

## Narcotics Crimes Criminal Procedure in Iran

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**Abstract:** Human societies have been involved in problem of narcotics from a long time ago and all kinds of these drugs have been added and new drugs have been created with different effects on decision making and thinking will and power of person. At present, our case law has some shortages, ambiguities and deficiencies and the legislator should fill this legal gap through the case law and logical interpretation of the available rules aside from correction of these deficiencies. On this basis, the main goal of this paper is to study deficiencies of laws available in the narcotic crimes criminal procedure in Islamic Republic of Iran. This paper which has been written in descriptive and analytic method gives suggestions for reforming these laws in Islamic Republic of Iran.

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### Introduction

Narcotics and its destructive effects on person and community have been seriously discussed in recent centuries and perhaps, it can be said that it is regarded as one of the largest threats in human society at present. Besides narcotics control, prevention of personal and social destructive effects of the narcotics, correction, treatment and even support of the persons who have been entangled in these drugs and suffer from these conditions should not be forgotten. In other words, society should think about treatment and recovery of the addicts to natural and healthy social life instead of punishing them and ostracizing them while category of criminal liability of the drug abusers has not been considered in legal texts of our country and legislator has neglected to issue award in this field. This caused difference of opinions in the present criminal systems and consequently difference of procedures about extent of criminal liability of the addicts and drug abusers and possibility or impossibility of criminal reaction to these people. On this basis, narcotic crimes criminal procedure in Iran is a very important case. This paper which has been written with descriptive –analytical method deals with narcotic crimes criminal procedure in Iran in the stage before issuance of award, during legal procedure and after issuance of award in Iran and finally, this paper makes conclusion for suggesting correction of these laws.

### Narcotics Offences Criminal Procedure

#### 1- Stage before issuance of award

Includes three stages of detection and prosecution, preliminary research and final trial. In complex proceedings system, each one of these three stages is performed by a special judge in order to protect rights and freedoms of the accused and prevent criminal

autocracy. Crime is detected by police controlled by the public prosecutor, crimes are prosecuted by the public prosecutor who prosecutes crimes according to law on behalf of society. Preliminary research is performed by the interrogator and final trial and award are issued by the judges of courts independently and considering bill of indictment of the public prosecutor and defenses of the accused.

#### A- Stage of Detection And Prosecution

Nor interrogator can start research nor is trial executed in the court unless it is prosecuted by the public prosecutor. The public prosecutor doesn't start prosecution unless after collection of enough information about the related crime. Therefore, start of prosecution is followed by a preliminary stage i.e. crime detection which is performed by the guardians of the peace. Stage of detection is a very sensitive and important stage of criminal proceedings; this stage is in fact basis of criminal proceedings and infrastructure of criminal case. In public courts, the guardians of the peace were as follows according to article 19 of Criminal procedure code 1911: 1- the primary public prosecutor and his deputies, 2- interrogator, 3- police commissars, 4- officers and brigade heads.

Stage of detection of narcotics crimes (the crimes for which legal punishment was capital punishment) was assumed by the military officers. Article 135 of military criminal procedure code stipulated that: in case of the absence of military officers in place of crime, preliminary research of crimes which is under jurisdiction of military courts is performed by the guardians of the peace. In revolutionary courts, the crimes which are under jurisdiction of these courts such as narcotics crimes shall be detected by the guardians of the peace which had been included in criminal procedure code 1911, article 19 and mentioned in procedure code of public and

revolutionary courts in criminal affairs, article 15. Narcotics crimes were prosecuted by the revolutionary public prosecutor by 1994. By enacting law regarding formation of public and revolutionary courts, the public prosecutors were excluded from public and revolutionary criminal system and their duties such as prosecution were assigned to heads of the justice administrations of the province and cities and their deputies but public prosecutor's offices were entered in criminal system of the country in 2002 and duty of crime detection and prosecution of the criminal was assigned to the public prosecutor's offices.

#### **B- Stage of research**

Preliminary research is one of the main duties of criminal justice. It is not possible to perform any trial without preliminary research. Preliminary research is applied in two general and special senses:

In general sense, it includes all researches which are performed before proceeding session whether in stage of detection and by the officers or in stage of research by the interrogator. Preliminary researches in this sense is performed for any crime though small and unimportant crime. In special and limited sense, preliminary researches mean the researches which are performed by an impartial interrogator) based on special powers to which law has been delegated and they are used based on different and strict formalities. Preliminary researches were performed for all narcotics crimes by the general interrogators and based on rules stipulated in criminal procedure code, 1911 by 1969. In 1969, preliminary researches of the related crimes under jurisdiction of the military interrogators were based on regulations of military criminal procedure code in 1969 by transferring jurisdiction to try some narcotics crimes to military courts. Here, we don't study preliminary researches in military courts and study preliminary researches in revolutionary courts. In revolutionary courts, preliminary researches are performed by the interrogators or assistant to the public prosecutor of revolutionary public prosecutor's office and under supervision of the public prosecutor according to bylaw of revolutionary courts and public prosecutor's office. Interrogator performs research personally and if appropriate, with help of the assistant to the public prosecutor and finally makes comment on criminality or acquaintance of the accused or issuance of the final writ. Then, he gives this writ to the public prosecutor to issue bill of indictment by agreement. In case of difference of opinion between the interrogator and the public prosecutor regarding criminality or acquaintance of the accused, the court settles the dispute by making comment. The accused is first summoned by the interrogator and then arrested if appropriate. Among the writs which interrogator issues, writ of non-prosecution and arrest warrant

should be given to the public prosecutor. In case of disagreement of the public prosecutor on the mentioned writs, view of the court judge will be binding and final for settling the dispute (Noorbaha, 2004).

#### **C- Issuance of bill of indictment**

Bill of indictment means the public prosecutor's office requesting the criminal court for determining punishment or precautionary measures or training measures for the accused (Ashoori, 1997). After the interrogator's ending the research and his issuing the writ of criminality in the public prosecutor's office, the public prosecutor requests the competent court to issue legal award in case the public prosecutor agrees on the writ of criminality.

#### **2- Stage of trial and issuance of award**

##### **A- Narcotics crimes trial**

B- In 1959, Narcotics crimes trial was announced to be immediate and out of turn. Article 17 of opium culture prohibition law reform act enacted in 1959 stipulated: "the mentioned crimes will be heard in this law out of turn". In military court, hearing sessions will be held publicly unless its publicity is rejected by the security forces or is contrary to interest of the country or precriminal to ethics. In this case, it is held secretly at request of the public prosecutor. After formalizing the court, the head asks the accused about his full particulars and secretary takes note and then the accused was asked to make comment to defend him at appropriate time and be careful about his comments. After performing the above formalities, the court secretary read the bill of indictment as ordered by the presiding judge and then the presiding judge announced summary of accusation to the accused and mentioned the proofs and documents raised by the public prosecutor and asked him if he accepted the related accusation or not. If he rejected the related accusation, the presiding judge would start research. If necessary, the public prosecutor explained the bill of indictment and then comments of the witnesses and experts were heard and the accused or the defending attorney defended him (Jafari LAngroodi, 2009). In the revolutionary courts, term of the court trial was at most 1 week and his accused or attorney had right to defend at most within 15 hours. The court was held in public but if the presiding judge found that the trial should be done secretly, the court was held secretly. After the bill of indictment was read and defense of the accused and his attorney were heard, the court performed the necessary research and issued the award after consultation according to Islamic rules. By enacting criminal procedure

code of the public and revolutionary courts, bylaw of the revolutionary courts and public prosecutor's offices was abolished. Article 193 of this law declares that trial is performed as follows:

- 1- Hearing comments of the complainant and claimant or their attorneys, witnesses and experts whom the claimant or complainant has introduced.
- 2- Investigating the accused to see if he accepts the accusation or not.
- 3- The exact response of the accused is mentioned in minutes.
- 4- Hearing comments of the accused, witnesses and experts whom the accused or his attorney has introduced.
- 5- Investigating means of crime and hearing comments made by attorney of the accused.
- 6- Hearing new proofs which are submitted by the accused or his attorney. The court is obliged to reflect provisions of the comments of parties to suit and the exact remarks of the witnesses and experts in the minutes. The court allows the accused or his attorney to speak after the end of discussion and ends trial after the parties' signature.

In order to hear narcotics crimes relating to public order, there should be one prosecutor who defends the bill of indictment in the court but article 193 has not referred to this subject. At present, the public prosecutor defends the bill of indictment by reestablishing the public prosecutor's office. Duty of the public prosecutor or his delegate and head of the jurisdiction is not always to prosecute the accused and request for his punishment. The public prosecutor supervises on good performance of the laws as symbol of public will and reminds the court some legal points and legal details with his long views and valuable guidance (Akhondi, 1989).

### **C- Right of the accused in stage of research and trial**

In particular sense, right of defense means free application of all legal means against any accusation and claim.

