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Reform of China's Reeducation Through Labor System

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1.The Historical Development and the Present Situation of the System of Reeducation Through Labor

The system of reeducation through labor was established in August 1955 (Communist China was founded in 1949). In the latter part of 1955, on the basis of important victories scored in a nation-wide movement to suppress counterrevolutionary elements, a large-scale movement was launched within the government organs to eliminate those counterrevolutionary elements in hiding. On August 25, 1955, the Central Committee of the Communist Party issued the "Order to Thoroughly Wipe out Counterrevolutionary Elements in Hiding." This order clearly pointed out that: "With regard to the counterrevolutionary elements and other bad elements who have been found out in the movement, some of them will receive the death penalty. Others will stay on in their original posts because their crimes are not serious enough, they have confessed their crimes thoroughly or they have performed meritorious acts to atone for their crimes. In addition, there are two other ways of handling their cases. The first is to send them to reform through labor after sentencing. The second is to send them to reeducation through labor. The latter applies to those who cannot be sentenced because their crimes are not serious enough, but cannot remain in their original posts because of political considerations. If released into society, these people will increase the unemployment rate. Because this is not a form of sentencing, these people don't lose their complete freedom. However, they should be concentrated in specific places to work for the state and receive a certain amount of pay from the state." This was the first order regarding reeducation through labor issued by the Central Committee of the Party.

On January 1, 1956, the Central Committee of the Party once again issued the "Order for all Provinces and Municipal Governments to Make Immediate Preparations for the Establishment of Institutions for Reeducation through Labor." This order contained principled provisions on the nature, task, guiding principle, the authority to approve, the leadership and the management regarding the system of reeducation through reform. After that, institutions for reeducation through labor were successively established all over the country. The system of reeducation through labor was thus born in China. On August 1, 1957, with the approval of the Standing Committee of the National People's Congress, the State Council issued the "Decision on the Question of Reeducation through Labor." This was China's first set of laws on reeducation through labor. However, due to the influence of erroneous " leftist" ideological trends, not long after the issuance of this set of laws, the work of reeducation through labor overstepped its scope as stipulated by law. The provisions on the authority to approve and other relevant procedures were not strictly adhered to.

By the time the Cultural Revolution took place, the work of reeducation through labor was badly sabotaged. It virtually came to a halt. Even though some institutions for reeducation through labor reopened, they followed "leftist" policies in their management. They erroneously treated people under reeducation through labor as targets of a dictatorship. After the convening of the Third Conference of the Eleventh Session of the Communist Party in 1978, the work of reeducation through labor entered a new stage of development. With the approval of the Standing Committee of the National People's Congress on November 29, 1979, the State Council promulgated the "Additional Decision on the Question of Reeducation through Labor" on December 5. It also reissued the "Decision on the Question of Reeducation through Labor."

With the approval of the State Council, the Ministry of Public Security promulgated the "Pilot Methods for Reeducation through Labor." It also laid down specific provisions regarding practical implementation of reeducation through labor. Later on, in light of the new problems affecting public security, the Standing Committee of the National People's Congress expanded the scope of the target of reeducation through labor in its new laws. These laws included the "Administrative Penalty Regulations for the Maintenance of Public Security of the People's Republic of China," revised in 1986, the "Decision on the Prohibition of Narcotic Drugs," adopted in 1990 and the "Decision on the Prohibition of Prostitution," adopted in 1991. Other administrative laws and regulations, judicial interpretations and regulatory documents also provided additional elements for the work of reeducation through labor. They include: the "Regulations for the Protection of Railroad Transportation Safety" promulgated by the State Council in 1989, and the "Notice on How to Handle Reactionary Superstitious Sects and Secret Societies" by the People's Supreme Court, the People's Supreme Procuratorate, the Ministry of Public Security, and the Ministry of Justice, etc. At present, there are over 310 institutions for reeducation through labor in the whole country, which involve over 100,000 policemen and other relevant staff. There are over 310,000 people under reeducation through labor.[1]

Over the past forty years, the system of reeducation through labor has undergone changes and developments in the following areas.

The Nature and Purpose of Reeducation Through Labor

In the initial stage of the establishment of the system of reeducation through labor, reeducation through labor was one of the measures enacted to carry out compulsory reform through education for its targeted people. It was also a method to arrange employment for them. Its main purpose was to reform people who were physically fit to work but preferred to stay idle, who violated legal regulations and who didn't have the proper means of earning a living. Its purpose was to transform them into self-sufficient and self-reliant people in order to maintain public security and contribute to the construction of our society. It was at the beginning of the eighties when reeducation through labor was defined for the first time as "an administrative measure for enforcing compulsory reform through education for its targeted groups and a method for handling internal contradictions among the people." Its main purpose was further clearly defined as follows: "To transform these people into useful, talented people who abide by the law, respect public moral standards, love the motherland, love physical labor and are equipped with a certain level of education and production skills for the construction of socialism. This will be achieved through strict management, in-depth political, ideological, cultural and technological education and through physical labor."

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1 *According to this issue, during the period of "severe punishment" of 1983, the number of people taken in for reeducation through labor reached its historical peak of 220,000. Compared to this figure, it is a new record that the number has reached 310,000. This new record can be looked at least from two perspectives. (a) In light of the tremendous pressure in maintaining public security in the transitional period, there is a real need for reeducation through labor. (b) The inadequacy of the structure of the system of reeducation through labor has made it possible to expand the scope of its targets. For detailed analysis, please refer to the text that follows.*

Compared with its previous definition, two main changes took place. First, reeducation through labor was no longer regarded as a method for arranging employment. Second, reeducation through labor was clearly defined as an administrative measure and as a method for handling internal contradictions among the people. In the beginning of the nineties, the Ministry of Justice again issued specific provisions that compulsory reform through education for people under reeducation through labor should be enforced according to the policy of "education, persuasion and salvation." Later on, the State Council again confirmed that "institutions for reeducation through labor are state implementing agencies that enforce administrative public security penalties." This, in fact, reaffirmed that reeducation through labor was a measure for reforming a person through education. It also confirmed for the first time that reeducation through labor was an administrative penalty for the purpose of maintaining public order.

