

Death penalty: Murder in the name of law

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Illicit drugs and drug trafficking has been a major social issue in Iran for some time. Therefore, legislation to combat illicit drugs began in the 1960s, and the first use of capital punishment in this regard dates back to 1968. The fight against drugs took a new form after the Islamic Revolution of 1979. The Islamic Republic's laws, which are based on the Islamic sharia and the views of Islamic jurists (foqaha), looked for solutions based on sharia rules to eradicate the drug problem, without any regard for the pre-existing legislation. Therefore, Ayatollah Khomeini's fatwa became the basis for issuing sentences, particularly death sentences, to drug offenders. The aforementioned fatwa states that: "Corruption is any act that afflicts a large number of people, either intentionally or without the knowledge of an such outcome."¹

While the execution orders by the Islamic Revolutionary Courts continued, the Supreme Judicial Council also passed its circular number-43383 on 7 December 1982, which recognized the death sentence for drug-related offences based on the aforementioned fatwa. This circular states that: '...issuing [the] death penalty for drug-related offences is appropriate and in accordance with the Islamic principles, if the offender's action has been to such an extent that it can be regarded as spreading corruption on earth'.² Thus, 'spreading corruption on earth' became the charge and the sharia-accepted justification for executing drug offenders. In the years that followed, the aforementioned fatwa was referred to by the judges as a basis for issuing death sentences to drug traffickers, until a regulation was passed by the Expediency Council³ in 1988 based on the same fatwa; which has been, with only slight modifications, used as a reference for issuing death sentences until today. Over the past 38 years, thousands of drug offenders have been executed and thousands more are on death row. Drug-related cases are dealt with in the Islamic Revolutionary Courts; although these courts are not authorized to do so. As per Articles 159 and 61 of the Constitution, all criminal investigations must be carried out in public courts. Because of the history behind the formation and initial objective, the Revolutionary Courts do not follow the usual formalities carried out in the public courts. In addition, the legal documents used for issuing death sentences have some serious and fundamental problems, some of which will be discussed in brief:

1. The first problem is that the Islamic Republic still lacks a legally-approved anti-narcotics law. The Revolutionary Courts still refer to the regulation passed by the Expediency Council for issuing death sentences, whereas the official legislator in Iran is the Islamic Parliament (Majlis). Only in such cases where differences of opinion arise between the Parliament and the Guardian Council and the Parliament's decision does not meet the Guardian Council's requirements, the matter is forwarded to the Expediency Council for approval and only in such conditions does the Expediency Council's decision find a legal basis.⁴ The anti-drug regulation has not gone through such procedure and was passed directly by the Expediency Council, contrary to the Constitution. The introductory section of the Council's regulation states that the Supreme Leader of the Islamic Republic regards the issue of illicit drugs as a scourge [for society] and has therefore put the Council in charge of addressing the issue, with reference to paragraph 8 of article 110 of the Constitution. According to this paragraph, the Council shall offer advisory opinions to the Leader on matters that cannot be resolved through normal channels. This is while; firstly, in this case, the Council has entered directly into legislation rather than offering its advisory opinion. Secondly, paragraph 8 of Article 110 of the Constitution states that the Council shall offer advisory opinions to the Leader on matters that cannot be resolved through normal channels. These include such matters that arise unexpectedly and in such circumstances where there is not enough time for the Parliament to resolve it through normal procedures. Ongoing and prevalent social problems such as the issue of illicit drugs should not be resolved through unusual and unlawful channels, but need to go through the normal process of legislation by parliamentary experts. Thirdly, the advisory opinions by the Council include temporary solutions to resolve unexpected and transient matters. Providing a permanent and sustainable solution to resolve ongoing problems is the responsibility of the legislative body.
2. The laws related to drugs and the execution of drug traffickers were enacted without going through the necessary social and legal debates, without professional studies on the social consequences of their implementation, without the presence of people's representatives and by an institution that lacks legislative power. That is why these laws have not only failed to solve the drug problem in the country, they have added to the existing problems. The increasing difficulties for the families of the executed

¹ Refer to www.vekalatonline.ir

² Ibid.

³ The body that mediates disputes between the parliament (Majlis) and the Guardian Council (the powerful body of 12 high level clerics that advise on legislation, election eligibility and other issues).

⁴ Article 112 of the Constitution of the Islamic Republic of Iran.

persons, pressures by international and human rights groups on the country and the distortion of Iran's global image are some of the consequences of implementing the aforementioned laws and executing the drug offenders in large numbers. The death sentences continue to be issued, while many Iranian officials have repeatedly acknowledged the fact that the executions have failed to deter the drug-related offences and have even added to the existing problems.⁵ When a penalty, especially the death penalty, has not only been ineffective in deterring a particular crime, but even resulted in further negative consequences, it would be logical and moral to stop its implementation immediately.

