

Review the advantages and disadvantages of the death penalty law in the Islamic Republic of IranAhmad Reza Rafiei (Ph.D.)*² Amir Ahmadi¹¹. Department of Law, Islamic Azad University Khorasgan (Isfahan) BranchE mail: a.rafie@khuif.ac.ir². Department of law, Payame noor University, IranEmail: Amir.ahmadiy91@gmail.com, Tel: +989372980096

Abstract: The death penalty is regarded as the heaviest punishment in the field of penology, which has for some years been criticized by some quarters and consequently scientists in some countries, have different approaches to it, some have attempted to remove the absolute or relative to Some opponents of the House shall retain the death penalty, but it is effective and fruitful ones. This is the most important thing that caused the death, including murder; to investigate the advantages and disadvantages from the perspective of Islamic law has supporters and opponents of the death penalty.

[Ahmad Reza Rafiei, Amir Ahmadi. **Review the advantages and disadvantages of the death penalty law in the Islamic Republic of Iran.** *N Y Sci J* 2014;7(3):14-19]. (ISSN: 1554-0200). <http://www.sciencepub.net/newyork>. 3

Keywords: murder, death in Islamic law, death penalty supporters and opponents of view.

1. Introduction

Death is the strongest punishment in criminal law and is normally expected to be announced towards the criminals who have committed major crimes dangerous to the public and will modifiable certainly Criminal death penalty and the nature of the degree of painful Intimidating or degrading Treatment or so scandalous that the purpose of that particular offender's eternal rejection of society and thus ending with potentially dangerous offenders immune from the criminal life, which. Parallel punishment the on direction of Other matters Much has changed criminal law as most of the old laws, crimes subject to the death penalty and its performance in terms of quality - the type and circumstances of the crime charged against them, and sometimes social class - the difference between torture a central pillar of But gradually it was in force before the jurisdiction to declare the punishment of crimes, such as murder or intentional crimes of acting against national security, and some are no longer limited and its implementation of the types of crimes, the same eliminate torture condemned was and simple and gentle way possible criminal life was ending's evolution as a result of cultural and scientific advances and communities with the help of different ages has been achieved through the efforts of scientists and authors, therefore the execution of issues Philosophers and scientists have long been debated, especially in the world of contemporary penology and the respect for human life and philosophy and aspirations of humanity has a wider dimension range of the debate. Penalties, including the death penalty in recent years, with challenges faced in the field and practice. In theory, scholars such as Becerra's treatise on crimes and

Punishments and his followers, the penalty against the theory of "social contract" ones, although other scholars such as Bentham, Rousseau and Montesquieu him not Agree on Responses are firmly against it. This little serious discussion of international organizations and the most important, namely the UN raised. On 20 November 1959, the General Assembly of the fourteenth course of their work, according to the Economic and Social Council decision 1396 mission to study about death and its laws and practice, and the results and effects on survival and abolition Criminology is the study of Mark Ansel, counselor and director of comparative law, the Court of France in Paris, presented a report about the death penalty, which was published later in 1962 He presented figures, concluded the international community's willingness to abolish the death penalty and replace it by the prison's security measures and training. Course, the term "international community", including Islamic countries is to what extent is unclear because Rights of Islam and Islamic countries have emphasized the punishment Ansel attitude and other opponents of the death of the "International Covenant on Civil and Political Rights", adopted on 16 December 1966 had the effect of abolishing the death was confirmed, attitude, and as a result, countries that have not abolished the death penalty, it is limited to cases and they accepted certain conditions course, extreme tendencies are condemned to the death penalty, but the penalty if it can generally be inefficient and inhumane?

Ethics of many scholars in the West who have profound disagreements about the death penalty, as **applied**, for example, **the moral dilemmas of** books written by Cohen (Andrewicohen) and Wellman

(Wellman). It is in this context refers to the difference Pvyymn and Natanson (Nvrba, 2012, 66).