The Target and Scope of Reeducation Through Labor

At the beginning, the people defined as the targets of reeducation through labor included the following four categories: (1) People who don't have proper means of earning a living, who have committed hooligan acts, theft or fraud, which are petty crimes not punishable under criminal law, who have violated public security regulations and who refuse to repent and change their ways. (2) Counterrevolutionary elements and anti-socialist reactionary elements who have committed petty crimes not punishable under criminal law and people who have no means of making a living because they have been subjected to disciplinary sanctions or expelled by government organs, entities, enterprises, schools and other work units. (3) Those employed by government organs, entities, enterprises, schools and other work units who are physically capable of working yet have, for a long period of time, refused to work, who have broken rules, disrupted public order and who have no means of making a living because they have been expelled or subjected to disciplinary sanctions. (4) People who don't obey job assignments or orders of transfer to civilian jobs, people who don't heed advice to work and who constantly stir up trouble, disrupt public order and refuse to mend their ways despite repeated admonitions.

In the beginning of the eighties, new regulations regarding the targets of reeducation through labor included the following six categories: (1) Counterrevolutionary elements and anti-Communist, anti-socialist reactionary elements who have committed petty crimes not punishable under criminal law. (2) People who have participated in organized murder, robbery, rape, arson and other criminal activities but are not eligible for punishment under criminal law. (3) People who have repeatedly participated in hoodlum activities, prostitution, theft, fraud and other criminal activities, refusing to repent but not eligible for punishment by criminal law. (4) People who have participated in gang fights in public places, incited fights and troubles, created incidents to disrupt public order and security, but who are not eligible for punishment by criminal law. (5) People who are employed but refuse to work. Instead, they break rules at their work places, constantly stir up trouble, and disrupt orders in factories, work places, schools, academic institutions and disrupt the order of daily life. They disrupt the management of public affairs and they refuse to listen to persuasion or demands that they stop their actions. (6) People who incite others to commit crimes and who are not eligible for punishment by criminal law.

It was also stipulated that people who are mentally ill, mentally retarded, blind, deaf, dumb and seriously ill, women who are pregnant or breast feeding and people who are not physically fit to work should not be taken in for reeducation through labor. Later on there were further provisions which stipulated that people who participate in gambling, production and marketing and dissemination of pornographic materials ,and people who resume taking drugs or injecting themselves with drugs after compulsory detoxification programs should be taken in for reeducation through labor. People who resume participation in prostitution after having been punished by public security bureaus should also be taken in for reeducation through labor.

In the early period, there was no provision with regard to the domicile of the targets of reeducation through labor. The "Additional Provisions for Reeducation through Labor by the State Council" defined the targets of reeducation through labor as "those living in large and medium-sized cities who need reeducation through labor." According to the provisions of the "Pilot Methods for Reeducation through Labor" of 1982, those who reside in rural areas but have wandered into cities, regions along railroad routes, large-scale factories and mines and who have committed crimes there, can also be taken in for reeducation through labor if they fit the conditions for reeducation through labor. In the "Notice Regarding Reeducation through Labor and the Cancellation of City Residence Permits for those under Reeducation through Labor" of 1984 by the Ministry of Public Security and the Ministry of Justice, it is stipulated further that: "For those who need reeducation through labor in towns and cities along railway routes, important transportation routes and who depend on commodity grain, county public security bureaus should compile relevant information to be submitted to commissions in charge of reeducation through labor at the regional or municipal level for approval."

In recent years, with the deterioration of public security situation, some regions have expanded the scope of reeducation through labor to rural areas. For example, Shandong Province has a special arrangement in this regard. Its provincial High Court of the People, the High Prosecutor's Office, the Public Security Bureau and the Judicial Office jointly issued the "Opinions on how to handle cases of reeducation through labor in an effort to address public security problems in rural areas in a concentrated manner."

The Approval of Reeducation Through Labor

The "Decision on Reeducation through Labor by the State Council" of 1957 stipulated that with regard to people who need reeducation through labor, their parents and guardians, civil administrative organs, public security bureaus, and the institutions, groups, enterprises, schools and the units that they work for should submit applications to the people's commissions at the provincial level, at the level of municipalities directly under the Central Government and at the level of autonomous regions or to organs delegated by them for approval. The "Additional Decision on the Question of Reeducation through Labor by the State Council" of 1979 amended its decision in the following manner. With regard to people who need reeducation through labor, their cases should be approved by commissions in charge of reeducation through labor established by the people's governments at the provincial level, at the level of municipalities directly under the Central Government and at the level of large and medium-size cities.

Commissions in charge of reeducation through labor should be composed of heads of civil administration organs, public security bureaus and labor departments. The "Pilot Method of Reeducation through Labor" of 1982 reiterated this provision. In the "Notice regarding Reeducation through Labor and the Cancellation of City Residence Permits for those under Reeducation through Labor" of 1984, the Ministry of Public Security and the Ministry of Justice added a new provision regarding the approval process for reeducation through labor. It says: " Organs for approving reeducation through labor should be established within public security bureaus to examine and approve the people who need reeducation through labor on behalf of commissions in charge of reeducation through labor. "

Time Limit for Reeducation Through Labor

There was no clear provision on the time limit for reeducation through labor in the early period. In 1979 the "Additional Decision on the Question of Reeducation through Labor by the State Council" stipulated that the time limit should be one to three years. An additional year is possible if it is deemed necessary. The "Pilot Method for Reeducation through Labor" of 1982 contains detailed provisions regarding the approval of early termination, extension or shortening of the time limit for reeducation through labor. With regard to early termination of reeducation through labor, the time cancelled should not be longer than half of the original time limit. Extensions of reeducation through labor should not be longer than one year in total. Early termination, extension and shortening of the time limit for reeducation through labor must be approved by commissions in charge of reeducation through labor.