3. Another problem is the use of the term sharia (Islamic law) for offences related with drug trafficking. When a crime comes under the banner of sharia, in a religious system, executing the sentence itself becomes the objective, irrespective of its consequences. The same is true for all other sharia-defined laws. The term 'spreading corruption on earth' has been used in describing drug-related offences, whereas using the term in relation with drug trafficking has no reference in religious texts and narratives, and consequently in fiqh. Use of the term was solely based on a personal decision by Ayatollah Khomeini, without any valid explanation according to sharia. The aforementioned fatwa was issued based on Verse 33 of Surah Al-Ma'idah, also known as the verse of Moharebeh (waging war against God). This verse addresses a group of thieves whom the Prophet had trusted and sheltered and permitted them, who were sick and weak, to drink from the milk of the camels that had been collected as charity. After they recovered, the men stole the camels, killed some men and fled.⁶ The aforementioned verse refers to these men as 'those who have waged war against God and His Messenger and spread corruption on earth'. This verse sanctioned punishment by death for those men; but the Prophet Mohammad did not sentence the men to death.⁷ Implementing the punishment which was not even applied to a group of thieves 14 centuries ago in the Hejaz region to deal with drug traffickers today indeed has no reasonable justification. Subjecting drug traffickers to the death penalty is also not justifiable by the usual fiqh arguments - because drug trafficking has no certain punishment in the sharia laws and therefore does not fall under the category of hudud⁸ - but rather in the traditional jurisprudence, it falls under the category of tazirat⁹ and tazir cannot be harsher than hadd. This is while, in the case of drug trafficking, the highest of the hudud punishments has been applied to a crime of the tazir nature, which is contrary to Islamic jurisprudence.
4. Another important point is that any punishment should be proportionate to the gravity of the crime committed. The death sentence is traditionally and legally not proportionate to the offence of drug trafficking, and all international regulations and global conventions, to which Iran has pledged obedience, regard this as an inappropriate punishment. Moreover, the death sentence is not just limited to drug traffickers, but any person found carrying more than 30 grams (even if only 31 grams) of heroin, cocaine and morphine.¹⁰ Issuing the death penalty for such cases is inappropriate and cruel.

Sharia is used as a means to justify the death sentences, whereas the Quran, Islam's most sacred text, has not encouraged the death penalty even in case of homicide, which is regarded as the greatest sin, and invited people to forgive rather than seek retaliation.¹¹ It can be understood from explicit verses of the Quran that it did not automatically support the notion of 'a life for a life' even at the time. Therefore, it is reasonable to argue that it would not approve of taking lives for other crimes either. In the old days, human life was often regarded with a low value and therefore in practice the death penalty was recognized as a common punishment. In today's world, a progressive idea has emerged that tries to remove the death penalty from the list of punishments. Removing the death penalty from drug-related offences - a criminal sanction which has no historical reference or validity in sharia and is in fact against sharia - would be a huge step toward understanding that killing offenders instead of punishing them and ignoring the circumstances that have led to the offence is an unreasonable, harmful and inhumane act. It could be said that recognizing the death sentence is equivalent to legalizing murder.

⁵ For example, refer to the remarks made by the spokesperson of the Parliament's judicial committee and the statements of the former head of Tehran's Criminal Court as well as comments made by Director-General for Legal and Parliamentary Affairs of the Drug Control Headquarter in Iran newspaper, dated December 9th 2015.

⁶ Al-Hural-Aamili, Wasa'il al-Shi'a volume 28, narration no. 34836, Aal al-Bayt Le Ihya al-Turath institute, Amman; And Muhammad Ibn 'Omar Waqidi, Al-Maghazi volume 2, page 431, university publication, second edition, 1990.

⁷ Al-Hural-Aamili, Wasa'il al-Shi'a volume 28, narration no. 34836.

⁸ Hadd (plural: Hudud) in the Islamic jurisprudence refers to the punishments for offenses for which particular punishments have been specified in the Quran or the Hadiths, such as a hundred lashes for adultery or hand amputation for stealing.

⁹ Tazir (plural: Tazirat) refers to punishments for offenses for which no punishment has been specified in the Quran or the Hadiths, such as imprisonment of drug traffickers.

¹⁰ Paragraph 6 of article 8 of the Anti-Narcotic Law and its amendments, approved on October 25, 1988 by the Expediency Council.

¹¹ Refer to the Quran: Ma'idah/45 and 32, Baqarah/178, Shora/ 40 and Nahl/126