
Capital Punishment from the Perspective of Criminal Law and International Criminal Law Ideologies

Golnaz Moradi Pasand^{*1}, Alireza Lotfi Dodaran², Mozafar Bashokuh³

¹Criminal law and Criminology Department, Ardabil Branch, Islamic Azad University, Ardabil, Iran

²Assistant professor and faculty member, Islamic Azad University, Ardabil Branch, Ardabil, Iran

³Lecturer and faculty member, Islamic Azad University, Ardabil Branch, Ardabil, Iran

*Corresponding Author E-mail: golnaz.moradipasand67@yahoo.com

Received: 24 August 2013, Revised: 30 September 2013, Accepted: 20 December 2013

ABSTRACT

Capital punishment or death penalty is a social enforcement guarantee which have existed in all societies and civilizations since past, and have taken many victims. Although today, this punishment has revoked in many countries completely and many international documents and treaties consider it as a violation of human rights, but still, there are some countries and governments that have maintained this punishment in their laws and against some political, social or religious crimes are applied. Despite many altercations and discussions that about the abolition or retention of the capital punishment has been started about two hundred years ago and each of the opponents or fans have expressed reasons and arguments about approval or rejection, yet, certainly we cannot believe that the capital punishment is an unhelpful and effective legal. But a useful practical solution is that to maintain the right of live of individuals and observe their inherent value, which has been highly regarded in recently years, at least in some crimes, opponents views should be preferred the disciple views and as much as possible, cases for applying it in laws should be reduced and its enforcement should be limited to some very serious and harmful crimes, especially with regard to that in contemporary world, the purpose of punishment is not punishing or penalizing, but also its purpose is correction and nurturance of offenders and restore him/her to normal life.

Keywords: Execution or Capital Punishment, Laws, Punishment, International Documents.

Introduction

Execution (capital punishment) is an Arabic word meaning destruction; accordingly, we can say that execution is the most severe punishment that is predicted in the criminal law of countries,

and usually it applies to offenders who have committed the most important crime and are dangerous to society and certainly will not be modifiable. By analyzing the historical precedents of capital

punishment from long time, it can be seen that capital punishment has been applied always about crimes and even the manner of execution has been in various forms and often offenders have been punished with execution. Of course, the purpose of punishments is intimidation and prevention of crime and correction the offender, and it is not a private revenge and human going to revoke the capital punishment and replace it and it is considered that the best option for replacing the execution is long-term imprisonment or exile or heavy fines.

Now some countries, have not deleted the capital punishment from law, but actually they do not condemn to execution. Some countries do not apply capital punishment to their offenders at all, but in some countries, the capital punishment is applied in some of crimes. In general, in global and international view, tendency goes towards abolition of capital punishment. Explaining the current status of capital punishment, whether the abolition or maintain it, is not possible in all countries, because the available resource is often related to those countries which or by their representatives have presented detailed reports in congress and international conferences or some publications or published literature about penal and criminal system of that country is available. In almost all Western European laws, in public law, in time of peace, capital punishment is considered as an abolished law but outside of Western Europe, the situation is different and according to the degree of development and national traditions a customs and other assumption, the issue is posed in different manner. This study wants to answer this question finally that how many the conventions, international and regional treaties have been effective in

order to abolish or reduce the capital punishment?

Study background

Dr. Abdolhosein Ali Abadi believes: emotions and heart elegances has an important role in judgment of capital punishment. Opponents of the execution know it against and unlike the traditions and customs of civilized people but it should be noted that if capital punishment be abolished they must ordain punishments for social protection that are more loathsome. Dr. Hamid Smaii believes: in terms of absolute justice, an issue that should be considered, it is a proportion that should be considered between the crime and degree of carried out crime and the degree of offender responsibility. Obviously, if this proportion is maintained, execution is unhindered in terms of absolute justice. Sezar Bekaria says: if passion or necessity of war has learned bloodshed to human, laws that should create lenient on people's behavior, it should not be increased the number of these atrocities.

Materials and methods

The method of collecting and organizing of this thesis is direct referral to library's resources that has been with the guidance of worshipful supervisor, Dr. Alireza Lotfi and the use of efficient and effective consultations of Dr. Muzaffar Bashokuh as advisor. It means that in the use of the different resources, in the beginning, contents related to execution have been carefully studied, and then useable contents have been noted and the notes have been studied and finally after numerous displacements and editing the selected contents, the research have been prepared.

