

Assessment of Iran's Criminal Policy in the Fight Against Narcotics Crime in the Past Three Decades

Seyyed Mahmoud Mir-Khalili², Zahra Ahangari³

1. Faculty of Law, Farabi College, University of Tehran, Iran

2. Young Researchers and Elite Club, Ardabil Branch, Islamic Azad University, Ardabil, Iran

Corresponding Author email: mirkhalili@ut.ac.ir

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ABSTRACT: Aiming to assess Iran's criminal policy in the fight against narcotics crime in the past three decades, the current article first presents a review of the evolution of Iran's criminal policy in fight against narcotics in the recent years, and then examines the latest Iranian Anti-Narcotics Law (2011). In Anti-Narcotics Law and its amendment (2011), Iranian lawmaker has set forth the disproportionate and heavy penalties, particularly the death and life imprisonment, and has always focused on criminal policy based on oppression and the punishment. However, this criminal policy is not highly accepted by the judicial criminal policy (the Judiciary's approach). Criminal policy governing drug offenses revolves around government's responses including criminal or non-criminal, while the role played by organizations and NGOs is tangible in the area of non-criminal responses relating to prevention and treatment. Relative decriminalization of addiction, participation of NGOs and the members in the treatment of addicts, criminalization of industrial psychoactive substances, and reducing the confiscation of criminal assets to property resulting from crime, cooperation with other countries in tracking and monitoring of drug-related offenses, imposed sanctions for revocation of offenders' passport, and aggravation of the punishment of main criminals in the area of drug abuse, are some amendments (2011) to Anti-Narcotics Law influenced by anti-narcotics general policies approved in 2006 and international conventions, especially the Convention 1988 of United Nations. Iran's judicial system, for various reasons, including the excessive use of regulations and institutions of amnesty and commutation of punishment, the reluctance of many judges to implement severe penalties, and the slow pace of criminal proceedings, certainty of punishment has been undermined to a large extent. Eventually, some strategies and suggestions have been presented to improve the current criminal policy problems.

Iran's policy in relation to narcotics crime in the past years

In the pre-revolutionary era, we cannot literally discuss criminal policy and effective anti-narcotics laws, because we can speak of criminal policy when an action is criminalized by legislator, and at least when the act is socially recognized as a social deviation. However, in Iran, for a long time, the practices exercised in relation to drugs were not criminalized and even such acts were not recognized by the public as a social aberration. Secondly, when the actions taken in relation to narcotics were ultimately criminalized, the government did not take serious actions to combat it, and the policies adopted by the government were even encouraging directly and indirectly. Thirdly, in the course of passing the anti-narcotics regulations, two dimensions including criminal aspect and the severity of punishment were only taken into account.

Evolution of Iran's criminal policy in the area of narcotics after Iranian revolution

Given the severity of reactions and oppositions, the punishments set forth in this period can be divided into two parts:

First legislation era: since 1980 to 1988

In this period, opium poppy cultivation was totally banned and criminalized, and severe punishments and widespread executions same as the pre-revolutionary era were conducted.

The bill on the severity of penalties for perpetrators of drug offenses and security and treatment measures to encourage addicts toward treatment and employment after the establishment of the Islamic Republic of Iran aimed to fight against the scourge of addiction and drug trafficking in any way possible.

In the bill, the following items were anticipated: 1- ban poppy cultivation and to set forth the most severe punishments even death penalty; 2- the prohibition of keeping, concealing and carrying poppy through sentencing; 3- ban on drug trafficking, purchase, sale, maintenance, produce, import, and exposing such drugs by setting up punishments such as

execution and imprisonment; 4-ban on making, importing, storing, concealing, purchase and sale of machinery and equipment related to drug abuse through sentencing; 5- The confiscation of property in favor of the government in case of establishing a place for drug use or being a beneficiary in such illegal act, in addition to the main penalty; 6- prohibition of illicit drug use and addiction bound to “hooliganism” and delivering the perpetrators of these crimes to addiction rehabilitation centers; 7- prohibitions on the use of public places for drug use through sentencing and in case of repetition, issuance of the imprisonment and execution sentence; 8- Cancel the regulations concerning the quota of opium addicts and cards, quota, and obligation of drug addicts to quit addiction, 9- mandatory presentation of the certificate of non-addiction to narcotics in case of marriage, and employment in private and public job positions.

