

The Deterrent Effect of Death Penalty on the Behavior of the Potential Perpetrators of Death-Deserving Crimes in Iranian Criminal Justice System

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Abstract:

Amongst the most important issues with which Iran's criminal justice system is faced is finding a solution by which the narcotics' problem can be controlled and managed. To do so, the legislator has tested various strategies the last example of which is appending an article to the law on fighting narcotics in 2017; by the force of this appended article, the crimes deserving death are reduced and long incarcerations and financial punishments including pecuniary penalties and confiscation have been predicted. The present study shows that replacement of incarceration for death penalty does not damage the deterrence of the punishments considering the non-enforcement of a great many of the death verdicts at the time of the governance of the former law provided that the incarcerations predicted in appended article 45 are actually put into practice and their deterring effects are not diminished by instruments flawing the certainty of the punishments. However, in regard of the pecuniary punishments, the amounts specified in the law are a lot lower than being capable of properly deterring the narcotics-related crimes because the panorama of these crimes' financial interests goes well beyond the sums predicted in pecuniary punishments for the perpetrators. In this regard, the aforesaid punishment lacks the required deterrence.

Keywords: the law on fight against narcotics, death penalty, long-term imprisonment, cash pecuniary, deterrence

Introduction:

The narcotics-related crimes have always been one of the problems in the face of Iran's criminal justice system and the legislator has endeavored in various periods to think of a solution through various strategies for overcoming this problem and reducing the harms stemming from such crimes that directly and indirectly constitute the highest quotient of Iran's criminal population. The last solution devised by the legislator in this regard has been manifested within the format of "the law on the appending of an article to the law

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on fight against narcotics”, passed on 23rd of October, 2017³. Previously, the legislator thought the narcotics-related crimes can be controlled via increasing the severity of the punishments but he is presently thinking of other policies and, considering the domestic and transnational matters and expediencies, he has taken the first steps towards criminal retrogression in the area of criminal reaction to the supply of narcotics.

In sum, the most important changes created in article 45 that has been appended to the law on fight against narcotics can be recounted as shown below:

Firstly, limitation of the cases of death penalty’s enforcement;

Secondly, transformation of death penalty to imprisonment for more than 25 years to 30 years in addition to pecuniary punishment for amounts above one billion to two billion RIALS and confiscation of properties gathered via selling narcotics;

Thirdly, transformation of life sentence to over 15 to 25 years in addition to pecuniary punishment for over 550 million RIALS to one billion RIALS and confiscation of the properties acquired via selling narcotics.

These changes can be investigated from various jurisprudential, political, sociological, human rights, criminological and other perspectives. The present study aims at exploring this legislative innovation from the perspective of the punishment’s deterring function and dealing with this issue that how the change in the criminal policy in the

³According to this single article: “an article with the following explanations will be added to article 45 of the law on the fight against narcotics ...:

Article 45: perpetrators of crimes that have been mentioned in this article as deserving death penalty or life sentence will be considered as widespread corruptors hence sentenced to death and confiscation of the properties acquired through smuggling of the narcotics or psychotropic drugs in case of having one of the following conditions, otherwise the individuals deserving death penalty will be sentenced to first degree imprisonment from one to thirty years and degree one pecuniary punishment up to twice as much of its minimum; the individuals with life sentence will be sentenced to degree two pecuniary punishment and, in both of the cases, confiscation of the properties acquired from selling narcotics and psychotropic drugs:

- a) In cases that the crime accomplice and/or at least one of the crime participants has used a firearm during the crime perpetration or when they are found having a firearm and/or hunting weapon carried along with the intention to fight the agents.
Weapon in this paragraph means cold weapon, firearm and ammunition as stated in the law on the punishment of arms and ammunitions’ trafficking, passed on 29th of August, 2011, hence it includes the owners of the illegal weapons and ammunitions.
- b) In case that a person is found having headed (article 130 of the Islamic penal code of law passed on 21st of April, 2013) or financially sponsored and/or invested or used the children and adolescents below 18 years of age or insane persons for perpetrating the crimes.
- c) In cases that the perpetrator of the crime subjects of this law is found with a past history of decisive death penalty or life imprisonment or incarceration for more than fifteen years.
- d) All the crime subjects of article 4 of this law provided that the smuggled narcotics amounts to over 50kg and drug subjects of article 8 in this law provided that the smuggled substances amount to over 2kg and in case of the other crime subjects of the article 8 provided that the smuggled drugs amount to over 3kg. The enforcement of this paragraph for the perpetrators, culprits and criminals before the declaration of this law’s indispensability is suspended on the possession of one of the conditions mentioned in paragraphs (a), (b) or (c) ...”.

