

Restricting Execution as Punishment for Drug Trafficking in Iran



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Abstract

Lawmakers have been always trying to protect the society against various harms resulting from crimes by administering certain punishments for perpetrators of those crimes. Therefore, the laws have been usually formulated in a way that punishments specified in them would be deterrent while helping rehabilitation of criminals. They are also meant to console victims of various crimes and make up for all the losses they have suffered. Iranian laws, which are based on the Islamic Sharia, have always administered the execution as a punishment for the most serious crimes. Of course, this issue has been in line with the Islamic Republic of Iran's international and human rights obligations and based on the International Covenant on Civil and Political Rights, despite the fact that definition of serious crimes is somehow different in the Iranian law. However, the high number of convicts sentenced to execution in Iran, most of whom were in prison for committing drug-related offenses, as well as increasing problems resulting from this high number of executions and concerns raised by human rights activities during recent years finally prompted Iranian officials, legal activists and nongovernmental organizations to review those cases in which this punishment could be administered.

Smuggling of illicit drugs and addiction are among major maladies plaguing the humanity and a continuous and all-out struggle, including military, political, economic and cultural efforts, is needed to overcome these problems. In view of the high sensitivity of the Islamic Republic of Iran about the issue of drug trafficking and complexities that surround this phenomenon, one of the tools used in the Iranian laws to fight it is considering severe and heavy penalties, including execution and long-term imprisonment.

However, following many years of studies and research on the inefficiency of execution as a form of punishment for drug offenders, the Islamic Consultative Assembly (Iranian parliament) passed a new law on October 19, 2017, according to which, from now on, only three groups of convicts imprisoned for committing drug-related offenses, will be sentenced to execution. They include those drug traffickers who carry firearms, drug traffickers who are ringleaders, and drug traffickers with a criminal record related to drug offenses of more than 15 years. The new law is expected to lead to a drastic fall in the number of drug-related executions and according to the current estimates, 4,000 inmates sentenced to

death will be saved from execution.

The following report seeks to discuss the new amendments to this law in view of the importance of execution as a punishment from the viewpoint of human rights and the impact that the new law will have on improving the overall structure of Iran's criminal code. It also offers a brief review of previous laws and punishments considered for drug offenders in order to facilitate understanding of the new amendments.

Introduction

During recent years, the high number of executions has caused many problems for the families of convicts, on the one hand, while stirring serious concerns among human rights activists, who bitterly criticized the Islamic Republic of Iran, on the other hand. Figures showed increased trend of drug trafficking in the country, increased rate of addiction and increasing discovery of illicit drugs, which proved that execution as a punishment has not been able to have a remarkable effect in reducing drug trafficking in the country. As a result, state bodies in charge of fighting drug trafficking spent a lot of time to revise and amend those laws, which pertained to punishment of drug traffickers.

Following the ratification of legislation by the Islamic Consultative Assembly (Iranian Parliament) regarding amendment of the Anti-Narcotics law, which was on 19 October, finally years of efforts of Iranian NGOs, legislators and human rights experts has been effective. With the ratification of this law the number of executions will dramatically drop in Iran, because most executions in Iran are related to drug crimes.

History of Heavy Sentences for Drug Crimes

The fight against drugs is one of the most important issues in Iran, which annually imposes heavy financial and material costs. According to the announcement of the Interior Minister, drug traffickers make 5 billion dollars per year, which is approximately 5 percent of the national budget. The Police Superintendent says that till the end of 2016, 4000 policemen had been killed and 12,000 injured in the fight against drugs. In addition to these figures, the 43 percent level of the figures for drugs criminals in relation to the total number of prisoners has also added to these figures.¹

These issues have made the legislator, throughout different periods, to apply heavy sentences that include capital punishment to fight the entry and exit and distribution of drugs. In June 1980, the Revolutionary Council, harshened the punishment for drugs criminals where in some instances capital punishment had been foreseen as punishment² and in 1981 with the addition of a clause to its article, the jurisdiction of the definition of drugs increased. In November 1988, the Expediency Discernment Council ratified the Anti-Narcotics law, and capital punishment became inclusive to 9 various scenarios.³

