

Execution: Efforts to stop executions including juvenile executions in Iran

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A historical overview

Putting citizens to death and ordering executions by authorities and those in positions of power is a typical and punitive phenomenon that, until relatively recently, both with and without the approval of judicial authorities, was included in the laws of all countries.

Even now, state-sponsored forms of violence and the assassination of political groups impact upon the lives of many. The earliest references to the just treatment of people's rights in the history of civilisations include Confucianism, Buddhism and Mithraism (during the reign of Cyrus the Great); during the early days of Christianity through the state (for example, Emperor Constantine, who began to formalise Christianity as the state religion of the Roman Empire, and banned crucifixion); as well as the early days of Islam and the initial Caliphate. Important political discourse surrounding the notion of 'treat others as you wish to be treated' were to some extent reflected in these instances. However, this imperative yielded greater ethical dimensions than those of legal or penal.

In contemporary times, it was during the enlightenment era when, for the first time, a thinker called Cesare Beccaria, in his book entitled 'On Crime and Punishment' referred to the inhumane nature of execution and raised a call for the eradication of execution in specific cases. Written in 1764, Beccaria's book was one of the best selling books of its time. According to Beccaria, execution does not lead to a decrease in the number of criminals/crimes. Therefore, one of the most important reasons used by legal authorities and states for the use of execution was seriously questioned.

Following this book and the increase in the level of knowledge and public awareness, many citizens, intellectuals, civil rights activists and scholars began their efforts to fight against execution. Among them was the Heidelberg University scholar, Carl Mittermaier whose second book called 'death penalty' was published in 1830. They were among well-known figures in Germany and Scandinavia who raised their voices against execution and began to popularise their point of view among the masses.

In 1867 Portugal became the first country to eradicate the execution of criminals during peace time. In 1870 Holland, in 1889 Italy, in 1902 Norway, in 1921 Sweden and in 1930 Denmark were among European countries that also stopped the use of execution in times of peace. Unfortunately this human rights-led and humane approach was later set aside by fascists in Italy and Spain, Nazis in Germany and Stalin's dictatorship in the Soviet Union. The murder of dissidents, Jews and Roma were conducted by those regimes but countries that regard themselves as liberal and supportive of human rights also conducted courts such as Nuremburg and ordered the execution of Nazi and fascist criminals¹.

Human rights conventions and execution

Following the 1948 ratification of the Universal Declaration of Human Rights in Paris, a new process for the stay or abolition of execution got underway. This process was similar to that prior to WWII. Many countries abolished execution either during peacetime or entirely. Following many years of negotiation², in 1965 the UK signed a bill to abolish the death penalty.

It is important to note that, among European politicians, in spite of their dynamic relationship with the social sciences, where the notion of abolishing the death penalty had been prevalent for many years, the fear of public opinion, which viewed execution as a means of violence prevention, stopped them from openly expressing their views or approving laws against the death penalty. To this day, public opinion is an important factor in accepting or rejecting execution as a form of punishment. Therefore, the most effective way of abolishing the death penalty must be through a two-track approach. The first step is to raise public awareness and share information about the lack of impact execution has in decreasing rates of crime and violence. The second must be working with policymakers.

It is interesting to note that the European Convention on Human Rights that was approved in 1950 did not identify execution as a form of punishment. This was added following a substantial delay in 1983 in an amendment to protocol 6 of the Convention that abolished the death penalty in peacetime.³ Much later,

¹ De mänskliga Rättigheternas Väg – genom historia och litteratur, Ove Bring, 2011, s: 602-613

² The Abolition of Death Penalty Act (ADPT), 1965

³ Council of Europe, Protocol No. 6 to The Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, as amended by protocol No.11, April 1983, http://www.echr.coe.int/Documents/Library_Collection_P6_ETS114E_ENG.pdf

in 2002, in another amendment known as protocol 13, execution at all times, including during war, was abolished among the member states of the Council of Europe, a mere 15 years ago.⁴

What is important to note here is that changes in culture in our society and acceptance of societal norms and new policies require fundamental change in a society. Gradual changes in public opinion can result from a change of policy. Policymakers introduce new laws. Then economic and social conditions transform and finally the masses, meaning society as a whole, begin to accept these changes. Research in legal advances, the evolution of norms and constructs by political sociology and social sciences in general point to the fact that the political schools of the modern era, in particular humanists, social democrats, liberals, feminists and activists, in harmony with other groups and modern parties, are among the most important social forces demanding the abolition of the death penalty.