abovementioned manner influences this most important goal of punishment from the perspective of the crime's economic analysis.

In proportion to the three above-presented axes, the present study has been organized in three sections in each of which the changes created by the new law will be considered and the positive and negative aspects of it will be elucidated in terms of the achievement of such a goal as the punishment's deterrence.

1. Limitation of Death Penalty:

The primary goal of the bill that eventually led to the appending of article 45 to the law on the fight against narcotics was the reducing of the cases of resorting to death penalty in this set of crimes in such a way that some of the codifiers seminally called it the plan for cancelling death penalty for narcotics' smuggling. In line with this, the article appended in 2017 limits the death penalty in narcotics-related crimes to cases like crime's perpetration along with the use of firearms or the use of minors and insane persons for the perpetration of crime and the other cases are sentenced to "incarceration for over 25 to 30 years in addition to pecuniary punishment for over one billion to two billion RIALS and confiscation of the properties gathered via smuggling". This way, the domain of the death penalty in narcotics-related crimes was severely narrowed. Now, the question is that how has the punishment's deterrence been changed with the reduction in the cases of resort to death penalty?

To find an answer to this question, attention should be firstly paid to this matter that whether death penalty serves a deterring function or not; if yes, does the death penalty in narcotics' crimes have the conditions required for creating a deterring effect in a quality previously existed in Iran's criminal justice system or not?

Death penalty is amongst the oldest punishments used by various communities for responding to crime. In fact, if the trends of criminal laws' evolution is succinctly investigated from the ancient times up to now, it can be seen that as soon as the states gained enough power for giving up their observing and intermediating role between the victim and the criminal and become the enforcers of punishment, they started using death penalty as one of the primary options for exerting their own penal authority⁴. In the book "lectures on jurisprudence", Adam Smith clearly explains the process of the death penalty's formation and its transformation into one of the primary punishments in the ancient punitive systems. He explains that the government was solely a mediator for resolving the discrepancies between the tribes in the ancient punitive systems. For example, if a tribe usurped a piece of land that belonged to another or if a member of one tribe was found having murdered a member of the other, the government intervened and resolved the hostilities via a sort of loss compensation.

⁴Hylton, Keith, (2005), "The Theory of Penalties and the Economics of Criminal Law", vol. 1, Review of Law and Economics, p. 191

“The reason for such a faint role was the government’s weakness during those times and such weakness made intervention in the individuals’ affairs very difficult. Therefore, government was seminally acting as a mediator to prevent the wars and blood-sheds that could come about following the murdering of a person ... At that time, the government’s role in respect to the crimes was the role it is currently playing for the civil damages, to wit the government’s goal of intervention is preventing the society’s order. The crimes had been perpetrated in the past and the government could not do anything about it. The government only intervened to prevent the intensification of the adverse results thereof”⁵.

After the governments became more powerful, their role, as well, was transformed from mediator to crime investigation and punishment specifier and enforcer⁶. In these preliminary periods of the government’s accumulation of more power, almost all criminal behaviors were punished by very heavy penalties, especially death⁷. But, after these communities become more advanced gradually, the severity of punishments was reduced but not for all the crimes⁸. At first, the punishment of crimes that could be easily discovered was decreased. Death penalty and the other heavy punishments were preserved still for the crimes that could not be easily discovered as well as for crimes that the chances of their perpetration were numerous as compared to the chances of their discovery⁹.