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2. Challenges and Problems Facing the System of Reeducation Through Labor

Commissions for the Management of Reeducation Through Labor are Empty Frameworks. There is no Effective Monitoring Regarding the Approval Process for Reeducation Through Labor.

Commissions for reeducation through labor at the provincial level, the level of autonomous regions, the level of municipalities directly under the Central Government and the level of large and medium-cities are leading organs for the management of reeducation through labor designated by law. At present, these commissions are composed of the heads of civil administrative departments, public security bureaus and labor departments, who have other responsibilities as well. There is no one appointed exclusively for this work. The commissions have two main legal mandates. The first is to examine and approve the people to be taken in for reeducation through labor. The second is to approve early termination, extension or shortening of the time limit of reeducation through labor.

For a long time, these two legal mandates have been carried out by public security bureaus and the administrative organs of the judicial departments in the name of these commissions. The relevant organs of public security bureaus serve as the organs to approve reeducation through labor. They also examine dissenting appeals. At the same time, they are also responsible for correcting erroneous decisions regarding reeducation through labor. The organs in charge of

reeducation through labor of the administrative branch of the judicial departments not only have the right to approve early termination, extension or shortening of the time limit of reeducation through labor, but also have the right to delegate institutions for reeducation through labor to approve any extension or shortening of three months or shorter in the name of the management commissions. With regard to these two mandates, the only external monitoring from the people's procuratorate is restricted to external opinion on correction measures. There is no control over whether the concerned organs would heed these opinions or not. Such a system is not conducive to guaranteeing the quality of the cases of reeducation through labor, neither is it conducive to reforming persons under reeducation through labor through persuasion. [2]

It should be pointed out that the practice of allowing organs of public security bureaus and administrative branches of the judicial departments to approve early termination, extension or shortening of the time limit of reeducation through labor in the name of managing commissions was formed gradually in the work of reeducation through labor. The only basis for this practice are relevant documents published by the Ministry of Public Security and the Ministry of Justice. Laws and legal regulations regarding reeducation through labor approved and promulgated by China's legislative organs and the State Council have never clearly authorized implementing organs for reeducation through labor to perform the function of leading organs for reeducation through labor. Therefore, this practice is inappropriate measured even against current laws and regulations on reeducation through labor.

The Legal Nature of Reeducation Through Labor is Not Compatible with the Degree of its Severity

As an administrative measure for compulsive reform through education, or as an administrative penalty for maintaining public order and security, its target is the people who have committed minor crimes and who are not eligible for the penalties of criminal justice. Yet, judging from the time limit of reeducation through labor and from the degree of personal freedom it takes away from those under reeducation, it is much more severe than the sentence of surveillance or detention given to criminals. The time limit of surveillance is longer than three months and shorter than two years. The time limit of detention is longer than one month and shorter than three months. However, the time limit of reeducation through labor is one to three years. It can be extended for an additional year if it is deemed necessary. The sentence of surveillance is carried out locally in the place of the person who is sentenced. It is an open penalty, which restricts part of a person's personal freedom.

People who are sentenced to detention are detained in a place in the vicinity. They are allowed to return home once or twice every month. However, people who are taken in for reeducation through labor are gathered in special institutions for reeducation through labor that are tightly guarded. They can only rest on the premises of the institution during holidays or their days off.

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[2] *During a symposium organized by the Legal Commission of the National People's Congress and the Ministry of Justice, which I attended, the head of a reeducation camp told us that it was difficult for them to carry out their work. Many people under reeducation through labor were resentful. They felt that the people under reform through labor had been sentenced by courts while they had been locked up carelessly.*

Furthermore, the execution of a detention sentence and an imprisonment sentence of three years or less can be temporarily suspended in accordance with law. There isn't a similar provision regarding reeducation through labor. Because of the severity of reeducation through labor, people tend to confuse reeducation through labor with reform through labor.

Ordinary folks regard reeducation through labor as similar to reform through labor, thinking of them both as "being held in prison." Even government organs mention the two in the same vein, simply describing them as "the two kinds of people in labor camps." They even regard one system as similar to the other. For example, Article 1 of the "Decision on How to Handle Prisoners Under Reform through Labor and Persons Under Reeducation through Labor who Escape or Commit Crimes Again" says: "For persons under reeducation through labor who escape, the time limit of reeducation through labor should be extended. Persons who commit crimes within three years after they are released from reeducation through labor and those who commit crimes within five years after their escape should be punished as severely as possible. Furthermore, their city residence permits should be taken away. When their time limit expires, they will all be retained under the employment of the camps and they will not be allowed to return to the large or medium-cities of their origin, except for the very few who have truly been reformed. For those whose crimes are minor and are not eligible for criminal penalties, they should re-enter reeducation through labor, or their time limit of reeducation through labor should be extended. ....." Article 3 says: "Those persons in reeducation through labor and those criminals in reform through labor, who take revenge on and commit violence against people who have accused them, their victims, relevant staff of the justice system, cadres and ordinary people who have tried to stop their criminal acts should be punished as severely as possible, or they should be subjected to weighted penalties in accordance with the laws governing the crimes they have committed."