In 1997, this law was again amended by the Expediency Council, but nothing changed with regards to capital punishment. In December 2010, the Expediency

Council once again amended the Amendment of the Anti-Narcotics law, but this time too, the stopping of executions or reduction had not been foreseen, but the sphere of capital punishment was increased to include individuals who use children or mentally ill individuals to commit crimes and also organize and manage drug gangs and make investments. Also the sphere of the definition of drugs increased and also actions were foreseen for the treatment of addicts and their supplementary benefits. Also addicts who take steps to get treatment became exempt from prosecution.⁴ Ultimately in October this year with the amendment of the Anti-Narcotics law, the Parliament deemed only 3 situations where capital punishment would apply to drug crimes.

Reducing the frequency of executions for drug offenses had started many years ago. As a result, the judicial procedure in Iran during recent years shows that more lenience has been exercised for the administration of execution as a punishment for drug offenses. Therefore, out of all cases in which execution has been given as the final sentence for inmates, only 12 percent actually ended in that punishment and in other cases, the offenders were either pardoned or their sentence was overruled by the Supreme Court. (Akhavan, 2017, p53)

Efforts to Remove Capital Punishment from Drug Crimes

In the recent years Iranian NGOs have tried hard to get the law changed. Many field and academic studies have been conducted to this aim, and governmental and nongovernmental organizations and held various campaigns. These include the Judiciary's High Council for Human Rights, the Fight Against Drugs Department, the campaign in support of the commuting of capital punishment to life imprisonment, the Imam Ali Society regarding Juvenile Criminals, the Jurisprudence Association of Iran, and the Organization for Defending Victims of Violence as one of the NGOs active in the campaign to change the capital punishment of drug traffickers law, made extensive efforts for dialogue with Judiciary officials and the Parliament. Several meetings with officials provided the opportunity for the ODVV and sister organizations so that convince the decision makers in the Parliament and government that capital punishment was a weak deterrent for the reduction of drug trafficking.

Furthermore, in the recent years, man academics and law researchers have complained about the Drug Crimes Punishment Law and called for its amendment. They believed that capital punishment for drug traffickers and couriers caused the carrier of small amounts problems and did not result in the apprehension of drugs trafficking bosses. (Poorbafrani, & Masaeli, 2017, p146) It seems that capital punishment in practice is not effective in crime prevention. Even the children and family members of those that have been executed continue on this path, because of perhaps the problems that they experience following the execution of a family member. Therefore it is not deemed as a deterrent.⁵

In amending this law, the observation of Sharia laws in the carrying out of the punishment of those convicted of drugs offense was necessary, because Iranian laws are based on Islamic Sharia laws. The spokesperson of the Parliament's

Legal and Judicial Commission, Hassan Nowrouzi says: “there are differences of opinion for the punishment of production, distribution and importing of drugs. Some believed that these individuals no matter in what capacity that they conduct activities are eligible for capital punishment and some others, particularly Imam Khomeini believed that the religious jurisprudence of capital punishment include corruptions that are alongside war against God (Moharebeh), therefore some are for the execution of these types of criminals and some are against. (Akhavan, 2017, p40)

Some jurists believe that usually those get involved in this crimes who are not the main traffickers and for receiving small amounts of money as truck drivers, become transporter of drugs and unfortunately heavy sentences are automatically dished out in this regard.⁶

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In view of these criticisms, a proposal with the aim of reduction of capital punishment cases and effectiveness and deterrence was brought to the attention of Parliament experts and jurists. But in spite of holding numerous meetings with those in charge of fighting drugs crimes and even experts from the Expediency Council did not reach a consensus because of big disagreements. One of the important disagreement points was the fear of committing a crime becoming easier with the removal of capital punishment and lack of deterrence from other lesser punishments. For example,

the National Security Commission rejected this proposal because it believed that heavier sentences played a deterrence role.