One of the most important means of providing right of the defense to the accused is right to elect and use the defending attorney. This right shall be observed not only in final trial stage in the court but also since primary stage of crime detection and preliminary research. In legal system of our country, involvement of the defending attorney in stage of preliminary research was not stipulated due to investigative nature of this stage when criminal procedure code is enacted. This trend continued by 1956 and no accused person was not entitled to use the

defending attorney in this stage. In reforms of criminal procedure code in 1956, one note was added to article 112 of criminal procedure code. By enacting this added note, the defending attorney participated in research in stage of preliminary research without interference in research. Therefore, the accused of narcotics crimes who were always tried in criminal public courts by 1969 and sometimes tried since 1969 later on and were subject to general conditions of criminal procedure code were entitled to appoint defending attorney in preliminary research stage since 1956 later on with reliance on the added note to article 112 of the criminal procedure code. In military criminal procedure code, the accused in military courts had no right to appoint defending attorney in preliminary research. In the revolutionary courts which were formed and were recognized to be competent for hearing narcotics offences, the accused had right to use the attorney according to bylaw of the revolutionary courts and public prosecutor's office but the above bylaw didn't specify that the above right related to stage of trial or included preliminary research stage. Article 7 of the above bylaw stipulated that: any accused person will have right to appoint one Iranian attorney who is aware of the criminal issues and criminal law of Islam. Considering principle of criminal laws interpretation in favor of the accused and considering that the accused has right to have an attorney in preliminary research stage according to the criminal procedure code (note of article 112) and bylaw of the revolutionary courts and the public prosecutor's offices have not extinguish such right of the accused, it should be said that right to appoint the above attorney as mentioned in article 7 of this bylaw also includes preliminary research stage. Article 128 of procedure code of the public and revolutionary courts stipulates that: the accused can appoint one attorney with himself. Attorney of the accused can notify the judge about the facts which he deems to be necessary for discovering the fact and defending the accused or enforcing the laws without interference in research after termination of research. Comments of the attorney are reflected in the minutes (Sanei, 1974).

### **3- Stage after issuance of judgment**

The stage after issuing award includes two stages of complaining against judgment and execution of judgment. Therefore, in this section, we study how to complaint against or revise the narcotics judgments and execution of narcotics judgments.

#### **A- Revision of the narcotics judgments**

After victory of Islamic Revolution, trial in courts was declared in one stage. Consequently, the criminals of these courts were deprived of their right of revision in bylaw of the revolutionary courts and public prosecutor's office enacted on 17 June 1979 by

Revolutionary Council. It has been stipulated in note 2 of article 11 of the above bylaw: judgments of the revolutionary courts are final and cannot be reviewed. This trend continued until law determining revision of the court judgments and hearing them was enacted on 18 Oct. 1988. By virtue of article 1 of this law, judgments and writs of the courts regarding the cases stipulated in the law were announced to be reviewed and article 3 of the above law stipulated that the Supreme Court would investigate violation or acceptance of the judgments of the revolutionary courts, criminal, military and civil courts. Therefore, the judgments which were issued for narcotics crimes in revolutionary courts were reviewed in Supreme Court of the country according to the above-mentioned article. Drugs control law was enacted by the Expediency Assembly of the Regime on 25 Oct. 1988 very soon and the issued judgments of narcotics offences but final capital punishment were announced final in article 32 of this enactment. Therefore, the issued judgments regarding narcotics offences were reviewable only for 7 days after Islamic Revolution (from 18 Oct. 1988 to 25 Oct. 1988). Later on 8 Aug. 1993, courts judgments revision law was enacted and stipulated in article 3 of the law reviewing judgments of revolutionary courts of the Supreme Court. Law forming public and revolutionary courts regarded judgments of these courts reviewable and criminal procedure code, 1999 has accepted revision of the judgments of these courts. Drugs Control Law enacted in 1988 was amended on 8 Nov. 1998 and article 32 was exactly maintained. Article 232 of procedure code of Court of Administrative Justice has counted the reviewable judgments which included three-month imprisonment to capital punishment while article 32 of drugs control law has regarded the issued judgments but final capital punishment final and binding. Members of Expediency Assembly of the Regime waived right of review from the narcotics offenders by enacting drugs control laws on different pretexts particularly immediate trial of the mentioned crimes and seriousness of punishment for such criminals. Right of revision is one of the most important defensive rights of the accused. This right has been accepted in international declarations and constitutional laws of the developed countries in the world. Two stages of trial have been accepted in international treaty of civil and political law. Paragraph 5 of article 14 of international treaty of civil and political law stipulates: anyone who commits a crime is entitled to recourse to higher court to hear his criminality and trial according to the law. Therefore, it is unfair and dangerous to waive this right of the drugs offenders which vitiates their defensive right. Article 32 of drugs control law stipulates that: the capital punishment judgments which are issued by virtue of

this law are final and binding after being confirmed by the head of Supreme Court or the public prosecutor. In other cases, when the judgment is found by the head of Supreme Court or the public prosecutor to be contrary to canon or law or the judge who issue the judgment is not competent, the head of Supreme Court or the public prosecutor has right to review and violate the judgment. However, the presence of this right doesn't prevent finality or enforceability of the judgment. Considering this article, capital punishment judgments should be separated from other judgments.