Here, persons under reeducation through labor are treated in the same way as persons under reform through labor. This has turned a certain innate logic of criminal justice upside down. It has also caused the following irregularities in actual practice. In some cases of organized crimes, the main perpetrators are sentenced to surveillance, detention or a set term of imprisonment, the execution of which may be suspended temporarily. However, accessory criminals are sent to reeducation through labor for over one year. In some theft cases, a person who has stolen one or two thousand Yuan gets a sentence of a few months while a person who has stolen less than one thousand or several hundred Yuan is sent to reeducation through labor for two or three years. Some of the persons taken in for reeducation through labor voluntarily confess the crimes they have committed right after they are taken in and plead to be sentenced by the court. This is a way for them to get out of the longer time limit of reeducation through labor with a shorter imprisonment sentence. [3] This phenomenon has created the impression that "violating legal regulations is worse than committing crimes and that reeducation through labor is worse than prison sentences" on society and some of the people receiving reeducation through labor. This has severely affected the consistency and dignity of the law.

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[3] *For example, in the camp for reeducation through labor in the city of Dandong in Liaoling Province, in the first half of 1999 alone, seven people were arrested and sentenced under criminal law after confessing their crimes. In this way, the time of two to three years that they should have spent in reeducation through labor was shortened.*

There is No Sufficiently Effective Legal Basis for Reeducation Through Labor

The legal basis for the current work of reeducation through labor are the following documents. The "Decision On the Question of Reeducation through Labor" in 1957 (simplified in this transcript as the Decision in the following text) approved by the Standing Committee of National People's Congress and promulgated by the State Council; the "Additional Decision on the Question of Reeducation through Labor" in1979, (simplified as the "Additional Decision"); the "Pilot Methods for Reeducation through Labor" approved by the State Council and promulgated by the Ministry of Public Security in 1982, (simplified as the "Pilot Methods"). Among these documents, even though the "Decision" and the "Additional Decision" were approved by the Standing Committee of the National People's Congress, they are still basically administrative laws and regulations because they were promulgated by the State Council. Even if there is room for arguing whether the "Decision" and the "Additional Decision" are laws, there is absolutely no doubt that the "Pilot Methods" is not a law. At most, it is a set of administrative legal regulations. (In reality, it can only be regarded as a set of departmental regulations.) Even though Article 1 of the "Pilot Methods" states clearly that this document is formulated on the basis of the previously mentioned "Decisions" and the "Additional Decisions," it is not difficult for us to see that it is, in fact, a comprehensive amendment and addition to those two documents if we look deeply into it's content. [4] In reality, the "Pilot Methods" has become the de facto main legal basis for the work of reeducation through labor.

The " Legislative Law" adopted by the National People's Congress in March of 2000 clearly stipulated that any compulsory measures or penalties that restrict personal freedom can only be formulated by the National People's Congress and its Standing Committee through law. It is evident that the " Piloting Methods" and other documents don't live up to this criterion. Even according to the present definition of the nature of reeducation through labor, it is still an administrative penalty. However, reeducation through labor is not included in the seven kinds of administrative penalties provided in Article 8 of the "Law on Administrative Penalties /sanction" adopted by the National People's Congress in 1996. Furthermore, Paragraph 2 of Article 9 of the same law clearly stipulates "Any administrative penalty that restricts personal freedom can only be established by law." Paragraph 2 of Article 64 stipulates: "Laws and regulations on administrative penalties promulgated before the present law must be amended according to the present law from the day the present law was promulgated, if they are not in conformity with the present law. The work of amending them must be accomplished by December 31, 1997." Therefore, it is not in conformity with the present law for the "Piloting Methods" to use reeducation through labor as an administrative penalty to limit person freedom because it is a set of administrative regulations. Furthermore, China signed the "International Covenant on Civil and Political Rights" in 1998 (simplified as the "Covenant"). Paragraph 1 of Article 9 of the "Covenant" stipulates that "No one should be deprived of his liberty except on such grounds and

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[4] *In terms of the number of provisions contained in these instruments, the "Decision" contains five articles only, the "Additional Decision" contains five articles only, while the "Pilot Methods" contains eleven chapters and sixty-nine articles. In terms of the content of these instruments, the "Pilot Methods" not only contains amendments to the "Decision" and the "Additional Decision," such as amendment regarding the target of reeducation through labor, it also contains provisions that are not stipulated in the "Decision" and the "Additional Decision," such as the reexamination of cases of reeducation through labor, its early termination, extension or shortening, etc.*

in accordance with such procedures as are established by law." People in the legal field are clearly aware that the "law" mentioned here refers to the law formulated by legislative bodies. All in all, the system of reeducation lacks legal basis at present.

There is a Great Deal of Subjectivity and Confusion in the Practice of Reeducation Through Labor Which is Not Conducive to Rule of Law or the Guarantee of Human Rights.

First of all, the fact that the approval rights regarding reeducation through labor is in the hands of public security bureaus exclusively has caused the following to happen. Those who don't satisfy the conditions of reeducation through labor are sent to reeducation through labor. Those who should have been punished by criminal law receive a lesser punishment of reeducation through labor. In a case where there is neither enough evidence to convict a person, nor enough evidence to prove his innocence, the public security bureaus simply refrain from submitting such a case to the prosecutor's office in order to prevent the case from being returned. Instead, they resort to reeducation through labor. In other situations when the prosecutor's office has made the decision not to prosecute, the public security bureau not only refuses to release the concerned person, but also sends him to reeducation through labor.

But the new law on criminal procedure clearly stipulates: "If the person in detention is not going to be prosecuted, he should be released immediately." (Article 143) Secondly, after the promulgation of the "Pilot Methods," relevant organs have successively promulgated additional regulatory rules in the effort to keep up with the new developments in society. They include: rules and decisions passed by the National People's Congress and its Standing Committee, administrative laws and regulations promulgated by the State Council and other relevant organs, judicial interpretations by the Supreme Court of the People and the Highest Prosecutor's Office, and other regulatory documents such as "notices" or "reexaminations." These rules are contained in different laws, legal regulations and documents, which have different effects. They are piece-meal and chaotic.