In terms of operations between countries, which is markedly different approaches, Europe, some countries, including EU members to limit these penalties paid Others, such as the Scandinavian countries and Austria have canceled it altogether and others have continued to emphasize the benefit of the death penalty on their belief foot tower; But the strength and durability of the punishment for many years, despite many objections have been added and the solid support, on the one hand, scientific and experimental results on the other hand, religious teachings, especially in Scripture Bible and the Koran, some Crime has been. The effect of the doctrine of religious ethics, the death punishment for certain offenses, deemed it necessary to emphasize moral and decisive response against opponents also offered.

Literature

Balustrade, Mohammed Hussein, exploring new death penalty (graduate theological and legal experts) Fathi Ali, of the death penalty, its advantages and disadvantages in Iran and the world, a Justice Department lawyer 07/17/201.

Materials and Methods

In this research, legal books, internet sites and articles have been published.

First Speech

Murder

Murder is the greatest crime that disrupts the social security and therefore punishment and the punishment it sacred law of Islam and the punishment of the harshest in the world and has set back At verse 31 of Surah Maryam mighty Allah says: ((anyone else without regard to murder and corruption in the earth, the pull is like killing all people can live and that which him (pardon the punishment and the punishment he would), e.g. is that all people living a) (Shamyaty, 2005, 55).

Meditate on this verse is little known that all people, as a single body and its members as individuals are configured and killing a man in connection with a massive body, the rush of the social life of a society. Such aggressive rogue assassin known as a member of dozens of holy Quran he knows it is at war with society. In a survival situation he is in conflict with society and must be destroyed because he stood in continuity and social life are guaranteed death (Intelligence, Retaliation keep your life to keep you from killing each other). (Verse 187 of Surah Baqara) Abi Hamza Smaly of Imam Sajjad (AS) narrated that the Prophet (PBUH) said (Not you proud of your arm them with the power and strength to the blood-stained and dirty. Properly for it assassin's blood is constantly living in the

universe is God, and will not die, Said Maghsoud killer Allah or the Prophet that will not die, what hell he is considering the above narratives conclude that any social system as a legal system of Islam, the act of killing a human life is not important. Sacred law of Islam, in terms of social and moral murder ugliest human beings before God and the nation, and even the introduction of a community equated with murder and murder for the practice of civil, penal Worldly case by case basis and put in the world of eternal hellfire has promised, not only Islam and killed a living person knows the act ugly and uncouth, but in a world of rules, punishment for murder is the death penalty under certain circumstances, it is worth noting that the basic social human social benefits and government organizations in modern sense did not exist primarily to punish the murder did not intervene. At this time, the victim or the victim's family against him personally perpetrator and his family took revenge, Most of murder led to civil war between families or tribes, and thus human life was spent in perpetual insecurity concerns (IPod, 1,385th, 23). Progresses to the societies and communities more civilized relations to of Complicating on and government intervention was dramatically evident. It is the crime of murder as the most publicly known and for which punishment prescribed is death. Will Durant, in law review the Beyond writes: "punishment in the beginning, was based on the principle of retribution, if one man's teeth Sharifi free to fail, or be blinded her eyes, or the limbs of his faulty construction, he brought the same harm. Whenever a house fell down and was killed homeowner, architect or builder doomed to was death., if the result of the destruction of the house, the landlord's son was killed the son of an architect or builder would have killed it., if one girl ran and killed himself did not kill his daughter to be brought". In Ancient Rome was due (when the killer is from the aristocracy, and as punishment is exiled to the middle class, and the class was beheading punishment, the death penalty was nailed to the cross, but with modifications later Roman law was done, it was decided that if the killer is class, coop predators should be put to death by hanging sentence after it has become) in some of the old laws, such as the Germanic and Frank The killer was executed based on personal revenge, but was not required to implement it, but it could be the killers or those close to him as he gives blood money and finance., after a while the same was also abolished punishment system to the provisions of remained. Way that can be said about the thirteenth century AD to the general intentional murder punishable by death is almost everywhere (Pad 2005, 23).

