



Comparative study of observation of human dignity in death penalty in Iranian law and international documents

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Abstract

International Covenant on Civil and Political Rights, which outlaws capital punishment in all circumstances, states that the “abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights. Countries around the world have adopted a similar position. In 1990, the Hungarian Constitutional Court tied the constitutional right to life to the concept of human dignity when ruling that “capital punishment resulted not merely in a limitation upon that right but in fact the complete and irreversible elimination of life and dignity.” Hence one of the controversial issue about death penalty is that this punishment is that it is assumed against human dignity. The idea of dignity is central to moral and legal debates about the death penalty worldwide. Philosophers, theologians, and drafters of international human rights law have all referred to dignity in the context of capital punishment. This Article therefore explains why and how the Court has used dignity to justify the retention of the death penalty.

Keywords: death penalty- dignity- human rights- Iran law

Introduction

Human dignity

What does it mean to respect a person’s human dignity?” comes down to acknowledging their humanity, a humanity shared by all human beings by virtue of being human beings. Awareness of self, reason, choice, connection to others—these are part and parcel of what it means to be a member of the human species. These attributes, in turn, convey the moral right to live as a human being, which is to say, to act on one’s awareness of self, to use reason, to make choices, and to take into account the existence and corresponding rights of other human beings. The essential respect due another human being is to treat him or her as a human being with the right to live as a human being. To be sure, the capabilities that undergird our humanity vary over the life course and among individual persons—in awareness of self, in reasoning power, in insight, in the capacity to see others as like oneself and, indeed, in the ability to see oneself in others, often captured in the notion of empathy. These capabilities vary as a function of genetic, congenital, developmental, or environmental factors ^[1]. Yet even with such variations, all human creatures share an essential humanity and, by virtue of that endowment, possess human dignity and hence the right to be treated like human beings.

The Universal Declaration of Human Rights of 1948 provides that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. The dignity of the human person is inherent in any right protected by international human rights law. Dignity lends real meaning

to human rights, and as such is inherent in any right protected by international human rights law ^[2].

This rule should be considered in any punishment, it is similarly stated: “Evolving standards of decency must embrace and express respect for the dignity of the person, and the punishment of criminals must conform to that rule.”³⁰ And in a very recent case involving prison conditions, the Court stated that “[p]risoners retain the essence of human dignity inherent in all persons.” Despite the nominal acceptance of the principle that all humans, even those who have committed the most horrendous crimes, possess an inherent human dignity, the practice of criminal punishment some countries have in many ways failed to translate the principle into practices that respect the humanity of criminal offenders ^[3].

One of the most important issues in the implementation of the death penalty is conflict of this punishment with human dignity.

Actually, Breaches of other human rights in the imposition of the death penalty is serious. The assertion that the death penalty constitutes torture or cruel, inhuman or degrading treatment is gaining ground. These human rights breaches may occur in the period following sentencing and before execution, (which is known commonly in the United States as ‘death row phenomenon’), in the method of execution, or in the loss of life itself. The European Court of Human Rights found that the death row phenomenon in the United States constituted cruel, inhuman or degrading treatment in *Soering v United Kingdom*

² - general assembly of un, human rights council, capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. 2015, p3.

³ - dora w. Klein, the dignity of the human person: catholic social teaching and the practice of criminal punishment, *loyola law review*, 2014, p9.

¹ - johnson, robert, hard time: understanding and reforming the prison, 2002, jenson books inc., p93.

