

The Role and Place of Public Opinion on the Death Penalty for Drug Crimes in Iranian Criminal Law

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Abstract

Public opinion is regarded as one of the main factors determining the severity of actions taken by the judiciary towards criminals. Its role is also being emphasized in the criminal policy, either criminalization, penalization or sentencing. Negative consequences of death penalty, especially its brutalization effect on society, numerous international conventions related human rights and considerable public opposition to the capital punishment by reason of its ineffectiveness as a deterrent factor have caused some challenges on the national and international levels. Based on “Death Sentences and Executions Report by Amnesty International (2019), Iran remains as the fourth executing country within the Middle East and North Africa particularly for drug-related crimes. The situation has made it imperative to revise and amend the current approach. The present article is based on the field research and interview with jurists/lawyers, judges of Islamic Revolutionary Court, psychologists, peoples and families of the executed persons. The results show that the capital punishment for drug-related crimes (75 percent of the total recorded executions) doesn't have a deterrent effect and has not decreased these crimes' rate. Additionally, it has been revealed that these crimes are rooted in socio-economic issues that could be tackled through improving employment rate, the eradication of poverty, also with quality education and skills training. Furthermore, from the public viewpoint, replacing alternative sanctions to capital punishment, it not only reduces the risk of recidivism but also contributes to their rehabilitation and social reintegration. According to the survey conducted for this paper, the death penalty is considered to be against human rights and thus, other alternatives have been proposed based on a constructive approach to this issue.

Keywords: Death Penalty, Drug Crimes, Public Opinion, Iran Criminal Law.

A. Introduction

Amongst psychological and sociologic phenomena in the society, public opinion has become indispensable as a support for policies. In parallel with the development of democracy throughout the world, it turns into a significant factor in political, societal and economic life, thus affecting the structure of socio-political system of the society. Considering the aforementioned point, the significance and power of the public opinion is revealed to policymakers, especially in criminal justice systems. With the development of communication, especially by its collective form, on social networks as a significant part of human life, public opinion plays its role as an effective factor in shaping macro policies in today's modern societies. Regarding the public opinion, death penalty is paradoxical because, on the one hand, it is a tool for securing the society against dangerous and recidivist criminals and, on the other hand, it is against the right to life as the top of fundamental

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human rights. The Anti-Drug Act 1988 defines severe punishments in particular death penalty and life imprisonment for drug related offenders. It follows a strict sense of criminal policy mostly referred as to penal policy, i.e. based on punishment and other penal sanctions. Crime has overall several dimensions and drug crimes are so. In the one side of criminal phenomenon there is the criminal who commits a crime for different causes and his/her family that would be affected by the criminal event and their consequences and effects. On the other side, the government in the name of society is accountable for the public safety and order. Therefore, the paper concludes that it is necessary to pursue a reasonable and systematic criminal policy against drug-related crimes.

B. Death Penalty for Drug Crimes in the light of Public Opinion

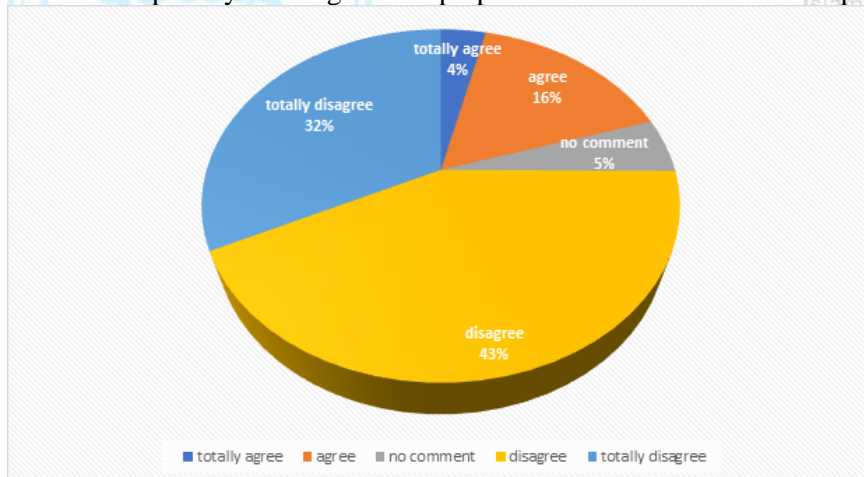
In this part, the content of electronic questionnaire and data related to 171 respondents including jurists, peoples and family of prisoners will be analyzed.