Including Islamic jurisprudence and Islamic criminal law, manslaughter is given great importance, because Islam is the legislative authority in a very respectable and a great community, and therefore special care is given to it.

Section I: constituent elements of murder

Constituent elements include the three pillars of deliberate legal, moral and material from victims of the way they are.

Section II: Legal pillar

Article 170 of the General Penal Code stipulates that murder as a legitimate element ((intentional murder punishable by death, unless the law is Exceptional”).

Murder is murder in the following cases:

A) Cases that do murder to kill a certain person, or a person or persons other than a sum are certain or whether it is not typically fatal, but in practice is the cause of the killing of.

B) Where the murderer intentionally does something that is typically fatal, although it is not going to kill someone.

C) where the killer does not kill something that does not typically fatal, but other than that caused by illness or old age or disability, or a child, and so they are typically lethal killer to be aware of (The rule of IPC old).

Thus Article 206 as the legal element is murder, It is remarkable to note that the assumptions concerning the “general rules” is the intentional killing if “special law” This is about the rule of law will govern the other hand, if the murder and the Verify that there is no specific law on general principles contained in Article 206 of the criteria will be as compared to the verification and decision making texts adrenal the then far referred to in Article 206 is not killings murders kind deliberate. Another thing that is significant in terms of the Penal Code has no legal element dissipates through some intentional killings are a crime described as:

1 - Murder in the implementation of the legal

2 - Murder under Article 630

3 - Intentional killing in self-defense

4 - Intentional killing of blood futile

Chapter Two: Pillars of material

A) There is a live person:

The first constituent material elements of intentional killing of a person is alive and as long as the current leads to the killing of innocent people is not a crime of murder cannot be achieved. Therefore the intentional killing of a human condition is that the life he has legislator supported by the attack the first component is the fulfillment of the material elements of intentional murder Talk “live” AND “dead” is discussed. When a claim is denied the life of a person is not required to determine that the victim was

located in the former has a definite life for granted, out but also to her death’s Life is dead significant issue Occurrence the exact time of detection The question here arises is which of the stages of conception, inspiration of the Spirit and is the basis of life began? And the occurrence of death and how long can a person be considered dead? Is there activity of other body parts if someone is brain dead or dead is considered Not Therefore clarify the origin of life and death is very important to recognize that in the decision is a necessity.

Section III: Life

From a biological perspective, human life begins with conception and against it in the course of a particular crime (abortion) raises, in other words, if human life from conception until birth is raped by the abortion As long as delivery of the fetus and fetal blood flow to the unit is still not accepted the situation continues and the fetus is not an independent existence and the delivery and the umbilical cord of independence, is cut. So independence embryo “separating the fetal blood from the maternal blood flow through the umbilical cord cut” is therefore if the fetus is an independent life even in the short time he raped achieving other deliberate murder is implemented in terms of in this respect there is no difference between a children born with several people year. On the other hand, as the victim's physical and mental well-being deformed or mentally handicapped as well as felony murder is not effective, Murder a crime is bound to result in death of the victim against the bet is the realization that achieving. “In ancient times until the early nineteenth century, it was easy to define death stops the heart and they knew about the death of the last beat of the heart, death comes”. “The perfect stop the death of Back vital functions and is usually broken heart first and then the death of brain cells and thereby come to breathe and feel and move the first death is, and often back and breathing is the brain cells and thus boxing Lack of oxygen in the blood can cause heart failure and death in both real and decisive arrives”.

Medically types of deaths are death Appearance:”in the case of death and life before death comes to appearance, during which impose extremely severe respiratory and cardiac movements, and even appear to stop appearing in the conditions of artificial action. BREAKBREAK The revival and oxygen and stimulating the person's heart back to life, there is a possibility ect”.

The actual death or definite: “Death is certain that the cardiovascular actions of sensory and motor completely wiped out and back is not possible; Signs of real death include cessation of blood flow, stop breathing, stretching and constant pupil in both eyes and loss of electrical waves of the heart and brain”.