Capital punishment in criminal law ideologies

Full consideration to intensity and weakness of crime and neglect of the needs and circumstances of offenders and committed criminal causes, was continued from the day that the society was formed, until the early nineteenth century. According to the theory of scientists and researches of this period, we understand well that each of them permit punishment for a criminal act and always ignore the offender, and have not studied his/her personality. With the advent of modern criminal law, the issue of his/her financial responsibility and also criminal responsibility from the actions of others disappeared, and it is necessary to consider that still there are differences among the researchers about the basis of criminal responsibility and that some people really need to be absolved of the responsibility or not.

Classical ideology

Among different ideologies that have been developed from eighteen century, classical ideology confirmed the capital punishment in some of especial cases, but finally, they have sought to adjust the punishments and replace the prisons and the rough punishments have been questioned. Fans of this ideology are: Jean-Jacques Rousseau, Bkarya. Rousseau believes about exception, for that anybody does not be bait of crime; all people are satisfied that criminals should be sentenced to death. Offender, with her/his desire and willingness, has violated a contract that was closed with society and due to abuse the social rights, is not a member of society and his/her life does not conform to society's survival. Thus, one of them should be eliminated and because the interest of society is above the interest of offender, and he has violated above

commitment, therefore, community has the right to kill him/her. So he believes that capital punishment is essential for the survival of society. In summary, Bkarya political thought is that the punishment should have an advantage. Bkarya has proposed to delete the capital punishment in original, and for this reason it is innovator. Bkarya believes that capital punishment is not helpful because of the brutal lesson that teaches humans. Bkarya, like Rousseau, believe in favor of social punishment. He leads people to seek benefits. He also believes that crime is also because of probable benefit which offender has dream of having it, but the offender according to the crime punishment that he/she is going to do it, examine profit and detriment and if punishment has been selected so severe but with complete thought, he/she will refuse of carrying out the crime.

Absolute justice ideology

In this ideology, the purpose of punishment should not be social benefit but also it is necessary that the ultimate purpose of the punishment should be restoring the moral order and establishment of justice in society. Scientists and originators of this ideology are Immanuel Kant and Joseph de Maistre which its philosophy was based on absolute justice and according to that, it should not be put the basis of punishment on profit considerations. In this ideology, not only the punishment was not condemned, but also it was persisted. Kant believes that losses incurred by offender are not compensable, unless using punishment against him. For Kant, nemesis or execution is an optimal or desired level of enforcement of social justice. This is, that the retaliation and execution should be derived from judicial decisions and lost should not be enforced it alone. Joseph de

Maistre's idea, like Kant, is based on absolute justice, with this difference that in the sight of Joseph de Maistre, celestial and religious views is overcome on philosophical view. He opposes to the purpose of seeking the benefit of punishment and believes punishment (even death) even though does not have any benefit, should be applied and enforced.

Realization and positive ideology

Positive ideology believes to social prevention or safeguarding measures that is equivalent with punishment or in fact it is the replacement it. Fans of mentioned ideology based on the resultant experiences claim that what leads people to the crime is fusion of these de factors of and offense. One category of factors is called internal misdemeanor (crime) factors and another category is called external misdemeanor factors. Fans of this ideology are Lombroso and Enrico Ferri that in general, they believe to being mandatory the phenomenon of delinquency (criminal) and lack of moral responsibility. In Lombroso's idea, offenders with physical characteristics such as short stature, high forehead, broad temple, growth of lower jaw, prominent of cheeks and etc. are people born from mistake of rules in nature. Enrico Ferri believes that should be left any criminal politics which is based on offender moral responsibility or fault element, and then human's social responsibility should be replaced it only because of that he/she lives in community. In general, Ferri has opposed by the capital punishment and he believes to frightening effect of it which should be applied to large scale in society.