I. Analysis of Participant Survey

The data shows that 58.5 percent of respondents of the questionnaire were male and the rest were female. 50 percent of them had master degree, 20 percent were undergraduate and 11 percent had Ph.D. degree. Totally, 13 percent of the 171 respondents were judges or lawyer and 37 percent had different profession such as engineer, doctor, scholar etc. Finally, 6 percent were employed and 23 percent were students. Approximately 23.4 percent had good knowledge about legal issues that some of them were judges and lawyers and 26.9 percent were familiar with legal matters. However, 32.7 percent of them had the necessary information about law. Consequently, 83 percent were familiar with questions.

II. Result of Public Opinion Analysis

1. Death penalty for drug-related perpetrators deters them from relapse into criminal behavior:

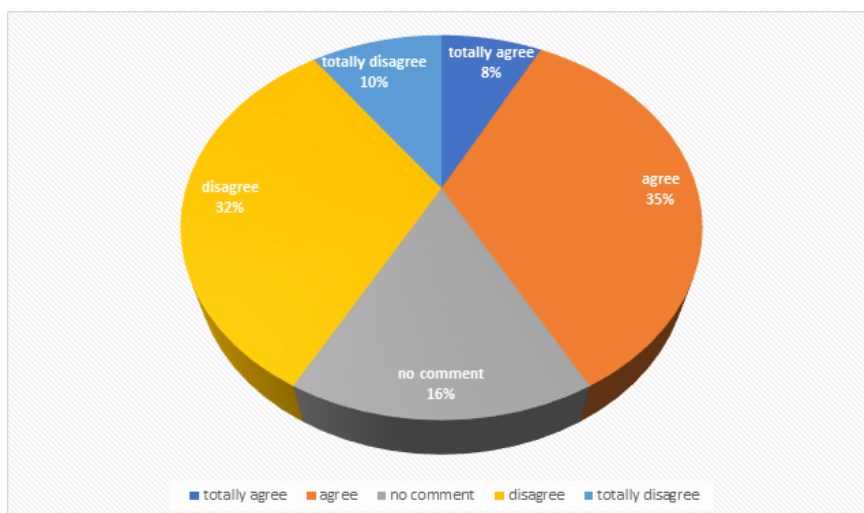


This question is focused on public and specific deterrence that is the basis of punishment. The majority responded that this punishment either publicly or specifically will not be deterrent¹. Only a minority considered this punishment as a deterrent factor. It should be noted that many of politician, takes public opinion as a main factor in limitation of public politics.²

2. According to the public opinion, if the death penalty was substituted with other sanctions and measures, the criminals would have more likely to repeat the crime:

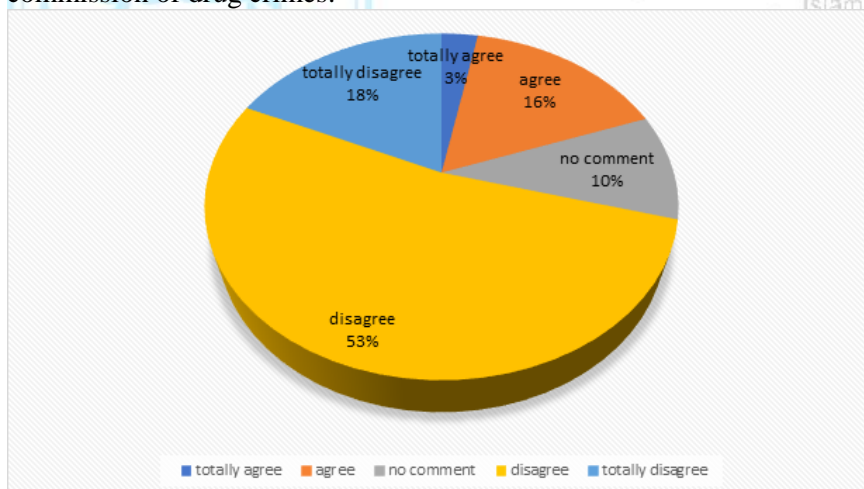
¹ Britto, Sarah & Noga-Styron, Krystal, The belief that guns deter crime and support for capital punishment, *Criminal Justice Studies*, No. 3, Vol. 28, 2015, p. 56.

² *Ibid*, p. 10.