This situation has infused a great deal of subjectivity in the work of reeducation through labor. For example, according to the provisions of the "Pilot Methods," there is a regional restriction with regard to the target groups of reeducation through labor. The scope is restricted to "Those who live in large or medium- cities that need reeducation through labor" and "Those who live in rural areas but have gone to cities, regions along railway routes, large scale-factories and mines and those who have committed crimes there." However, there is no regional restriction in the "Penalty Regulations for the Maintenance of Public Security," the "Decision on the Prohibition of Narcotic Drugs" or the "Decision on the Prohibition of Prostitution." This has caused different practices in the administration of law in different regions. Some people are of the view that the scope of reeducation through labor should continue to be restricted to "large and medium cities." Others take the view that it should be expanded to include townships and rural areas.Furthermore, there are different understandings with regard to the number of petty crimes to be included in the scope of reeducation through labor. Some people think that more than 20 should be included. Others think that there should only be 20. Another view is that almost all the violations described in the "Penalty Regulations for the Maintenance of Public Security" should be included because the terminology used in the "Pilot Methods" and other legal rules are

ambiguous. Therefore, "all those who are eligible for public security penalties are eligible for reeducation through labor." There is another view which says that further expansion of the scope of reeducation through labor may "turn it into a basket which any one can be added." Even those who are not eligible for the public security penalties may be sent to reeducation through labor because the laws have been promulgated by different organs.

3. Reform and the Choice of Reeducation Through Labor

There are three proposals regarding the future of reeducation through labor. The first is to retain and strengthen this system. People supporting this proposal are of the view that the system has educated and reformed close to three million people with different criminal backgrounds since its establishment. It has not only made important contributions to stabilizing society but also has transformed many people into self-sufficient and law abiding citizens. It is a system with Chinese character. It should only be strengthened, not weakened. The second proposal is to abolish this system. People supporting this proposal are of the view that this system is prone to make mistakes and violate the personal freedom of citizens because the nature of the system is confusing and the criteria of eligibility are too general. In addition, there is no monitoring regarding its operational procedure and there is a great deal of subjectivity. It should be abolished because it is a product of a period when there wasn't a comprehensive and sound legal system. The third proposal is to reform the system. People supporting this proposal are of the view that China is in the process of transition from a central planned economic to a market economy. There is a need to further stabilize public security and the order of people's life. Under these circumstances, it is not realistic to abruptly abolish the system of reeducation through labor, which has been in practice for nearly 50 years.

Furthermore, China's criminal law does not consider an offence to be a crime if the result is not very serious (in contrast, the criminal laws of Western countries state that even if you only steal one dollar, it’s nature is still a crime.) This shows that China’s criminal law is consequence-based. The law ignores the character of the perpetrator of an act. This characteristic of criminal law also determines that the penalty regulations for public security are bound to be consequence-based. They emphasize the connection between the act committed by a person and the seriousness of the danger the act poses. They don't give sufficient consideration to the negative character of the perpetrator of the act. Therefore, there is a structural flaw in terms of crime prevention and management. This flaw can be compensated for by the system of reeducation through labor, which pays attention to the bad habits of the perpetrator of the act, as well as corrective measures. Of course, the flaws of the existing system of reeducation through labor should not be ignored. It is therefore urgent to reform the system. Judging from the discussions of the past few years, we can see that most people support the third proposal. I am one of these people. However, there are different opinions as to how to reform the system. I am going to discuss some of the options for your reference. I am also going to present my own views.

The Nature of Reeducation Through Labor

What should the nature of the system of reeducation through labor be after it is reformed? On this question, there are mainly the following views: Reeducation through labor should be

regarded as an administrative penalty. According to this view, the system is an administrative penalty, not criminal penalty. The legal nature of reeducation through labor is ambiguous in actual practice. To a large extend this is thanks to the irregular practices formed over a long period of time, which should be corrected urgently. These practices include the physical environment and facilities of the camps for reeducation through labor. In addition, regulations for controlling the activities of persons under reeducation through labor and their treatment don't reflect the legal principles governing the restriction of personal freedom. The situation of these people is close to that of criminals who have been deprived of their personal freedom. This has led to confusion about the difference between reeducation through labor and criminal penalties. Another example is that the target, method of operation and legal consequence of reeducation through labor are different from those of short-term sentences with freedom. Therefore, it is hard to measure which penalty is more severe.

However, the irregularities in actual practice should not serve as the basis for determining the legal nature of reeducation through labor. On the contrary, they should be corrected. Scholars holding this opinion further pointed out that, since reeducation through labor is an administrative penalty in its legal nature, administrative organs should be authorized to exercise the right of approval. Therefore, the existing commissions in charge of reeducation through labor should be reformed so that they can truly perform their function of approving reeducation through labor as mandated by law. They should be provided with basic facilities, full time staff. They should be given substantive authority. The relevant details are as follows: {1} Representatives from public security bureaus who participate in the work of these commissions must not be the same people who participate in the investigations of cases concerning reeducation through labor. The neutrality of the authority to approve should be guaranteed through the separation of functions. {2} In light of the theory on judicial examination of other countries, decisions of these commissions should be submitted to the people's court of the same level for written examination and approval before being publicized or delivered to the concerned persons. This practice creates a legal oversight over the authority to approve. {3} The procedures of approval must adhere to the basic principles of the law governing administrative processes, in particular those regarding the participation of the concerned persons and due legal process. The right of the concerned persons to be informed in advance before being sent to reeducation through labor must be guaranteed as well as their rights to request to participate in relevant hearings. {4} The establishment of a reasonable and effective remedy mechanism should be stipulated. The mechanism should include the rights of the concerned persons to request the assistance of lawyers. The system of legal assistance should be expanded into this area. Persons to be sent to reeducation through labor should be allowed to request administrative reexamination in accordance with the "Law on Administrative Reexamination." They should be allowed to bring administrative suit to the people's court in accordance with the "Law on Administrative litigation." They should be compensated in accordance with the "Law on Compensation by the State" when their legitimate rights and interests are violated, etc.