Brain death: "Brain death is the irreversible cessation of all mental acts, it should be noted that the loss of the great acts of destruction of the cortex and brain stem that is silent and continuous EEG and dropped several hours of reactions skin, eye and throat irritant, etc can be detected with time and precision".

A: the act committed

Committed the act of murder as the second component of the material element to be materially positive action such as burning, feeding and handling of the material is, in other words it is necessary that the actual killer of the victim's body to do.

Legal Department Branch Justice has stated that during a consultative approach: "committing the act, such as murder and assault by strangulation and so bias, it may also be the result of omissions. Example, if a mother commitment to foster children has to kill an assassin is to die his children he does valve (advisory opinion, 1996, 1098).

So from the perspective of the material element of the crime of murder laws position (Mvzh) material should always be positive and practical way to establish a physical relationship with the victim's body. Unless texts, there are the general regulations murder do not conform to these criteria the actions will be and how and murder by the special provisions specified. Example, according to Article 325 of the Penal Code ((Whenever someone on a personal weapons to kill or dog or anything else that he inspires fear he will do, such as screaming or sonic boom is causing fear and intimidation of the person die if the operation is typically fatal, or for the purpose of Although murder is typically not fatal, causing death and is considered murder if the act is not typically fatal, and not by semi-intentional murder, attempted murder is to take place and the money it is a killer. considered to be in the matter of General Terms murder contrary to the relationship between the act of physically murderer and the victim's body was needed to establish such a relationship is not necessary (Mirmohamad Sadeghi, 2012, 88). If or animal personal the killing of the he instigated weapons or generally to do any work other horrors and deaths caused by intentional or quasi-intentional murder him as the case may be is required, so under the provisions of Article 325 of pulled some other on the weapons of mass destruction of his own body physical connection is established or the animal may damage or bodily injury on the victim's voice exploded just do not see the action of this substance is sufficient to realize these things and the damage to the victim by the animal enters a Due to harm him and his slaying is located outside of the scope of Article 325.

Third speech: moral

Another constituent element of murder spiritual elements, the meaning of moral defining the mental state of the perpetrator in relation to actions that can be done, In other words, which is an intentional constituent of measures material element of murder, For example, if someone shot the other hand, will attempt to determine his mental approach at the moment of firing the gun that intentionally try to push or Mashh' no Precautionary is excluded from the shot, indicating element inadvertently is committed to a mental or spiritual. In addition to achieving the intended result of criminal acts committed in the performance is also required.

So if someone else blow into it, causing his death if his act of deliberately premeditated murder and wants to obtain the result of criminal as well as the Islamic penal code, but despite the by willing committing despite the "attempted murder" has to be a deliberate act committed in some cases, although no such intention, but murder is considered eligible.

Second: First paragraph: concept or practice typically fatal

Legislative provisions triple Article 206, the so-called "work typically fatal" has referred the criteria to diagnose or at least permitted "fatal lack of" determines not to be based on "lethality" do Now the question that arises here is to discern the intent of "work typically fatal" is Should an abstract be considered in terms of their work and to determine whether it should consider other factors such as the condition of the victim and the defendant?

Article 171 of the General Penal Code was decreed "everyone else intentionally maim or beat the and response which leads to death, the victim will have to kill without committing a criminal class of three to 10 years in prison will be sentenced provided a tool that is being used, not the murder weapon and the murder weapon is guilty of intentional murder sentence".

Can be seen in the material as well as criteria for the diagnosis of non-weapon states is no murder weapon but by jurisprudence interpreting the legal vacuum in the following scenarios, and the murder weapon is the penis.

Section II: The murder weapon into account the nature

Basically do some actions or use some equipment than anyone can employ lethal weapons such as members of the firearms, swords, bayonets, daggers, knives, and a variety of hunting and war weapons, throw grenades and deadly poisons such as Lethal Devices be. Therefore, if a murder weapon by someone else traumatic to enter and cause of his death is the use of such a device is potentially lethal killing is intentional.