“History presents a lot of examples of this kind. The laws of the Romans’ twelve tables that pertain to the period of loss compensation perspective’s commencement sentenced a great many of less important crimes to death penalty. The punishment of insolence was death. But, later on, the rulers replaced these punishments with lighter penalties which were more consistent with the then people’s imagination of justice. In the same way, the first law that the Greeks enacted after discarding the loss compensation method was Draco Law which was extremely excessive and

⁵Smith, Adam, “Lectures on Jurisprudence”, Stein, Peter, et al (eds.), Glasgow Edition, 1763, republished by the Liberty Fund in 1982, p. 106

⁶Foruzesh, Ruhollah, (2008), “the position of reparatory justice in Islamic jurisprudence and Iran’s laws”, Tehran, Khorsandi Publication Institute, p.25

⁷Morris, Norwall and Rotman, David (editors), “the history of prison (the adventures of the methods of punishment enforcement in western communities)”, trs. Muhammad Reza Gudarzi Borujerdi et al, 2005, Tehran, Mizan Publication Institute, p.46

⁸ Decrease in the severity of the punishment and withdrawal from the very harsh punishments can be interpreted in line with these newly emerged governments’ acquisition of legitimacy, as well. The punishments that are extremely harsh probably make the government appear despotic in the eyes of the citizens and this makes them disobedient; in this regard please see Williams, Frank and Mac Shin, Marline, (2004), “criminological theories”, tr. Hamid Reza Malekmohammadi, Tehran, Mizan Publication Institute, pp.36-37

⁹As an example, in the Romans’ twelve tables, the common punishment for robbery is pecuniary punishment for an amount twice as much that of the stolen property but the punishment for the robbery of the agricultural instruments (like plow) is death penalty. The customs and traditions of the villagers’ life especially in the past have been in such a way that these instruments were left on farm without protection and guard. Due to the same reason, the chances have been very high for the perpetration of the related crimes like stealing of them. In the twelve tables, the person who harvests the others’ crops at night or grazes his animals on another person’s crops at night is also sentenced to death penalty. In this case, as well, it can be seen that the difficulty in identifying the criminal caused the determination of the severe death penalty.

sentenced nearly all crimes to death penalty ... These were subsequently substituted by milder and more just Solon regulations. Similarly, in the then Britain, as well, most of the crimes encountered death penalty ... But, the first punishment discarded after the transition from loss compensation period was the most severe punishment that was replaced with lighter penalties in line with the society's progress.¹⁰

Therefore, death penalty originally belongs to the period at which the government had been newly formed and did not have the ability of supplying punishment's "certainty" in an optimal level hence it endeavored to safeguard the favorable deterrence of punishment via setting punishments with maximum severity¹¹. This issue is not just a historical point rather it is implicitly accepted in every case of death penalty's prescription that the ability of supplying favorable punishment certainty is missing¹².

Death penalty has also been the subject of many discussions in the contemporary era and one can possibly claim that the intensity of the controversies over this punishment is more than any other penalty. These discussions and disagreements about death penalty are centered about to primary pivots: the first is acceptability of this punishment in ethical and other terms and the second is this punishment's deterrence.

The present study does not intend to deal with the ethical issues related to death penalty as a primary subject so it is not more unraveled. The rest of the discussion is concentrated on the deterrence of death penalty.

Every case of death penalty enforcement has two completely different and contradictory effects: the first is the brutalization effect. Death penalty causes the creation of a setting of violence in the society and it presents the individuals with this pattern that they can revenge a person who has caused them problems by killing. In this way, death penalty causes the declination of the position of "life" in the minds of the society members¹³ and, in this regard, it per se becomes a factor giving rise to the perpetration of crimes. Death penalty also has a deterring effect¹⁴. Death penalty potentially has the highest deterrence rate (assuming the stability of the other factors influencing the deterrence, especially certainty and

¹⁰Smith, Adam, *Ibid*, p. 130

¹¹To see examples of extreme severity in enforcing the punishments, please look at Martinege, Rene, (2006), "the history of Europe's criminal law", tr. Muhammad Reza Gudarzi Borujerdi, Tehran, Majd Publication Institute, pp.83 on; Foucault, Michel, (2005), "protection and punishment: birth of jail", trs. Nikoo Sarkhosh and Afshin Jahandideh, 5th ed., Tehran, Nay Publication Institute, pp.11-14