Social defense ideology

Desired social defense in this ideology does not mean that government to defend

the society only has the duty of maintain of benefits of society, but also, in addition, it should try in correction and improvement of social condition with socializing the offenders. Therefore, in this ideology, the purpose of social defense is to improve society through socialization and training the offenders. Mark Ansel, Adolf Prance and then Gramatyka are fans of this ideology. In general, this ideology has announced its principled opposition to the capital punishment. Punishments of imprisonment if also lead to be incompatible person with the community, by this ideology were being questioned. Mark Ansel permits the enforcement of capital punishment if all efforts have failed to achieve educational goals. If government's efforts to adjust him/her with society and finding social degree are not reached the desired outcome, a person can be executed. Adolf Prance deems appropriate the life imprisonment for incorrigible offenders but he does not agree with capital punishment and only considers the dangerous status of offender that it is only concept which can be deployed order. Gramatyka is denier of criminal law and principles of crime, offender, and responsibility in general and believes that social defense rights should be replaced with criminal laws. In Gramatyka's idea, factors and conditions that cause a conflict of person with society as much as possible must be removed and instead of punishing offenders, should be stressed on preventive measures and criminal proceedings should be continued to remove anti-social mode. As a result, from the perspective of the social defense ideology, execution is a barbaric punishment and in general was severely criticized. In summary, we say that in a system based on respect to human, protection of human life and belief and social promotion, the capital punishment

is based on this assumption that the government has rights towards life and death of citizenships, assumption that due to being irrecoverable of capital punishment, it certainly loses its justification.

Western Europe countries

With the adoption of international treaties and numerous agreements to abolish the capital punishment and influence these efforts to United National, the anti-capital punishment movements gained power and began its fundamental activities, as far that these efforts led to the abolition of the capital punishment in the Western Europe countries widely in the twentieth century and especially since the early 80s. Before that, "Republic of Rome (Italy)" was the first country that abolished the capital punishment from its own constitution in 1849 and followed by that, Portugal in 1867 and then in other countries such as Netherlands, Romania, Italy, the Republic of San Marino and the Swiss Federal Council abolished it. At the end of the century, Norway was the first country in the Nordic region that abolished capital punishment and after the First World War, Sweden, Iceland and Denmark has abandoned the execution. In Germany, that until the appearance of fascism, significant advances had been made for abolishing execution, Experience of the Holocaust and other violence, was created the numerous domestic pressures to maintain this punishment for perpetrators of murder, but finally, abolition of capital punishment for all crimes in all circumstances in article 102 of new constitution if Federal Republic of Germany was guaranteed. Greece in 1993 by stating that the human life has great value and yet the profit of execution has not been proved, they abolished this punishment for common crimes. In November 2004, some cases of these

punishments in military law was left that in that year, this punishment was removed for all crimes with the approval of the protocol No.13 of European Convention on Human Rights in the Greek Parliament.

Middle East and North of Africa

Movement to abolish the capital punishment in some countries has been largely unsuccessful. However, this movement also have has some achievements in this areas that if does not lead to abolish this punishment, but at least it can reduce the scope of the capital punishment. Occupied Palestinian Territories are the only region in Middle East that has abolished the capital punishment incompletely but even this country that abolished this punishment for common crimes in 1954, it has maintained it for the Holocaust. The punishment of crimes such as murder, rape, cooperation with the Israeli Forces in order to kill the Palestinians is execution. Tunisia, Morocco and Algeria, three countries of North of Africa can be considered as repealer of these de factors that were not executed anyone for more than a decade. Libya also was repealer of execution between the 1954 and 1977 and time of starting again the executions was 8 year after the Republican Revolution and gaining power the Gaddafi. Despite that Gaddafi declared in 1988 that is interested in abolishing the capital punishment, but executions have been carried out in this country that among them, we can mention the execution of at least six foreigners in 2005. Such crimes that are punishable by death in this country are great betrayal, attempt to transform the government forcibly, premeditated murder. In Lebanon, 14 executions were carried out between 1994 and 1998. In July 2001, the Lebanese Parliament abolished the mandatory capital punishment for predetermined

murder and gave the authority of applying them in the especial cases to the judges. The last execution which was carried out in this country was in 2004.

In Egypt, capital punishment not only for predetermined murder and rape with kidnapping and betrayal is workable, but also for new narcotics crimes in form of organizing narcotics trafficking are punished by death. At the present, there is not any reliable statistics on the execution in Egypt but the government report shows that between 1999 and 2003, each year between 25 to 50 people have been executed and 4 people were executed in 2006. Afghanistan after the Taliban in 2004, executed its first prisoner. Until the October 2007 any execution did not enforce officially in this country, until in this date, 15 men were executed by firing squad for crimes such as rape and theft. Among other crimes that are punishable by execution in this country are: murder, apostasy, child trafficking in order to use parts of the victim's body.