#### **4- Execution of narcotics judgments in Islamic Republic of Iran**

In execution of the judgments of revolutionary courts, article 32 of the revolutionary courts and the public prosecutor's offices stipulated that: the judgments should be notified to the losing party in appropriate manner and the revolutionary public prosecutor will issue order for its execution. The capital punishment judgments should be announced to the revolutionary public prosecutor 10 days before execution of the judgment. During this term, the losing party is allowed to visit his family. The judgment shall be executed at place of crime if possible. Here, we study regulations inserted in article 31 of drugs control law i.e. imprisonment for the cash fine due to conflict with applicable law of financial convictions enacted on 1 Nov. 1998 by Islamic Consultative Assembly. Article 31 of drug control law 1987 stipulated that: the convicts who are not able to pay all or part of the judged cash fine shall reside in half-open or open prisons or employment and job training centers for 10 days in return for Tomans 1000. In case conduct of the convicts is proper during the mentioned residence term, this term will be reduced to three days in return for each Tomans 1000 at discretion of the center authorities. In amendment of 1997, article 31 changed as follows: the convicts who are unable to pay all or part of the ordered fine shall reside in half-open prisons or employment and job training centers within one day in return for Rls. 10,000 and in case conduct of the convicts is proper during the mentioned residence term, this term the above price will be calculated to be Rls. 20000 to 50000 for each day at discretion of the center authorities. By virtue of article 31 of the amendment, term of imprisonment for cash fine which was 10 days in return for Tomans 1000 was reduced to one day. In case conduct of the convicts is proper during the mentioned residence term, this term the above price will be calculated to be Rls. 2000 to 5000 for each day at discretion of the center authorities. In note 2 of the above article, it is stipulated that term of punishment for cash fine will not be longer than 10 years.

Law of financial convictions execution which was enacted by the Islamic Consultative Assembly on 1 Nov. 1998 stipulated some regulations regarding imprisonment for the cash fine which are different from contents of article 31 of drug control law. Article 1 of the above law stipulates that: everyone who is convicted to pay cash fine in criminal field and doesn't pay it or he pays any money other than his debts, he will be imprisoned for one day in return for each Rls. 50000 by order of the judge issuing the judgment. In case the above mentioned conviction is accompanied by imprisonment, the imprisonment for cash fine will start since completion of imprisonment and will not be longer than the maximum term of imprisonment stipulated in law for that crime and the maximum term of imprisonment for cash fine shall not be longer than 5 years. The conflicts which are between the mentioned article and article 31 of the drug control law are as follows:

First, cash fine of Tomans 1000 will be calculated for each day of imprisonment based on article 31 of drug control law while this amount has increased to Tomans 5000 for each day based on article 31 of financial convictions execution law.

Second, term of imprisonment for cash fine can be extended for 10 years in drug control law (note 2 of article 31) while this term cannot exceed 5 years in financial convictions execution law.

Considering the conflicts between these two laws, the question is that if article 1 of financial convictions execution law can abolish article 31 of drug control law. Executive deputy of the judiciary has found financial convictions execution law binding for the narcotics offenders by issuing circular to the criminal authorities.

### Conclusion

It seems that legislator of Iran tends to use criminal sanction generally and use of severe criminal sanctions particularly while criminal law is regarded as an exception against the law in general sense because it limits and waives personal rights. In other words, art of a government and a legislator for managing a society is to recourse to noncriminal institutions and reactions and government or legislator that recourses to criminal body in order to fight against the social phenomena in society will not be regarded as a successful legislator. In other words, the artistic legislator will resort to the criminal means in the last stage and only when he cannot fight against

the noncriminal means or social phenomena. One cannot and should not issue general and fixed judgment regarding criminal liability of the addicts and drug abusers and final result should be independently announced in each case. In other words, the judge is obliged to specify effect of the personal states and his motivations for abusing drugs on criminal liability of the person by studying these states and considering effect of drugs on will of the person and to convict the criminal due to the criminal behavior. For improvement of criminal system in this regard and removal of silence and cure, one can use one of the following two ways:

First, one can prevent issuing any unjust judgment and without considering will and criminal liability of such persons by amending Islamic Punishment Law and expressing the judgment about the extent and quality of criminal liability of the addicts and drugs abusers .

Second, one can cure the legal defect in extent and quality of criminal liability of the addicts and drugs abusers by establishing and expanding criminal precedent in this regard and especially considering deep insight which the lawyers and judges have in this regard. Resort to this way can better make criminal system close to justice considering higher speed and flexibility of the legislation route.

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