Alternatives to the capital punishment, already denoted, imply the message that the society opposes against this type of punishment and gives another chance to the criminals to be rehabilitated. Such alternative sanctions make it possible to adopt some mechanisms such as suspension of punishment,³ postponement of sentencing and alternatives to imprisonment that are provided in the Islamic Penal Code 2013. With respect to drug-related crimes, it seems that the society has propensity to accept the alternative sanctions. Yet, it is believed that if the death penalty was abolished totally or partially, criminals would repeat their crimes with more courage and the society would not be safe because of some current issues such as high rate of unemployment, lack of cultural infrastructure as well as ignoring the philosophical backgrounds of punishment.

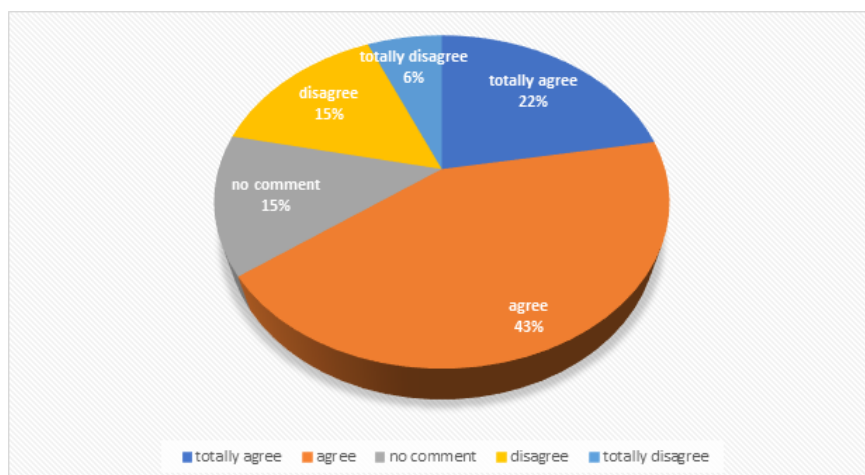
3. An effective punishment except for death penalty makes the criminal more encouraged not commission of drug crimes:



When the alternative punishments are discussed, it means that the death penalty is ineffective. Regarding the statistics, death penalty should be the last resort. It is better to give priority to rehabilitation of criminal.

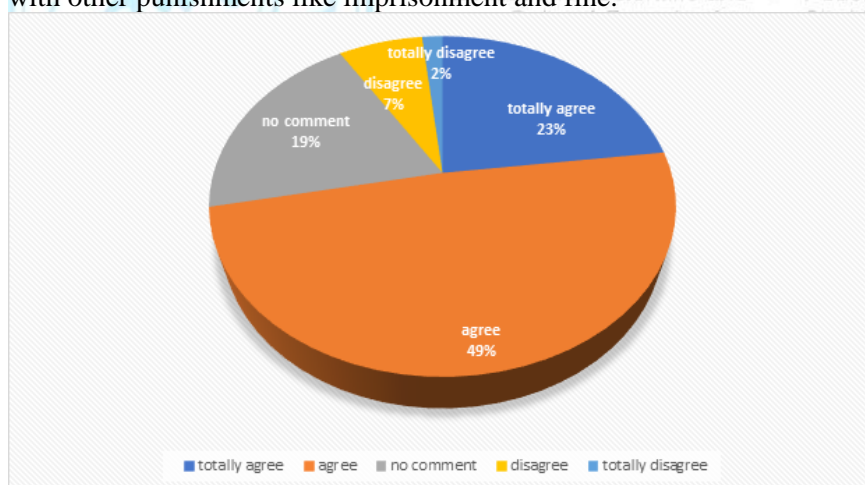
4. Public opinion has a significant role either in abolition of death penalty or in its affirmation in legal system:

³ Hall, A.C., *Crime in its in Relation to Social Progress*, New York, Columbia University Press, 1902, p. 19.



This question was posed in order to find out the effectiveness⁴ of public opinion about death penalty. In fact, in democratic political system, the public opinion should be taken into consideration. But, populist criminal policy exaggerates the dangerousness⁵ of these criminals and resulted in harsh punishments. But nowadays the situation has changed, because the people themselves have a significant role in media⁶ in particular in social media and so, the role of politicians in terms of populist criminal policy has been reduced. With regard the research done in all over the world, it has shown that public opinion has an indispensable role and if it supports a policy or wants to abolish⁷ it; respectively that policy would be remained or abolished. This is the case for example the Japan whose government believe that death penalty will remain until the people support it.

5. Lack of cultural model in the society is one of the obstacles for substitution the death penalty with other punishments like imprisonment and fine.