Anti-narcotics Law approved by the Expediency Council

The former law was aggressively enforced in Iran for eight years and during this time many people were executed for alleged drug trafficking. However, on 29 May 1988, by ratifying the anti-drug legislation by the Expediency Council and the anticipation of Iran Drug Control Headquarter, a radical shift was created in legislative criminal policies and consequently more unity achieved in the process of combating drug trafficking and abuse. The most important instances of such shift in policy that adopted a measure of moderation compared to the previous laws on the death penalty include: for the offense of cultivation for the fourth time, import, export, production, distribution, purchase, sale and exposition of more than 5 kilograms of opium, transporting, storing and concealing more than 5 kilograms of opium, importing, exporting, producing, distribution, purchase, sale, exposition, transporting, concealing and storing more than 30 grams of heroin, morphine and cocaine, death penalty was set forth.

In the new law, while new opportunities were given to addicts to quit addiction, by eliminating the attribute “hooliganism” of the addiction, practically all addicts were announced to be sued.

In addition, in Clause of Article 4, and Clause 1 of Article 8, for the perpetrators who committed a capital offense and deserved to be punished by life imprisonment for the first time, life imprisonment sentence was set forth.

Second legislative period from 1997 to 2011

In this period, the relative moderation was shown toward punishments, more attention was paid to the issue of drug prevention and addicts’ rehabilitation, and also drug trafficking was recognized as an organized crime.

Amendment Bill of Anti-narcotics Law and addition of some articles to it, ratified by the Expediency Council

The law which came into force on 23 May 1997 with the approval of the Expediency Council has advantages and disadvantages. In this amendment, in addition to the moderations shown to criminal legislative policy compared to other punishments, following developments on death penalty occurred, which some were more severe and some were more lenient compared to the previous legislation.

For importing, exporting, transmission, production, manufacture, distribution and sale of more than 5 kilograms of opium, same as the previous law, death penalty was set forth, but it was decided that “whenever it was proven that the perpetrators of these crimes have done violation for the first time or were not able to distribute or sell, the amount of drug is 20 kg or less, the court will commute the death penalty to life imprisonment, of course under the approval of all three conditions”. In contrast, based on the previous law, despite a failure in the distribution or sale of opium in Iran, no matter what was the amount of opium, perpetrator’s death penalty would be commuted to life imprisonment. As it can be found, based on the new law, precondition for the perpetrator’s exemption of death penalty is that the amount of opium is not less than 10 kg, and this case is more severe than the previous law.

For transporting, storing and concealing opium if the amount is more than 20 kg, in the third time of the crime, the death penalty has set forth, that the law has shown moderation compared to the former law. This is because, in the latter law, in the second time, transporting more than 5 kg, had death penalty. In contrast, under the latter law, carry up to 20 kg for the second time shall expose the perpetrator subject to the death penalty, while in the third, perpetrator shall be executed.

In case of transporting, concealing and maintenance of opium in the form of an organized crime or for domestic consumption, the death penalty will be committed while the case was not treated same in the former law, and legislator considered organization of crime and intent to distribute drugs within the country as an aggravating quality, and death penalty was anticipated for such people in the first time.

In this law, same as the previous legislation, for carrying, concealing, maintenance, fabrication, manufacturing, distribution, purchase, sale, exposition, import, export and send more than 30 grams of heroin, morphine and cocaine, death penalty was set forth. However, in this case, legislative criminal policy has undergone two major alterations. Firstly, same as previous law, it has been anticipated to avoid the death penalty at a broad level, and if perpetrators committed the crime for the first time, and failed to do distribution or sale in the country, and the amount of drug is 100 grams or less, the penalty is commuted from death sentence to life imprisonment. Secondly, in a more fundamental development than the current law,

legislator considered transporting heroin, morphine and cocaine out of the country to any extent as a crime subject to death penalty and also life imprisonment. In contrast, in the current law, the opium offences are not treated in the same manner, and if the amount is more than 100 kg, perpetrator will be punished by death penalty in any case.

Another major development that has incurred regarding all execution punishments is to accept amnesty for the perpetrators sentenced to death by the court that is entitled to issue the sentence, i.e. if the court specifies that perpetrator is entitled to commutation of the sentence, it can request amnesty commission to issue his amnesty.