The nature of reeducation through labor should be criminal penalty. People supporting this view believe that "the solution to the problems facing the system of reeducation through labor is to make the system part of the criminal law. That is to say, the system should formally become a form of criminal responsibility." There are even different opinions along this line of thinking. For example, some people are of the view that the system of reeducation through labor after its

reform should be applied to two kinds of people. The first are people who have committed petty crimes and who don't need to be punished by criminal penalty. The second are people who have finished serving part of their sentences and who have demonstrated repent. Their sentences cannot be immediately reduced neither can they be released. If their penalties can be changed to reeducation through labor, they can gradually adapt themselves to life in society and return to society as soon as possible. Others believe that reeducation through labor after its reform should mainly include the following people: {1} Those who have committed petty crimes and who are already in reeducation through labor {2} People who should be forced to "remain under the employment of the camps" because they belong to the first two of the three categories contained in the "Decision on How to Handle Criminals under Reform through Labor and Persons under Reeducation through Labor, Who escape and Commit new crimes." These people include {a} criminals under reform through labor who have escaped and who have committed new crimes and {b} persons who are re-sentenced to reform through labor because they have committed new crimes after finishing their previous terms. There are two similar points in the above suggestions. First, both of their targets are people who have committed crimes. Second, sentences must be rendered by the people's courts.

The nature of reeducation through labor should neither be an administrative penalty or criminal penalty. A scholar of this school of thought commented that: "I don't believe that it is necessary to make sure whether it is an administrative penalty or criminal penalty. Isn't there any other option apart from administrative penalty or criminal penalty? The theory that "if it doesn't belong to this category, then it must belong to the other" cannot explain the reality of " it belonging to this category as well as the other." This scholar also presented his own program of "three changes." First, the name of the system should be changed. Reeducation through labor should be changed to reeducation treatment. Second, the time limit should be changed. The present practice of one to three years with a possible extension of an additional year should be changed to three months to two years (or even one year and six months). Of course, the precondition for the change is the implementation of actual measures to ensure genuine "restricted freedom" instead of the "deprivation of freedom." Third, the procedure should be changed. The authority to approve reeducation through labor should be assigned to the people's courts (prostitution, and drug abuse cases should not be included). A simple procedure should be applied. Decisions can be appealed if there are disagreements.

There are some elements in all the above three views that are worth considering. But after a closer look, we can see that there are also elements in them that should be discussed. With regard to the first view, one question should be clarified. Can an administrative penalty deprive a citizen of his personal freedom, especially for as long as one to three yeas or even four years? According to our information, in all the other countries with advanced legal systems, the authority to deprive a citizen of his personal freedom is exclusively assigned to the courts without exception. Administrative organs absolutely don't have this authority. Some scholars have pointed out that harsh penalties like reeducation through labor, which deprives a person of his personal freedom for as long as four years without sentencing by the court is "perhaps unprecedented in any other country with rule of law." Other scholars repudiated this view from a higher theoretical point of view, saying: "Among the legislative, judicial and administrative powers of the State, the judicial power is the weakest of the three. Citizens limit the power of government by relying on judicial power and due legal process so that the implementation of the

idea of human rights may be possible.” If reeducation through labor continues to be defined as an administrative penalty, "the containment of government power and the guarantee of human rights can not be realized." Just as mentioned in the above, Paragraph 1 of Article 9 of the "International Covenant of Civil and Political Rights" that China has signed stipulates: "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” According to experts, the "procedure" here refers to qualified legal procedures.

The key element of the second view is that it excludes those non-criminals presently undergoing reeducation through labor, particularly those who have violated public security regulations and who have refused to repent. These people "never violate major laws. However, they constantly violate minor laws (public security regulations). They are a headache for the public security bureaus and are tough nuts to crack for the courts." Even though the actual damages caused by their actions are not serious, the perpetrators have, through these actions, demonstrated some deep-rooted bad habits. Because they are not eligible for criminal penalty and they can not reformed by public security penalty, there is a need to apply measures that can correct their character such as reeducation through labor. This will be conducive to achieving the goals of safeguarding our society and preventing these people from committing crimes. This can be regarded as the main theoretical basis for the existence of the system of reeducation through labor. If these people are excluded from reeducation through labor according to the view of making the system a part of "criminal penalty," they will exert a tremendous pressure on society. This is not conducive to preventing these people from committing crimes again. Therefore, this view is neither comprehensive nor scientific.

The merit of the third view is that it sees the innate difference between reeducation through labor and an administrative or criminal penalty. It doesn't define it as either an administrative penalty or criminal penalty in a simplistic manner. The drawback of this view is that it does not say what the nature of reeducation through labor after its reform should be. Every system must have its defined nature. This is not a question one can avoid or should avoid.

I’m of the view that reeducation through labor after its reform should be a disciplinary sanction for maintaining public security with the characteristic of a public security penalty. The so-called public safety characteristic means that this system is similar to a disciplinary sanction for maintaining public security. It pays attention to the bad character and psychological problems of the perpetrator. It emphasizes improvement through education and active prevention. "It breaks out of the narrow practices of punishment and post-crime remedy measures. It fulfills the task of controlling and preventing crimes from a broader and deeper perspective." The so-called security disciplinary sanction means that it is a disciplinary sanction against people who have violated rules and who have, through their actions, exposed their deep-rooted bad character. It severs the purpose of maintaining public security. In light of the fact that this disciplinary sanction involves the deprivation or restriction of the personal freedom of a citizen, it should be included into the judicial process.