The disproportionate penalization in Iran's society stems from weak cultural model. During the long times of capital punishment, people got accustomed to those punishment⁸ and when an alternative option is replaced, they feel dissatisfied with the substituted approach taken by the criminal justice system to abolish the death penalty. The main reason is the lack of cultural model and

⁴ James Midgley, Public Opinion and The Death Penalty In South Africa, *The British Journal of Criminology*, Issue 4, Vol. 14, October 1974, p. 352.

⁵ Farajih, Mohammad, Mohamad Bagher Moghaddasi, Some Aspects of Populism in Criminal Policy of Drug Offences, *Legal Research Quarterly*, No. 68, 2015, p. 28.

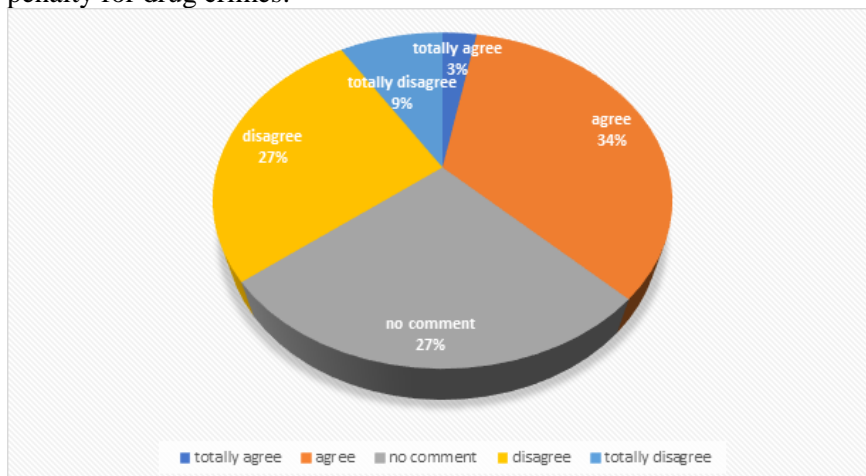
⁶ Britto, Sara, Krystal E., Noga-Styron, Media Consumption and Support for Capital Punishment, *Criminal Justice Review*, No. 1, Vol. 39, 2014, p. 28.

⁷ Amid, Reza, Analysis of the Role and Effect of Media on Public Opinion, *Studies of Cultural International Relations*, No. 1, 2011, p. 83.

⁸ Hough, Mike & Bradford, Ben & Jackson, Jonathan & Roberts, Julian, *Attitudes to Sentencing and Trust in Justice: Exploring Trends from the Crime Survey for England and Wales*, Ministry of Justice, 2013, p. 1.

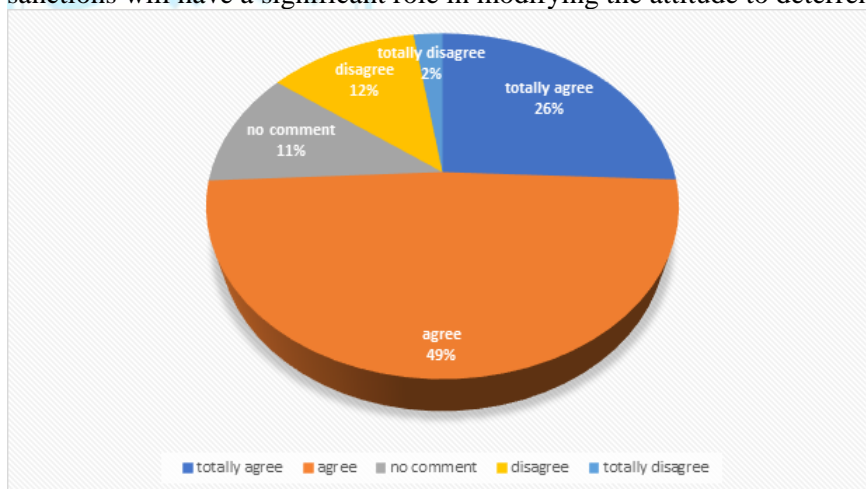
sufficient information about punishments and their consequences. Fortunately, with the development of mass media and the advancement of the information technology, the situation⁹ has been transformed and people are more ready to accept less severe punishments. But they insist on more severe punishments for drug traffickers, because they believe this kind of criminals deserve it. The public attitude towards severe punishments such as death penalty, lack of sufficient information about this punishment and other types of punishment are the reasons for which in some country death penalty is still the main punishment and its rate is high. This is the case for Iran,¹⁰ China and Japan.