In addition, Article 33 of the Code has preferred preventive policies over the policy of repression, because drug traffickers and drug abusers should be distinguished. Regarding drug trafficking as organized crime, security, disciplinary, and judiciary methods are prioritized, but in the case of drug abuse and addicts, educational, cultural, and therapeutic procedures should be sought that these issues are considered in Article 33.

The most significant limitations of this legislation include: 1-Drug trafficking crime is an organized crime, but the law has not paid much attention to this issue, and same as the previous laws, adopts an domestic approach to drug crime; 2-Although in Convention 1988 which Iranian government joined it in 1989, the member states are obliged to criminalize money laundering and incomes obtained from drug trafficking, this issue is not addressed in the relevant law; 3-This law is not comprehensive, for example the plant *Khaat* is not included in the law. 4-Procedures of this law were passed at the meeting of Iran Drug Control Headquarter, while the headquarter does not have the right to pass the procedure; as a result, as this procedure has not right to legislation, it has been annulled in accordance with Vote No. 79 19 May 2002 general board of Court of Administrative Justice; 5- some substantive objections have been addressed to some provisions of this law, as in Article 4 inclusion of codeine and methadone as pre-processed drugs is wrong; 6- The death penalty is prescribed for fourteen cases, while death penalty should be set forth for important cases. 7- Article 15 of the Code has criminalized addiction, while according to the views proposed by psychologists and psychiatrists, addition is not a crime, and addict is a patient and so addicts should decriminalized. 8-Another objection is lack of prediction of criminal liability of legal entities. This is because, in most cases, many large companies are active worldwide in the field of drug-related offenses.

The general policy on the fight against drugs approved in September 2006

Anyway, ambiguities, lack of comprehensiveness and ban and also above-mentioned objections and failure at national and international levels in the fight against drugs are the most important variables that prompted the Expediency Council to ratify Iranian system's general policies in the fight against drugs, thus to eradicate challenges facing the judiciary and the executive powers.

Hence, the general policies of Iranian system on the fight against drugs approved by the Assembly in September 2006 are as follows:

1-Comprehensive and decisive combat against all illegal activities associated with drugs and psychotropic substances and their precursors such as cultivation, production, import, export, storage and supply of drugs; 2- strengthening, development, equipping and widespread use of informants, military , police and judiciary information to identify and track down and destroy the networks and deal with the main internal and international factors associated with the drug, psychotropic substances and precursors; 3-Strengthening, equipping and development of units and mechanization of control systems and the centralization of information to control the borders and points of entry in the country and prevent illegal acts related to narcotics, psychotropic substances and precursors, and reinforcement of the specialized structure of drug in disciplinary forces (police) and other relevant organizations; 4-Adopt preventive strategies in the face of threats and damage caused by drugs and psychotropic substances by using public and private resources with emphasis on the strengthening of people's religious beliefs, and cultural, artistic, sporting, educational and advertising activities in the context of family, work, education and training, and public cultural centers; 5- criminalization of drug and psychotropic substances and precursors, except in scientific, medical and industrial cases and the ones approved for therapeutic applications, and harm reduction programs; 6- The creation and expansion of public facilities for diagnosis, treatment, rehabilitation and adoption of comprehensive measures aimed at treatment and rehabilitation of drug abusers, harm reduction, prevention of changing consumption patterns of low-risk to hazardous substances; 7- take necessary measures to social support after treating patients with drugs and psychotropic substances in the field of employment, leisure, providing medical and counseling services, and legal and social support for people in recovery and their families; 8- strengthening and promotion of regional and international diplomacy related to narcotics and psychotropic substances in order to perform targeted activities, active participation in decision making, decisions and related actions, utilizing technical, logistics, and economic facilities and experiences of other countries and international organizations, and provides the context for joint action in the prevention of drug trafficking; 9- adopt measures necessary for serious participation and presence of people and families for harm reduction and treatment of addicts; 10-Development of studies and fundamental applied and development research in the field of fight against narcotics and psychotropic substances, and the prevention and treatment of addicts based on the latest global knowledge and use of relevant scientific and technical capacities in the country; 11-upgrading and restructuring management of combat against drugs in order to achieve the general

policies of the system and speed up operational activities and coordination in adopting practical policies, and all executive and judicial and legal measures.