and Germany, as did the Judicial Committee of the Privy Council in *Pratt et al v Attorney-General for Jamaica et al*. However, this has caused concern, as the Human Rights Committee and the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions have noted that such criticisms are only likely to result in the limitation of appeals^[4]. Various methods of execution have also been identified as unacceptable at international law. For example, the Human Rights Committee has deemed the use of the gas chamber to constitute cruel, inhuman and degrading treatment. The Human Rights Committee has also found that 'public executions are... incompatible with human dignity'. The release of the recorded executions of Saddam Hussein and his associates in 2006 was widely criticised, as were the taunts made against him in his last moments. Stonings are heavily criticised as being cruel and inhuman, particularly as the size of the stones is limited in order to prolong the suffering and death of the condemned person. The accidental decapitation of one of Saddam Hussein's associates (considered further below) also raised objection. In the United States, a number of states have ended use of the electric chair as it is considered to be excessively painful, while debates are ongoing about the use of lethal injections. This is due to concerns that when using lethal injections, the cocktail of drugs may result in an extremely painful and slow death combined with paralysis. However, the use of lethal injection remains legal at international law at this stage. The line between cruel, inhuman and degrading treatment and torture may be blurred. Some commentators have argued that execution is similar to torture, as it constitutes an extreme mental and physical impact on a person already under the control of the government. Under Article 1 of the Convention Against Torture, torture is defined as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as...punishing him for an act he ... has committed', however it specifically excludes 'pain or suffering arising only from, inherent in or incidental to lawful sanctions', thereby not prohibiting the death penalty 11 Supra Note 1, 4. 12 7 July 1989 Series A Vol 161 11 EHRR 439 13 [1993] 4 ALL ER 769 14 Supra Note 7, 372. 15 Supra Note 4. And *Ng v Canada* (No. 469/1991) and Supra Note 7, 375. 16 Supra Note 7. 376. 17 Executions Fall as Pressure Grows for Universal Moratorium (Amnesty International Press Release: 27 April 2007). *Cox v Canada* (No. 539/1993) UN doc CCPR/C/52/D/539/1993 and Supra Note 7, 375. 19 Supra Note 8, 24. The Death Penalty under International Law MAY 2008 where applied in accordance with the law^[5]. The comparison of torture with the death penalty raises a number of questions about the logic of current international law, as threatening to kill a prisoner may be illegal, but the sentencing and actual execution of a prisoner may be lawful. Under current international law, progress towards considering the death penalty to constitute torture remains slow. It is more likely that in the near future most methods of carrying out the death penalty will be seen as a breach of the protection against cruel, inhuman or degrading

⁴ - william a schabas, the abolition of the death penalty in international law (third edition: cambridge up, 2002), 373.

⁵ - the death penalty under international law: a background paper to the ibahri resolution on the abolition of the death penalty, international bar association, united kingdom, 2008, p5.

treatment, and eventually, the penalty itself will be regarded as a breach of the right to life^[6].

Violation of human right by death penalty

▪ Understanding of this this violation

Amnesty International opposes the death penalty as a violation of fundamental human rights - the right to life and the right not to be subjected to cruel, inhuman or degrading punishment. Both of these rights are recognized in the Universal Declaration of Human Rights, other international and regional human rights instruments and national constitutions and laws. Defence of life and defence of the state may be held to justify, in some cases, the taking of life by state officials; for example, when law-enforcement officials must act immediately to save their own lives or those of others or when a country is engaged in armed conflict. Even in such situations the use of lethal force is surrounded by internationally accepted standards of human rights and humanitarian law to inhibit abuse. The death penalty, however, is not an act of defence against an immediate threat to life. It is the premeditated killing of a prisoner for the purpose of punishment - a purpose which can be met by other means. The cruelty of torture is evident. Like torture, an execution is an extreme physical and mental assault on a person already rendered helpless by government authorities. The cruelty of the death penalty is manifest not only in the execution but in the time spent under sentence of death, during which the prisoner is constantly contemplating his or her own death at the hands of the state. This cruelty cannot be justified, no matter how cruel the crime of which the prisoner has been convicted. If it is impermissible to cause grievous physical and mental harm to a prisoner by subjecting him or her to electric shocks and mock executions, how can it be permissible for public officials to attack not only the body or the mind, but the prisoner's very life? Threatening to kill a prisoner can be one of the most fearsome forms of torture. As torture, it is prohibited. How can it be permissible to subject a prisoner to the same threat in the form of a death sentence, passed by a court of law and due to be carried out by the prison authorities?

The cruelty of the death penalty extends beyond the prisoner to the prisoner's family, to the prison guards and to the officials who have to carry out an execution. Information from various parts of the world shows that the role of an executioner can be deeply disturbing, even traumatic. Judges, prosecutors and other officials may also experience difficult moral dilemmas if the roles they are required to play in administering the death penalty conflict with their own ethical views. The right to life and the right not to be subjected to cruel, inhuman or degrading punishment are the two human rights most often cited in debates about the death penalty. But the death penalty also attacks other rights. As indicated by the annual reports of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and by Amnesty International's own information, in many cases prisoners are sentenced to death in trials which do not conform to international norms for a fair trial. Prisoners facing a possible death sentence are often represented by inexperienced lawyers, and sometimes by no lawyer at all. The defendants may not understand the charges or the evidence against them, especially if they are not conversant with the language used in court. Facilities for interpretation and

⁶ - supra note, p 6.

