

Limitation of Death Penalty for Drug Offenses in Iran's Penal Policy from the Perspective of Criminal Sociology

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Abstract

The legislator has adopted a policy of repression and aggravation of punishment in drug offenses. Undoubtedly, the legislator has adopted such measures due to the obscenity and severity of these crimes, as well as their danger to society. However, it seems that this penal policy is not useful for many reasons and does not move the legislator toward its goal (prevention of crime, recidivism, and reform of the offenders); It is probably due to the fact that imposing heavy punishments is reasonable and correct regardless of the causes and factors of the crime, as well as the circumstances in which the person committed the crime. The thing that prevents offenders and people from committing or repeating offenses is the speed and precision of executing the punishment, not the heavy ones. Hence, with regard to the shortcomings of this policy and the weakness of the deterrent theory against social, economic, cultural, and political crime factors at some periods of time, and in particular recently, the legislator has tried to moderate its penal policy. In 2017, an article was added to the Counter-Drug Law to undergo a fundamental change, including the significant reduction in cases of execution and life imprisonment. The moderation of penal policy against drug and psychotropic crimes plays a major role in the elimination of death sentences from the Iranian criminal justice system and promotes human rights status of Iran in the international community. This moderation is originated from the post-revolutionary criminal sociological study as well as internal and external criticisms of strict penal policy; internal criticism was from jurisprudential, legal, human rights, criminology, and criminal sociology circles.

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1. Introduction

Regarding doubts about the permission to execute capital punishment among lawyers, the legislator after the revolution has resorted to the terms such as "Mofsed-e-filarz" (corrupt on earth) or "Muharab" wherever it faces a problem of determining the death penalty. One of the cases is Article 9 and 45 of the Amendments to the Counter-Drug Law, which stipulates that the death penalty in this law is fundamentally skeptical in accordance with Article 9 of the Constitution. According to the above principle, the legitimate rights and freedom of individuals cannot be negated even on the pretext of the independence and territorial integrity of the country. Also, there is a controversy about the definitive or discretionary nature of the death penalty in the Counter-Drug Law: Apparently, those who determine this punishment resort to the term "corruption on earth," and this is why the death penalty is not included in discretionary punishments in the Islamic Penal Code of 2013. Since the death penalty is not prescribed as a definitive punishment in religious references and the corruption on earth is described as an independent crime in article 286 of the Islamic Penal Code, the legislator used the terms "widely", "severe disruption" and "extensively" as a criterion for the detection of the corruption on earth in order to limit the scope of the crime to specific cases.

However, in the Amendments to the Counter-Drug Law, the death penalty is considered for drug trafficking, producing, cultivating, distributing, exporting, importing and selling without mentioning the condition of "confrontation with the authorities." In some cases, such crimes cannot be in line with Article 286 of the Islamic Penal Code as instances of corruption on earth so that, inevitably, the legitimacy of execution is set forth as the discretionary punishment.

Given that Iran's penal policy provides for the possibility of the death penalty for drug offenses in a wide range, it has made Iran as one of the focal points for human rights organizations.

The question now arises whether the penal policy proposed by the legislature in our society has reduced the commission of drug-related crimes? It seems that the penal policy in the Counter-Drug Law is always based on repression, the severity of punishments and the disproportionate nature of the punishment with respect to the death penalty for some drug offenses. In this context, the enormity of the punishment, human dignity, human rights standards and the principle of justice are not considered.

Over time, these internal and external critiques increased and persuaded the legislator, along with critics, to make a fundamental change in the penal policy and reform the law. In this framework, the parliament proposed and approved a plan to reduce the death penalty for drug offenses, and it was communicated and enforced by the President after the defects were resolved by the Guardian Council; a law that could be considered the most important step towards the elimination of death penalty for drug offenses in the country. Such a measure has been unprecedented until today; A law that seems to be not the end of the road, but the beginning of a path that will gradually be followed up to restrict the execution to the prescribed and unconditional cases, and maybe only to the blood vengeance if the theory of recession of definitive punishments in the absence of Imam Zaman is accepted. The blood vengeance can also be converted into blood money along with the moral development of society.