In the late nineteenth century, a number of governments found that the prevention of trafficking and drug abuse is beyond the responsibility of one or more of the regional government. The drug problem turned gradually into a global problem and some global decisions were adopted to combat such grave issue, and contracting states were required to implement them.

The first multinational conference on opium drugs in limiting the use of opium to medical and scientific cases in 1909 in Shanghai was held by the participation of thirteen states including Iran.

Other international treaties in this field that Iran joined it and their provisions played roles in the process of legislation in Iran include: 1-International Opium Convention dated 1925 Geneva; 2- Geneva 1931 Convention on limitation of production and distribution of drugs; 3- Protocol to limit and regulate the cultivation of opium poppy, the major international trade and production and the use of opium in 1954 and accession to the Protocol in 1956; 4-Single narcotics protocol 1961 which was amended by the additional protocol in 1972. Although Iran in 2002 joined it but complied with its provisions from the very beginning; 5- Convention on Psychotropic Substances Act 1971 and its impact on the adoption of Narcotics Law in 1975 in Iran. Of course, Iran formally joined the convention in 1998; 6- narcotics and psychotropic substances trafficking combat convention adopted in 1988 in Vienna Convention as the last international convention in the fight against drugs. Iran joined it in 1991 with the approval of Parliament. The most important topics of the Convention include confiscation of property and recognition of money laundering as an independent crime, extradition of culprits, legal assistance, shipments under control, the fight against trafficking of pre-processed materials, alternative cultivation and eradication of the illicit cultivation of plants which are used as the sources of drug production, and propose strategies for the fight against drug trafficking by the sea, road, air and mail.

Thus, different rules including “law restricting opium”, “opium state monopoly law” and many other laws have been ratified to prevent illegal trade and abuse of opium, influenced by the global atmosphere and international treaties, and Iran in the last hundred years in the fight against drugs has been in constant cooperation with related international organizations, and the country has joined different conventions and protocols and hosted several international and regional conferences as well.

Amendment Bill of anti-narcotics law ratified in 2010 by the Expediency Council:

Amendment Bill ratified in 31 July 2010 is the last anti-narcotics law that is so far valid and binding. In this amendment, some variations and leniencies have been shown in criminal legislative policy toward addicts on the one hand, and more attention has been paid to international cooperation in the fight against drugs and organized crime on the other hand.

Legislative criminal policy

The legislative criminal policy is the primary underlying layer of criminal policy of a country. In Iran, according to the regulations on narcotics crime, the main authority responsible for drug-related offenses is Expediency Council. The current legislative criminal policy on drug-related crimes, except addiction, rests largely on the severity of punishments such as death penalty, life imprisonment, and unfair differential trial. By imposing heavy and severe punishments, legislator, intentionally or unintentionally, has followed criminal policy of “zero tolerance”¹ or no tolerance. However, the results show that the expected targets have not been achieved. Differential criminal policy against drug addiction follows a dual approach based on the distinction between the two phenomena drug addiction and trafficking and also related crimes, and while adopts “a policy of rehabilitation and therapy” regarding addiction, it emphasizes “repressive policies” in the area of trafficking and laundering, etc. (Najafi Abrand Abadi, 2006: 240). Criminal policy governing drug-related crimes is primarily built upon the policy of repression and punishment, and in terms of special and limiting criminal procedure, the relevant policy has adopted a differential procedure. However, such criminal procedure cannot be useful and supported by scholars and political criminal scholars, because in differential criminal law and differential proceedings, or in differential criminal policy in general, as long as there is no beneficial or innovative aspect, it is not supported or accepted by criminologists and lawyers. In particular, the present criminal policy, in the broad sense, is affected by the findings and teachings of criminology and human rights, and is moving away from purely criminal policy.

Non-criminal policies

Anti-narcotics policies governing non-criminal criminal policy include:

¹ This policy was applied in some states of US such as New York City due to the rampant extension of civil violence and insecurity, and it had positive impacts, and was appreciated by a number of French criminologists. In this method, legislator had provided police and other penal system officials with right to show repressive and stringent oppositions to any kind of violence without showing any leniency toward offenders and abusers.