¹²Posner, Richard, (1985), "An Economic Theory of the Criminal Law", *Columbia Law Review*, vol. 85, p. 1212

¹³Of course, this issue depends on the idea that the value of life should have not been previously declined by means of other factors in the society members' minds. Thus, in societies that the individuals' violence threshold is low and deprivation of others from their lives does not seem to be a far-fetched solution for resolving the problems, talks should be carefully made about the idea that death penalty has brutalization effect. In such communities, death penalty has a lower or essentially no brutalization effect.

¹⁴Shepherd, Joanna, (2005), "Deterrence Versus Brutalization: Capital Punishment's Differing Impacts Among States", *Michigan Law Review*, vol. 104, p. 206

speed of punishing) amongst the various punishments. The most important hindrance on the path of the death penalty's deterring effect is that its certainty is little. This issue specifically originates from the cautions exercised for preventing the issuance of wrong death sentences. Disregarding some exceptional cases, death penalty is amongst the most severe punishments in various legal systems but it has the lowest error rate in comparison to the other punishments. If the statistics of mistaken convictions and sentence issuance is found higher than an acceptable level in a legal system, it is possible to reduce the percentage of the wrong sentences and convictions via increasing the investigation stages, increasing the number of trying judges and/or limiting the acceptable proofs in the courts. But, the problem that may arise here is that it is practically impossible to devise a program capable of reducing the likelihood of wrong convictions without decreasing the possibility of right convictions. For instance, if strict regulations are set for accepting the proofs in the courts with the intention of decreasing the cases of wrong convictions, the aforesaid goal can be accomplished but at the cost of reducing the correct convictions, as well, because the convicts who have truly perpetrated crimes will be provided with such privileges. False convictions are reduced but, simultaneously, incorrect exonerations and cases of punishment non-enforcement will be also increased for a reason or another, as well. The result of such an issue is nothing except the reduction of the death penalty's certainty and this gives rise to a situation existed about death penalty in the narcotics-related crimes in our legal system in such a way that two thousand (i.e. 9%) out of the 125 thousand narcotics-related cases have led to the issuance of death penalty but only 12% of the sentences have been enforced and the rest has been either forgiven or invalidated by the country's Supreme Court¹⁵. The other studies show that the death penalty has been transformed to life sentence in some years in 70% of the opium smuggling cases and 90% of the heroin smuggling cases for various reasons¹⁶.

This way, certainty of the death penalty is lower than the other punishments. On the other hand, "the expected punishment" is a combination of the punishment severity and certainty. Expected punishment is a concept different from punishment specified in law. The expected punishment is specified based on two indicators, namely severity and certainty. In this way, it can be seen in a comparison of death penalty and life sentence in this regard that the life sentence has a lower severity but a higher certainty whereas death penalty features a higher

¹⁵Kazemi, Mas'oud, (2013), "the effect of death penalty on the deterrence of the narcotics and psychotropic drugs-related crimes", seasonal journal of social health and addiction, (4): 104 cited in Akhavan, Bahar, (2017), "investigation of the death penalty commutation in narcotics-related crimes", human right research journal, (9): 53

¹⁶Qannad, Fatemeh, (2000), "investigating the proportion between crime and punishments in narcotics-related crimes in Iran's legal system", international scientific-applied conference on the various aspects of the criminal policy in respect to narcotics, v.1, formal newspaper publication, p.233 cited in Pourbaferani, Hasan and Masayeli, Amin, (2017), "criminological analysis of death penalty in the law on fight against narcotics", congress and strategy, fall, (91): 149