2. Methodology

The present research is applied in terms of purpose and content analysis method. In the organization of research, the documentary and library methods have been used and the information analysis has been obtained qualitatively and based on the inference of the researcher on the sources and texts.

3. Findings

The concept of Criminal Sociology :Criminal sociology examines the social feedback of criminal law institutions. In fact, criminal law, sometimes referred to as "sociology of criminal law" or "sociology of criminal justice," aims to study criminal institutions and techniques as social phenomena and their effects in society and then sociological judgment about them (Najafi Abrandabadi, 2012: 8). In criminal sociology, for example, the freedom of body is considered as a fundamental social value and the deprivation of which is called imprisonment in the private criminal law (the legislative birth of prison sentences). In other words, what is the perception of law about the social phenomenon of imprisonment? Thus, studying the legislative, judicial and social nature of prison is relevant.

The tendency of Iran's penal policy towards the death penalty in fighting against drug offenses from the perspective of criminal sociology: The issue of drugs has many dimensions, from the economic, social and legal dimensions to the issue of dirty money, but the human dimension is above all. Despite the fact that the statistics of prisoners and death sentences in the field of drug offenses are reported annually, the human tragedy that lies behind it is underestimated. In the legal system of Iran and some countries, the death penalty is considered the most severe criminal response to drug trafficking.

There are no precise, scientific and rational assessments indicating that the death penalty was deterrent and that it was able or could help reduce drug offenses. Sometimes, some studies show that when the risk of drug trafficking changes, its distribution not only does not change but also increases (Zebhi, 2013: 67); because when the risk goes up, the price difference in the destination will increase and this increase in prices creates more profitability in the field of drug. Hence, people enter the illicit drug market with high tendency; if the action is taken according to the current official rules of the country and drug smugglers are sentenced to death on the basis of the amount of material they carry, the number of executions would increase. It is while we know that according to official statistics in the country the number of executions is not as many as the traffickers, and the number of executions is lower than that of traffickers. It shows that we currently have laws in the country that have lost their effectiveness and we have to set the rules according to the facts.

The execution-oriented culture of society and public opinion: Reports from several countries over the past decades have shown that people have become punishment-oriented; they are less likely to support corrective programs; they call for more serious sentences (Miyazawa, 2008). P77).

Public opinion is a complex and multidimensional issue; public opinion is properly shaped and integrated if a particular topic is discussed by people in an interactive atmosphere and a collective mind will be formed through this process. What matters is that public opinion is formed in a thematic way; it is a mistake to speak of the formation or non-formation of public opinion (Moradi Hassan Abad, 2011: 95).

In some countries, the death penalty and life imprisonment have been predicted as a response to a wide range of crimes, which is far beyond the extent of traditional use concerned only the first-degree murder. This has sometimes increased the number of prisoners who are sentenced to imprisonment or death using the policies of "truth in sentencing." Determining fixed penalties, imposing minimum standards, three strikes and you're out rule, and ultimately moving toward a new structure of security that considers security as a fundamental component to achieve the goals of criminal law and criminal penalties, have led to this change of mindset. The attention has been shifted from the offender and the individualization of the punishment to the severity of the crime and the deterrent punishments. Perhaps, it has never been deviated from paying attention to the punishment.

The legislator's emphasis on deterrence and aggravation of punishments should be considered a response to the news broadcasted in the media about the prevalence of drug abuse and its dangers, as well as the legislator's measure against increasing public concern about this phenomenon. The characteristic of these types of penal responses is that they do not pay attention to the scientific findings of criminal sociology and

the results of previous criminal interventions. In fact, such response considers that the mission of the legislative system is ended by aggravating the penalties.