translation of court documents are often inadequate. In some cases prisoners are Human Rights v. the Death Penalty 3 Amnesty International December 1998 AI Index: ACT 50/13/98 unable to exercise their right to appeal to a court of higher jurisdiction and the right to petition for clemency or commutation of the death sentence. In some jurisdictions, capital cases are heard before special or military courts using summary procedures. Such practices undermine the right to a fair trial and are in violation of standards recognized in international human rights instruments. The death penalty is often used disproportionately against members of disadvantaged social groups, and thus in a discriminatory fashion, contrary to Articles 2 and 7 of the Universal Declaration of Human Rights. It is the ultimate denial of the dignity and worth of the human person, affirmed in the preamble to the Universal Declaration of Human Rights. There is no criminological justification for the death penalty which would outweigh the human rights grounds for abolishing it. The argument that the death penalty is needed to deter crime has become discredited by the consistent lack of scientific evidence that it does so more effectively than other punishments. The death penalty negates the internationally accepted penological goal of rehabilitating the offender ^[7].

▪ Actions taken

The death penalty is a denial of the most basic human rights; it violates one of the most fundamental principles under widely accepted human rights law—that states must recognize the right to life. The UN General Assembly, the representative body of recognized States, has called for an end to the death penalty and human rights organizations agree that its imposition breaches fundamental enshrined human rights norms. Convention is quickly moving towards a position in support of worldwide abolition. The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the Universal Declaration of Human Right (UDHR), which the U.S. helped draft in the aftermath of World War II and adopted in 1948. Under Article 3 of the UDHR, life is a human right. This makes the death penalty our most fundamental human rights violation. As long as governments have the right to extinguish lives, they maintain the power to deny access to every other right enumerated in the Declaration ^[8].

Therefore, the Council of Europe, European Union (“EU”), and Organization of American States (“OAS”) have adopted policies against the death penalty. The Council of Europe advocates for the abolition of the death penalty and, in 2001, set forth its position in Resolution 1253. Paragraph 1 states that “the [Parliamentary] Assembly considers that the death penalty has no legitimate place in the penal systems of modern civilized societies, and that its application constitutes torture and inhuman or degrading punishment within the meaning of Article 3 of the European Convention on Human Rights ^[9]. The

Assembly cites the ineffectiveness of the death penalty as a deterrent, as well as the risk of executing innocent people as reasons for its opposition. It expressed particular concern over the execution of juveniles and the mentally ill or retarded and is critical of both the United States and Japan for their continued use of the death penalty. The resolution calls on both countries to take steps to abolish the death penalty.

The EU, with its 27 member countries and 5 candidate countries, “is opposed to capital punishment in all circumstances and considers that abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights ^[10]. Abolition is a prerequisite for membership in the EU. In particular, Article 2(2) of the EU Charter of Fundamental Rights provides that “no one shall be condemned to the death penalty, or executed.” Moreover, the EU Guidelines on the Death Penalty (“the Guidelines”), adopted in 1998 by the Council of the European Union, underscores “the priority the EU attaches to the fight against the death penalty as a strongly held policy view agreed by all member states.” In furtherance of this priority, the EU acts in its bilateral relations with third countries and in multilateral relations. It consults and engages with third countries in human rights dialogues, public declarations, and interventions in individual cases in line with the Guidelines. It also acts in multilateral fora and has conducted advocacy at the UN level on the issue, such as United Nations Resolutions 62/149, 63/168, and 65/206.18 Finally, in December 2007, the Council of the EU agreed to establish a “European Day against the Death Penalty,” to be celebrated on October 10 every year, beginning in 2008. This commemorative date is celebrated alongside the international World Day against the Death Penalty, as spearheaded by the World Coalition against the Death Penalty, on October 10. The African Union does not explicitly prohibit its members from retaining the death penalty. Article 4 of the African Charter on Human and Peoples’ Rights (African Charter), however, protects the right to life, and Article 5(3) of the African Charter on the Rights and the Welfare of the Child prohibits application of the death penalty for crimes committed by children. In 1999, the African Commission on Human and People’s Rights passed Resolution 42(XXVI) calling upon governments to limit the death penalty to the most serious of crimes and to consider imposing a moratorium on executions and abolishing the death penalty. In 2008, the commission adopted Resolution 136 (XXXIII), which calls on governments to impose a moratorium on executions and ratify the OP2-ICCPR.²¹ The African Commission’s Working Group on the Death Penalty encourages members to either enact a death penalty moratorium or to abolish it altogether.²² The working group recognizes that the trend in international law is to abolish the death penalty. Similarly, 1323 of the 35 independent member states 24 of the OAS have ratified and acceded to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Article 1 of the Protocol provides that the States parties thereto “shall not apply the death penalty in their territory to any person subject to their jurisdiction,” although Article 2(1) allows States, at the time of ratification or

⁷ - prokosch, eric, human rights v. The death penalty abolition and restriction in law and practice, amnesty international, 1998, p 3.