In Iraq in March 2003, execution was suspended by Coalition forces but in August 2004, interim government announced that execution for murder, narcotics trafficking, kidnapping and threats to national security have restored. Capital punishment in Iraq in October 2005 was decreed by the newly selected parliament for the perpetrators of terrorist acts or financial support and encouragement these acts. According to the indication of Amnesty international, at least 270 men and women, including Saddam Hussein was executed in 2007. Among the crimes that are punishable by death in this country are: murder, endangering national security, distribution of narcotics, rape and enforcement of terrorist attacks. The rate of supporting the capital punishment in Syria, Kuwait, and Yemen and especially in Iran and

Saudi Arabia according to Islamic Sharia laws is high. At least 7 people in 2005 and 10 people in 2006 were executed in 2006 in Kuwait that makes this country one of the highest execution rates according to the world population. In this country, murder, rape and narcotics trafficking are punishable by death. Saudi Arabia is one of the countries that have the highest execution rates. This country from the beginning of 2012 so far has executed 17 people that 8 people of them had other nationalities and in 2011 at least 82 people were executed in Saudi Arabia which compared with the previous year, it has been three times greater. Such crimes that are punishable by death are: murder, apostasy, crimes related to narcotics, sexual misbehavior and wizardry.

South and Central American Countries

South and Central American countries have been indisputable pioneers in abolishing the execution. At the end of nineteenth century, Venezuela, Costa Rica and Brazil were abolished the capital punishment and immediately after them, Ecuador, Uruguay, Colombia, Argentina, Panama and most of the Mexico states did this work, and in 1956 Honduras also that was not executed anybody since 1940, joined them. Paraguay that was abolished this punishment as de facto and in practice in decades, finally abolished the capital punishment for all crimes in 1992. Bolivia's 1967 constitution was prohibited the use of the execution but criminal law in 1973 still has this punishment. This conflict in 1997 resolved when Bolivia officially abolished the execution by eliminating all remaining serious crimes in rules. The last execution in Chile was done in 1985 and execution was abolished in 1989 for some crimes and finally for all of them in 2001 and only in military justice

law for probable use in war time remained. Brazil has declared to United Nation that a bill to abolish the execution in 2003 has been provided, but yet no final action has been taken by the Chamber of Deputies of the national congress. Once in 1976, in the wake of a coup, this punishment was imposed for different violent crimes, but with the fall of the military government, the civilian government abolished it again. Argentina in 2004, in the response to United Nations investigation declared that is among the countries that have abolished the execution effectively.

South and East Asia

While a portion of small and countries and islands in Asia have abolished the capital punishment, but to achieve this purpose in the larger countries, especially China, Vietnam, Japan, Pakistan, Indonesia and even small country of Singapore still has a long way. Small island countries in the Pacific Ocean such as Fiji, Micronesia, Palau and etc. are countries that have refused the use of execution in its law by following of the process of before the independence, which Fiji and Cook Island have this punishment for military crimes. Cambodia, Nepal, Bhutan and the Philippines are the only countries in this area that have abolished the execution. Abolition of execution in South Korea also has been proposed several times and may soon take the practical shape. Since independence in 1948, at least 900 people have been executed in this country. The last execution took place in 1997 with 23 people being hanged. Discuss abolishing the capital punishment in Taiwan in 1990 also began, In 2006, with the entry into force of the new law reduced the number of crimes punishable by the execution and this punishment for people under 18 and over 80 Officially Cancelled. The process of execution in Japan has been also irregular.

In 2003 only one execution, in 2004 two execution and in 2005 only one execution has been enforced. While Japan in general in 2007, nine people and in 2008, fifteen people were executed, suddenly in February 2009, the news of 4 executions in the cities of Tokyo, Nagoya, Fokoya announced. Usually, this punishment is applied in cases such as serial killings. Execution in North Korea, Singapore, Pakistan and Vietnam is highly supported and it does not seem to exist a powerful movement for the abolition in these countries or created primary. Execution for 29 crimes in Vietnam until recently was workable, Such as treason, espionage, armed robbery, terrorist acts, hijacking, crimes against humanity, embezzlement, rape and the exact number of executions carried out in China is one of the country's most important state secrets. Estimates differ from a thousand cases per year to 8 or 10 thousand. No matter how much this amount is, anyway China has at least 80 and perhaps 95% of all judicial executions in the world.