severity and a lower certainty. The higher the severity of a crime's punishment, the lower the likelihood of a person's being sentenced thereto¹⁷. Based thereon, a situation may possibly come about in which the severity of the legal punishment is increased but the expected punishment may actually be decreased. Such a situation occurs when the certainty reduction decreases the expected punishment more than the severity increase adds thereto. Resultantly, the general balance of this addition to the punishment severity is negative. This same situation existed about the death penalty in narcotics-related crimes in our criminal system. The death penalty cases that had been predicted in our law were numerous. However, the very low certainty of these punishments had made these crimes' perpetrators gradually understand that the death penalty is very much probable to be not enforced for them. Considering this reality, it can be stated that although the limitation of death penalty use in the appended article 45 of the law on the fight against narcotics reduced the severity of the punishments, no considerable change was actually brought about in the "expected punishment" for the perpetrators of narcotics-related crimes according to the higher "certainty" of the punishments replaced for death penalty, i.e. incarceration, and, in this regard, the punishments' deterrence did not undergo any change.

From another viewpoint, limitation of death penalty in the narcotics-related crimes is aligned with the teachings of deterrence theory. Resort to death penalty in narcotics-related crimes is in contradiction to "marginal deterrence" or the restrictive deterrence with the explanation being that deterrence is of different types: the most well-known classification of the deterrence is a classical categorization thereof into general and specific deterrence. The general deterrence includes the general public of the society while the specific deterrence holds true about the criminals. In other words, general deterrence is the prevention of the potential criminals from perpetration of the initial crime whereas the specific deterrence incorporates the inhibition of the crime perpetrators from repeating the criminal action¹⁸.

However, the other kinds of deterrence, as well, have been noted by some of the writers, including the absolute deterrence and restrictive deterrence¹⁹. Absolute deterrence points to a situation wherein an individual decides to perpetrate a crime but s/he refrains from doing so for the fear of punishment.

Restrictive deterrence encompasses the assumption that the active criminals reduce the number of their crime perpetration times or the severity of their crimes so as to lower the likelihood of their apprehension and punishment. As a specimen, in some of the cases, the punishments' threat is not so intense that it can make the potential criminal completely withdraw from crime perpetration but it makes the perpetrator limit the domain of his or her crime. For example, the

¹⁷ Kleiman, Mark, *When Brute Force Fails: How to have less crime and less punishment*, Princeton, Princeton University Press, 2009, p. 93

¹⁸Salahi, Javid, (2008), "criminology and new perspectives", Tehran, Mizan, p.30

¹⁹Gholami, Hussein, (2003), "recidivism (legal and criminological investigation)", Tehran, Mizan, p.89

perpetrator may not be dissuaded from perpetrating robbery but because s/he knows that the expected punishment for robbery accompanied by annoyance is more intense in terms of both severity and certainty than the expected punishment for a simple robbery, s/he may avoid resorting to violence and annoyance in the course of robbery and keep his or her criminal action within the limits of a simple robbery. In this presumption, the criminal justice system is incapable of absolute deterrence but it has been able to actualize restrictive deterrence. The proportion between punishment severity and the crime's harshness is amongst the tools of such deterrence²⁰.

If the narcotics-related crimes are sentenced to death penalty, the persons having perpetrated such crimes would have the motivation to perpetrate any other crime so that the discovery likelihood can be reduced. Thus, although death penalty might also have a strong deterring effect in such crimes, its enforcement for such crimes should be carried out through more contemplation considering the ancillary heavy costs it generates. Every year, a notable number of the police agents are killed in the fight against the narcotics' smugglers. It seems that one of the reasons for such a happening is the same foresaid motivation for these crimes' perpetrators who do their best to escape arrest and conviction by any possible means albeit murdering a number of police agents. In this state, the perpetrators know that they are not so much distant from death penalty after apprehension and it suffices them to have enough motivation for perpetrating murder. It is evident in such a situation that death penalty would not only have no deterring effect but it also becomes a factor giving rise to the perpetration of more crimes. In this regard, limitation of the cases of resorting to death penalty is very well conforming to the teachings of the deterrence theory.

