

被害人过错限制死刑适用研究

摘 要

死刑是大众比较熟知的一个惩罚犯罪的刑罚，在刑罚中它的惩罚力度是非常大的，对于犯罪分子有极强的震慑作用，因为它会夺取犯罪人的性命。而随着我们国家的不断发展，人权运动开始不断被兴起，被人们所倡导，人道主义在国际上流行，随之而来的是对死刑的审视和批判，加之人们意识到死刑作为一种刑罚不符合刑罚的目的和本质要求，因此逐渐限制死刑和废除死刑成为国际潮流。随着我国的发展和人们思想水平的提高，同时为了顺应国际潮流，也进行了死刑改革，限制死刑的适用。而对限制死刑适用的一个重要影响因素就是被害人过错。由于受传统刑法理论的影响，人们更多关注被告人的责任和犯罪行为，很少关注被害人的过错。但是，被害人过错也是某些故意杀人行为的诱因和推动因素，正是因为被害人过错，导致犯罪的发生。因此本文通过采用文献研究方法、比较研究方法和功能分析方法来研究被害人过错限制死刑适用的问题。主要包括被害人过错的界定和成立要件、限制死刑适用的理论依据和法律依据、现在该制度存在的问题和被害人过错如何限制死刑适用。根据以上的研究提出完善和解决方案，推动该制法定化，从而减少死刑的数量，推动死刑改革，更好的保护人权，更好的符合刑罚的目的和本质要求。

关键词：被害人过错；限制死刑；过错；法定化

Abstract

The death penalty is a punishment for crimes that is well-known to the public. In the punishment, its punishment is very strong, and it has a strong deterrent effect on criminals, because it will kill the criminal. With the continuous development of our country, the human rights movement has been continuously raised, advocated by people, and humanitarianism is popular in the world. The ensuing review and criticism of the death penalty, plus people realize that death penalty is a punishment It does not meet the purpose and essential requirements of punishment, so gradually limiting the death penalty and abolishing it have become an international trend. With the development of our country and the improvement of people's ideological level, in order to comply with the international trend, we have also carried out reform of the death penalty to limit the application of the death penalty. An important factor influencing the application of the restriction of the death penalty is the victim's fault. Due to the influence of traditional criminal law theory, people pay more attention to the defendant's responsibility and criminal behavior, and pay less attention to the victim's fault. However, the victim's fault is also an incentive and driving factor for certain intentional homicides. It is precisely because of the victim's fault that the crime occurred. Therefore, this article uses literature research methods, comparative research methods and functional analysis methods to study the application of the victim's fault limitation to the death penalty. It mainly includes the definition and establishment requirements of the victim's fault, the theoretical and legal basis for restricting the application of the death penalty, the existing problems in the system and how the victim's fault limits the application of the death penalty. Based on the above research, we have proposed improvements and solutions to promote the legalization of the system, thereby reducing the number of death penalty, promoting death penalty reform, better protecting human rights, and better meeting the purpose and essential requirements of penalty.

Keywords: Victim's fault; restriction death penalty; fault; legalization

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