As to how to include it into the judicial process, we may learn from the system of the "Magistrate Court" of Britain. “Magistrate Court " can be established by low and medium-level people's courts, which have the exclusive mandate of handling these cases. Cases may be submitted by

public security bureaus directly. The procedures can be based on the simpler procedures contained in the law on judicial proceedings currently in practice. Most of the cases can be handled by the single judge. But for some cases, relevant persons should participate as the people's jury. For example, in cases involving narcotic drugs, experts in this field should be invited to participate as the jury. The court should notify the prosecutor's office when it starts its proceeding. The prosecutor's office may send its staff to be present at the proceeding to monitor the whole process if necessary. The accused has the right to defend himself either by himself or through an attorney. He has the right to appeal if he doesn't agree with the ruling.

The Target and the Scope of Reeducation Through Labor

The scope of the system of reeducation through labor after its reform should include the following groups of people. First it should include those who have violated the "Administrative Penalty Regulations for Maintaining Public Security," those who refuse to repent, and who repeatedly participate in illegal activities such as drug abuse or prostitution. [6] Second, it should include those who are not eligible for criminal penalties or prosecution because they have committed petty crimes. These people can not be released into society immediately because of the personal danger they pose. [7] Third, it should include those who can not be subjected to criminal penalty because they are under the age of 16 according to Article 17 of the

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6 *Paragraph 2 of Article 8 of the "Decision On the Prohibition of Drugs" of the Standing Committee of the National People's Congress stipulates: "With regard to people addicted to taking or injecting narcotic drugs, there should be compulsory drug detoxification, medical treatment and education in addition to the penalties stipulated in the previous article. Those who resume drug abuse after a detoxification program can be taken in for reeducation through labor. There should be compulsory drug detoxification during reeducation through labor." I'm of the view the public security bureaus should not have the right to approve compulsory drug detoxification programs because these programs involve the deprivation of personal freedom. If there is proof that a person is addicted to drug use or injection, it means that he is not a first time user. An application for reeducation through labor can be submitted to the court. If a case involves a person who is a first time user and who does not have a drug addiction, it should only be handled by the public security bureaus as an ordinary security penalty case. Similarly, Paragraphs 2 and 3 of Article 4 of the "Decision on the Prohibition of Prostitution" stipulate: "With regard to those engaging in prostitution, they can be rounded up by the public security bureaus and the relevant organs. They should be educated about law and morality and put to work at physical labor so that they may change their bad habits. The time limit of reeducation through labor may be six months to two years. " "Those who resume their involvement in prostitution after they have been punished by the public security bureau should be sent to reform through labor." In this regard, we cannot agree to deprive these people of their personal freedom for six months to two years at the initiative of the public security bureaus. We adhere to our position. With regard to those who resume their involvement in prostitution, public security bureaus can submit applications of reeducation through labor to the court. But with regard to those who engage in prostitution for the first time, public security bureaus can only handle their cases as ordinary security penalty cases (which includes warning, fine and at most 15 days administrative detention).*

7 *How to determine the presence of personal danger is a question that should be solved at the operational level. On the one hand, the legislation should include a listing as exhaustive as possible of the objective criteria for determining the presence of personal danger. On the other hand, this depends on the understanding of the judges of the spirit and value of the law. In light of the present situation of the judiciary, more work needs to be done in the first regard.*

"Criminal Law." But, they should be taken in by the government for reeducation. [8] Fourth, it should include mental patients that need compulsory medical treatment provided by the government in accordance with Art.18 of the "Criminal Law." [9]

There is no specific provision regarding the age of people eligible for reeducation through labor in the law on reeducation through labor currently in implementation. I am of the view that there should be a clear provision in this regard in the legislation for reeducation through labor after the system is reformed. According to the "Administrative Penalty Law" and the "Penalty Regulations for Maintaining Public Security," the minimum age eligible for penalties is fourteen years of age. In principle, the minimum age eligible for reeducation through labor should remain the same after the system is reformed. Some of those who are under the age of 14 and who pose serious dangers to society may be taken in for reeducation through labor at the request of their guardians, with the approval of the courts and when absolutely necessary, if their guardians cannot control or educate them.

With regard to the regional restriction for reeducation through labor contained in the present "Pilot Methods for Reeducation through Labor," it should be abolished after the system is reformed. The reason for this is that because of the acceleration of the pace of reform, openness and modernization, small and medium-sized towns and cities are undergoing rapid development.

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[8] *According to a note issued by the Ministry of Public Security in 1982 ,the public security authority can deprive those people of their personal freedom for one to three if they commit a crime but under the age of 16.Let's see a case: two children committed arson and hurt many people, one was over 16 and sent to the jail by a decision of the court ,the other was under 16,so was taken in by the police directly for reeducation without a public hearing and a lawyer's help and no chance to appeal. This is also unreasonable. It should be decided by an independent judge.*

9.*With regard to the harm caused by people who are mentally ill and who are unable to make judgments or control their own actions, the criminal law of 1979 stipulates only that: "His family or guardian should be ordered to watch him more closely and help him get medical treatment." On this basis, the criminal law of 1997 made an addition: "When necessary, the government should enforce medical treatment." Undoubtedly, this is an improvement. However, there is not yet any measure for the implementation of this provision. According to criminal law, when mentally ill people commit crimes during the time when they are not ill, and when those who have not*

completely lost their ability to make judgments or control themselves commit crimes, they should be criminally responsible for the crimes. However, the implementation of penalties against them should be different from those against criminals who are not mentally ill. This group of people can be considered for reeducation through labor after the system is reformed. When regard to those criminals who become mentally ill while serving their sentences, they should be transferred to camps for reeducation through labor. I would like to say I became more convinced of this position during my visit to a hospital for criminals who are mentally ill in Britain not long ago. There are mainly two categories of people in these kinds of hospitals in Britain. The first category are people who have committed crimes and are mentally ill. They can not be sent to a prison or released into society. They are sent to a hospital for criminals who are mentally ill after being sentenced by a judge. The second category are people who have become mentally ill while serving their prison sentences. They are transferred to this kind of hospital. But, most of the patients belong to the first category. There is no time limit for the time spent in these hospitals. The severity of managing methods varies according to the seriousness of the patients' mental situation. There are specialized psychiatrists and doctors in these hospitals. The release of patients must be based on the confirmation by a medical group that the patients in question will not pose any danger to the local community after their release. Of course, these hospitals have first class facilities, such as swimming pools, gyms, backyards, etc. The impression one gets is that they are just like comfortable rehabilitation centers. All the treatment provided to the mentally ill criminals is free of charge.