Correction, treatment, and prevention

Before amending anti-narcotics law, Article 15 of the law explicitly criminalizes addiction, but all the addicts are given permission to receive treatment and rehabilitation. However, in paragraph 6 and 17 of the Amendment, by adding Articles 15 and 16, legislator initially decriminalizes drug addiction and necessitates treating it as a disease, and oblige addicts to refer to public, governmental or private centers, or NGOs. It is observed that criminal policy of legislator regarding addiction is based on comprehensive and public non-criminal response to treatment and rehabilitation. If addicts do not surrender to the policy of treatment and support, he/she is considered a violator, and will be subject to legislator's penal policy in terms of violation of the obligation to quit and treat addiction (not due to drug addiction).

Although non-criminal prevention of drug addiction and crime prevention have been taken into account in two Articles 4 and 9 of the anti-drug policies (2006) on the basis of adoption of preventive strategies to deal with the threats and loss caused by drugs and serious participation of all people and families and support NGOs in the fields of prevention, harm reduction and treatment of addicts, in the amendment there is no specific regulation on non-criminal prevention of drug-related crimes. However, regarding addiction, adoption of treatment and rehabilitation policies are regarded as secondary crime preventive practices that are directed to groups at risk of committing a crime (such as addicts).

Participative criminal policy

Participative criminal policy is a criminal policy annexed with the participation of civil society, which within the framework of it, other levers and institutions and also the police and judiciary provide organized responses to criminal phenomena. On the other hand, it could be said that participative criminal policy is participation of people in fight against criminal actions, or it is prevention in addition to repression (Lazerges, Ch. 139).

No accurate statistics is available on the number of active NGOs and civil society to deal with drug-related offenses. However, we can say that participative criminal policy that is defined mainly by public participation or NGOs, is applicable mainly to non-penal criminal policy including prevention, correction, and treatment, while penal criminal policy is a sovereign issue and is it considered by the government as a highly significant affair.

Conclusion

By evaluating the criminal policy of Iran in fight against drugs in recent years, the current article have come to the conclusion that the legislator's penal policy in fight against narcotics is always built upon repression, severity of punishment, and an incongruity between them, so that in specifying punishments some factors such as social denouncement of an action, the personality of perpetrator, human dignity, type of crime, and human rights standards (as criteria to issue an appropriate punishment) have not taken sufficiently into account, and it should be noted that penal policy based on more use of death sentences and lengthy imprisonment not only lack desired deterrent effect, but are unfair and contrary to human dignity. This is because the reluctance of judges to the issuance of such rulings and try to use legal loopholes and sometimes illegal alternatives in some cases and a violation or non-compliance with the majority of them in different directions is a clear indication of the fact that severe and repressive punishments are not approved by judicial criminal policy. Therefore, legislator's penal policy based on repression and severity of punishment is countered because of its extreme and unbalanced proportionality and cannot achieve expected achievements.

In the criminal policy governing drug offenses, especially in the area of penal policy, official and governmental responses play a pivotal role. In addition, in the area of non-criminal policy, especially prevention and treatment system, given the presence of multiple regulations, community-oriented and NGOs-based responses are more or less tangible and debatable, and it is worth mentioning that in terms of international and transnational nature of drug trafficking, under the influence of global and regional international conventions, particularly the United Nations Convention on Narcotics in 1988 and also based on general policies of Drug Narcotics Act 2007, one of the advantages and positive steps of Anti-Narcotics Amendment Bill in 2010 is that it underlines cooperation and partnership of the government with other countries to follow and monitor drug offenders and their shipments and also the participation of non-governmental organizations and NGOs in the field of addiction treatment and quit and control.

Finally, it should be acknowledged that despite the numerous regulations and high costs in terms of treatment and prevention of addiction and drug-related offenses, non-criminal prevention system in the country is still weak, and proper and desired success has not been achieved in this regard due to different reasons. Some of these reasons and obstacles include lack of proper preventive structure at the level of the relevant organizations, a multiplicity of accountable organizations and the lack of coordination, weakness of drug monitoring system and its agents, lack of support and the presence of various obstacles to the establishment and active participation of NGOs in the area of prevention and treatment, lack of control and evaluation of activities and measures for prevention, weakness and failure in allocating budget and funds to relevant organizations, and lack of coordination between relevant organizations, and lack of effective cooperation between active and effective public and private organizations in the field of prevention.

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