Section III: murder weapon hit the credit position

The purpose of the position sensitive device that means fatal to the validity of the first kind, nature, and nature is not fatal, but by hitting some sensitive parts of the body, the weapon are General Board of the Supreme Court of the votes of self-declared Unity vahdat procedures who committed the murder weapon is a device used to be and whether death is the device that is usually fatal or critical position for the shot against the death Provided(Victims) lead and limit the event that the murder weapon to the penis, mystical weapon known not to agree with this (out of precedent, 1954, 4668).

Section IV: The murder weapon to the victim's credit status

According to Article 206, paragraph (c) where the killer does not kill something that does not typically fatal, but other than disease or aging or disability, or a child, and the like is typically fatal to the killer to be aware of Murder is intentional. In paragraph (c) of Article 206 of the state legislature against the victim or evidence discovered as a child aging disability and disease classification and knowledge as revealed or Non-recognized killer towards the fulfillment of conditions in such situations is considered in other words, commit murder should be fully aware of the circumstances of the victim Can tolerate him as the murderer deliberately pursued therefore Non revealed situations killer awareness of the existence of such characteristics is the intentional killing of the victim against the fulfillment of the condition. This follows a vote, the Supreme Court has emphasized. Due to the special quality of the records and statements of the accused pleading guilty at all stages of investigation and trial runs on the kick struck the chest of the deceased and the deceased's come down a head of they're going to kill no to kick Breast typically is not fatal and that the defendant is not guilty of illness and disability, if the deceased is well aware of this quasi-intentional murder case seems to be out and about the instances of murder (vahdat(Unity) out procedures 1,370th, 435).

According to the above considerations already past jurisprudence on the nature of the work being done and do not change that typically is fatal, typically fatal to the means place Specifies struck slain status because working physical condition is not imaginable without the presence of so-called murder weapon to change the criteria typically fatal precedent by identifying the type of work is still being intentional homicide knows.

The third debate: Retribution conditions

It applied to be put to death, should be eligible. Most Islamic scholar's six conditions of equality in liberty, and religious blasphemy, loss of filiations,

maturity, wisdom and lack of blood futile Retaliation is considered for obtaining it.

Section I: How execution

The killer will be punished and how the execution Islamic scholars have different ways of expressing the same way that some people believe that the murders took place, the murderous retribution Shafi'i and Maliki jurists are of the opinion, but the similarity is not possible. Abu Hanifa categorically says that the murderer should be punished with the sword, even though the victim is burned (Zrafat, 1378, 62).

A group of Imami scholars believe that death should be cut by swords and the like Head Killer by cutting the artery of the neck four reached. Imam Khomeini says in this regard: "will not be punished except by the sword and the like, and is unlikely to be permitted to retaliate by means of the sword, which is easier (i.e., faster and more comfortable killer would) like to shoot with a gun on the brain, such as connectivity, power tools, implementation of death retribution or retaliation member is not permissible and not permissible means of torture and torment is more than swords, such as cutting with the saw, and if someone is a sinner and need Was punishment, but what Not upon him (Imam Khomeini, V 2, 535).

Penal Code and in compliance with the terms of Article 263 provides: "Nemesis (qisas) does not win the penis causing criminal harassment is prohibited and mutilated his crime".

Legal Department of the judiciary rather than the act of retaliation is prescribed to execution by hanging and that: "Whenever a criminal court issued the death sentence and executed court of Justice in charge granted, and Principle (Al-asvl)Ali according to the procedure of execution of the Court's action and timely implementation and leave it to the police about the death sentences from other courts, Running low execute the mission that other provisions are". On Quality retaliate by shouting Door Shuffle It should be noted that, as of 1334 the city took place in public in the fields and sometimes on the court it clears that felony execution in the place of charged. However, since taking away the life of a human being repugnant to the scene, causing discomfort and sometimes lead to severe psychological effects, so in 1343, the death penalty regulations hereinafter referred execution of reform and will take place on prison. Provisions the Regulations 18 and 19 of 15.2.1370, approved the execution of death sentences to death if the verdict is not provided, the bearing is pulled over with an hour will not be achieved it to death, he sure then the bearing is lowered. After examining the body, and make sure the people sentenced to death, the body representing the judicial order succumbed to detect and according to the

Ella and the ceremony bury ton. In this case, all expenses will be the responsibility of the government.