It is important to emphasise that the struggle for access to human rights for all is not a struggle for equal rights for all during the contemporary era, but a long term process that stems from the earliest days of groups and communities. However, it is only during the modern era that, following the formation of judicial and legal institutions, and those responsible to act as a check on institutions of power, that the influence of individuals and authoritarian processes have been diminished, and gradually, in democratic countries, human rights have been recognised as a political norm.

In other words, that democracy and human rights each necessitate the other is not natural or God-given. It is possible, even in democratic societies to regress to dictatorship and authoritarianism. In 21st century Europe, the possibility of extreme nationalists and those in favour of radicalisation such as the Front National in France, UKIP in the UK, the Sweden Democrats, the Danish People's Party in Denmark and Geert Wilders' Party in the Netherlands reversing progress on human rights and reinstating the death penalty is real. The election of new US President Donald Trump could also potentially reverse recent steps taken to reduce the use of the death penalty in America. However, the point is that human rights-friendly and democratic states must be re-enforced and protected by civil society organisations.

How to measure the rate of universal rights

Issuing and carrying out executions is an important indicator for the lack or presence of democracy, human rights laws, due process and functioning of judicial systems around the world. As of 2016, in 104 countries the death penalty is entirely abolished and in 36 countries it is temporarily banned. Therefore, in more than 75% of the member states of the United Nations, execution is no longer applicable or currently not being carried out. The number of those put to death in 2016 is estimated at more than 2,000. This rate does not include those executed in China due to a lack of reliable data. In addition, around 20,300 individuals await their execution.⁵

As mentioned above, execution or death sentences against citizens by the authorities in charge based on current bodies of law was a regular occurrence until the end of WWII. Tradition, social norms and practices, religion and ideology played an important role in the maintenance of capital punishment.

For instance, in Muslim majority countries, according to the laws of Islam, citizens can refer to the laws of qesas⁶ and demand execution in cases involving murder. In such cases, other legal sanctions must be replaced by execution. In other words, two forms of punishment take place: legal/judicial and religious.

Iran and juvenile executions

According to Iran's laws the age of criminal responsibility is 15 years for boys and 9 years for girls. If a crime takes place prior to the age of 18 the case is placed in a queue and usually executions are carried out after the accused reaches the age of 18. International human rights conventions condemn the execution of those who have committed crimes whilst below the age of 18. This means that issuing death sentences for those below the age of 18 can be argued to be illegal. Usually those below the age of 18 when committing a crime are sentenced to serve periods involving rehabilitation and education.

According to reports issued by the Human Rights Commission of the United Nations, Amnesty International and Human Rights Watch, along with Saudi Arabia, Pakistan, Sudan and Somalia, Iran continues to subject

⁴ Council of Europe, Protocol No.13 to The Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, May 2002, http://www.echr.coe.int/Documents/Library_Collection_P13_ETS187E_ENG.pdf