Public opinion in our country has been able to play an active role in the retention of the death penalty. If we want to talk about the future status of executions in Iran, we should ask the question why execution has been retained in our country? And why we lag behind the abolition movement in the West? Apart from the influence of Sharia and jurisprudence, which will be discussed in an appropriate place, we can point out the role and position of public opinion in increasing the severity of punishments. We have to examine why the severity of the punishment has never increased in parallel, although such criminal-oriented attitudes can be found in other parts of the world. In addition, hostility towards the perpetrators is a recurring and normal behavior that is not specific to recent decades; A similar argument can be made that the tendency of people to execution, as a criminal response to criminal behavior, is not specific to the Iranian society, even not specific to the current period of time. So why these attitudes have not emerged at the legislative level in many western countries. In other words, despite the high criminal-orientation in other Western countries, why they have moved toward abolition of the death penalty, but this movement has slowly taken place in Iran and faced severe opposition.

Execution has become a symbol of fighting against offenders; hence, in the political discourse of our country, the opposition to this punishment is also viewed as confirmation of the criminals' behavior from the perspective of public opinion. This issue has paved the way for the influence of public opinion so that it is more effective in the retention of the death penalty.

Penal Populism: Recent attention to the victim and the protection of potential victims is defiantly a clear reflection of these changes. These changes also indicate a desire for an "Inclusive Penal Populism" by politicians, which calls for heavier penalties, especially for drug traffickers (Daemns, 2007, p. 319). As well, it considers the gap between criminal justice activists and scholars who want to assess the nature of criminal justice policies, on the one hand, and politicians who want to send messages to the public people (Tonry, 2006, pp. 45-56).

The urgent need for the approval and social support of policies adopted by governments is something that has not been denied by any government, even the authoritarian state. All governments acknowledge the fact that advancing goals will be simpler and less costly if approved and supported by the community. Undoubtedly, the government's penal policy is one of the most important components of public policy that must always be supported by the community. But the point is that whether the governments that do not attach importance to the community in this field will receive support and approval? The answer is to resort to populism.

Penal populism appears as a concern for the entire community in various forms, including attempts to obtain public support on a particular criminal matter (regardless of specialized studying this matter and explaining its various dimensions), and the introduction of a specific criminal case using government-administered tools (such as mass media). The government also introduces its penal policy together with social support by pushing this out (Moghadasi, 2011: 29).

The penal policy of the Islamic Republic of Iran has not been away from populism, and in some cases, the government's compromise in the field of penal policy has resulted in the emergence of populism. In this context, the legislator's approach to drug offenses and determination of severe sanctions, as well as a strict view for the interpretation of criminal acts and the rapid implementation of punishments, has been carried out through a populist approach. However, in all these cases, the actions have been taken upon the community's support and introduced as a proper response to the crime.

The adoption of popular approaches in the penal policy of drug-related crimes has a relatively long history in comparison with other crimes. Wide coverage of drug offenses news and the concern of public opinion have provided an appropriate framework for the emergence of exceptional laws and procedures based on the suppression and adoption of strict criminal laws. Over the past three decades, the verbal and symbolic

aspects of this discourse have gained success in drawing the attention and confidence of public opinion about the seriousness of the penal system toward these crimes. The most important characteristics of this populist approach include the demand for increasing the powers of the bodies responsible for crime control, the transformation of drug addiction from a social and local issue into an international and transnational conspiracy, the induction of a state of war against this phenomenon, the establishment of an extraordinary criminal procedure, the restrictive principles and standards of fair trial in dealing with drug offenses, and focusing on hardware indicators such as the number of arrested drug addicts, the amount of captured drugs, the number of reviewed cases, and the severity of convictions to measure the success (Farajiha and Moghadasi, 2014:43).

