implementation of the "Community Correction Law" signifies that my country's criminal justice has reached a new level, towards the goal of civilization and justice. More and more criminals will not have to "reform through labor" in prison, but "reform and reform" in society, have freedom of movement, choose their own careers, and reunite with their families at any time. With the continuous deepening and improvement of community corrections, its role will become more and more obvious, and its vitality will increase day by day. However, the community correction system is transplanted from Western countries, and it still needs to adapt to the domestic local culture. The implementation of the "Community Corrections Law" will inevitably produce some worrying, even criticized and condemned points. In the face of complex social attitudes and various difficulties, the state, government, society and every responsible social citizen should "fumble from top to bottom" to improve the experience of the community correction system.

References

- [1] Zheng Hangsheng, Cheng Hu. The Community Correction System in the Perspective of Legal Sociology. *Journal of East China University of Science and Technology: Social Science Edition*, vol. 18, no. 4, pp. 1-7, 2003.
- [2] Cheng Hu, Sun Xia, Wu Lijuan. Community Correction System from the Perspective of Legal Sociology. *Chinese Journal of Prisons*, vol. 5, no. 4, pp. 108-111, 2004.
- [3] Li Xiaoe, Zhang Xiaoming. Research on Community Correction and Community Correction from the Perspective of Sociology. *Economic Research Guide*, vol. 3, no. 19, pp.138-139, 2011.
- [4] Liu Zheng. Reshaping the community correction system with both punitive and restorative properties. *Jiangxi Social Sciences*, vol. 37, no. 12, pp. 191-198, 2017.
- [5] Wang Shunan. Legislative suggestions for community corrections. *China Judicature*, vol. 5, no. 2, pp. 12-13, 2005.
- [6] Wu Zongxian "Foundation of Community Correction Legislation and Reflections on Filling up the Leaks", "Journal of Wenzhou University (Social Science Edition)", vol. 213, no. 4, pp. 36-45, 2020.
- [7] Zheng Liping, "Research on the Object and Nature of Community Correction in Mutual Construction", "Chinese Law", Vol. 213, no.1, pp. 149-165, 2020.