6. Based on the public opinion, it is impossible to consider another punishment instead of death penalty for drug crimes:



Some people believe that this punishment is the best option and no alternative can be proposed due to its deterrent effect and based on their religious beliefs about death and life in the afterlife world.¹¹

7. Alternative punishments for death penalty as fine, community service and other community sanctions will have a significant role in modifying the attitude to deterrence of punishments:



Drug-related crimes are rooted mostly in socio-economic problems and the criminals are the by-products of these problems, while the main roots remains strong, punishment of these criminals would not be justifiable through death penalty. Consideration of some responses like community service or learning a skill can contribute to change of the life style, thus prevent these crimes. And it is possible to consider confiscation of all properties of drug-related criminals instead of death penalty to prevent

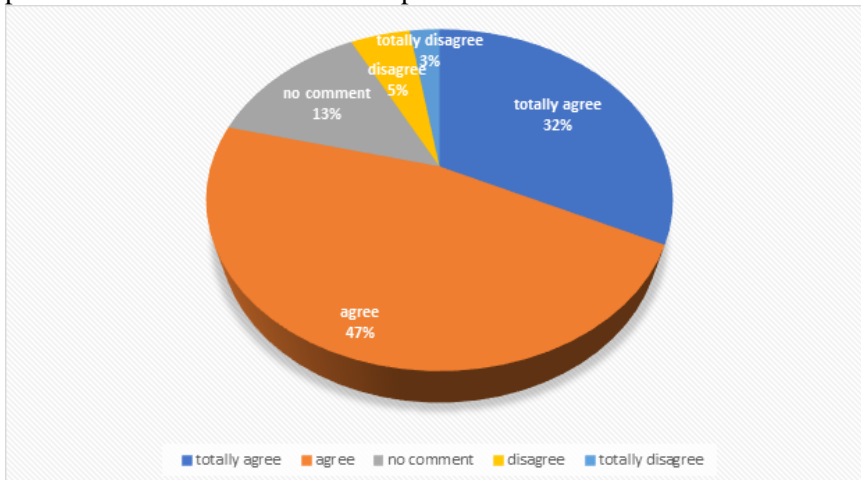
⁹ Mokhtary, Mohammad Ali, *Media and Orientation of Public Opinion in Decision-Making*, No. 24, 2010, p. 70.

¹⁰ Gallahue, Patrick, *The Death Penalty for Drug Offences, Global Overview*, International Harm Reduction Association, 2011, p. 26.

¹¹ Ryberg, Jesper and Julian V., Roberts, *Popular Punishment, On the Normative Significance of Public Opinion*, Oxford University Press, 2014, p. 230.

these crimes and to change the culture of the society from severe punishment including death penalty to rehabilitation and social reintegration.

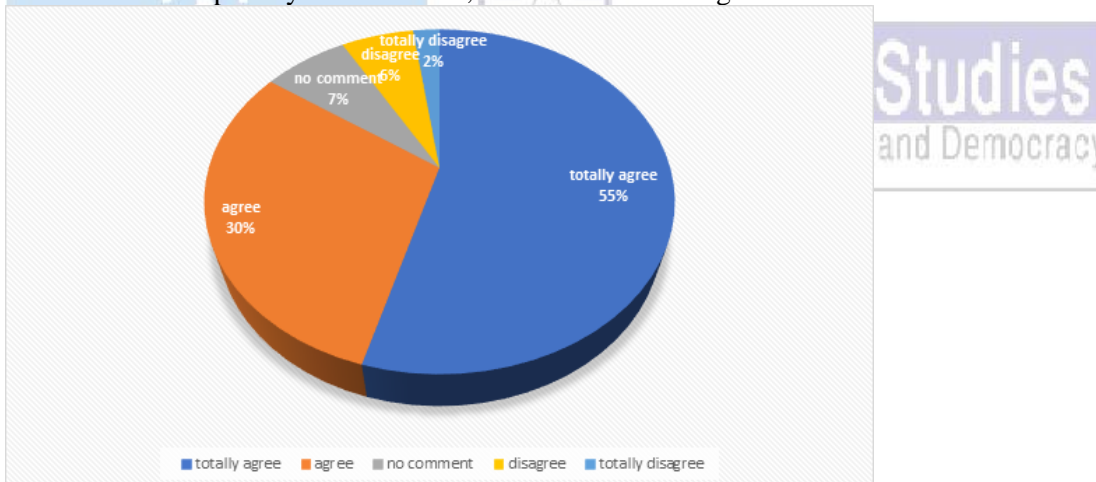
8. Based on the public opinion, the marginalization/stigmatization of families of the executed person is considered to be unacceptable:



One of the serious problems of death penalty is its consequences on the family of the criminal convicted to death. Interviewing with these families, these points have been revealed:

Death penalty has a direct effect on these families and makes members of families unsatisfied with government and this may result in their unrest and thus, the possibility of their actions against order and security. Besides, they may feel being oppressed and unconsciously tend to commit crime. Moreover, death penalty stigmatizes the family of the criminal and this makes it difficult they have a normal life in the society. But, it is considered that most of these crimes are committed because of economic problems, and in relation to death penalty, the family and other relatives may feel that they are victims and may believe that the society and government are responsible for this suffering. Thus, instead of sense of justice, people feel sympathy for criminals. Consequently, death penalty is not only imposed on the criminal, but it has stigmatization consequences for their families and this is contrary to the justice and principle of personal liability.

9. If the death penalty was deterrent, it should reduce drug related crimes:

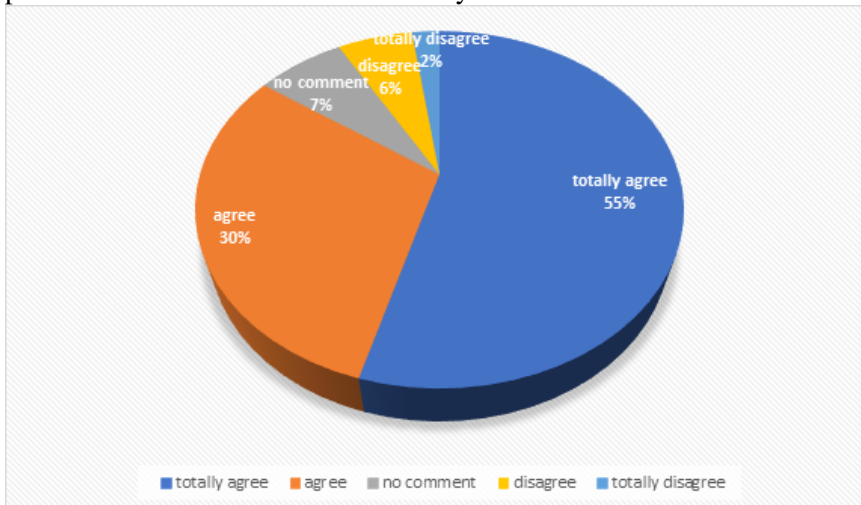


High rate of drug crimes and death penalty is one of Iran's society problems.¹² In fact Iranian criminal justice system has not been successful in terms of controlling the drug crimes. The system only punishes individuals who commit these crimes because of economic problem and unemployment, but has not been able to punish the principal criminals who play a key role in the

¹² Hood, Roger, Capital Punishment: A Global Perspective, *Punishment & Society*, No. 3, Vol. 3, 2001, p. 88.

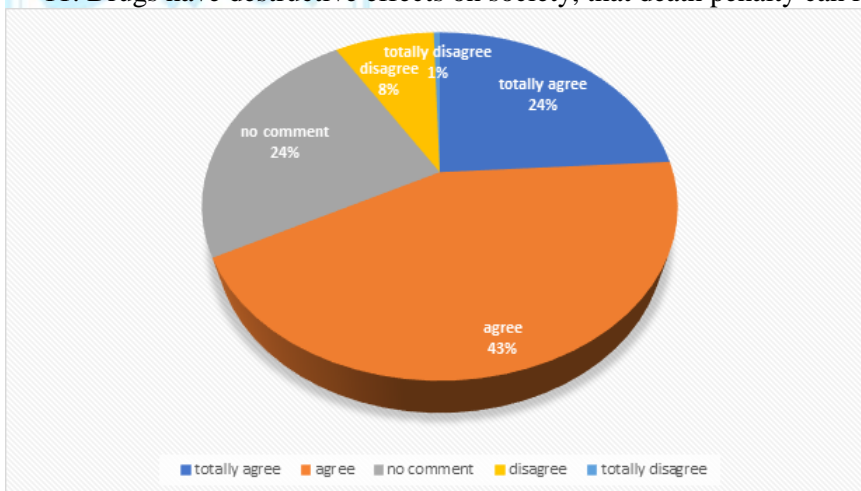
preparation and organizing these crimes. So, it is believed that if death penalty was effective, it could reduce crime rate.¹³