This proposal was once again prepared by a number of members of Parliament in the 10th Islamic Parliament and placed in the working agenda of the Parliament Judicial and Legal Commission. Based on field and communication studies which it conducted with the people (particularly in regions that suffered the most executions) and also carrying out some amendments and enclosing expertise viewpoints, the Commission sent the proposal to the open session of the Parliament. But after the adoption of the generalities of the proposal, many amended comments regarding paragraphs of this article resulted in the proposal being resent to the Judicial and Legal Commission for more technical amendments.

After the referral of this proposal the situation for the offenders for the commuting of the death sentences changed in the Judicial and Legal Commission in a way that the weight condition for the production, distribution, carrying, holding and importing of drugs got completely omitted from capital punishment. On this basis, capital punishment only included the leaders of drug trafficking groups

and those who used firearms in committing these crimes.

The removal of the paragraph in this proposal with regards to production, distribution, carrying, holding and importing of drugs to determine capital punishment caused numerous reactions and objections; in a way that those in charge of the fight against drugs, Judiciary and Justice Ministry officials and the Attorney General of the country as opponents through dialogue with the board of directors tried to send this to the Judicial and Legal Commission for amendment for a second time. In fact, the opponents stressed on the determination of the weight as criteria for specification of cases where capital punishment should apply. On this basis the proposal to attach an article to the Fight against Drugs Law was for the second time sent to the Commission and amendments were done in the presence of the Attorney General and deputies from the Judiciary. With these amendments capital punishment for the production, distribution, carrying, holding and importing of 100Kg of traditional drugs and 2Kg of industrial drugs was considered and approved.

Approval of Restrictions on Capital Punishment

According to the new law⁷, three groups of those convicted of drugs offences are executed, and the rest of the offenders to whom previously capital punishment was dished out will instead be sentenced to 25 to 30 years imprisonment:

The first group are traffickers who use firearms while trafficking drugs and or carry any type of firearms which this group of traffickers are examples of war against God and will be sentenced to death.

The second group are those traffickers who form bands or gangs and they traffick drugs in the group form, who according to the recent law these individuals will be sentenced to death. Furthermore, traffickers who use children or mentally ill individuals for trafficking drugs are included in this article and will be sentenced to death.

The spokesman for the Judicial and Legal Commission of the Parliament in explaining about the third group of traffickers who will be sentenced to death said: “Traffickers who have drug-related criminal records that are longer than 15 years, in the event of repeat offence will be included in capital punishment sentences.”

The current law has been ratified following months of studies and utilisation of nationwide academic researches. The new law is directed towards being constructive for the drug offenders, because the experiences of the previous years showed that not only did this law not have a deterrent effect, but the families of those who were executed on drugs convictions, were unwillingly drawn into drugs trafficking due to the history of the head of household. The spokesmen of the legal Commission said the aim of this law is the reintegration of drug traffickers back to society.

The Deputy Speaker of the Parliament has estimated that approximately 4,000 prisoners who are in death row, will have their lives spared in view of the precedence of the new law.

Conclusion

Although there are still human rights concerns about the high number of executions in Iran, the point that must be taken into account is that Iran is located along the main drug transit routes. Therefore, the costs incurred on the Iranian government and society as well as the loss in human life suffered in the fight against drug trafficking are very high. This is why the Iranian law has always administered strict punishments for drug offenders, so that, such punishments will be able to reduce the frequency of drug-related offenses. At the present time, there is hope that the new amended law, commuting punishment of drug offenders, and considering substitutes for execution will finally reduce social and economic harm done to the country through drug-related offenses.

Also, in view of the heavy financial, economic and physical burden for the prevention of the transit of drugs to Europe, it seems necessary to ask the following question, "how much technical assistance can international organizations and NGOs that criticise the execution of drug criminals, provide with regards to reduction of armed clashes on the borders with Afghanistan and reduction of the human casualties of the border patrols of Iran, so that the concerns of the domestic critics are also replied, and also prevent the increase in the volume of drug trafficking in Iran?"

In particular, considering the UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances in 1988, member states are committed to cooperate for further performance in the fight against various dimensions of drugs trafficking and fight against drugs trafficking is the collective duty of all states and reaching this objective requires a coordinated action within international cooperation framework.

Sources

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