Eastern European countries (socialist)

Countries that are the birthplace of Fascist are one of the first countries that stand against the capital punishment. In the former Soviet bloc, the circle of the crimes punishable by death was so widespread that not only economic crimes, but any other crime could be considered as a threat against the stability of the country and deserved the execution. Ideological space of that time have effected on the people so that still its effects can be seen. Federal Republic of Czechoslovakia after the fall of the dictatorial regime in May 1990 vote to abolish the capital punishment. Republic of Serbia in November 2001 corrected the federal criminal law, and in June 2002, the newly independent Republic of Montenegro, with

similar actions, 13 years after the last execution in this country in 1989, abolished execution as a punishment for all crimes.

After the Second World War, Execution in Poland, like other communist regimes, foremost, it was used for economic and property crimes that also potential political opponents were the purpose of that. Execution history of the former Soviet Union is somewhat confused. This punishment in years of 1917-18, 1920-21, and between 1947 and 1950, three times for offenses committed in peacetime was abolished, but each time was revived again that in all cases relies on this argument that the execution to defend the revolution and its enemies, those carry out counter-revolutionaries and terrorists actions or are a member of insurgent organizations is necessary. In socialist countries determine the capital punishment by the judge is optional, i.e. the crimes are punishable by death and in particular chapter of criminal law has been predicted, the right to choose between determination this criminal or instead that, imposing punishment of deprivation of freedom, is in authority and discretion of judge issuing the warrant. And when that in any especial case, the judge recognizes that applying the punishment of deprivation of freedom to achieve the intended purpose of this punishment is inappropriate and useless, then it can publish an execution sentence.

Capital punishment in international and regional documents

Beside the international documents that in order to eliminate the execution had an effective stapes, the activity of other regional organizations also is notable. The capital punishment that in medieval centuries was the score of rulers and a criminal tools and criminal policy of the countries during the centuries,

monopolized its national sovereignty against international community and the material provisions of the UN Charter, it was protested that, Recently has been the subject of public international law and of the shackles of the old principle of "non-interference in the internal affairs of States" has been released. These changes were owed to changes that the international law after the Second World War due to significant appearance of human rights knew. The rights that for the first time in the history of international laws were traditionally based on the relationships between states, with awarding the authority of chasing and even accusing the government, lifted person until international issues level. Among these rights, the rights of life according to that is a necessary condition for other fundamental rights and is consider to be a member of set of Cogens law in international law, is dignified and in this respect that has general audience, it cannot be violated that even in wartime. But in fact it is not. Any interpretation of the right to life is not absolute because limitations and exceptions such as conviction and law enforcement of capital punishment, have been bounded it.

Capital punishment in International instruments

While long been that the capital punishment and its enforcement way have been turned into one of the challenges of human rights issues, international human rights law, in turn, has had a special emphasis on the right to human life as one of the most basic rights. In this field International documents are existed in order to reduce and abolish the capital punishment and to respect the human right. The local protocols may not lead to universal abolition of the capital punishment, because of all the earth not

covered by regional conventions of human rights. And also this punishment has been highly penetrated in some of mentalities of some areas.

Universal Declaration of Human Rights

Universal Declaration of Human Rights is an international treaty that was adopted in Paris on 10 December 1948 when the 48-member UN voted without opposition to it. Provisions of this Declaration have been specified the fundamental Rights of civil, cultural, economic, political and social, which all human beings in every country must have them. Protect the right to life in the Universal Declaration of Human Rights as the first codified document for protecting of modern human rights; the capital punishment was one of the most important issues. Article 3 of the Declaration provides: Every person has right to life, liberty and personal safety. In this declaration, the capital punishment is not explicitly mentioned, but the right to life has been protected by Article 3 and it seems that intention have been to abolish the capital punishment.

International Covenant on Civil and Political Rights

International Covenant on civil and political rights 1966, interpretation of a part of principles enshrined in universal declaration is considered as legal duties and the first attempt to limit the enforcement of the capital punishment. Article 6 of the Convention which was adopted from article 3 of the Universal Declaration of Human Rights refers to the right to life. In this article, the "right to life is one of inherent rights of human, the law must support this right and any person shall not be arbitrarily deprived of his/her life."