2. Long-Term Imprisonments:

Various studies show in general that the balance of the incarceration performance is positive in terms of crime reduction though there are discrepancies regarding the limits of such an effect. For instance, in one of the studies that has been conducted based on meta-analysis method and evaluated a vast domain of the other researchers, it has been concluded that elasticity of the crime in respect to incarceration is equal to -0.2. This means that every 10% increase in the use of incarceration causes reduction in the crime rate by 2%²¹. There are also performed other studies some of which have proved a flexibility up to -0.4 for the crime to imprisonment ratio. This means based on these studies that a 10% increase in the imprisonment brings about reduction by 4% in the crime rate²². This effect of

²⁰Montesquieu, "spirit of laws", tr. Ali Akbar Mohtadi, (1983), 8th ed., Tehran, Amir Kabir, p.210

²¹Donohue, John, "Economic Models of Crime and Punishment," Social Research, vol. 74, 2007, pp. 379-412

²²Levitt, Steven and Thomas J. Miles, "The Empirical Study of Criminal Punishment," The Handbook of Law and Economics, Mitchell Polinsky and Steven Shavell (eds.), 2007, 453-95.

- Spelman, William, "What Recent Studies Do (and Don't) Tell Us about Imprisonment and Crime," Crime and Justice, vol. 27, 2000, pp. 419-94

imprisonment stems from various functions this punishment can have from stripping the criminality power off to resocialization and deterrence. But, the thing that is intended in this article is the sole deterring effect of this punishment and, of course, the existence of this effect has been proved in independent studies²³.

The primary question in this regard is what effect does the incarceration prolongation have and can the addition to the incarceration term increase its deterring effect or not? The common perspective amongst the planners and officials of the criminal justice system is that all the days spent in prison are equally difficult. This can be realized as the simplest assumption in the equation of the length of incarceration and the severity of this punishment: the increase in the length of incarceration causes an increase in the severity of punishment, as well. The more the incarceration term is prolonged, the more the punishment is envisioned as severe. However, it is not so in reality. Prison, as well, can become “normal” like any other unfavorable situation for the human beings. The inmates get accustomed and adapted to incarceration in two ways: firstly, through getting accustomed to the prison’s space; living in a small cell along with several other inmates may be seminally very irritating but they become habituated and accustomed to it little by little in such a way that they will quickly find themselves like persons outside the prison. Thus, experiencing the jail space might be seminally difficult and nettlesome but it gradually becomes normal. Amongst the evidence of this issue is that more than 50% of the suicide cases inside prisons occur during the first 24 hours after entry into the prison²⁴.

The second type of an inmate’s adaption to prison is his or her becoming indifferent towards the negative experiences inside the prison. As an example, violence and fights inside the prison are seminally very horrible and annoying to some but they gradually get used to them in such a way that they are not only viewed as non-irritating but the negative perceptions of them are essentially changed and they are deemed as the ordinary and daily incidents and happenings²⁵. In this way, although experiencing the jail is seminally hard and bothersome, it gradually becomes the normal trend of the inmate’s life and the convict adapts oneself thereto in such a way that s/he does not feel it as being much different from his or her life outside the prison.

The problem that is specifically existent in our country’s criminal justice system is that the real amount of incarceration a convict experiences is a lot lower than the legal punishment specified for the crime and even the amount of imprisonment ordained in the court. The manifestation of such an issue can be seen in the repetitive dismissals granted to prisoners and extensive amnesties endowed to the

²³Kessler, Daniel. & Levitt, Steven, “Using Sentence Enhancements to Distinguish between Deterrence and Incapacitation,” *Journal of Law and Economics*, vol. 42, 1999, pp. 343–363

²⁴Hayes, L, M, “And Darkness Closed In: A National Study of Jail Suicides”, *Criminal Justice and Behavior*, vol. 10, 1983, p. 484

²⁵ McAdams, Richard H. and Ulen, Thomas, “Behavioral Criminal Law and Economics”, *University of Chicago Law & Economics*, Working Paper No. 440, 2008, p. 10

convicts on certain occasions. This way, the lowness of the real amount of incarceration is not for following a coherent policy of decarceration but due to the shortage in the prisons' capacities. The country's capacity of prisons has remained almost fixed for years but the rate of crimes is in an ascending trend. Such a situation has caused a reduction in the imprisonment per capita for every crime. This situation has per se resulted in crime rates' increase because the reduction in the punishment to prison ratio per se causes reduction in the expected punishment of the potential criminals and increase in their tendencies for crime perpetration. This situation is so-called as punishment enforcement swamping, to wit a state that the increase in crime rate exerts so huge a negative effect on the ability of the criminal justice system for punishing the perpetrators that it per se causes more crime rate increase²⁶.