10. Political consequences of death penalty are high, including Iran is known for violent severe punishment in international community:



In the international community according to the Amnesty International's report, 23 countries have executed death penalty in 2016. Some countries do not publish any information in this domain like China and North Korea. In the past, death penalty was existed in the most countries, but today, its abolishment has been increased throughout of the world. Public opinion and human rights organizations have contributed in reducing this punishment or in its abolition. Some countries have abolished death penalty through referendum. Regarding Amnesty International's report in 2014, Iran was on top in terms of executions, most of which were for drug-related crimes.

11. Drugs have destructive effects on society, that death penalty can reduce it:

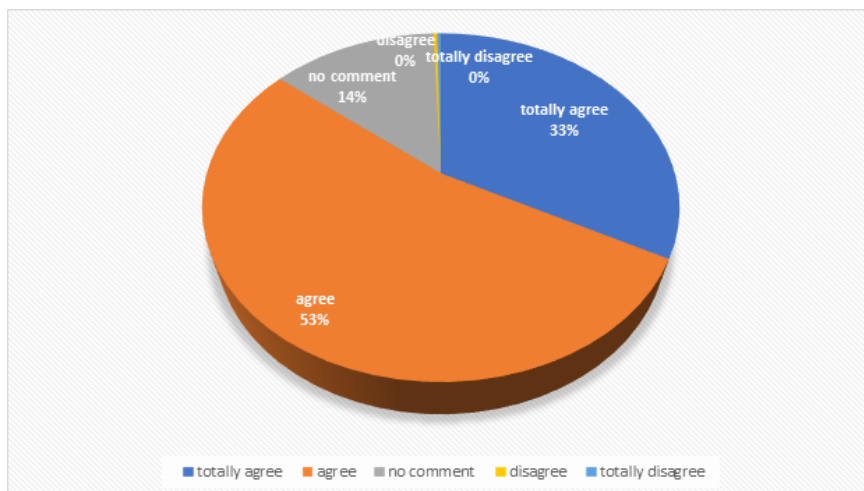


High unemployment, lack of preventive measures, lack of rehabilitation capacities, high rate of drug-related crimes and impossibility of its full control by government lead to use the death penalty as the only way to reduce these crimes.¹⁴

12. Emphasizing on retributivism instead of rehabilitation led to death penalty as the main punishment in the courts:

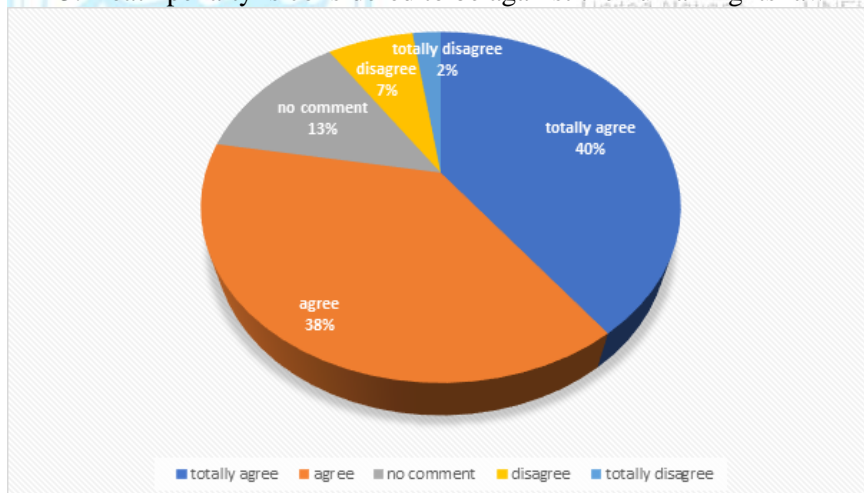
¹³ Najafi Abrand Abadi, AliHossein, Hamid Hashembeyki, *Lexicon of Criminology*, Third edition, Ganj Danesh Publication, 2014, p. 124.

¹⁴ Gholami, Hossein, Strict Criminal Policy, *Law Enforcement Science Quarterly*, No. 27, 2016, p. 96.