Second Optional Protocol related to the International Convention of Civil and Political Rights

The protocol controls the abolishing the capital punishment, which was adopted by the UN General Assembly in 1989, and entered into force on 11 July 1991. Present Protocol, including Article 11, Section 1 of this document, the Member States shall prohibit the execution. This Article forced the member states to work towards abolition.

Capital punishment in regional documents

Beside international documents, activities of other regional organizations are also remarkable that are mentioned below:

European Convention on protection of the Human rights and Fundamental Freedoms

However, the right to life is recognized as one of the most basis of human right, by a large number of countries, international organizations and institutions active in the field of promotion and protection of human rights, but in practice, this right is engulfed in an aura of ambiguity and uncertainty. Article 2 of the European Convention on Human Rights and Fundamental Freedoms was being drafted that explicitly the capital punishment recognizes as an exception on the right to life. According to the first paragraph of this Article: "Everyone's right to life shall be protected by law. No one may deliberately deprive of the right to life, except on enforcement of punishment that the court has ruled that and then the condemnation of the person for a crime which it punishment is provided by law". In the second paragraph Article has been said: "Deprivation of the right to life should not

be deemed contrary to this article, when due to force in necessary level to:

1. To defend himself against illegal violence.
2. To do the legal arrest or to prevent the escape of a person this is detained lawfully.
3. Is to put down a rebellion or sedition

Although the purpose of writing this article has been a protection of right to life, but style of writing it, it does not provide that purpose and even the reader will despair by seeing that, because this article only relies on importance of law and legality of capital punishment and the major part of it related to conditions that with respect them, the capital punishment is legal and legitimate.

Second Additional Protocol to the American Convention on Human Rights

The process of abolishing the capital punishment in the Americas, with the adoption of the protocol was completed in June 1990. This summery document includes 4 articles about abolishing the capital punishment and in 22 August 1992 entered into force after ratification by Costa Rica and Panama.

Protocol No. 6 of Convention for the Protection of Human Rights and Fundamental Freedoms

The document was adopted in 1983 by most of Council of Europe member states that the important steps taken towards the capital punishment. Contrary to the title that has chosen for this protocol, this protocol abolishes the capital punishment only in peacetime, and applying the capital punishment in wartime or imminent threat of war authorized (Article 2 of Protocol No. 6). Despite gaps available in it, Protocol No. 6 is the first legally-binding document in Europe, and even the world, that has prohibited the capital punishment

in peacetime. Therefore, we can consider the codification and approval of this protocol in his time as an important step toward banning the capital punishment in all circumstances, both in peacetime and in time of war.

Protocol No. 13 concerning the abolition of the capital punishment in all circumstances

Protocol NO. 12 is the last step of a lengthy struggle during these years that has been followed by Council of Europe to abolish the capital punishment completely and approval of this protocol, without doubt, makes Europe the vanguard of abolition movement, among regional international and global organizations. Approval of Protocol No.6 created a great leap in this field in its time and Council of Europe member state even those with suspicion saw to the abolition of this punishment, or apply this punishment, forced to refuse from execution actions during the war.

Child Right Council (CRC) 1989

A clause of article 37 of Child Right Council prevents the member states from using the capital punishment towards children. The text of this Article is: No child shall be subjected to torture or other cruel and inhumane behavior or violation of human dignity. The capital punishment or life imprisonment without possibility of pardon cannot be executed on children under 18 years. These efforts have had a wide range of reflections in level of internal laws; So that today in laws of more than 100 countries the use of capital punishment for juvenile offenders is prohibited.

Universal Declaration of Human Rights in Islam

Members of the Islamic Conference to develop the Universal Declaration of

Human Rights in Islam in the year 1407 AH (1986 AD) were prepared a text and presented in 1410 AH. In the year 1411 AH corresponding to 1990, this document was approved. The first Article of the Declaration refers to the right to life for all human life and considers the life as gift of God and guaranteed for all human, and the use of any means to destroy human life knows prohibited. Article 4 of this Declaration, the right to life, the right to dignity, and the right to freedom responsibly are debated. This Article is provided: it is not permissible to take human and arrest him/her or constraining his /her liberty or exile him or punish him without legal cause, therefore, this declaration would accept the capital punishment in cases where the Sharia has been permitted and not willing to abolish the capital punishment.