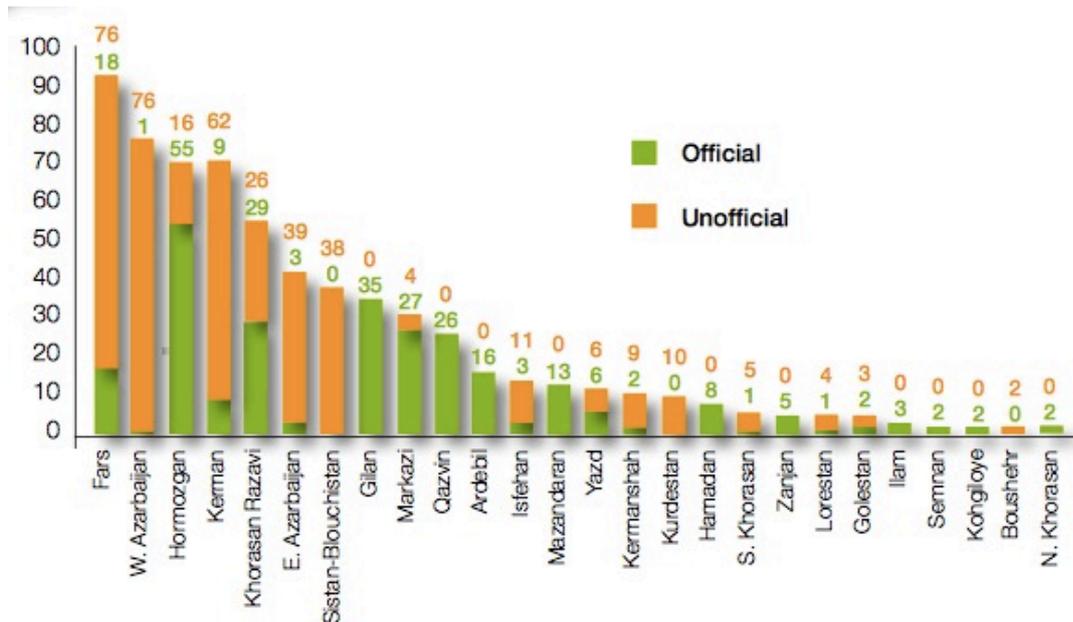
⁵ Amnesty International Sweden, Facts on the Death Penalty, December 2016, (in Swedish) <http://www.amnesty.se/vad-gor-vi/dodsstraffet/fakta-om-dodsstraffet/>

⁶ The victim's family's legal right to retaliation, to demand the execution of the perpetrator in cases of murder

juvenile offenders to execution. This practice is in contradiction with the framework of the International Convention for Civil and Political Rights as well as the Convention on the Rights of the Child.

The most recent reliable news about rates of juvenile executions in Iran was published towards the end of January 2017 on the website of the UN Human Rights Commissioner and states that during 2016 at least 5 of those sentenced to death in Iran at the time of committing the ‘crime’ were not of legal age.⁷

There are no official statistics to determine the national or ethnic identity of those juveniles who are facing execution or have been executed, however, it is possible to argue that, due to the centralist policies of the Islamic Republic, marginal communities and regions, in particular Kurdistan, Khuzistan, Adharbaijan, Turkiminstan, and Baluchistan, may be disproportionately affected. Most of Baluchistan, much of Khuzistan, and Kurdistan face poverty and unrest is rampant in these parts of the country. It appears that the number of juveniles executed in Balushistan, Khuzistan and Kurdistan may be relatively higher than in other regions.



The diagram above shows the geographical distribution of the official (green) and unofficial/unannounced (yellow) executions in other parts of Iran than the in the Tehran/Karaj area. Prisons in the provinces of Fars (south), West Azerbaijan (northwest), Hormozgan (south) and Kerman (southeast) had the highest number of executions. Hormozgan province had the highest number of officially announced executions.

What does the Islamic Republic claim?

Islamic Republic officials share others’ views. In his response to a question regarding juvenile executions, Alireza Jamshidi, the spokesperson of the judiciary, stated: “As you know we do not have execution for those below the age of 18. What appears in our laws for those between the ages of 15 and 18 is qesas. We have prepared a bill in this regard that in case of approval will be implemented.” He added: “Our perspective regarding those whose age at the time of committing a crime may have been below 18 involves peace and reconciliation. Fortunately, in some cases, the case has reached an amicable end. With regards to the case you are questioning, he was above the age of 18.”⁸

Penal codes and Islamic punishments

Penal codes in Iran are in accordance with Islamic punitive laws. In other words, fatwas and legal processes that stem from 1,400 years ago. Since 2007 the process of approving a revised penal code has been ongoing and in 2013, after addressing concerns expressed by the Guardian Council, the revised code was approved by the Islamic Republic Parliament and has begun implementation. The greatest and most comprehensive

⁷ UN Human Rights- Office of the High commissioner, UN experts urge Iran to halt juvenile’s execution, January 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21093&LangID=E>