⁸ -the death penalty is a human rights violation:an examination of the death penalty in the u.s. from a human rights perspective, report of center for constitutional rights, 666 broadway, 7th floor, new york, ny 10012.

⁹ - eur. Parl. Ass. Res. 1253 1 (2001):

Available at <http://assembly.coe.int/documents/adoptedtext/ta01/eres1253.htm>.

¹⁰ - see <http://www.consilium.europa.eu/showpage.aspx?id=1702&lang=en>.

accession, to “declare that they reserve the right to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature.” Both Brazil and Chile have so declared their reservations for wartime application of the death penalty.

Iran Regulation

It should be noted that the number of retentionist countries imply a greater resistance to abolition than may actually be the case. In 2007, 91% of all known executions took place in just 3% of the world’s countries: China, Iran, Pakistan, Iraq, Sudan and the US, leaving 58 countries to account for the remaining 9% of all executions. The total number of executions worldwide has also been falling, from 2,148 in 2005 to 1,591 in 2006^[11].

In other document it is said that Iran is ranked second in the world after China for the number of executions committed annually. Although Iran does not provide comprehensive statistics on the issue of capital punishment, and refuse to make statistics available. Drug offences constitute, annually, more than two thirds of executions in Iran. The narcotics issue in Iran is serious, with over a third of the annual world seizures of heroin occurring in the country, Iran also has a high consumption rate of heroin. Iran views the death penalty as a viable route to tackling this issue^[12]. These concern have led to the idea of eliminating these punishments. Some argue that this punishment does not have the necessary deterrent, and they agree with the removal^[13]. The advocates state that Iran’s criminal policy has paid attention to suppressive measures before taking preventive measures^[14].

Conclusion

While there are some belief that Capital punishment should be abolished because it has no role in the modern civilized society. The victims of capital crimes may feel a lot of pain, but there are alternative forms of punishments such as life imprisonment. The world has made some resinous steps towards promoting human rights and therefore capital punishment is the greatest impediment to this process. Death penalties are costly to the prosecution side because the process can take many years before coming to a full conclusion. The punishment is also irreversible and therefore any mistakes made cannot be corrected, in the Iran, there is this penalty, and one of the most severe criminal responses to drug trafficking in Iran and some countries is the death penalty. However, over time, with the clarification of the lack of effective of this penalty, a great deal of effort has been curtailed and the legislator has tried to create ways to escape this punishment.

¹¹ - philip alston, ‘transparency and the imposition of the death penalty’ civil and political rights, including the questions of disappearances and summary executions, (economic and social council, e/cn.4/2006/53/add.3 24 march 2006.

¹² - hriu research paper overview, “the death penalty for drug crimes in iran: an analysis of iran’s international human rights obligations.”, more information available at <http://www.essex.ac.uk/hri/documents.aspx>.

¹³ - ahmadi, omid ali, the impact of execution in the drug struggle process in kerman province, directorate of studies and research of the presidential anti-narcotics headquarters, 1998, pp. 232-432.

¹⁴ - rezaei rad, abdohossein, soleimani, batool, moradi, wali, detention function of death penalty, journal of crime prevention studies, vol. 10, no. 34, 2014, p. 131.

It seems that our society needs to be changed. Scholars and lawyers must attempt to replace or maintain this penalty under certain circumstances. Because in my opinion it does not seem insurmountable and we can eliminate conflicts and adjustments in the law regarding death punishment should be considered. So with regard to the above, it seems that we should seek more effective alternatives instead of death penalty.

Now due to the criticism of this Iranian approach, a new approach is underway, in other words, recently, The Iranian parliament approved a bill on Sunday to limit death penalty for drug offenders. 182 out of 245 MPs present in the parliament voted in favor of the bill. The bill will be turned into a law when it is studied by parliament’s Judicial Committee and after being confirmed by the Guardian Council. A lawmaker said that those who committed crimes related to drug trafficking due to poverty and unemployment will not be sentenced to death. However those offenders who carry deadly weapons while trafficking drugs as well as drug lords will get death sentence, he explained. The bill to limit death penalty for drug offenders was introduced last year. Reportedly, more than 100 lawmakers have helped draw up the legislation Therefore, there is a hope that effective steps will be taken in this regard.

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