In addition to the rigorous aspects and punishment-oriented culture of the community, non-tolerance procedures and populism are also seen in the practical and verbal discourse of criminal justice administrators; the former head of the judiciary issued a directive in 2004 based on which the judges, the prosecutor general and the head of the Supreme Court of Iran were required to deal with drug offenders strictly; the directive calls on the Revolutionary Courts to respond to society's demands and expectations and issue a sentence of legal punishment without tolerance and forbearance (Deputy of Education in Judiciary, 2006: 202-203); while the legality of crime and punishment is the pillar of criminal law, and the basis of the legal system (Habibzadeh and Tohidifar, 2009: 11) and the judge can solely order a punishment on the basis of law, the notification of a directive by the head of the judiciary regarding the aggregation and non-tolerance in sentences cannot be justifiable.

The Head of the Judiciary can have administrative supervision on judges and courts; in addition, the issuance of a directive or regulation on the strict treatment with certain crimes or special criminals may interfere the independence of the judge. Also, the discourse of some judicial directors on the urgent implementation of drug-related sentences and a strict treatment with drug traffickers demonstrate the non-tolerance toward drug offenders in the area of judicial strategies; the recidivism of drug crimes and the growth of drug abuse, especially industrial drugs, during several years of implementing strict measures indicate that these measures couldn't have a deterrent effect (Khodabakhsh, 2012: 143).

Executions have also not caused fears among drug traffickers and cartels; furthermore, failure to achieve successful outcomes from strict measures has led the relevant custodians to attribute the failure and the ineffectiveness of these policies to the transnational and foreign factors; this is evident in the discourse of drug-related penal policy authorities in various categories; it seems that drug-related laws should entail educational, preventive and efficient solutions, but Iran's criminal authorities have mainly emphasized on the punitive and repressive aspects of perpetrators.

Pathological Analysis and Positive Outcomes of Article 45 of the Counter-Drug Law approved in 2017 from the perspective of Criminal Sociology: Sociological studies carried out in the Iranian society indicate the ineffectiveness of the death penalty in crime prevention; however, the results of these studies have somewhat affected the performance of judges (Rahmdel, 2006: 163); Iran's criminal policy has always acted in any way possible to moderate this issue and adapt penal policy with social realities (Kazemi, 2014: 116).

Following to these challenges, the draft to add an article to the Counter-Drug Law in the form of a reduction in the death penalty for drug convicts was proposed; the criticisms of the details of this draft caused it to be referred to the Judicial and Legal Commission for amendments. In this while, various opinions about the provisions of this article urged the members of the Judicial and Legal Commission of the Parliament to consider the details of the draft in terms of the weight and the amount of traditional and industrial drugs and sent back the draft to the board of directors after specialized modifications.

After referring the draft to the Judicial Commission of the Parliament and reviewing the views of some Counter-Drug officials who emphasized the determination of "weight" constraint for determining the death penalty, including some authorities from the judiciary, the Ministry of Justice and the Prosecutor General of the country, the conditions for criminals to reduce the death penalty was changed in way that, in addition

to the weight constraint for producing, distributing, transporting, storing and importing drugs, those who carry specific weight of the traditional and industrial drug without any criminal record and carrying firearms are also executed; and the death penalty is also executed for drug traffickers and those who commit this crime using firearms or have repeatedly been arrested; in this regard, a member of the board of directors of the parliament's judicial and legal commission has emphasized that the parliament seeks to punish the major drug traffickers through the draft on reduction of death penalty (Akhavan, 2017: 54-55).

The justification introduction of this draft reads: "Given that the death penalty for drug traffickers and drug carriers has been determined based on quantity, the carriers are getting into trouble, and the access to the gang smugglers has become difficult." Therefore, according to Article 45 of the Amendments to the Law on Counter-Drug adopted in December 2010 by the Expediency Council, it is proposed to change the death sentence to life imprisonment except in armed cases, since execution has no outcome except encouraging to the drug."

Finally, the MPs adopted the urgent draft to reduce the death penalty for drug convictions; it was approved by the Parliament in the form of an amendment to the Counter-Drug law in 2017 with 182 votes in favor and also enacted by the Guardian Council in 2017; thus, an article is annexed to the Counter-Drug Law as Article 46. Although the aforementioned law is not perfect in the legal and criminal sense, its adoption is considered a positive step towards limiting the death penalty in the penal policy of drug offenses.