Life in rural areas is much more active than before. The above-mentioned categories of people can also be found there. Therefore, the abolition of regional restrictions for reeducation through labor can meet the need of safeguarding the public security of these regions. It can also demonstrate the principle of "everyone being equal before the law" in our country.

The Degree of Severity of Reeducation Through Labor and its Time Limit

In many of the suggestions on reeducation through labor, it is often suggested that the present system is too severe in restricting personal freedom and that its time limit is too long. On the whole, I agree with this opinion. However, this assertion can not be applied to all cases in a general manner. Things should be looked at on a case by case basis.

For the first group of people (excluding those who take drugs or inject themselves with drugs), as well as for the second and the third groups of people, the system of reeducation through labor should be fundamentally different from that for those receiving the criminal penalty. It should be less severe. The existing camps for reeducation through labor should be transformed into institutions such as "schools for reeducation through labor." These "schools" should transform people into law-abiding, useful people with a certain level of education and production skills by giving them education in political ideology, morality, legal discipline, knowledge, science and technology, and production. This is the only way for a system that restricts personal freedom for quite a long time to establish the raison d'être for its existence, as well as its legality. It is also a way to achieve the purposes of "education, persuasion and salvation." The time limit should be shortened on this basis. The preliminary suggestion is to shorten it to longer than three months and shorter than one year.

With regard to people who abuse narcotic drugs, they should not be handled in the same way as the above-mentioned three categories of people. Instead, they should be placed within a very strict environment for compulsory drug detoxification. [10] The time limit for them should not be shortened excessively. Otherwise the purpose of detoxification can not be achieved. For these people, we suggest detoxification programs without time limit. They should only be released back to society when psychologists and doctors confirm that they have gotten rid of their drug habit.

In the same vein, with regard to mentally ill people who need compulsory medical care, they should be handled in the same manner as drug addicts.

The Legislative Model and Name for Reeducation Through Labor

With regard to the legislative model for reeducation through labor, there are two kinds of suggestions at present. The first is that the model should be established by a special legislation adopted by the National People's Congress. The second is that the elements of the law on reeducation through labor should be included, as a separate chapter, in the "Penalty Regulations for Maintaining Public Security," which is in the process of being amended. We are inclined to

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10 *Of course, the qualifier "strict" is placed here in response to the need for detoxification programs. On this basis, every effort should be made to search for humanitarian managing methods.*

support the first suggestion. The reasons are as follows. {1} Reeducation through labor has a bearing on the personal freedom of citizens. It touches upon a wide scope of people. {2} It has elements different from public security penalties in terms of its target, procedure and method of implementation. {3} Reeducation through labor contains elements that are security disciplinary sanctions in nature. Therefore, it should be based on independent legislative thinking.

With regard to the legislative name for reeducation through labor, we definitely should not continue to use the term "reeducation through labor." Apart from the fact that the system of reeducation through labor after its reform will no longer have labor as its basic characteristic, consideration must also be given to the relevant provisions of the "International Covenant on Civil and Political Rights." For example, Paragraph 3 of Article 8 of the Covenant stipulates: "No one shall be required to perform forced or compulsory labor, (which) shall not be held to preclude, in countries where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor in pursuance of a sentence to such punishment by a competent court." Just as mentioned in the above, reeducation through labor after its reform will no longer be a penalty against crime in its legal nature. Therefore, if a system with "reeducation through labor" as its name continues to exist outside the scope of China's criminal justice system, this will definitely cause unnecessary misunderstandings and trouble within the international community. What should the name of this law be? At present, there are many suggestions, including the following: "Law on Forced Reeducation," "Law on Correctional Disciplinary Measures," "Law on Educational Disciplinary Measures," "Law on Reeducation Treatment" and "Law on Reeducation Inside Correctional Institutions," etc. I am of the view that the name should be changed to "Law on Public Security and Reeducation." The word "security" reflects the social effect of the law while the word "reeducation" highlights the correctional character of the law. This name summarizes the content of the law in a comprehensive manner.

Concluding Words

The president of Russia, Putin, made the following assessment on the achievements and mistakes of the Former Soviet Union. He said that while it is unrealistic to deny the achievements of the past, it is dangerous to ignore the mistakes of the past. This statement is also a pertinent assessment of the system of reeducation through labor that which has been in practice in China for the past fifty years. To criticize the system of reeducation through labor doesn't mean the complete negation of the past. On the contrary, it helps to prepare for the future. "Once the goals of a country are changed, it is unavoidable to amend its laws." Furthermore, "changes of social values, changes in the meaning of justice have been for several centuries and still are the causes for deep and broad changes in laws." In the present China, the purpose of the law has been shifted from emphasis on the protection of society to greater emphasis on the protection of human rights. At the same time, social values and the concept of justice are changing with the changing situation in and outside China.

Under these circumstances, legal reform is an unavoidable development. From the discussions included in this article on the system of reeducation and other similar systems and their reform, it is evident that legal reform is not limited to the reform of one or two mechanisms in a society like China, which is in a transitional period. It is about the overhaul of the whole system. The reform of one specific mechanism serves as a trigger. How to take into account the overall

situation, how to combine China's experience with that of the West, how to push the comprehensive reform on the basis of the successful reform of a specific mechanism and how to accomplish legal reform in the new century under the guidance of the modern concept of rule of law, are some of the things that should be discussed on a broader scale.