In the Iranian criminal justice system, the main penal philosophy justifying the punishment is retributivism instead of rehabilitation. Ineffectiveness of harsh punishment based upon rehabilitation theories has resulted in human rights concerns in certain sections of the society. The jurists/lawyers and judges have a long-time tendency to rehabilitative responses. However, statistics shows that death penalty as a significant example of harsh punishments has a high rate; the judges do not take into consideration the cause of crime and thus, do not pay attention to individualization of punishment. In fact, the focus point of criminal justice system is on crime, not on rehabilitation and social reintegration of criminals.

13. Death penalty is considered to be against the human rights law in international community:



Article 3 of Universal Declaration of Human Rights says that everyone has the right to life, liberty and security. So, the right to life is a concrete fundamental norm without any exception. Thus, it is believed that death penalty is against this right. In this regard, the number of countries abolishing this punishment has been increasing. Consequently, death penalty should not be imposed even for serious crimes like drug-related crimes.

C. Analysis of Opinions of the Revolutionary Court's Judges on Death Penalty for Drug-Related Crimes

1. Death penalty was never deterrent. The high rate of drug-related crimes can be a proof for this claim. According to the relevant facts, the capital punishment was not effective with any positive results. The right to life is at the top of the non-derogated human rights. Under Islamic rules, deprivation of life can only be decided by God. The drug-related crimes are not amongst the

categorization of crimes in Sharia that called as the crime of spreading corruption on earth -*Afsad-i fil Arz*.¹⁵

2. Fighting against drug-related crimes in Iranian criminal justice system has been always with a focus on effect, instead of causes; therefore, the criminological aspects have mainly been neglected by the system. The idea that can be proposed in terms of alternative punishment is "Addicts' Island". So it seems any individuals related to these crimes are in exile on an island that nobody can leave.

3. Considering the stigmatization and side effects for the family members of the executed persons, the society has an ethical obligation for rethinking the capital punishment, since most of these crimes are rooted mainly in socio-economic problems. In fact, one reason for substituting this punishment is that family members of the executed persons consider the law and the government as unfair in their attempt to control the drug-related crimes by eliminating by-products of the deep socio-economic problems. And people take the executed person at the same time an offender as a victim.

4. Death penalty solidifies the brutalization as permanent dimension of the cultural sphere and makes people unconsciously cruel to each other and doubtful to the fairness of criminal justice system.

Conclusion

It is indispensable to take into consideration the public opinion as one of the main factors in designing a more effective and systematic criminal policy. Otherwise people would be doubtful to the fairness of criminal justice system. This would justify the criminals in their decision to commit drug-related crimes against an unfair society which leaves them behind in deep socio-economic problems and thus, lead to a weak legitimacy of sovereignty which undermines the security, peace, human rights and sustainable development in the society. According to the survey conducted for this research paper, it is revealed that the public in Iran does not believe in deterrence of death penalty, but they do not act in favor of its total abolition. The reason lies in public opinion concerns about a proper alternative to the capital punishment. Abolishing the death penalty, either totally or partly, would justify the advantages of the alternative punishments for the public.

The abolition of death penalty is rooted in the socio-economic problems including poverty, high rate of unemployment, unsustainable development and lack of quality education and skills training. On the one hand, these problems play a significant role in occurrence of drug-related crimes. Thus, any severe punishments have no effect on deterring them. On the other hand, it is the security of the society which is in danger with some serious crimes like those related to drugs. But the proper response to this problem is not death penalty with different disproportionate consequences on the society and the family members of the executed persons, also solidifying the brutalization as permanent dimension of the cultural sphere.

Therefore, the abolishment of death penalty may be suggested by eradicating the socio-economic factors with more effects on drug-related and introducing other proper criminal sanctions to be replaced. As the first step, unemployment and poverty should be eliminated or reduced in order to weaken the main causes of drug-related crimes. The second step will be the introduction of the proper alternatives as criminal sanctions for these crimes. Also, noteworthy that above all the aforementioned reasons for the abolition of the death penalty, there is another strong reason, the more important one: the death penalty as a brutal punishment is against humanity as well as the human rights. Therefore, abolishing it without any need to recourse to any other justifications is a concrete suggestion. However, as mentioned, it is a complicated problem that could not be tackled without a comprehensive approach. Yet as the current public opinion confirms not efficacy of the death penalty in its deterrent function, the abolishment could act as a driving force to reduce gradually the rate of death penalty.

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¹⁵ Habitabar, Javad, Habibi, ZamenAli, Foundations of Islamic Jurisprudence for Capital Punishment in Drug Offences, *Fiqh Journal*, No. 2, 2014, p. 99.

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