Increasing the prison population: The main alternative to the death sentence has long been life imprisonment or long-term imprisonment (usually more than thirty years); on this basis, the result of the elimination or reduction of executions in these crimes is already known, i.e., a massive resort to imprisonment and an increase in the number of prisoners sentenced to long-term imprisonment.

Since Iran's legal system still does not provide the necessary basis for widespread and comprehensive application of social sentences (imprisonment alternatives) in relation to severe crimes, the death sentence will be inevitably replaced by long-term imprisonment. The negative consequences of life imprisonment are not less than execution, but in some cases more severe and more adverse; since there is little hope for those who are sentenced to life imprisonment or long-term imprisonment for more than thirty years, so they have to spend their time in jails and far away from the community. Also, if this conviction occurs at the age of forty years and later, it is something like life imprisonment and will reduce the hope for reform and rehabilitation.

At present, prison sentences, especially short-term imprisonment, life imprisonment, and long-term imprisonment have been subject to severe criticism; international human rights have also taken a few steps to abolish life imprisonment; the critics of this categories of imprisonment imply the issues such as lack of prison capacity, high rates of prison population, high maintenance costs, health issues and diseases in prison, sexual abuse and assault, crimes in prison, difficult control of prison and some prisoners, limiting and depriving family members and relatives (especially spouse and children) and its harmful consequences, connecting with dangerous people and getting involved in criminal groups and gangs, accepting prison culture, losing jobs, losing social status and attaching negative and destructive labels to prisoners and their family members, severe psychosocial illnesses and distress (depression, mental disorders, suicide, self-harm, etc.), little effectiveness and efficiency (high rate of recidivism among prisoners and immediate return to prison) (Jorg Albrecht, 2016: 14-17).

As reducing executions will increase the number of prisoners and results in the prison population inflation, the existing problems of prisons and prisoners will not only not be reduced, but will continue to increase. In the current situation, the available prison capacity is much lower than global standards, and this has been criticized by human rights circles; the exacerbation of this situation will shift the criticisms of high rates of executions to high rates of imprisonment and inappropriate conditions of prisons and prisoners.

Conversion of different types of death sentences to first-degree imprisonment and the enforcement of the note to Article 45 has gradually increased the prison populations so that drug offenders will constitute

more than half of the prison population. This approach is in contradiction with the policies of reducing the prison population. In other words, the Parliament has adopted a penal populism approach in the adoption of the new law and has affected political elements, public opinion, and the media in order to remove international human rights pressure for the death penalty and life imprisonment; it looks as if the Parliament has eliminated the problem instead of solving it. In fact, the replacement of execution with long-term imprisonment will not be effective and result in an increase in the prison population and other prisoners' health threats.

Skepticism about the legitimacy of past executions: The previous executions of drug offenders have been carried out in the name of Sharia and based on Islamic laws. In these cases, it was believed that since the committed crime is an instance of "corruption on earth" and the perpetrator is a *Mofsed-e-filarz*, the definitive punishment is execution (Sarikhani and Aghabebei Bani, 2014: 11).

The justification faced by many jurists and lawyers from the very beginning of the Islamic Revolution and the amount of these objections has been increasing day by day so that some of the supporters of the death penalty also abandoned their former positions and got in the opposition line. Now, the adoption of this law raises an important question that if perpetrators of drug-related crimes are considered *Mofsed-e-filarz* in case one of the four conditions mentioned as a corruptor on earth is realized and they will be sentenced to death, then what is the juridical decision of the executions that have already been carried out for the same title (corruption on earth) but lacking one of the above four conditions? Is this dualism acceptable in the concept and scope of the corruption on earth? Whether this issue proves that those who do not regard the corruption on earth as a criminal offense and do not consider it as a definitive punishment, or they are opposed to the execution in discretionary crimes? Whether the families of executed individuals can complain against the judiciary and demand for blood money? These questions and similar other questions are a fundamental challenge to the new law, and the legitimacy of former executions may be challenged if the answer to these question cannot be found.