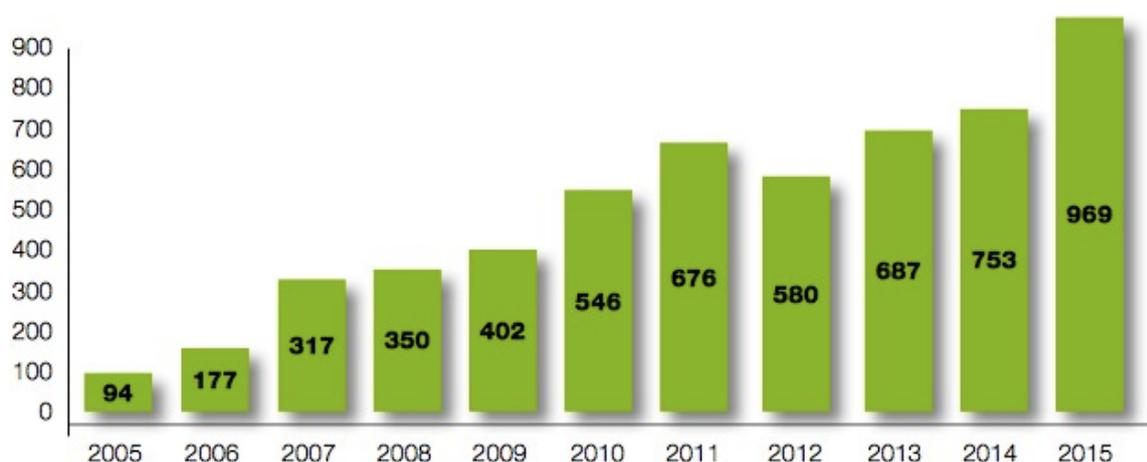
⁸ Gooya News, Wednesday, June 2008, <http://news.gooya.com/politics/archives/2008/06/073008.php>

challenge to the new penal code, much like the original penal code, is that of hadd⁹, qesas, death penalty and the age of criminal responsibility, set at 9 for girls and 15 for boys, stemming from Islamic law.

Based on Article 78 of the new code, children and teens below the age of 12 who commit a crime are introduced to social workers, psychologists or educational and cultural institutions in order to receive training. However, youth between the ages of 15 and 18 who commit a crime face hadd or qisas which may result in execution after they reach the age of 18.

Despite the fact that in the revised Islamic penal code the legal and public nature of penal laws are emphasised¹⁰, lawmakers have determined punishments based on sharia laws, and since there are varying interpretations of Sharia among clerics, then the principle of equality before the law is violated.

Ayatollah Sanei has determined the age of maturity and legal responsibility at 13 years. In other fatwas physical characteristics have been noted in place of age. Ayatollah Fazel Meybodi states: “Maturity is an evolutionary and natural phenomenon and lawmakers cannot reject or validate it and say: a 9 year old girl is automatically mature.”¹¹ In summary, it can be stated that Islamic Republic penal codes are based on feudalist standards where clerics and judges make legal and penal pronouncements according to their own inclinations. Instances of miscarriages of justice, random sentences and inhumane punishments over the past four decades are rampant¹². Subsequently, the number of executions over the past decade has grown at least ten-fold. Therefore, the struggle for the abolition of the death penalty and juvenile executions in Iran must continue more than ever before.¹³



Since the first annual report by IHR in 2008 the number of executions increased by about 300%. With 969 executions 2015 was the year with the highest number of executions since 1990. (Numbers prior to 2008 are reported by Amnesty International).

⁹ Oxford Islamic Studies, A punishment fixed in the Quran and hadith for crimes considered to be against the rights of God. The six crimes for which punishments are fixed are theft (amputation of the hand), illicit sexual relations (death by stoning or one hundred lashes), making unproven accusations of illicit sex (eighty lashes), drinking intoxicants (eighty lashes), apostasy (death or banishment), and highway robbery (death). <http://www.oxfordislamicstudies.com/article/opr/t125/e757>

¹⁰Please see full English text of the revised code at: <http://www.iranhrc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>

¹¹Meybodi, F. 1995. “Puberty from Theological and Professional Perspectives”, Farzaneh Journal, Volume II, No.

¹²Please see the full text at: <http://www.iranhrc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>

¹³ Both charts are from the Iran Human Rights 2015 annual report available on-line at: https://iranhr.net/media/files/Rapport_iran_2014-GB-120314-BD.pdf