The measures taken place to abolish the capital punishment

Move step by step towards cleansing the capital punishment that in most cases takes years, has been a process that has been considered in most re-leaper countries. In this manner, first the compass of applying this punishment has been decreased and the number of crimes punishable by death has been reduced until are limited to a limited number. The next step is to abolish this punishment

practically that in the law of countries still this punishment remains, which this duration in countries that have abolished the punishment in this way, is a decade, and finally, final step is abolition of this punishment completely and cleaning it from the law's screen of a country.

Effort process to abolish the execution

Capital punishment has historically evolved, so that the old rules were applied for the majority of crimes of this punishment. Corporal punishment, particularly the execution was common everywhere until the 17th century. China has the highest number of executions in the world, with more than 2,000 executions in 2012. Iran with 314 executions and Iraq with 129 executions were in the second and third ranks. Amnesty International says in 2012, excluding China, at least 682 people has been executed in the world that has been two people more than 2011.

In the Table 1, you can see the number of executions in 2012 in 1 country that the capital punishment is enforcement in them: insertion the sight of + means that capital punishment is more than this amount but the information of Amnesty International is not enough and relies on the minimum.

Table 1.

Number of execution	Country	Number of execution	Country
+314	IRAN	+200	China
+79	Saudi Arabia	+129	Iraq
28	Yemen	43	United State
14	Afghanistan	19	Sudan
7	Japan	9	Gambia
+6	Somali	+6	North Koura
		6	Palestine

Discussion and Conclusion

1. With the advent of the famous ideologies and jurists and the lawyers writing against

the intensity of punishment, especially the capital punishment, whispering of

abolition of execution were heard slowly and gradually that it is necessary to consider that among the abolishing of execution in some countries, crime rates have continued to increase, therefore, some countries inevitably were reactivated the capital punishment for some crimes that the experts found that these countries regardless of the country's social fabric and also particular fabric of people were attempted to abolish the execution.

2. Criminal doctrine in nineteenth century led to some theories that replacements of criminals of rehabilitate the circuit rather than physical criminals knows desirable. "The global movement to abolish capital punishment" is one of the greatest achievements of the twentieth century, so that with significant expansion of the movement, every day number of the countries that clean the execution from their criminal arsenal is increasing.

3. The contrast of the two attitudes -one of them in favor of abolishing the capital punishment penalty and the other one wants to maintain it - those countries that respect the traditions and believe the religious-cultural beliefs - against the growing wave of the global movement of releapers show more resistance.

4. Beside the Islamic countries which based on the teachings of the religious, permit the capital punishment, it can mention some examples (such as united State of America) that are involved political-social interests in the increasingly enforcement of this criminal

References

Ardebili, Mohammad A. (2010), public criminal law, 24 editions, Tehran, Mizan publication.

Bkarya, S. (2010), crimes and punishments thesis, translated by Mohammad Ali Ardebili, Tehran, Mizan publication.

Shambiati, H. (2010), public criminal law, 3 editions, Tehran, Majd publication.

Shams Nateri, Mohammad E. (1995), comparative study of capital punishment, Qom, Center of Islamic Studies and Researches,

Shahlaii, F. (2010), death penalty and its abolition movement, first edition, Tehran, Negah Bineh Cultural Institute of Publishing.

Ali Abadi, A. (2005), criminal law, Mizan Publication, Bita.

Nooriha, R. (2004), public criminal law field, 20 editions, Ganj Danesh Publication.

Jean-Jacques R. (1969), the social contract, translated by Enayatollah Shakiba poor, Tehran, Farokhi press institution.

Validi, M.S. (1993), public criminal law, second editions, Tehran, Samt publication.

Ardebili, M.A. (2006), international criminal law, selected papers, capital punishment from the perspective of human rights, Tehran, Mizan Publication.

How to cite this article: Golnaz Moradi Pasand, Alireza Lotfi Dodaran, Mozafar Bashokuh, Capital Punishment from the Perspective of Criminal Law and International Criminal Law Ideologies. *International Journal of Advanced Studies in Humanities and Social Science*, 2013, 2(4), 218-229.
http://www.ijashssjournal.com/article_83497.html