4. Discussion

The increasing growth of drug trafficking in Iran due to its shared borders with the drug production states, being at the middle of drug trafficking pathway, the political regime change, and the domination of war over the country at a period of time, has had a profound impact on Iran's penal policy toward this category of crimes during the last century. So the penal policy has gradually moved toward a strict policy; in other words, these factors have led the Iranian government to fail to enforce a soft penal policy toward drug-related crimes. On this basis, a differential and oppressive penal policy that originates from the political, economic, social, religious, and cultural conditions of the country was inevitably adopted to deal with these crimes by strict responses; to the extent that the title of the law has been chosen as the "Counter-Drug Law"; Under this title, the legislator has attempted to demonstrate its "combating policy".

Although Iran's penal policy against drug crimes has been mainly strict and aggravated, policymakers have sought to distinguish between two critical issues of supply and demand, and take strict measures in relation to "supply-driven behaviors" (Such as production, distribution, cultivation, import, export, transportation, maintenance, etc.), and, in contrast, take soft policies in relation to "demand-driven behaviors" (consumption, use, addiction, etc.). It seems that such policy is rational and purposeful. In line with the policy of distinction between supply and demand, the legislator has been trying to consider the most severe responses for the suppliers of drugs and psychedelic drug. It should not be forgotten that the legislator does not equally apply the punitive measures for all the suppliers, but individuals such as ringleaders, investors, employers of children, adolescents and people with mental disorders for the commitment of drug crimes, the users of weapons, and the forcible injectors of drug, who mainly commit these crimes because of profit are subject to the most severe penal policies. On the contrary, the law has tried to exclude ordinary drug

and psychotropic suppliers from the strict penal policy. Hence, it has been attempted to take lenient measures for those who commit drug crimes due to poverty, unemployment, lack of income, low level of education, difficult conditions of life, drought, economic deprivation, economic inequality and so on. However, this smart and targeted approach has not been implemented once, and the legislator has understood its correctness over time and attempted to normalize it.

Occasionally, the legislature has made amendments to the law so that a smart penal policy can introduce "smart responses"; in line with this smart penal policy, the legislator tries to consider the most severe criminal response for the person who plays the most important role in committing a crime, although he/she did not seem to have done anything and the perpetrator is also someone else; in contrast, those who have little role in designing and committing a crime only because of social and economic problems and execute the commands and plans of someone else would be subject to mild criminal measures and social measures. The goal of these measures is to separate these individuals from gangs and criminal groups so that they can return to the normal course of life; accordingly, Iran's legislator is strict to the first group and takes severe measures and responses; this separation is based on the findings of criminology and criminal sociology, since these crimes are committed in a group and organized way; in this way, those who seek to make huge profits recruit forces and form a criminal organization and group, then start drug trafficking and other criminal acts by resorting to any possible illegal way.

Although Iran's penal policy on drug supply has always been intensive, the legislator has been endeavoring to strictly and resolutely respond to this category of criminal behaviors according to the criminal deterrence theory. With regard to the inadequacies in this policy and the weaknesses of deterrence theory against social, economic, cultural, and political crime factors, the legislator has attempted to modify its penal policy at some times and especially in recent years. In 2017, an article was added to the Counter-Drug Law to undergo a fundamental change, including the significant reduction in cases of execution and life imprisonment. The moderation of penal policy against drug and psychotropic crimes plays a major role in the elimination of death sentences from the Iranian criminal justice system and promotes human rights status of Iran in the international community. This moderation originates from the post-revolutionary criminal sociological study as well as internal and external criticisms of strict penal policy; internal criticism was from jurisprudential, legal, human rights, criminology, and criminal sociology circles.

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