If the incarceration term required for the accomplishment of the deterrence objective is at least set, it can be consequently said that going beyond that term and continuation of the incarceration beyond it would be wastage of resources for it does not make any contributions to the elevation of deterrence. However, in a situation like that existent in Iran, the minimum period required for the actualization of deterrence is essentially out of reach. In such a situation, speaking about incarceration term's reduction for increasing the deterrence would be insensible. Construction of new prisons and heightening the ratio of punishment to crime are amongst the most necessary measures that should be taken under such a circumstance.

Considering the aforementioned materials, it can be stated that the long-term imprisonment stipulated in the appended article 45 of the law on fight against narcotics (15-30 years) practically remains inside the regulation collections and is not given much of a practical position in practice and this would mean nothing more than the reduction in punishments' deterrence.

3. Pecuniary Punishment:

Amongst the important subjects in the area of criminality economics is that how the criminal justice system, punishment system included, should be organized so that the least costs are incurred and the highest output can be achieved in a resource allocation plan. It is clear in such a setting that the financial punishments are of a great importance for their enforcement is not only not so much costly unlike the other punishments but it causes the creation of earnings for the criminal justice system, as well, in many of the cases and such revenues can be utilized for responding to the other needs. It is according to this same matter that some writers believe that the financial punishments should be posited amongst the primary punishments and the other punishments should be applied under such an assumption as absolute necessity and for compensating some shortfalls of the financial punishments. Corresponding to this perspective, "the social welfare can

²⁶ Kleiman, Mark, & Raaj, K, Sah, "Social Omissions and Patterns of Crime", Journal of Political Economy, vol. 99, 1991, p. 1280.

be better supplied in case that the financial punishments are used in all the possible cases²⁷.

The point that should be taken into account here is that assuming the use of pecuniary punishment, as well, “the expected punishment” and not the legal punishment should exceed the interest expected by the criminal from the crime. The difference between these two concepts was explained previously in details but, in sum and within the format of an example, it can be described in the following words: if the interest expected by a criminal from a crime is one million RIALS with the apprehension and punishment likelihood (punishment certainty) being also 2% (meaning that one out of every 50 criminal is punished), the legal punishment rate should be above 50 million RIALS so that the punishment’s deterring function can be actualized because, in this state, the “expected punishment” of the criminal which is attained through multiplying the punishment severity by the punishment certainty would be more than the interest obtained from the crime.

Considering the reality that certainty of the narcotics-related crimes’ punishments is very low, it can be readily concluded that the amounts of the pecuniary punishments specified in the appended article 45 of the law on fight against narcotics (from 550 million RIALS to 2 billion RIALS in a crime-dependent manner) are very ineffective and the individuals’ intellectual evaluation perfectly guides them towards the perpetration of such crimes. The narcotics-related crimes are followed by a lot of economic interests for the perpetrators and the aforesaid pecuniary punishments’ sums are seemingly a lot lower than even one time of perpetrating such crimes leave alone the low possibility of apprehension and conviction of the perpetrators that makes them repeatedly perpetrate this crime before being arrested and obtained a lot of material interests by doing so.

The specification of the pecuniary punishment with the abovementioned explanation is also of a great importance from another perspective and that is the relationship between the individuals’ wealth and amount of punishment expected for them. Unlike what is imagined in the first glance, the punishments’ certainty is not equal for all the society members. Punishments’ certainty for various society members differs based on their age, gender and, especially, income rate. Criminals having more revenues are motivated to allocate more money to the planning for the crime perpetration, hiring sophisticated lawyers, appealing in the courts and following it and even bribing the governmental officials thereby to reduce their conviction likelihood because the cost of being sentenced to imprisonment is a lot more than these financial costs to them. Conversely, criminals having lower income are motivated to spend more time on planning for crime perpetration, presence in court and others of the like thereby to reduce their conviction likelihood to, saying, pecuniary punishment because the cost of such a conviction