The third topic

The first clause

Reasons pros and cons of capital punishment

One of the main reasons is because of moral opposition to the death on the basis of certain moral teachings, to hate and ugliness and violence Hanging go up to reach the conclusion that, say, violence against violence is not worthy; Executed with a sense of humanity and spirit of today's civilization, which respects the right to life for all human beings is contrary Author of the article says: The death penalty kills. Killing is bad Thus, death is bad. According to Victor Hugo, do you think there is a lesson to death? Why because what they teach but how you teach this lesson? This will not kill it. How should learn the culture? Killing? On the other hand, some citing Declaration of Human Rights, saying: Based on Articles 3 and 5 of the Universal Declaration of Human Rights, the death penalty is a violation of basic human rights. American Declaration of Independence in the "right to life" as is Regulators believe this statement: Administration savagery (death) is inconsistent with the provisions of the ethics.

Suggestions

In Islamic Law, "justice" of the main conditions of a just God, the basic framework of legislation, penalties and interest of the individual and society based on justice urged lawmakers are developed and based on the framework taking into account the interest of justice, punishment determine the sentence. Among the major punishment by God in some cases been asserted, is the death penalty Judgment about whether such punishment is fair or not, requires the knowledge of all aspects and effects of this punishment; because no man can claim to be aware of all aspects and effects of this punishment, therefore, cannot be a correct judgment. Awareness and consideration of all aspects of God's punishment imposed cannot be unfair.

Discussions

Although opponents of the death penalty in some countries have been successful, but it still seems to be difficult to prove the ineffectiveness of punishment and the need for further research in this area, especially in Iran and other Islamic states, reveals. The reckless operation and not blindly imitate the action of some countries to deal with the punishment, but because the execution of punishment in Islamic law, can be divided into partially suspended the executions as punishment, Islam special emphasis on its implementation are necessary in order to be more study of the execution of

an order to be seen how much influence? And on the other, it found that death does not affect the size of penalties, if it can be seen as the result of carrying out the executions Non sentenced refused or not?(Of course, because the punishment is the Islamic ruling in this regard according to the prevailing interest of the community can choose the appropriate punishment, therefore, the execution of punishment, the punishment was more efficient, the ruling may choose an alternative punishment that in response to these issues, the first should be noted that these are the real evils of Islam and the aggregate function is achieved if the interests of science, we can consider the material to be making judgments about the change or not to change . In this regard, some scholars orders to prove (sentences which criteria are fixed and unchangeable) and variable (sentences in which the material can be changed with changing conditions) have been assigned. The reason is that the issue in this case (The second case) has changed and as a result, the new rule will require a new topic.

Corresponding Author:

Ahmad Reza Rafiei (Ph.D)

Department of Law, Islamic Azad University Khorasgan (Isfahan) Branch

E mail: a.raffie@khuisf.ac.ir

References

1. Light pricing, fulfillment, general criminal law, in 2012, published a treasure of knowledge, print, wire, Tehran.
2. Shambayati, H., Dedicated Criminal Law, Volume I, Majd publisher, year of publication 2005 Tehran.
3. Sepahvand, Amir Khan, one specific criminal law, Majd publisher, year of publication 2006, Tehran.
4. Balustrade, Mohammed Hussein, a New Exploration on the death penalty, a graduate seminary and legal experts, knowledge house No. 118.
5. Kartvzyan, N., Bar Journal, No. 7-6, 72-1993.
6. Mahmoud, AA, criminal law of Islam, Muslim Women's Movement Publications, Volume the First, Second and Third Printing, 1981.
7. Fathi, Ali, to death penalty in Iran, and the advantages and disadvantages, a Justice Department lawyer, 07.17.2013.
8. Website Justice, Justice Magazine.
9. The Islamite News.
10. Journal bar Association.