²⁷Becker, Gary “Crime and Punishment: An Economic Approach”, Essays in the Economics of Crime and Punishment, New York, Columbia University Press, 1974, p. 24

is a lot worthier than the value of their time to them. The result is that the conviction likelihood is systematically associated with the individual's income rate: this relationship is negative regarding the crimes deserving incarceration whereas it is positive about the crimes deserving pecuniary punishment: in crimes deserving incarceration, the more the individual is wealthier (which is here assessed based on such a criterion as income), the more s/he spends on keeping oneself immune of punishment and it is in this way that s/he reduces his or her conviction likelihood. The reason for such an issue is that the incarceration cost is very high for him or her and s/he prefers to spend large sums of money for not going to prison. As for this same incarceration punishment, the lower the wealth of an individual, s/he accordingly spends lower money for staying away from imprisonment and it is in this way that his conviction likelihood is also increased. The reason for such an issue is that the incarceration cost is lower for him or her in contrast to the costs s/he makes for staying immune of imprisonment and s/he concludes based on his or her calculations (or out of not affording the payment) that s/he should go to prison but not to pay such a higher price.

In regard of the individual who has higher revenue and when the crime is financially punished, the perpetrator is not so much worried about the punishment and his or her calculations guide him or her towards this direction that s/he should spend lower sums of money as punishment instead of spending higher sums for not becoming convicted. In this way, in this set of crimes, the increase in revenue causes an increase in the conviction likelihood. Probably, the distinct example of such a situation is the wealthy drivers who easily perpetrate driving violations whereas the drivers with lower income resort to various ways to avoid such driving fines.

It can be summarily stated that the wealthy persons avoid crimes deserving incarceration and individuals with lower incomes avoid crimes deserving pecuniary punishments. Resultantly, the likelihood of their conviction, respectively, to incarceration and pecuniary punishment is lower in comparison to the other groups: in line with income increase, the individual avoids crimes deserving pecuniary punishment and this increases the conviction likelihood of them for the perpetration of these crimes while, in the same way, they avoid perpetrating crimes deserving incarceration and this reduces their conviction likelihood for such crimes. The reason for the wealthy individuals' lower presence amongst the inmates is possibly the same matter.

It can be concluded based on the above-presented materials that the use of pecuniary punishment in crimes like smuggling narcotics that have a lot of financial interests and their perpetrators have a high payment affordability does not have a deterring effect and this change in the law on the fight against narcotics cannot be appraised positive in terms of serving the crime deterrence function.

Conclusion:

It is now for decades that the Iranian legislator is applying different strategies for controlling the narcotics-related crimes in the search for a proper solution. The last initiative by the legislator in this regard has been appending an article to the law on the fight against narcotics in 2017; this article limited the death penalties and replaced it by long-term imprisonment and relatively heavy pecuniary punishments in many of the cases. This change that jurisprudential premises to transnational requirements have been expressed as its reason possesses important implications in penological terms. The issue that was noted in this writing was the effects of these changes on the punishment's deterrence. The investigations show that the replacement of long-term imprisonment for death penalty can have deterrence to the same extent of the death penalty provided that such punishments are practically enforced and they are not weakened or rendered devoid of effect by such instruments as amnesty and dismissal because the death penalty that previously existed for the narcotics-related crimes featured a very low certainty and it accordingly did not create the required deterrence. But, if the required capacities are not provided by developing the jails in proportion to this legal change, the capacity shortages would be surely intensified and the result would be nothing more than the reduction in the amount of the convicts' real punishment hence reduction of the punishments' deterrence.

On the other hand, the amount of pecuniary punishment predicted in appended article 45 of the law on the fight against narcotics is not in proportion to the expected interests of such crimes. Resultantly, the potential perpetrators who assess the abundant interests of these crimes by the relatively small pecuniary punishment stipulated in this article would find the crimes' interest prevailing and they will be navigated consequently towards crime perpetration. This means nothing more than the reduction of these crimes' deterrence.

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